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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough

Case No. 2017-CP-10-03099
Appellate Case No. 2022-001479

Elizabeth Heatley, Neil B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and
Mariner's Cay Marina Council of Co-Owners, Inc.,.....Respondents,

v.

Mariner's Cay Marina Condo, LLC, Mariner's Cay Fuel Dock, LLC, George A. Farmer.,
Jr., and South Atlantic Bank, Defendants,

Of which Mariner's Cay Marina Condo, LLC, Mariner's Cay Fuel Dock, LLC, and George
A. Farmer., Jr. are the.....Appellants.

RECORD ON APPEAL
VOLUME XI of XV

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1 I started as manager.

2 Q. Exhibit 6. I think you were included
3 on this, but then again, maybe you weren't. Do you
4 recall Mr. Geiger doing a report back in August of
5 2015 wherein he said that it would cost about 115-
6 to \$138,000 to make repairs to the ship store
7 building?

8 A. I do not recall, no.

9 Q. Do you know if you've ever seen the
10 document that's attached at page MC-23 on Exhibit
11 6? And take your time to look at that, please.

12 A. Not familiar to me, no.

13 Q. Okay. Do you recall any discussions in
14 2015 about the ship store building needing work or
15 repairs?

16 A. Yes.

17 Q. Okay. And tell me what you recall
18 about those discussions.

19 A. I remember the board just discussing
20 the condition of the buildings and what would need
21 to be done to kind of bring it up to standard for
22 use.

23 Q. And was that during the foreclosure?

24 A. I believe so, yes.

25 Q. And if I use the term deferred

1 maintenance, would you know what that means?

2 A. Yes.

3 Q. Has there been -- was there a lot of
4 deferred maintenance on the building, to your
5 knowledge?

6 A. Not that I'm aware of.

7 Q. Okay. Do you have any idea if any of
8 those items were completed by anyone at Mariner's
9 Cay Marina Council of Co-Owners?

10 A. Not that I know of.

11 Q. Okay. You don't know whether they were
12 completed or not.

13 A. Correct.

14 Q. You just have no knowledge.

15 A. I have no knowledge.

16 Q. And are you aware of any repairs or
17 remodeling that Mr. Farmer's entities did after he
18 purchased the ship store and the fuel docks?

19 A. I have heard that there was some. I
20 don't know the details.

21 Q. Do you have any personal knowledge of
22 it?

23 A. No.

24 Q. Do you ever go out to do what we call
25 property inspections at Mariners Cay?

1 A. Yes.

2 Q. Okay. How often do you do that?

3 A. Once a month.

4 Q. And do you walk around with Mr. Geiger,
5 or do you walk around by yourself?

6 A. Typically by myself. Sometimes I see
7 him, sometimes I don't.

8 Q. And is that on a regular schedule of
9 your going to various properties, or do you just
10 say, oh, it's -- once a month I've got to go out
11 there?

12 A. It's not on a routine schedule, no.
13 It's just...

14 Q. Okay. But if you're at other
15 properties that you manage around Folly Beach, you
16 go to Mariners Cay and those other properties
17 probably in the same day; correct?

18 A. Yes. Yep.

19 Q. Let me turn to Exhibit -- make sure
20 it's right. The numbering can be a little tricky.
21 This is Exhibit No. 10. MC-33 through 35. You're
22 included on these emails, Ms. Barnes.

23 Do you recall any discussions with a
24 fellow named Jamie Williams about his having a
25 contract on the ship store and gas docks?

1 A. The name Jamie Williams, no. I do
2 remember there being someone else that had been
3 looking at purchasing them.

4 Q. All right. Feel free to review these
5 emails and just see if those refresh your memory.
6 And it's Exhibit 10.

7 A. I can't say for sure, but that's
8 probably the one that I remember. I just -- the
9 name isn't familiar to me.

10 Q. Okay. You just don't recall as we sit
11 here.

12 A. Right.

13 Q. This is Exhibit No. 13. If you would,
14 just review that for a minute, please, Ms. Barnes.
15 Do you recall ever -- and I didn't see your name as
16 being party to those -- that email exchange.

17 Does that refresh your memory about
18 Mr. Farmer, about the timeline of when he was first
19 involved with Mariners Cay?

20 A. From reading it, yes.

21 Q. Okay. And the Mike Sutton that's on
22 there, we've found out there were two Mike Suttons,
23 both of whom have served on the board. Do you know
24 which Mike Sutton that was?

25 A. I've never met the other one.

1 Q. Okay.

2 A. I know there are two, but I've only met
3 the one.

4 Q. All right. And it appears the board
5 was still contemplating a potential purchase, based
6 on those emails; correct?

7 A. Yes.

8 Q. And again, they never went through with
9 that purchase; correct?

10 A. Correct.

11 Q. If you'll turn to the next exhibit,
12 Exhibit 14. This -- you are on this email. It's
13 Exhibit 14, MC forty -- is that 46 or 48 in the
14 corner?

15 A. It's 48.

16 Q. MC-48 and 49. And you were -- tell me
17 why you sent that email.

18 A. It looks like one of the board members
19 had requested contact information for Dolph, and --

20 Q. And that would be Jeff Heatley?

21 A. Yes.

22 Q. Is he still on the board?

23 A. Yes.

24 Q. Okay. And do you know why Mr. Heatley
25 wanted Mr. Farmer's information?

1 A. I don't recall.

2 Q. But it would be in connection with
3 either his purchase or attempt at purchase of the
4 ship store and fuel docks; correct?

5 A. Yes.

6 Q. And you had Mr. Farmer's phone number
7 at some point; correct?

8 A. Yes.

9 Q. And do you know if Mr. Farmer or his
10 entities are still listed as owners on your rolls?

11 A. I believe they're still in the system
12 but not necessarily noted as an owner at this time.
13 It's just kind of in there with the ship store and
14 gas docks.

15 Q. Got it. But you think they're still in
16 the Sentry system?

17 A. I think it's still in the database,
18 yeah.

19 Q. That proprietary software, if we were
20 to get you to print it in that 30 seconds it would
21 take to print, they would be listed on there.

22 A. I believe so.

23 Q. Okay. If you'll turn -- I think it's
24 Exhibit 33, but I will confirm. It's 34. Sorry.
25 I was off by one. Exhibits 34 and 35, if you'll

1 take a minute to look at those, please, ma'am.

2 A. Okay.

3 Q. And I'll represent to you that one is
4 an email about potential reserve studies and then
5 two proposals from reserve studies from a crowd
6 called Miller Dodson and Reserve Advisors. Tell me
7 about those reserve studies, if you recall them.

8 A. They aren't the actual reserve study.
9 It's just a proposal to perform a reserve study by
10 two different --

11 Q. Correct. I'm sorry if I said that they
12 were reserve studies, because they are proposals.
13 Tell me, what was the board -- what were they
14 thinking about doing reserve studies back in 2016?

15 A. From what I could probably remember at
16 that time would be just to look at for -- planning
17 for reserve funds for upkeep of the community, the
18 docks.

19 Q. And were you required, as your
20 community manager position, to get proposals for
21 those reserve studies?

22 A. If the board asks, yes.

23 Q. Okay. And I see those two exhibits
24 that are attached -- excuse me -- two proposals
25 that are attached as Exhibit 35.

1 A. Um-hum.

2 Q. Do you recall receiving those
3 proposals?

4 A. I don't really remember at this point,
5 no.

6 Q. All right. I would imagine you see
7 requests for reserve studies or proposals on a
8 fairly regular basis; correct?

9 A. Yes.

10 Q. Do you know if the Mariner's Cay Marina
11 Council of Co-Owners ever authorized a reserve
12 study?

13 A. No.

14 Q. No, you don't know, or no, they did
15 not?

16 A. No, they did not.

17 Q. Okay. Do you know why they did not?

18 A. No, I do not know.

19 Q. Do you know when their -- if they've
20 ever had a reserve study done?

21 A. Not that I'm aware of.

22 Q. So since the condominiums --
23 dockominiums were formed, to your knowledge,
24 there's never been a reserve study.

25 A. Not that I know of.

1 Q. And the board, of course, at one point
2 was considering one back in 2016, but you don't
3 know why they didn't do one; correct?

4 A. Correct.

5 Q. Have you ever recommended they have a
6 reserve study?

7 A. Not that I recall.

8 Q. Okay. Do you know if Mr. Geiger's ever
9 recommended a reserve study?

10 A. I do not know.

11 Q. You just don't know.

12 A. I don't know, yeah.

13 Q. And you testified a few minutes ago
14 about your attendance at board meetings. Do you
15 attend every board meeting or just if they contact
16 you and say we'd like you here?

17 A. If they contact me.

18 Q. And do you attend every annual meeting?

19 A. No.

20 Q. Okay. Does someone from Sentry
21 generally attend an annual meeting if they're
22 requested to be there?

23 A. Typically, yes. There was one annual
24 meeting that the board planned, and we had
25 encouraged them not to choose that date because no

1 one was able to attend it.

2 Q. Got it.

3 A. But there was one that we did not go
4 to.

5 Q. Do you remember when that was?

6 A. I want to say maybe 2015. Well, it
7 might have been the 2016 annual meeting. It was --

8 Q. And that was in the spring -- I'll
9 represent to you in the spring of 2016.

10 A. Yes.

11 Q. And Mr. Farmer came to that meeting.

12 A. I believe that was the one that the
13 email was talking about that Mr. Farmer wanted to
14 come to that year.

15 Q. Correct. And because of scheduling
16 reasons, no one from Sentry was at that meeting.

17 A. That's Correct.

18 Q. So no reason to ask you about that
19 meeting; correct?

20 A. Correct.

21 Q. Do you know if Sentry sends out the
22 notice of the annual meeting?

23 A. Yes.

24 Q. And how many days prior?

25 A. It's in accordance to the master deed.

1 I want to say theirs is about at least 30 days'
2 notice.

3 Q. And you send it based on the addresses
4 you have on your running list on your proprietary
5 software that would take you 30 seconds to print;
6 correct?

7 A. Yes.

8 Q. And during your entire time managing
9 Mariners Cay, have you ever had a problem with
10 those notices being returned or a problem with
11 people saying, hey, I didn't get notice of the
12 annual meeting?

13 A. Annual meeting? Not that I recall, no.

14 Q. And do you know if Sentry sends out
15 notices of board meetings to the members of
16 Mariners Cay?

17 A. The board has asked on occasion for
18 emails to be sent out notifying owners of meetings,
19 of board meetings.

20 Q. And do you know -- when you've attended
21 the board meetings, have there been nonboard
22 members present?

23 A. Not that I recall.

24 Q. Okay. Generally just the board and you
25 as needed; correct?

1 A. Yes.

2 Q. Let me have the exhibit book, please.

3 This is Exhibit 46. It's MC-228. And then I'm
4 going to ask you also to look at Exhibit 55, 56, 57
5 for now. So if you'll just look at 46, 57, 56 and
6 55, if you don't mind.

7 A. Um-hum.

8 Q. So there's 51 and then 55, 56 and 57.

9 A. Okay.

10 Q. And do you recall any information about
11 the trailers, Dolph's son's trailer?

12 A. As remembering this instance?

13 Q. Yes, ma'am.

14 A. Yes, I do.

15 Q. And tell me about that instance.

16 A. Really, basically just what the emails
17 are; that the trailer had been stored on a patio
18 area and the board had requested that they be fined
19 for not having removed it.

20 Q. And do you recall the discussion where
21 Mr. Nauheim seems to state that \$250 is
22 inflammatory and not helpful? Do you recall those
23 discussions?

24 A. Not --

25 Q. Not specifically?

1 A. -- specifically, no.

2 Q. But do you know what fine was actually
3 levied, if any?

4 A. I don't recall specifically without
5 looking at past records.

6 Q. Okay. And you keep those records at
7 Sentry?

8 A. Yes.

9 Q. And do you keep them -- how do you keep
10 them for individual owners?

11 A. It would be on their owner card in our
12 software program.

13 Q. And again, is that some Sentry software
14 that y'all created?

15 A. Um-hum.

16 Q. You used the term owner card. Is that
17 what y'all call whatever the software is for each
18 individual owner?

19 A. Yeah. Each individual owner has their
20 own basically card in there where it has their
21 address, their phone number and email provided,
22 things along those nature. And any violations can
23 be recorded in there, and it also has an account
24 page where you can see if any fines have been added
25 to an account.

1 Q. Okay. But specifically as we sit here,
2 you don't recall anything about it other than --
3 you recalled something, but you don't recall that
4 specific --

5 A. The specifics.

6 Q. Or if a fine was actually levied.

7 A. Correct.

8 Q. If you would, please -- but you would
9 have levied that fine at the direction of the
10 board; correct?

11 A. Yes.

12 Q. And are you aware of anything in the
13 master deed of Mariners Cay that authorizes fines?

14 A. Not without reviewing the documents.

15 Q. Do you recall if you have fined any
16 other owners out at Mariners Cay?

17 A. I do not believe so.

18 Q. If you'll turn to Exhibit 58. I think
19 it's 58, but my numbers are messed up, so hold on
20 one second.

21 This is an email from January of 2017.
22 You are included on this email. If you'll review
23 that, I'm going to ask you a couple questions about
24 that email, please.

25 A. Okay.

1 Q. Does that refresh your memory?
2 Remember earlier this morning I asked you about
3 liens, if any liens were filed?

4 A. Um-hum.

5 Q. Does that refresh your memory?

6 A. Yes.

7 Q. And so it appears that liens were
8 filed.

9 A. Yes.

10 Q. And you would have directed the
11 attorney for the Mariner's Cay Marina Council of
12 Co-Owners to file that lien; correct?

13 A. I believe at that time in 2017 we were
14 probably filing liens in-house.

15 Q. Okay. That changed, I would imagine --

16 A. Yes.

17 Q. -- after a certain ruling by the --

18 A. Yes.

19 Q. -- South Carolina Supreme Court
20 involving a certain property --

21 A. Yes.

22 Q. -- management group?

23 A. But I believe that was probably before
24 that ruling.

25 Q. Do you know, did you all change that

1 policy in-house as a result of that Supreme Court
2 decision?

3 A. Yes.

4 Q. And I'm referring to a case called
5 Rogers Townsend & Thomas versus Community
6 Management Group. Have you read that case?

7 A. Yes.

8 Q. Okay. Was it sort of required reading
9 by everyone that worked at Sentry in South
10 Carolina?

11 A. Not required, no, but it made its way
12 around.

13 Q. Okay. Exhibit 67 are emails from March
14 of 2017 to Mr. Bessent and then Mr. Bessent to the
15 board about liens and some information you were in
16 contact with Derek Dean about. Do you recall that
17 email, ma'am?

18 A. I don't recall it specifically, but it
19 seems pretty logical.

20 Q. And again, do you know if the board
21 authorized any satisfaction of those liens or if
22 Mr. Farmer and/or his entities caught up in those
23 statements?

24 A. I believe they caught up.

25 Q. Okay. And if he -- if they catch up,

1 does the collections department tell you, hey,
2 they've caught up, you need to satisfy this lien?

3 A. Yes.

4 Q. And are liens noted on the owner card?

5 A. Yes.

6 Q. And then there's some coordination with
7 the crowd down in Florida and you all about
8 satisfying those liens.

9 A. They -- the collections department
10 coordinates with the attorney now directly to
11 satisfy it.

12 Q. They send an email or make a phone
13 call --

14 A. Yes.

15 Q. -- and say satisfy this lien?

16 A. Yeah.

17 Q. And then that goes to the register's
18 office; correct?

19 A. Yes.

20 Q. Exhibit 78, 79 and 80 appears to be
21 emails with attachments sending all the email
22 addresses for the folks out at Mariners during that
23 time frame. And so 78 didn't seem to have an
24 attachment. 79 says, you know, sorry. Try again.
25 And then 80 seems to be a list of names of owners

1 and email addresses. Is this Exhibit 80 the
2 running list you all -- or an example of the
3 then -- then running list you all keep --

4 A. Yes.

5 Q. -- in accordance with the proprietary
6 software out at Sentry?

7 A. Yes.

8 Q. Okay. And that's the list that would
9 take you all of 30 seconds to print; correct?

10 A. Yes.

11 Q. As we sit here today, are you aware of
12 any unit owners out at Mariners Cay whom you don't
13 have contact information for?

14 A. Not that I'm aware of.

15 Q. And I forgot to ask you this earlier,
16 but do you know what -- how much Sentry is paid per
17 year by Mariners Cay?

18 A. Not off the top of my head.

19 Q. Do you know how much it's paid per
20 month, or it's just something we'd have to look up
21 based on your management contract?

22 A. I'd have to check the contract, yeah.

23 Q. And do you know if that contract is
24 renewed and reviewed yearly?

25 A. It has a clause for an automatic

1 renewal for -- by the year basis.

2 Q. And does it also have a step up in
3 cost?

4 A. No.

5 Q. It doesn't.

6 A. No.

7 Q. And who has a copy of that? Who
8 negotiates that contract?

9 A. At this time it would be Yohanna.

10 Q. Okay. And Mr. Bruner was the former --

11 A. Yes.

12 Q. -- contact who would have negotiated
13 that?

14 A. Yes.

15 Q. In his capacity as vice president?

16 A. Yes.

17 Q. If you will turn -- here, I'll do it
18 for you. Maybe. Exhibit 108, I'll represent to
19 you, is an appraisal that was prepared for the
20 Mariner's Cay Marina Council of Co-Owners. Were
21 you involved in any way with this appraisal?

22 A. No.

23 Q. Okay. Because your testimony earlier
24 was you weren't involved in any of the negotiations
25 between Mariner's Cay Council of Co-Owners and

1 Mr. Farmer's entities; correct?

2 A. Correct.

3 Q. All right. Have you ever seen that
4 appraisal before?

5 A. Not that I recall.

6 Q. Has anyone on the board asked you to
7 get an update to that appraisal?

8 A. No.

9 Q. I'm showing you a letter from February
10 of 2017 from Simmons & Dean. This looks like what
11 I would call a debt collection letter, and you are
12 cc'd at the bottom of this. Do you receive copies
13 of collection letters from the Mariner's Cay Marina
14 Council of Co-Owners' --

15 A. Yes.

16 Q. -- attorneys?

17 A. Yes.

18 MR. SESSOMS: Does that have an exhibit
19 number?

20 MR. O'KELLEY: It does. It's Exhibit
21 122.

22 MR. SESSOMS: Okay.

23 BY MR. O'KELLEY:

24 Q. And on the back page of that there's
25 what I call a fair debt notice. Do you receive

1 those also as part of the letters?

2 A. I think I typically just get the first
3 page.

4 Q. Okay. And then I'm looking at the
5 third page of that exhibit. It's MC-1789. This
6 appears to be what I would call sort of a running
7 balance or statement for the Mariners Cay Fuel
8 Dock, LLC.

9 A. Yes.

10 Q. And is this generated as part of
11 Sentry's proprietary software?

12 A. Yes.

13 Q. And at the time it showed a balance of
14 how much?

15 A. \$1,615.53.

16 Q. And do you know, to the best of your
17 knowledge, was that ever paid?

18 A. I believe so.

19 Q. Okay. You testified earlier that
20 you're aware that the substance of this lawsuit is
21 about basically the ownership of the property that
22 Mr. Farmer claims he owns and the Mariner's Cay
23 Marina Council of Co-Owners claims he doesn't own;
24 correct?

25 A. Yes.

1 Q. Do you have an opinion one way or the
2 other about that ownership?

3 A. No.

4 MR. O'KELLEY: Let me take a quick
5 break. You and I might be finished.

6 (A recess transpired from 11:09 until
7 11:24.)

8 BY MR. O'KELLEY:

9 Q. When the budgets are done in
10 October-November, do you all send those budgets out
11 to the members prior to the annual meeting?

12 A. They would get the budgets with the
13 payment coupons, and the annual meeting's typically
14 in the spring. So they'd get all that information
15 towards the end of the year.

16 Q. Okay. So then you all attach a budget.
17 Does the budget have line items?

18 A. Um-hum.

19 Q. Or what does it look like?

20 A. Yeah. It's broken down income and
21 expenses. Income of what the dues should bring in
22 for the year and then, you know, anything from our
23 management fee to the dockmaster fee.

24 Q. To attorneys' fees?

25 A. Attorneys' fees. Anything on there,

1 yes.

2 Q. And do you know what attorneys' fees
3 Mariners Cay has spent this year to date?

4 A. I don't know.

5 Q. But you would know if you looked at the
6 budget; correct?

7 A. Yes.

8 Q. And what about the previous year?
9 Would you have to look at the budget to see?

10 A. I'd have to look, yeah.

11 MR. O'KELLEY: That's all I've got for
12 right now. Thank you.

13 EXAMINATION

14 BY MR. PERRIN:

15 Q. Are you good to keep going?

16 A. Sure.

17 Q. We met earlier today. My name's Whit
18 Perrin. I'm here along with Hamlin for the two
19 LLCs and also for Dolph individually. Are you
20 aware that Mr. Farmer was sued individually in this
21 matter?

22 A. No, I don't think I was.

23 Q. Are you aware of anything that
24 Mr. Farmer's done wrong or allegedly done wrong
25 that would lead to him being sued individually in

1 this matter?

2 A. Not that I'm aware of.

3 Q. Okay. When the board was looking at
4 potential repairs to be done to the ship store when
5 you came on board, are you aware if they had a
6 structural engineer go out and look at the pilings
7 on the ship store?

8 A. Not sure on that. I feel like they
9 might have had someone look at the pilings. What
10 their qualifications were, I don't know.

11 Q. Are you aware if they actually produced
12 a report and provided it to you or to the board?

13 A. Not that I recall.

14 Q. There was a special assessment for
15 litigation costs this past year; correct?

16 A. There was a special assessment for
17 their reserve fund.

18 Q. Okay. Was -- what was the special
19 assessment to cover based off of what was outside
20 of the reserve fund?

21 A. It was to replenish funds in their
22 reserve, to keep for repairs from storm damage and
23 things like that was my understanding of the
24 special assessment.

25 Q. Oh. For -- when you were asked to --

1 or Sentry was asked to stop accepting payment on
2 behalf of Mr. Farmer for his two dock units and the
3 ship store, when was that?

4 A. I don't recall. It was sometime this
5 year. I'd have to look back at everything to know
6 for sure when.

7 Q. So you don't know if it was the first
8 or second quarter of this year?

9 A. I'm not sure.

10 Q. And I assume the third quarter payment
11 is not due yet?

12 A. Third quarter typically would be July.

13 Q. Okay. So it's front end.

14 A. Right.

15 Q. You pay at the front of the quarter.

16 A. So you pay January for three months.

17 Q. Got you.

18 A. April for three months.

19 Q. Are you in charge of paying the HOA's
20 insurance, like actually making sure the check goes
21 to the insurance company for the year?

22 A. Yes.

23 Q. Is it renewed on a yearly basis?

24 A. Yes.

25 Q. What policies does the HOA have?

1 A. They would have a directors' and
2 operators' policy, just probably some general
3 package policy, general liability.

4 Q. Okay. Do they have any policies which
5 are specific to the ship store itself?

6 A. I don't know if there's anything
7 specific or not. I'd have to look at the records.

8 Q. Do you pay the taxes, the property
9 taxes?

10 A. If we receive bills, yes, we pay them.

11 Q. Are you aware of, in your time as the
12 property manager, whether property taxes have been
13 specifically paid for the ship store?

14 A. I don't recall.

15 Q. Does the HOA have a separate fire
16 policy for the ship store?

17 A. I don't know without looking at the
18 insurance records.

19 Q. And you can look at your insurance
20 records; right?

21 A. Um-hum.

22 Q. Okay. But if I send discovery to
23 Mr. Barr, you'd be able to get us that information
24 specific to that?

25 A. Um-hum.

1 Q. Were the dockominiums fully sold when
2 you started in 2015?

3 A. I'm not sure.

4 Q. All right. Are they fully sold now?

5 A. I believe so, yes.

6 Q. Do you know when that occurred, the
7 full -- say this year or the year before?

8 A. I don't know off the top of my head,
9 no.

10 Q. Has the -- in your period of time as
11 the property manager, has the HOA always met its
12 budget?

13 A. I don't know for sure. I'd have to go
14 back and look at records.

15 Q. Other than the special assessment that
16 has recently occurred, have you had to do a special
17 assessment at any other time since you have been
18 the property manager?

19 A. No.

20 Q. Do you take meeting minutes at the
21 meetings of the board that are outside of the
22 annual meeting?

23 A. Yes. If I'm there I do.

24 Q. Do you provide those meeting minutes to
25 the owners?

1 A. Meeting minutes would typically be
2 approved at the next meeting, and then after that
3 they're typically posted on a website where owners
4 could access if they wanted.

5 Q. Okay. And does Sentry have like a web
6 portal situation?

7 A. Yeah.

8 Q. Can the owners pay through the web
9 portal, or does it always have to be like a check
10 to Sentry?

11 A. No. They can make online payments
12 through the system.

13 Q. Is that -- is there a protocol for
14 keeping that up to date or is it -- is there
15 anything related to that in terms of a protocol for
16 how often those meeting minutes have to be posted
17 or maintenance or notices or anything like that?

18 A. No.

19 Q. Is there anything about notice to the
20 owners for this particular HOA in terms of it being
21 a dockominium that is different than -- for you for
22 a typical condominium complex or anything like
23 that?

24 A. No.

25 Q. Has the ship store, prior to

1 Mr. Farmer's purchase, been operated in a
2 commercial capacity since you have been the
3 property manager -- or the community manager?

4 A. No.

5 Q. Was the ship store in use when you came
6 on as the community manager in terms of the third
7 floor, second residential floor or the back end,
8 the front end -- side that would have been storage?
9 Were any of those used by the community as a
10 gathering place or anything of the sort?

11 A. The top floor, not that I'm aware of,
12 no. The main level of it, I guess, I mean, there
13 were areas of it that the dockmaster would use for
14 office location and storage.

15 Q. Were the annual meetings held in that
16 space?

17 A. I've heard they were. It was before my
18 time.

19 Q. When you came on as the community
20 manager, was there a specific line item within the
21 budget or section within the budget or whatever
22 would be the term of art for your budget specific
23 to maintenance for the ship store?

24 A. Specifically, no.

25 Q. Was there a -- what was the budget

1 allocation to maintenance for the facilities?

2 A. An amount?

3 Q. Yes.

4 A. I wouldn't know without looking at a
5 budget.

6 Q. Would it have been divided between the
7 docks and the rest of the property or...

8 A. It would have been used as a whole.

9 Q. Okay. Is there anything specific to a
10 maintenance contract for the docks on a yearly
11 basis like you would have for -- you've got a
12 landscaping contract. Do you have someone that
13 goes out and does the docks, or is that
14 specifically the sole duty of the dockmaster?

15 A. That's the dockmaster's responsibility.

16 Q. Have you as the community manager had
17 any involvement with the maintenance or upkeep or
18 future plans of the fuel tanks?

19 A. No.

20 Q. Is that part of the budget, to your
21 knowledge or understanding?

22 A. Not that I know of, no.

23 Q. Other than HOA dues, is there any
24 source of revenue generated for the HOA through the
25 use of the docks or the ship store?

1 A. The association owns one dock slip, and
2 they will rent that slip out, transient boaters,
3 whatever, and then have some income from that as
4 it's rented.

5 Q. That's the only other revenue stream.

6 A. Yes.

7 Q. Is there -- for the dues themselves,
8 are the dues allocated as are typical with -- we
9 cover our costs, we cover a certain amount of
10 reserve for future significant maintenance and we
11 cover a potential shortfall. But is there anything
12 else that is associated with the dues?

13 A. No.

14 Q. Is there any violation that Mr. Farmer
15 has been cited for, such as the boat trailer, that
16 has not been remedied by Mr. Farmer?

17 A. Not that I'm aware of.

18 Q. Oh. Do the -- to your knowledge, is
19 there anything prohibiting the dock unit owners
20 from using the restroom facilities and the ship
21 store to date?

22 A. The restrooms, not that I'm aware of.
23 I don't know about the ship store.

24 Q. The restrooms are located within the
25 ship store building.

1 A. In the building, yes.

2 Q. Okay. So --

3 A. I guess I look at there's a door that
4 kind of separates and that sort of thing.

5 Q. I got you. Understood. It's a little
6 bit separate and apart. So let me rephrase that.

7 Is there anything that you are aware of
8 to date that prohibits dockominium owners or
9 renters from using the bathroom, the male and
10 female bathroom facilities that are located within
11 the ship store building?

12 A. Not that I'm aware of.

13 Q. Is there anything that you are aware of
14 to date that prevents them from use of the handicap
15 access to those facilities?

16 A. Not that I know of, no.

17 Q. Is there anything that you are aware of
18 to date that prohibits vehicles from accessing the
19 ship store that are for renters of a slot or the
20 actual owners of the slots themselves?

21 A. I'm not sure I understand. Like the
22 parking spaces?

23 Q. There's an access to the right --

24 A. Oh.

25 Q. -- of the building if you're facing --

1 A. Almost like a little boat launch of
2 sorts.

3 Q. Right. Is there anything that is
4 prohibiting the use of that?

5 A. No, not that I know of.

6 Q. Is there anything that you're aware of
7 that prohibits the use of the sidewalk ingress and
8 egress to the dock itself?

9 A. No.

10 Q. Were you at all -- are you at all
11 involved in notification of access to the
12 latticed-in area below the ship store?

13 A. Do I have access?

14 Q. Excuse me. Let me rephrase.

15 A. Yeah.

16 Q. At some point in time access has been
17 limited to the underside of the ship store. You're
18 aware of that; correct?

19 A. Yes.

20 Q. All right. Since a protocol for notice
21 has been implemented, has access been denied?

22 A. I'm not aware if it has or not.

23 MR. PERRIN: I believe that's all I
24 have for you. Thank you very much.

25 THE WITNESS: Okay.

1 MR. MONTGOMERY: I have a few
2 questions. Probably 10 minutes.

3 THE WITNESS: Okay.

4 MR. MONTGOMERY: Unless you need a
5 break before.

6 THE WITNESS: No.

7 EXAMINATION

8 BY MR. MONTGOMERY:

9 Q. Ms. Barnes, my name is Andrew
10 Montgomery. We met earlier this morning. I'm here
11 on behalf of Emerald McDonough Road Holdings, an
12 entity that deeded the properties in question to
13 Mr. Farmer's LLCs back in May 2016.

14 A. Um-hum.

15 Q. You testified earlier, while talking
16 with Mr. O'Kelley, that you didn't have any direct
17 interaction with Emerald Portfolio; is that
18 correct?

19 A. Yes.

20 Q. How about Emerald McDonough Road
21 Holdings?

22 A. I don't recall having any communication
23 with them.

24 Q. Any interaction with Sabal Financial
25 Group?

1 A. No.

2 Q. Okay. And would there be any specific
3 records that Sentry maintains regarding the bank's
4 period of ownership of the property or the Emerald
5 entities' ownership of the property?

6 A. Typically after a property changes
7 hands we disregard any prior owner paperwork
8 outside of the documents.

9 Q. What sort of paperwork?

10 A. If we still had a copy of the deed.

11 Q. Okay. Sure. Earlier Mr. O'Kelley
12 showed you Exhibit 58 labeled MC-338 which was an
13 email you were copied on in January of 2017. And
14 that is your email, correct, copied on there?

15 A. Yes.

16 Q. And that basically is an email from Tom
17 Bessent to the board and yourself noting that you
18 provided a regime fee history for the properties in
19 question, noting that the bank and Sabal Financial,
20 they paid their assessments during their period of
21 ownership; is that correct?

22 A. I believe so, yes.

23 Q. Okay. And I don't have the exhibit
24 number. I apologize. But I'll refer to the MC
25 numbers. We've got MC-3525 through MC-3528. If

1 you could look at these. Take a minute.

2 And those would appear to be sort of
3 the regime fee history or statement of retained
4 history for when Sabal Financial and the Emerald
5 entities were involved with the property; is that
6 correct?

7 A. Yes.

8 Q. And they reflect similar to what's
9 noted in the email?

10 A. Um-hum.

11 Q. The email being from January. The
12 statements looked like they were generated in
13 November 2017. But that Sabal Financial and
14 Emerald maintained their dues and kept them up to
15 date?

16 A. Yes.

17 Q. And you mentioned you didn't have any
18 direct interaction with these groups. Do you know
19 who would have been the primary point of contact if
20 there was any interaction? Would it have been
21 Collin Bruner or somebody else?

22 A. I mean, if they were looking to contact
23 someone, it most likely would have been to me at
24 that time. I mean, they could have reached out to
25 Collin, but I'm not aware of anyone reaching out.

1 Q. Sure. I was curious too. In these it
2 notes that -- the bottom entry is January 2017, and
3 I think it's the same across the board for all
4 four. Shows the refund to Emerald McDonough for
5 the respective units. Is -- I notice that's six or
6 seven months after they conveyed out their
7 interest. Is that based on a Sentry policy of
8 taking a few months to review the --

9 A. It could just be when we got
10 documentation of everything.

11 Q. Sure. Got you. Are you aware of any
12 other foreclosures that have occurred in the marina
13 involving any of the docks over the years?

14 A. I know before my time with the
15 community there had been a lot of slips that had
16 been in foreclosure, but I don't have details on
17 anything on that. I'm just aware that it was that
18 way.

19 Q. Okay. If I were to represent, though,
20 that there was -- in 2009 there was a -- sort of a
21 bulk -- a large number were foreclosed at once
22 versus the same entity that was mentioned earlier,
23 Flint River, you wouldn't have any -- that was what
24 you were referring to?

25 A. I believe so, yeah.

1 Q. Not aware of any other --

2 A. No.

3 Q. -- individual docks going into
4 foreclosure?

5 A. No.

6 Q. To your knowledge, has the council of
7 co-owners at Mariners Cay ever foreclosed on one of
8 their liens?

9 A. Not that I'm aware of.

10 MR. MONTGOMERY: Okay. That's it from
11 me. Thank you very much.

12 THE WITNESS: Sure.

13 MR. BARR: No questions here.

14 MR. PERRIN: I don't think that's
15 actually been marked as an exhibit.

16 MR. MONTGOMERY: Okay. If we could
17 mark those. I could have sworn they came from an
18 exhibit earlier. I guess mark these as --
19 collectively as Exhibit 139. Is that what
20 everybody has?

21 MR. O'KELLEY: Yes.

22 MR. BARR: Do you guys have any other
23 questions?

24 MR. SESSOMS: I don't have any
25 questions. I do have a comment off the record.

1 (EXHIBIT 139, Statement of Retained
2 History for Emerald McDonough Road Holdings dated
3 11-9-17, marked for identification.)

4 (The witness, after having been advised
5 of her right to read and sign this transcript, does
6 not waive that right.)

7 (The deposition was concluded at
8 11:43 AM.)

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SIGNATURE OF DEPONENT

DEPONENT: AMANDA J. BARNES
DEPOSITION DATE: August 9, 2018
REPORTER: Sandra K. Bjerke
AWR JOB NO. 19281
CASE CAPTION: Neighbors vs. Mariners Cay

(Please return both Signature of Deponent pages.)

I, the undersigned, AMANDA J. BARNES, do
hereby certify that I have read the foregoing
deposition and find it to be a true and accurate
transcription of my testimony, with the following
corrections, if any:

PAGE	LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: August 9, 2018
REPORTER: Sandra K. Bjerke
AWR JOB NO. 19281
CASE CAPTION: Neighbors vs. Mariners Cay

PAGE	LINE	CHANGE	REASON

AMANDA J. BARNES

Date

I, Sandra K. Bjerke, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent page within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



Sandra K. Bjerke

Sandra K. Bjerke, RMR, RDR, CRR
My Commission Expires
June 18, 2020

CERTIFICATE OF REPORTER

I, Sandra K. Bjerke, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate,
and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 15th day of August,
2018 at Charleston, Charleston County, South
Carolina.



Sandra K. Bjerke

Sandra K. Bjerke, RMR, RDR, CRR
My Commission Expires
June 18, 2020

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57:16 73:22 terms 72:15,20 73:6 test 43:7,12 44:14 testified 5:5 29:22 32:18 36:8 53:13 65:19 78:15 testifying 25:9 testimony 5:25 6:18 11:6 29:8 34:22 43:16 63:23 84:8 testing 43:8 44:6 tests 43:5 44:17,19 thing 76:4 things 18:6 26:1 28:12,19 42:11,12 57:22 68:23 thinking 51:14 thirty 85:16 Thomas 60:5 Tiger 27:6 time 6:24 15:20 16:12 17:4 18:22 21:7 27:7 29:9 31:23 45:11 50:12 51:16 55:8 59:13 61:23 63:9 65:13 70:11 71:10,17 73:18 77:16 80:24 81:14 timeline 48:18 times 30:6 title 21:19 37:3 today 5:16 6:18 7:9,18 8:1,4,13 30:24 32:11 36:2 43:16 62:11 67:17 told 15:15 39:13,14	Toledo 14:3,4 Tom 39:17 79:16 top 26:6,10 27:15 38:4 41:22 62:18 71:8 73:11 Townhomes 22:23 23:6 Townsend 60:5 trailer 56:11,17 75:15 trailers 56:11 training 41:9,12 42:19,24 transcript 5:23 83:5 85:16 transcription 84:8 transient 75:2 transpired 66:6 treated 7:4 trial 43:17 tricky 47:20 true 84:7 trust 30:10,11 turn 6:12 47:19 49:11 50:23 58:18 63:17 turned 36:13 Two-fold 37:9 typical 72:22 75:8 typically 33:11 47:6 53:23 65:2 66:13 69:12 72:1,3 79:6 U um-hum 5:21 12:7 18:2	21:25 23:5 26:16 32:14 52:1 56:7 57:15 59:4 66:18 70:21,25 78:14 80:10 UNC 15:7 UNCG 15:8 underside 77:17 undersigned 84:6 understand 5:19 6:8,14,21,22 7:2 9:5 76:21 understanding 42:17 68:23 74:21 understood 26:17 76:5 unit 10:23 62:12 75:19 units 69:2 81:5 upcoming 31:25 update 64:7 updated 28:11 upkeep 51:17 74:17 V V-a-r-g-a-s 19:24 Vargas 19:23 20:9,13 varies 37:12 vehicles 76:18 verbal 5:18 verbally 85:14 versus 60:5 81:22 vice 21:14,17 63:15 View 12:17,25 13:21 23:1	Villas 22:6,7,16 23:8,12 violation 35:4 75:14 violations 25:15,25 30:16 57:22 vis-à-vis 33:5 W waive 83:6 walk 47:4,5 walked 25:8 wanted 49:25 54:13 72:4 water 44:6,13 weather 6:10 web 72:5,8 website 18:19 72:3 week 28:5 29:23 weekend 6:11 West 22:2,23 Whit 67:17 Wildwood 21:25 22:1 Williams 47:24 48:1 Wilmington 14:16,19 15:21,22 16:12 Word 29:14 words 7:17 10:17 work 15:17 16:21 17:23 18:11 29:5 37:8,15 45:14 worked 16:17 18:12 60:9	working 21:23 24:15 works 17:12 43:9 worry 43:24 wrapping 32:19 writing 85:15 wrong 67:24 Y y'all 57:14,17 Yacht 22:5,6,12,13,15,16 23:20 24:4 year 14:25 15:12 18:9 20:23 32:1 54:14 62:17 63:1 66:15, 22 67:3,8 68:15 69:5,8,21 71:7 yearly 62:24 69:23 74:10 years 12:11,24 14:7 15:17 16:23 19:18 43:1,3 44:18 81:13 Yohanna 21:11 63:9 Z Zip 13:5

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Alben D. Neighbors and Dan G. Nekola,)
on behalf of themselves and others)
similarly situated, and Mariner's Cay)
Marina Council of Co-Owners, Inc.,)

Plaintiffs,)
)
)

v.)
)
)

Mariners Cay Marina Condo, LLC,)
Mariners Cay Fuel Dock, LLC, George A.)
Farmer, and South Atlantic Bank,)
)

Defendants.)
)
)

Mariners Cay Marina Condo, LLC and)
Mariners Cay Fuel Dock, LLC,)
)

Third-Party Plaintiffs,)
)
)

v.)
)
)

Emerald McDonough Road Holdings,)
LLC,)
)

Third-Party Defendant.)
)
)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2017-CP-10-03099

**AMENDED NOTICE OF DEPOSITION
OF
AMANDA BARNES**

TO: *CAPERS G. BARR, IV, ESQ.*
ATTORNEY FOR THE PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that at **10:00 a.m.** on **Thursday, August 9, 2018**, at Clawson and Staubes, LLC, 126 Seven Farms Drive, Suite 200, Charleston, South Carolina, the Attorneys for the Defendants, Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer and South Atlantic Bank and Third Party Plaintiffs Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, will take the deposition of **Amanda Barnes**, on oral examination, pursuant to Rule 30, SCRCP, before a Notary Public, or before

{01116604.DOCX}



some other officer authorized by law to take depositions, said deposition to continue from day to day until completed.

You are invited to attend and take such part as is fit and proper.

LUZURIAGA MIMS, LLP

By: Kevin W. Mims
Kevin W. Mims, SC Bar No. 69418
Whidbee S. Perrin, SC Bar No. 100396
50 Immigration St, Suite 200
Charleston, SC 29403
(843) 410-4713
kmims@lmlawllp.com
wperrin@lmlawllp.com

*Attorneys for the Defendant/Third-Party Plaintiff
Mariners Cay Marina Condo, LLC*

BUIST BYARS & TAYLOR, LLC

By: G. Hamlin O'Kelley, III
G. Hamlin O'Kelley, III, SC Bar #15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

*Attorneys for the Defendant/Third-Party Plaintiffs
Mariners Cay Marina Condo, LLC, and Mariners
Cay Fuel Dock, LLC*

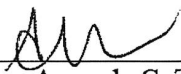
Mount Pleasant, South Carolina
June 21, 2018

{01116604.DOCX}2

CERTIFICATE OF MAILING

I hereby certify that on June 21, 2018, I mailed, postage prepaid, to counsel of record in this matter, as follows:

Capers G. Barr, IV Barr, Unger & McIntosh, LLC 11 Broad Street Charleston, SC 29401 <i>Attorney for the Plaintiffs</i>	Andrew W. Montgomery, Esq. Rogers Townsend & Thomas PC 1221 Main Street, 14 th Floor (29210) PO Box 100200 Columbia, SC 29202 <i>Attorneys for the Defendant Emerald McDonough Road Holdings, LLC</i>
David C. Cleveland, Esq. Clawson and Staubes LLC 126 Seven Farms Drive, Suite 200 Charleston, SC 29492-8144 <i>Attorney for the Plaintiffs</i>	



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

{01116604.DOCX}3

STATE OF SOUTH CAROLINA

ISSUED BY THE Common Pleas COURT IN THE COUNTY OF Charleston

Alben D. Neighbors and Dan Nekola, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Mariners Cay Marina Condo, LLC et al.,
Defendant

Case Number: 2017-CP-10-3099

Pending in Charleston County

TO: Amanda Barnes
c/o Capers G. Barr, III, Esq.
Barr Unger & McIntosh LLC
11 Broad Street
Charleston, SC 29401

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION
Clawson and Staubes LLC

126 Seven Farms Drive, Suite 200
Charleston, SC 29492

DATE AND TIME August 9, 2018, 10:00 AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

PLACE

DATE AND TIME , AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



June 20, 2018 G. Hamlin O'Kelley, III

Attorney/Issuing Officer's Signature

Date

Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number :

Attorney for Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC and South Atlantic Bank

Buist, Byars & Taylor, LLC

652 Coleman Boulevard, Suite 200

Mt. Pleasant, SC 29464

(843) 856-4488

Clerk of Court/Issuing Officer's Signature

Date

Print Name

Pro Se Litigant's Name, Address and Telephone Number :

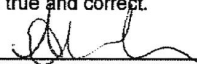
PROOF OF SERVICE

SERVED	DATE June 21, 2018	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$
	PLACE Barr Unger & McIntosh LLC	
SERVED ON Capers G. Bar, IV		MANNER OF SERVICE Regular Mail
SERVED BY Amanda C. Taylor		TITLE Paralegal to G. Hamlin O'Kelley, III

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on June 21, 2018


SIGNATURE OF SERVER

652 Coleman Blvd., Suite 200, Mt. Pleasant, SC 29464
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

MARINERS CAY MARINA COUNCIL OF CO-OWNERS INC
2180 W SR 434 STE 5000
LONGWOOD FL 32779

(800) 932-6636

NOV 9, 2017

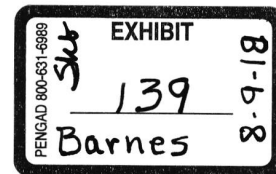
STATEMENT OF RETAINED HISTORY

CM 17 SC0670 000C22B
EMERALD MCDONOUGH ROAD HOLDINGS LLC
C/O SABAL FINANCIAL GRP/465 N HALSTEAD ST STE 105
PASADENA CA 91107

ACCT #000SC0670000C224
1.0769

PROPERTY 2 MCDONOUGH RD #C22
ADDRESS FOLLY BEACH SC 29439

DATE	DESCRIPTION	QUARTERLY	BALANCE
07/01/2015	3RD ASSESSMENT 7/1-9/30/15	370.00	370.00
10/01/2015	4TH ASSESSMENT 10/1-12/31/15	370.00	740.00
10/28/2015	ADJ ASMT 7/1-9/24/15-DK	-345.34	394.66
10/28/2015	UPDATE NEW OWNER RECORD	0.00	394.66
11/30/2015	ASSESSMENT INTEREST CHARGE	5.92	400.58
12/31/2015	ASSESSMENT INTEREST CHARGE	5.92	406.50
01/01/2016	1ST ASSESSMENT 1/1-3/31/16	394.46	800.96
01/31/2016	ASSESSMENT INTEREST CHARGE	5.92	806.88
01/31/2016	ASSESSMENT LATE FEE CHARGE	39.45	846.33
02/08/2016	CASH REC'D CK#34465 SABAL	-343.37	502.96
02/08/2016	CASH REC'D CK#34465 SABAL	-57.21	445.75
02/29/2016	ASSESSMENT INTEREST CHARGE	6.69	452.44
03/11/2016	INTENT TO LIEN NOTICE	65.00	517.44
03/29/2016	CASH REC'D CK#35323 SABAL AO	-774.55	-257.11
03/29/2016	CASH REC'D CK#35323 SABAL AO	-71.69	-328.80
04/01/2016	2ND ASSESSMENT 4/1-6/30/16	394.46	65.66
04/14/2016	RESALE DEMAND# 3439556-KB	0.00	65.66
04/21/2016	CASH REC'D CK#35540 SABAL AO	-464.89	-399.23
04/27/2016	ARCHIVED IL-03/11/16 th	0.00	-399.23
05/17/2016	REC'D LKBX CK# 0000036414 ND	-65.66	-464.89
06/13/2016	CASH REC'D CK#053816-WEEKS &	-65.66	-530.55
01/12/2017	REFUND EMERALD MCDONOUGH MR	530.55	0.00
		0.00	



MC-3525

MARINERS CAY MARINA COUNCIL OF CO-OWNERS INC
2180 W SR 434 STE 5000
LONGWOOD FL 32779

(800) 932-6636

NOV 9, 2017

STATEMENT OF RETAINED HISTORY

CM 17 SC0670 0COM1BB
EMERALD MCDONOUGH ROAD HOLDINGS LLC
C/O SABAL FINANVIAL GRP/465 N HALSTEAD ST STE 105
PASADENA CA 91107

ACCT #000SC06700COM1B4
1.0769

PROPERTY 2 MCDONOUGH RD #1B
ADDRESS FOLLY BEACH SC 29439

DATE	DESCRIPTION	QUARTERLY	BALANCE
07/01/2015	3RD ASSESSMENT 7/1-9/30/15	370.00	370.00
10/01/2015	4TH ASSESSMENT 10/1-12/31/15	370.00	740.00
10/28/2015	ADJ ASMT 7/1-9/24/15-DK	-345.34	394.66
10/28/2015	UPDATE NEW OWNER RECORD	0.00	394.66
11/30/2015	ASSESSMENT INTEREST CHARGE	5.92	400.58
12/31/2015	ASSESSMENT INTEREST CHARGE	5.92	406.50
01/01/2016	1ST ASSESSMENT 1/1-3/31/16	394.46	800.96
01/31/2016	ASSESSMENT INTEREST CHARGE	5.92	806.88
01/31/2016	ASSESSMENT LATE FEE CHARGE	39.45	846.33
02/08/2016	CASH REC'D CK#34465 SABAL	-343.37	502.96
02/08/2016	CASH REC'D CK#34465 SABAL	-57.21	445.75
02/29/2016	ASSESSMENT INTEREST CHARGE	6.69	452.44
03/11/2016	INTENT TO LIEN NOTICE	65.00	517.44
03/29/2016	CASH REC'D CK#35323 SABAL AO	-774.55	-257.11
03/29/2016	CASH REC'D CK#35323 SABAL AO	-71.69	-328.80
04/01/2016	2ND ASSESSMENT 4/1-6/30/16	394.46	65.66
04/14/2016	RESALE DEMAND# 3439582-KB	0.00	65.66
04/21/2016	CASH REC'D CK#35540 SABAL AO	-464.89	-399.23
04/27/2016	ARCHIVED IL-03/11/16 th	0.00	-399.23
05/31/2016	CASH REC'D CK#053827-WEEKS	-65.66	-464.89
01/12/2017	REFUND EMERALD MCDONOUGH MR	464.89	0.00
		<u>0.00</u>	

MC-3526

MARINERS CAY MARINA COUNCIL OF CO-OWNERS INC
2180 W SR 434 STE 5000
LONGWOOD FL 32779

(800) 932-6636

NOV 9, 2017

STATEMENT OF RETAINED HISTORY

CM 17 SC0670 000C21B
EMERALD MCDONOUGH ROAD HOLDINGS LLC
C/O SABAL FINANCIAL GRP/465 N HALSTEAD ST STE 105
PASADENA CA 91107

ACCT #000SC0670000C216
1.0769

PROPERTY 2 MCDONOUGH RD #C21
ADDRESS FOLLY BEACH SC 29439

DATE	DESCRIPTION	QUARTERLY	BALANCE
07/01/2015	3RD ASSESSMENT 7/1-9/30/15	370.00	370.00
10/01/2015	4TH ASSESSMENT 10/1-12/31/15	370.00	740.00
10/28/2015	ADJ ASMT 7/1-9/24/15-DK	-345.34	394.66
10/28/2015	UPDATE NEW OWNER RECORD	0.00	394.66
11/30/2015	ASSESSMENT INTEREST CHARGE	5.92	400.58
12/31/2015	ASSESSMENT INTEREST CHARGE	5.92	406.50
01/01/2016	1ST ASSESSMENT 1/1-3/31/16	394.46	800.96
01/31/2016	ASSESSMENT INTEREST CHARGE	5.92	806.88
01/31/2016	ASSESSMENT LATE FEE CHARGE	39.45	846.33
02/08/2016	CASH REC'D CK#34465 SABAL	-343.37	502.96
02/08/2016	CASH REC'D CK#34465 SABAL	-57.21	445.75
02/29/2016	ASSESSMENT INTEREST CHARGE	6.69	452.44
03/11/2016	INTENT TO LIEN NOTICE	65.00	517.44
03/29/2016	CASH REC'D CK#35323 SABAL AO	-774.55	-257.11
03/29/2016	CASH REC'D CK#35323 SABAL AO	-71.69	-328.80
04/01/2016	2ND ASSESSMENT 4/1-6/30/16	394.46	65.66
04/14/2016	RESALE DEMAND# 3439528-KB	0.00	65.66
04/21/2016	CASH REC'D CK#35540 SABAL AO	-464.89	-399.23
04/27/2016	ARCHIVED IL-03/11/16 th	0.00	-399.23
05/17/2016	REC'D LKBX CK# 0000036414 ND	-65.66	-464.89
06/13/2016	CASH REC'D CK#053817-WEEKS & I	-65.66	-530.55
01/12/2017	REFUND EMERALD MCDONOUGH MR	530.55	0.00
		0.00	

MC-3527

MARINERS CAY MARINA COUNCIL OF CO-OWNERS INC
2180 W SR 434 STE 5000
LONGWOOD FL 32779

(800) 932-6636

NOV 9, 2017

STATEMENT OF RETAINED HISTORY

CM 17 SC0670 0COM1AB

EMERALD MCDONOUGH ROAD HOLDINGS LLC

C/O. SABAL FINANCIAL GRP/465 N HALSTEAD ST STE 105

PASADENA CA 91107

ACCT #000SC06700COM1A6

2.0021

PROPERTY 2 MCDONOUGH RD #1A
ADDRESS FOLLY BEACH SC 29439

DATE	DESCRIPTION	QUARTERLY	BALANCE
07/01/2015	3RD ASSESSMENT 7/1-9/30/15	688.00	688.00
10/01/2015	4TH ASSESSMENT 10/1-12/31/15	688.00	1,376.00
10/28/2015	ADJ ASMT 7/1-9/24/15-DK	-642.16	733.84
10/28/2015	UPDATE NEW OWNER RECORD	0.00	733.84
11/30/2015	ASSESSMENT INTEREST CHARGE	11.01	744.85
12/31/2015	ASSESSMENT INTEREST CHARGE	11.01	755.86
01/01/2016	1ST ASSESSMENT 1/1-3/31/16	733.35	1,489.21
01/31/2016	ASSESSMENT INTEREST CHARGE	11.01	1,500.22
01/31/2016	ASSESSMENT LATE FEE CHARGE	73.34	1,573.56
02/08/2016	CASH REC'D CK#34465 SABAL	-638.48	935.08
02/08/2016	CASH REC'D CK#34465 SABAL	-106.37	828.71
02/29/2016	ASSESSMENT INTEREST CHARGE	12.43	841.14
03/11/2016	INTENT TO LIEN NOTICE	65.00	906.14
03/29/2016	CASH REC'D CK#35323 SABAL AO	-1,496.40	-590.26
03/29/2016	CASH REC'D CK#35323 SABAL AO	-77.43	-667.69
04/01/2016	2ND ASSESSMENT 4/1-6/30/16	733.35	65.66
04/14/2016	RESALE DEMAND# 3439568-KB	0.00	65.66
04/21/2016	CASH REC'D CK#35540 SABAL AO	-803.79	-738.13
04/27/2016	ARCHIVED IL-03/11/16 th	0.00	-738.13
05/31/2016	CASH REC'D CK#053827-WEEKS	-65.66	-803.79
01/12/2017	REFUND EMERALD MCDONOUGH MR	803.79	0.00
		<u>0.00</u>	

MC-3528

In the Matter Of:

Alben D. Neighbors, et al vs.
Mariners Cay Marina Condo, LLC, et al

Jeffrey E. Heatley

August 10, 2018



A. William Roberts, Jr. & Associates

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 ALBEN D. NEIGHBORS and DAN G. NEKOLA, ON BEHALF
4 OF THEMSELVES AND OTHERS SIMILARLY SITUATED,
AND MARINER'S CAY MARINA COUNCIL OF CO-OWNERS,
5 INC.,

6 Plaintiffs,

7 vs.

Case No. 2017-CP-10-03099

8 MARINERS CAY MARINA CONDO, LLC, MARINERS CAY
FUEL DOCK, LLC, GEORGE A. FARMER, and SOUTH
9 ATLANTIC BANK,

10 Defendants.

11 (Full Caption on Page 2)

12 DEPOSITION OF: JEFFREY E. HEATLEY

13 DATE: August 10, 2018

14 TIME: 10:13 AM

15 LOCATION: Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC

16 TAKEN BY: Counsel for the Defendants

17 REPORTED BY: SANDRA K. BJERKE, RDR, CRR, CBC

18
19 A. WILLIAM ROBERTS, JR. & ASSOCIATES

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A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO

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ALBEN D. NEIGHBORS and DAN G. NEKOLA,
ON BEHALF OF THEMSELVES AND OTHERS
SIMILARLY SITUATED, AND MARINER'S CAY
MARINA COUNCIL OF CO-OWNERS, INC.,

Plaintiffs,

vs. Case No. 2017-CP-10-03099

MARINERS CAY MARINA CONDO, LLC,
MARINERS CAY FUEL DOCK, LLC, GEORGE A.
FARMER, and SOUTH ATLANTIC BANK,

Defendants.

MARINERS CAY MARINA CONDO, LLC and
MARINERS CAY FUEL DOCK, LLC,

Third-Party Plaintiffs,

vs.

EMERALD McDONOUGH ROAD HOLDINGS, LLC,

Third-Party Defendant.

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFFS

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ALSO PRESENT:

George "Dolph" Farmer (Partial)

(INDEX AT REAR OF TRANSCRIPT)

(EXHIBIT 140, Amended Notice of
Deposition of Jeff Heatley dated 6-21-18, marked
for identification.)

JEFFREY E. HEATLEY
being first duly sworn, testified as follows:

EXAMINATION

BY MR. O'KELLEY:

Q. Good morning, Mr. Heatley. I'm Hamlin
O'Kelley. I think you attended a prior deposition
in this matter.

A. I did.

Q. I am here on behalf of Mariners Cay
Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,
which are -- and South Atlantic Bank too. But
those are -- the first two entities I mentioned are
owned by my client's member, Dolph Farmer, who is
also here with us today.

We're here to take your deposition, of
course. There are certain things I'm required to
explain to you. Now that you've been sworn in, if
you talk to Mr. Barr about anything I'm allowed to
ask you about it. Do you understand that?

A. Yes.

Q. And I need you to give a verbal
response. You're shaking your head, but I need you

1 to say yes/no --

2 A. I said yes.

3 Q. I know, but I need you to say yes or
4 no. And you understand that?

5 A. Yes.

6 Q. And if you have a problem with any of
7 the questions I ask, you need to ask me and not
8 Mr. Barr. Do you understand that?

9 A. Yes.

10 Q. Okay. And you have the right to read
11 and sign your deposition which you and Mr. Barr can
12 discuss at the end of your testimony today. You
13 can't change your answers, but if, for example,
14 your name's spelled incorrectly or something of
15 that matter you can change it.

16 As we go forward today you've been on
17 the board a long time, it seems, so we have a lot
18 of stuff to discuss. If you need to take a break
19 at any time just let me know, all right?

20 A. Yes.

21 Q. Okay. Are you under the influence of
22 any medication, drugs or alcohol that would
23 prohibit your testimony here today?

24 A. No.

25 Q. Have you ever been treated for

1 alcoholism, drug abuse or depression?

2 A. No.

3 Q. Do you know of any reason why we cannot
4 take your deposition today?

5 A. No.

6 Q. Have you ever had your deposition taken
7 before?

8 A. No.

9 Q. Have you ever been a party to a
10 lawsuit?

11 A. Only divorce.

12 Q. Well, that's a lawsuit. But other than
13 your divorce, any lawsuit where you've been a
14 plaintiff or a defendant?

15 A. No.

16 Q. And do you know why we're here today?

17 A. Yes.

18 Q. Why are we here?

19 A. To discuss the ship store, ownership of
20 ship store and fuel docks at Mariners Cay Marina.

21 Q. And tell me, whose deposition were you
22 here for in this case, for Mr. McGuire's or
23 Mr. Bessent's?

24 A. Bessent.

25 Q. Okay. And do you have a current

1 position on the board of the Mariner's Cay Marina
2 Council of Co-Owners? Are you the vice president,
3 secretary, anything of that nature?

4 A. Vice president.

5 Q. Okay. And how long have you served on
6 the board?

7 A. Since the inception, which is -- was, I
8 believe, summer of 2010.

9 Q. And were you appointed to the board
10 originally by the declarant of the condominium --
11 dockominium/condominium association?

12 A. Well, we were -- we formed the board
13 based upon the sale of over 90 percent.

14 Q. So you got on the board at turnover, is
15 what we call it.

16 A. Right.

17 Q. If turnover is an expression you
18 understand.

19 A. Correct.

20 Q. Because when you said you got on in
21 inception, I didn't know if you meant inception of
22 the creation of the docks.

23 A. No, not with the original guys, no.

24 Q. And do you know if in 2010 you were
25 appointed, or were you elected?

1 A. Well, we had a meeting. We were --
2 there was an election, but we kind of -- we formed
3 it and then had a meeting.

4 Q. And would that have been the original
5 sort of organizational meeting of the Marina
6 Council of Co-Owners back in 2010?

7 A. Yes.

8 Q. Okay. Has anyone served on the board
9 as long as you?

10 A. No.

11 Q. And have you held other positions
12 besides vice president?

13 A. Yes. In the beginning I was the
14 secretary and treasurer.

15 Q. How many years were you secretary and
16 treasurer?

17 A. Oh, probably about five.

18 Q. And how many years have you served as
19 vice president?

20 A. I guess about three. Oh, I take that
21 back. Let me back up.

22 Q. Yes, sir.

23 A. Since Tom Bessent became the
24 president is when I positioned out of the
25 secretary/treasurer, went to vice, and David --

1 now I took the secretary/treasurer slot.

2 Q. So would that be the last two years?

3 A. So that would be two years, yes, not
4 three.

5 Q. After Ms. Hull was no longer board
6 president?

7 A. Correct.

8 Q. And in terms of office holding on the
9 board, does the board select who holds which
10 office, or do the owners select who holds which
11 office based on, say, number of votes or anything
12 of that nature?

13 A. Well, we decide amongst ourselves, and
14 then we have the vote at the annual meetings for
15 the positions.

16 Q. And so you all decide. Then the
17 membership confirms basically what you've decided
18 by voting.

19 A. Right.

20 Q. Have you ever been opposed for board
21 membership?

22 A. No.

23 Q. So for the last eight years you've
24 served by unanimous consent; correct?

25 A. Correct.

1 Q. Before you is Exhibit No. 140. That is
2 the amended notice of your deposition. Have you
3 seen that document before?

4 A. Yes. It was emailed to me.

5 Q. And besides Mr. Barr, did you talk to
6 anyone else about this deposition?

7 A. No.

8 Q. Did you discuss it with your spouse, if
9 you have a spouse?

10 A. Well, other than -- yes, I do.

11 Q. Okay.

12 A. She's aware of it, that I'm here.

13 Q. You didn't discuss this with any other
14 board members or any other owners out at Mariners
15 Cay?

16 A. No.

17 Q. Have you read any of the transcripts of
18 depositions in this case so far?

19 A. No.

20 Q. Of course, you were at Mr. Bessent's
21 deposition.

22 A. I was.

23 Q. And back to another question about your
24 board service. Do you head up any committees or
25 are you in charge of any certain tasks besides your

1 being vice president?

2 A. Not at present.

3 Q. In the past did you ever head up any
4 committees?

5 A. I don't think so, no.

6 Q. Okay. Is there someone on the board
7 who's charged with, say, maintenance or financials
8 or insurance or the upkeep of the docs? How do you
9 all break out your duties, is basically what I'm
10 asking. Or who's responsible for what?

11 A. We occasionally form some committees
12 for special circumstances. I haven't been on any
13 of them.

14 Q. Okay. And you're not in charge of any
15 special committee involved with this litigation,
16 are you?

17 A. No.

18 Q. How involved with this litigation are
19 you, sir?

20 A. Well, I'm following it, trying to keep
21 up with everything.

22 Q. Who on the board is really spearheading
23 it?

24 A. I would have to say the president, Tom
25 Bessent.

1 Q. But prior testimony in the case has
2 been that the board is acting as a whole in regard
3 to the litigation. There's no committee, there's
4 no one person who's in charge of it. Is that
5 familiar with your understanding of what's
6 occurring in this case?

7 A. I agree with that.

8 Q. Okay. Tell me your home address,
9 please, sir.

10 A. It's 108 Mariners Cay.

11 Q. And what's your PO Box number?

12 A. 1824.

13 Q. And that's Folly Beach; correct?

14 A. Folly Beach.

15 Q. And how long have you lived at 108
16 Mariners Cay?

17 A. Ten years.

18 Q. Two years before you got on the board;
19 right?

20 A. Correct.

21 Q. And how long have you lived at 108
22 Mariners -- I mean. Excuse me. Let me scratch
23 that. Prior to moving to Mariners Cay where did
24 you live?

25 A. Prior to that I lived at Mariners Cay

1 in unit 71.

2 Q. Okay. So how long have you lived at
3 Mariners Cay? Let me ask you that way.

4 A. 2003. So 15 years.

5 Q. 15 years. And tell me your spouse's
6 name, please.

7 A. Elizabeth Heatley.

8 Q. And this is your second spouse --

9 A. Yep.

10 Q. -- based on your testimony? Okay. Do
11 you have any children or family members over the
12 age of 18 in Charleston County to whom you're
13 related by blood or marriage?

14 A. I have a daughter.

15 Q. And what's your daughter's name?

16 A. Rachel.

17 Q. Heatley?

18 A. No. It's Byas. B-Y-A-S.

19 Q. Is that her married name?

20 A. No. Well, yes.

21 Q. Okay. Heatley was her maiden name.

22 A. Was her maiden name.

23 Q. And Ms. Byas, what's her husband's or
24 spouse's name?

25 A. She has no spouse right now.

1 Q. Okay. And besides Elizabeth Heatley
2 and Rachel Byas, any other family to whom you're
3 related by blood or marriage in Charleston County?

4 A. Brother and a sister and our father.

5 Q. What's your brother's name?

6 A. Thomas Heatley.

7 Q. Is he married?

8 A. Yes.

9 Q. And what is his wife's name?

10 A. Kay.

11 Q. And sister?

12 A. Jennifer Mitchum.

13 Q. And does Ms. Mitchum have a spouse?

14 A. Yes.

15 Q. And what is his or her name?

16 A. Jeff Mitchum.

17 Q. And your father's name?

18 A. Are you ready for this?

19 Q. Yes, sir.

20 A. Philistine, just like in the Bible.

21 Q. I was about to say just like in the
22 Bible.

23 A. (Witness moves head up and down.)

24 Q. Philistine Heatley?

25 A. (Witness moves head up and down.)

1 Q. And what's your birth date, sir?

2 A. November 4, '55.

3 Q. And tell me about your educational
4 background.

5 A. I graduated Hanahan High '74.
6 Graduated College of Charleston in '80.

7 Q. And did you -- what degree did you
8 obtain from the College of Charleston?

9 A. Marine biology.

10 Q. Any other education after the College
11 of Charleston?

12 A. Technical school. Well, not schools,
13 but just manufacturer, technical equipment and
14 stuff.

15 MR. SESSOMS: Excuse me. Can I ask the
16 witness to speak up. I can't hear down here.
17 Thank you.

18 THE WITNESS: Okay. I'm a soft
19 speaker.

20 BY MR. O'KELLEY:

21 Q. Yeah. So the technical training would
22 be something required of your -- by your job or --

23 A. Correct.

24 Q. -- through your career? Any other
25 marriages besides the two we've discussed?

1 A. No.

2 Q. And what's your ex-wife's name?

3 A. Amy Farina.

4 Q. Spell the last for me.

5 A. F-A-R-I-N-A.

6 Q. And does Ms. Farina live in Charleston?

7 A. She lives in Columbia.

8 Q. Okay. Tell me about your work
9 experience after the College of Charleston.

10 A. Goes way back.

11 Q. Yeah.

12 A. I never worked in marine biology,
13 although that was my degree. I had worked as
14 college -- during college and summer jobs doing
15 electronics installations. Started out shipboard.
16 I've worked for many defense contractors doing
17 electronic installations.

18 Q. Was that work at the Navy base here in
19 Charleston or --

20 A. It was all over.

21 Q. All over. Okay.

22 A. First one was in Pensacola, Florida.

23 Q. And so how long did you work for
24 various defense contractors at various bases?

25 A. Still going on.

1 Q. Still going on.

2 A. Yes.

3 Q. Okay. So your entire career has been
4 in electronics, working primarily on ships?

5 A. No. I started out on ships.

6 Q. Okay. Started out an ships.

7 A. Did air traffic control. Did a lot of
8 communications, shore-based communications. 1985
9 got into security systems. Been doing security
10 systems since then. In 2003 joined my wife's
11 company, CodeLynx, doing my side of the -- my side
12 of the company doing the same thing.

13 Q. Security systems?

14 A. Security systems installations. Mostly
15 government and, you know...

16 Q. Are y'all considered CodeLynx
17 considered sort of a contract employee or
18 independent contractor? How does that work?

19 A. We're a contractor. I mean, we have
20 our own employees.

21 Q. Do you have a direct contract?

22 A. We don't contract employees. We have
23 our own employees.

24 Q. Okay. How many employees are --

25 A. About 50.

1 Q. And it's based here in Charleston?

2 A. Yes.

3 Q. Okay. Where -- what's its address?

4 A. 4937 Fargo Street.

5 Q. What's the Zip on Fargo Street?

6 A. 29418.

7 Q. Prior to CodeLynx do you remember the
8 name of any of your employers?

9 A. Yeah.

10 Q. Okay. Were you based -- was your work
11 based out of Charleston, or were you based out of
12 various places over that time period?

13 A. I was always based out of Charleston,
14 was usually working somewhere else.

15 Q. And the classes that you mentioned you
16 took after graduating from the College of
17 Charleston, were those electrical training classes
18 or training classes in communications or security
19 systems? Tell me about those.

20 A. Most of them were classes pertaining to
21 the manufacture of access control or video systems.
22 You have to be certified on their system to install
23 them and get technical support. So I've taken
24 many, many, many different classes for various
25 systems.

1 Q. So for your compatibility with the
2 products that they were -- you were going to be
3 using; correct?

4 A. Correct. Knowledge of it. When you
5 call the tech support, you should know kind of what
6 you're talking about, you know, that kind of thing.
7 Most of the time they will not talk to you if you
8 don't have the certification.

9 Q. Got it. And who -- or give me an
10 example of some of the clients of CodeLynx.

11 A. Some of them I'm not supposed to talk
12 about.

13 Q. Correct. Well, if nonconfidential type
14 clients.

15 A. Okay. I'll talk about the local ones.

16 Q. Sure.

17 A. College of Charleston, MUSC, Charleston
18 County, Beaufort County.

19 Q. And for those representative clients
20 you're installing security systems?

21 A. Correct.

22 Q. And what --

23 A. Installing and maintaining.

24 Q. And maintaining them. What type of
25 security systems are these? Access or computer

1 security or what?

2 A. I call it physical security.

3 Q. Physical.

4 A. Burglar alarms, cameras, video
5 surveillance cameras, and access control systems.

6 Q. And access control systems would be
7 like door fobs, swipe cards?

8 A. Swiping cards to get in the doors, yes.

9 Q. You've owned a condo at Mariners Cay
10 for years. When did you first buy a dockominium at
11 Mariners Cay?

12 A. In two thousand -- whenever they
13 came -- first became --

14 Q. When they first became condos?

15 A. 2007, I guess. 2006.

16 Q. And how many dockominium units have you
17 owned at Mariners Cay?

18 A. One.

19 Q. Just one. Is it the same unit?

20 A. Yes.

21 Q. And what's your unit number?

22 A. D8.

23 Q. And do you recall which attorney did
24 the closing for you?

25 A. Bleecker.

1 Q. John Bleecker?

2 A. Yes.

3 Q. And do you recall what you paid for
4 that dockominium unit?

5 A. Way too much. 120 I believe is what I
6 paid.

7 Q. 120,000?

8 A. Yes.

9 Q. Have you had any problems with that
10 dock slip through the years?

11 A. Just maintenance things like replacing
12 cleats.

13 Q. Normal wear and tear, things of that
14 nature?

15 A. Correct.

16 Q. And you said a minute ago that you paid
17 way too much. Why do you feel that?

18 A. Because it's not valued that now. I
19 would have thought back then it would have gone up.
20 Equivalent units were going for 300 or so at Dunes
21 West or Wild Dunes.

22 Q. Did you do some research prior to
23 buying your unit as to what the going rate was back
24 in those days?

25 A. Yeah.

1 Q. Do you know what the going rate for the
2 units are these days?

3 A. I'm not exactly positive, but I'm
4 thinking around -- depends on the unit.

5 Q. Sure.

6 A. I would say an average of between 30
7 and 40.

8 Q. And that's thousand dollars; correct?

9 A. Thousand dollars.

10 Q. Have you reviewed, as a board member,
11 any recent sales?

12 A. No.

13 Q. You base -- what do you base the 30- to
14 40,000 value on? Just word on the street?

15 A. Word. Word of mouth.

16 Q. We took Amanda Barnes' deposition in
17 this case who's the property manager for the Marina
18 Council of Co-Owners. Do you have any
19 communications with her when things sell out at
20 Mariners Cay?

21 A. Personally, no, I don't.

22 Q. Okay. I'll represent to you she
23 testifies she tries to keep your list up to date
24 when things change hands. I didn't know if the
25 board gets a regular update of owners, or is it

1 just something you all entrust her to keep a
2 running tally of?

3 A. I would say she does not send out a
4 notice to us when a unit sells.

5 Q. Got it.

6 A. Now does she update the owner's list?
7 Yes.

8 Q. Is your email address still
9 jeff.heatley@codelynx.com?

10 A. Yes.

11 Q. And have you had that email address
12 since you went to work with your wife's company?

13 A. Yes. It was -- used to be JHeatley.
14 Same. Same email.

15 Q. So since 2003 it's either been JHeatley
16 or jeff.heatley@codelynx; correct?

17 A. Yes.

18 Q. Do you have a personal email address?

19 A. I have a jeheatley@gmail.

20 Q. Which email address do you use
21 primarily?

22 A. CodeLynx.

23 Q. For work and for personal use?

24 A. Correct.

25 Q. You testified earlier when I asked you

1 why we're here today -- so I don't need to ask it
2 again, if you all are successful in your lawsuit,
3 do you all have plans to make Mr. Farmer and his
4 family leave the ship store?

5 A. Yes.

6 Q. Where are they supposed to live?

7 A. That would be up to him.

8 Q. Does the board have plans to pay
9 Mr. Farmer for the work he did to the ship store?

10 A. Not at this time.

11 Q. Does the board have plans to reimburse
12 Mr. Farmer for any dues he's paid?

13 A. You mean regime fees?

14 Q. Correct.

15 A. If the case goes our way, I would think
16 that any regime fees would be due back that he's
17 paid.

18 Q. Would that be with interest?

19 A. I would say no.

20 Q. Why not?

21 A. Well, I would say that both parties
22 have suffered here.

23 Q. What suffering has the Mariner's Cay
24 Marina Council of Co-Owners had in this case?

25 A. The use of our ship store.

1 Q. What use were you making -- the board
2 making of the ship store at the time Mr. Farmer
3 bought these units?

4 A. Dockmaster's office.

5 Q. And what other uses?

6 A. Restrooms.

7 Q. Have you been deprived of any of the
8 use of the restrooms?

9 A. No. Restrooms have been accessible.

10 Q. Okay. So the restrooms and the
11 dockmaster's office. What other suffering have you
12 had based on Mr. Farmer's ownership of the ship
13 store?

14 A. Basically the operations that we need
15 to run the marina. Places to store tools, places
16 to store our containment, the oil containment,
17 equipment, free access to the power panels, the
18 security panel that has been removed, fuel dock.

19 Q. Any other ways you all have suffered?

20 A. I'd say that sums it up as far as, you
21 know, not being able to run the marina properly as
22 we have in the past.

23 Q. Has Mr. Geiger told you he hasn't been
24 able to run the marina properly?

25 A. Yes.

1 Q. When did you have those conversations?

2 A. Numerous times. He complains about
3 nowhere to store the tools, nowhere to keep the
4 records.

5 Q. During his deposition he told us he has
6 all that stuff at his house which is located at
7 Mariners Cay.

8 A. Correct.

9 Q. Would you agree with that statement?

10 A. Not totally. I think we're storing
11 some things off site in a storage facility.

12 Q. He said he has a storage facility and
13 everything else is at his condo, his landward
14 condo. Has there been any problems with the
15 day-to-day operations of the marina?

16 A. I would say yes. We've had trouble
17 getting to our equipment underneath the building
18 to -- for the pump-out station.

19 Q. Have you personally tried to use the
20 pump-out station?

21 A. I personally have not.

22 Q. So any information about the pump-out
23 station -- pump-out access would have come from
24 Mr. Geiger or some other owner?

25 A. Correct.

1 Q. Have you had any dealings -- and I'm
2 not talking about, you know, social hellos -- with
3 Mr. Farmer individually relative to the matters
4 that bring us here today?

5 A. None.

6 Q. But you know him as a -- someone who's
7 at Mariners Cay; correct?

8 A. Correct.

9 Q. To speak to him on a social basis,
10 things of that nature.

11 A. Correct.

12 Q. And so the same question would go with
13 the two LLCs that I'm here with today. You haven't
14 had any dealings with those LLCs related to the
15 substance of this lawsuit; correct?

16 A. No.

17 Q. Have you -- and I'm going to represent
18 to you a lot of the emails that Mr. Barr produced
19 to us seem to have your email address on them.
20 Have you been sort of the institutional memory of
21 the board since you've served since the inception?
22 Has anyone else served longer than you?

23 A. No one has served longer than me.

24 Q. When you first bought your unit do you
25 recall whether the original master deed was in

1 place or the amended master deed was in place?

2 A. Original.

3 Q. And do you know if Mr. Bleecker gave
4 you a copy of that master deed at the time of your
5 closing?

6 A. Yes, he did.

7 Q. And did you review the master deed at
8 the time of your closing?

9 A. I did.

10 Q. Okay. And have you reviewed the
11 amended master deed?

12 A. I have.

13 Q. Okay. And were you involved in any way
14 with the amendment to the master deed?

15 A. No.

16 Q. And when did you receive a copy of the
17 amended master deed, if you know.

18 A. Don't remember the exact date. I
19 remember after we formed the board. Maybe sometime
20 after that -- I can't remember exactly -- I was
21 informed there was an amended master deed.

22 Q. Sometime after the turnover from the
23 declarant to the board, you -- someone told you
24 there had been an amendment.

25 A. Correct.

1 Q. And did you --

2 A. I believe it was Ed Geiger.

3 Q. Okay.

4 A. And I believe it was him who sent me an
5 email with that document.

6 Q. And when Mr. Geiger sent you the
7 amended master deed, did you review it at that
8 time, or did you just sort of place in a file to
9 review as needed?

10 A. I printed it out, started using that
11 one as the main one.

12 Q. Okay. So sometime after 2010 you all
13 were using the amended master deed instead of the
14 original master deed; correct? When I say you all
15 I mean the board.

16 A. I will speak for me.

17 Q. Yes, sir.

18 A. I was using that one.

19 Q. If you had a question about something,
20 you would go to the amended master deed instead of
21 the original master deed from 2010 to the present.

22 A. Yes.

23 Q. And since you've been on the board the
24 longest, were you involved in any way with the
25 foreclosure against Tiger River Capital?

1 A. No.

2 Q. You just turned it over to the
3 council's attorney and told him to run with it or
4 dealt -- let Sentry Management deal with that? Or
5 tell me how that worked, if you recall.

6 A. Start over with the question.

7 Q. Sure. I asked you originally if you
8 were involved in any way with the foreclosure
9 against Tiger River, and your answer was no.

10 A. Right.

11 Q. I'll represent to you that the board
12 had an attorney file an answer in that case, a
13 fellow named Derek Dean.

14 A. Derek Dean, yes.

15 Q. And I want to know, were you
16 involved -- you, Mr. Heatley, involved with any
17 communications, with any aspect of that
18 foreclosure, or did you just let Sentry Management
19 manage that for the board? If you remember.

20 A. I don't remember. There was
21 discussions. I was not involved with any
22 foreclosure stuff other than trying to follow it.

23 Q. Were you --

24 A. Sentry Management was doing a lot of
25 the conversations with Derek Dean. And we were all

1 copied on them, I'm sure. Most of them.

2 Q. So Sentry was coordinating it for you
3 all through Mr. Dean; correct?

4 A. Correct.

5 Q. And -- but were you aware the Mariner's
6 Cay Marina Council of Co-Owners was a named party
7 in that foreclosure and that you had filed an
8 answer, or were you just watching it?

9 A. I don't remember how we were named in
10 it. I guess we were because it's part of the
11 entity.

12 Q. Let me -- all right. So we've got this
13 huge notebook of exhibits. We're not going to go
14 through each one, but we're going to go through a
15 lot. I'm just going to show you.

16 The first exhibit is some requests for
17 admissions in this case, and I'm going to find what
18 I want you to look at.

19 If you look with me in this document,
20 Exhibit B, there's a complaint for mortgage
21 foreclosure, and it does name the Mariner's Cay
22 Racquet Club and it does name the Mariner's Cay
23 Marina Council of Co-Owners, does it not?

24 A. Yes.

25 Q. There does appear also to be an order

1 of judgment for foreclosure and sale in this case.

2 Does there not seem to be that?

3 A. Yes.

4 Q. And I'll represent to you this is a
5 court order ordering an actual sale of the
6 properties that bring us here today. Were you
7 aware that there was a sale that was going to be
8 conducted by the court in this matter?

9 A. Yes.

10 Q. Okay. Did you or anyone else from the
11 board object to that sale?

12 A. No.

13 Q. Why not?

14 A. This is the sale of the ship store?

15 Q. It's the ship store and the fuel docks.

16 A. To Mr. Farmer.

17 Q. This -- I'll represent to you this was
18 a sale that actually went to a crowd called Emerald
19 Portfolio --

20 A. Oh, okay.

21 Q. -- as a result --

22 A. Emerald.

23 Q. -- of the foreclosure.

24 A. Right.

25 Q. They were eventually sold to

1 Mr. Farmer.

2 A. Yes, we were aware -- I was aware of
3 that.

4 Q. But you didn't do anything to object to
5 the sale, did you?

6 A. We didn't object to the sale.

7 Q. And why did you not?

8 A. We assumed at that time that the title
9 was correct and everything was legal.

10 Q. Exhibit E, I'll represent to you, is
11 the deed from the court -- it's called a master's
12 deed -- to the Emerald Portfolio for \$280,000. And
13 I'll represent to you that this deed was recorded
14 in book 0510, page 674. Do you -- have you ever
15 seen this deed before?

16 A. No.

17 Q. Okay. If I represent to you it's the
18 deed as a result of this foreclosure, do you have
19 any reason to doubt that statement?

20 A. In light of what we know now, yes.

21 Q. Okay. And it begins: Whereas, a
22 foreclosure action involving the above-named
23 parties was decided by the master in equity. That
24 would seem to indicate that that's what this deed
25 is; correct?

1 A. Yes.

2 Q. Okay. And were you on -- you were on
3 the board, were you not, on the day of this deed in
4 2015; correct?

5 A. Correct.

6 Q. Do you know how many owners there are
7 out at Mariners Cay?

8 A. I think 88. Somewhere around that.

9 Q. And Ms. Barnes testified in her
10 deposition that she is tasked with keeping the
11 names and addresses of the owners. Is that
12 correct?

13 A. Yes.

14 Q. She also testified it would take her
15 about 30 seconds to print out a list of those
16 owners. Do you agree with that statement?

17 A. Yes.

18 Q. And you all, of course, need to keep
19 that list for regime fees and billing purposes;
20 correct?

21 A. Yes.

22 Q. Among other things. Do you know most
23 of the owners out at Mariners Cay Marina?

24 A. No.

25 Q. Would you agree with me that there

1 would never be more than either 88 or 90 names out
2 at Mariners Cay of owners?

3 A. There would never be any more?

4 Q. Never be any more.

5 A. I'm sorry. I don't quite understand
6 your question.

7 Q. Sure. What's the maximum number of
8 owners there could be at Mariners Cay? How many
9 boat slips are there?

10 A. I'm not sure the exact number.

11 Q. Okay.

12 A. Like I said, I think it's 88.

13 Q. Okay.

14 A. I mean, two or more people can own a
15 slip.

16 Q. Sure.

17 A. That answer could be variable.

18 Q. Sure.

19 A. Corporations own them.

20 Q. There can never be more owners -- well,
21 let me scratch that. The number of owners depends
22 on the number of slips, does it not?

23 A. Like I said, can be more owners of one
24 slip. I mean, my wife and I both own my slip. So
25 yeah. That's two.

1 Q. As for the ship store in terms of
2 administration, the building that the ship store is
3 in, do you know if the board is paying any of the
4 power bills for that building?

5 A. We are not paying power bills.

6 Q. Do you know if the board pays any water
7 bills?

8 A. I think we pay the water bill.

9 Q. How about any of the taxes?

10 A. No taxes.

11 Q. How about insurance?

12 A. Insurance we pay.

13 Q. You pay insurance for the --

14 A. We are paying insurance. We've always
15 kept insurance on the whole property.

16 Q. How about for the units inside the ship
17 store?

18 A. The...

19 Q. The place where Mr. Farmer and his
20 family are living.

21 A. Well, the ship store as a whole
22 building, yes. It's part of our insurance policy.

23 Q. Mr. Geiger testified about the use of
24 the ship store. Do you know when it quit operating
25 as a store or restaurant?

1 A. That's a tough one. I can't remember
2 the exact date. It was --

3 Q. And I'm not trying to do anything --
4 like, you know, have some gotcha moment.
5 Mr. Geiger said it operated as a ship store and
6 then it was the Tuna Grill at one point and that
7 it's been closed for years.

8 A. As far as a ship store selling things,
9 yeah, it has been closed for years. It has always
10 been occupied by our dockmaster until about two
11 years ago.

12 Q. After Mr. Farmer's --

13 A. Correct.

14 Q. -- entities purchased; correct?

15 A. Correct. And even for a while we were
16 doing that in -- when Mr. Farmer owned.

17 Q. Do you recall when, after Mr. Farmer's
18 entities purchased, the dockmaster was asked to
19 leave the premises?

20 A. I can't recall the exact date.

21 Q. But you said it was a couple months
22 after?

23 A. I would say longer than that. Maybe
24 six months. I'm not positive.

25 Q. If I told you he purchased it in the

1 spring, sometime in the fall of that year the
2 dockmaster was asked to leave? Does that sound
3 about right?

4 A. As near as I recall. I don't have that
5 date locked in my memory.

6 Q. You're just basing this on what
7 Mr. Geiger would have told you; correct? Or did
8 you have to help him move out?

9 A. I guess it was just based on
10 discussions with him.

11 Q. Okay.

12 A. I did not help move out.

13 Q. When you were on the board in 2016,
14 prior -- well, let me ask it this way: Were you --
15 you were involved as a board member with
16 discussions about potential purchase by the board
17 while the foreclosure was going on; correct?

18 A. Yes.

19 Q. Okay. And you were also -- were you
20 also involved with discussions about purchasing
21 from Mr. Farmer?

22 A. Yes.

23 Q. Okay. And the foreclosure was filed in
24 2013. So from 2013 until this lawsuit was filed
25 you were involved with negotiations about the board

1 attempting to purchase the ship store; correct?

2 A. Yes. We were always discussing it.

3 There were some public auctions. I remember we
4 prepared and got some appraisals, but the public
5 auctions never happened, so --

6 Q. Are you talking about --

7 A. -- it got lost.

8 Q. Are you talking about a public auction
9 separate from the court auction?

10 A. It may be the same one.

11 Q. Okay.

12 A. I don't know. It got postponed a
13 couple of times. We were considering putting in a
14 bid.

15 Q. Did you ever get authority -- the board
16 ever give authority to someone to make a bid for X
17 dollar amount?

18 A. Well, we made some offers to
19 Mr. Farmer. As far as the --

20 Q. Well, I'm talking about --

21 A. As far as the auctions --

22 Q. Yes, sir.

23 A. -- no. We got appraisals. We were
24 getting to that stage, and then we got an email
25 that -- you know, from the president at the time

1 that it's been canceled.

2 Q. Okay.

3 A. And so we started -- it was going to be
4 later on, maybe six months from that, and that got
5 canceled. So then it got lost.

6 Q. Did you have any dealings with anyone
7 from Emerald Portfolio about attempted sales or
8 purchase?

9 A. I did not personally.

10 Q. Do you know if anyone from the board
11 did?

12 A. Laurie Hull was talking to them. I
13 don't know -- remember how far that got.

14 Q. And was she the board president at the
15 time?

16 A. Yes.

17 Q. And we understand that she's also a
18 licensed real estate broker or agent.

19 A. Yes.

20 Q. Was she doing these discussions as a
21 board member or as the board's agent or both?

22 A. I would say as the board's -- a board
23 member.

24 Q. In other words, you all didn't hire her
25 or her company to be --

1 A. No.

2 Q. -- a broker; correct? But from the
3 time of the foreclosure of 2013 to the time this
4 lawsuit was filed, 2017, you were involved in those
5 negotiations back and forth with various entities
6 or individuals; correct? Or you knew they were
7 going on.

8 A. Okay. Go back to the beginning of
9 that.

10 Q. Sure. From the time this foreclosure
11 was filed in 2013 --

12 A. Right.

13 Q. -- we've seen documents that the board
14 was considering possibly purchasing the ship store
15 at the foreclosure sale.

16 A. That's correct.

17 Q. Then after the building's sold and the
18 fuel dock's sold, we've seen lots of documents
19 there were negotiations back and forth about --

20 A. With Mr. Farmer.

21 Q. With Mr. Farmer.

22 A. Yes.

23 Q. And you were involved in all those
24 negotiations, correct, or communications as a board
25 member?

1 A. I didn't personally make offers to him.
2 I mean, as a board we were discussing it, yes.

3 Q. And you testified a little while ago
4 that the board got an appraisal in connection with
5 those attempted offers; correct?

6 A. We got an appraisal at the -- yes, at
7 the original auctions, and I believe we got another
8 one after that.

9 Q. I've only seen one appraisal. Do you
10 know who did the original appraisal? I saw one
11 that was prepared, you know, after the foreclosure
12 had gone through. Do you recall there being a
13 foreclosure -- a preforeclosure appraisal, or do
14 you know?

15 A. Oh, I think -- I think there was one.
16 I don't remember exactly, and I probably don't have
17 it.

18 Q. Well, that was going to be my next
19 question. Who would have that original appraisal
20 if there was one?

21 A. I don't remember.

22 Q. Well, if --

23 A. I think we were talking about making an
24 offer, so we would have to do an appraisal.

25 Q. If there were an original appraisal,

1 would somebody have already given that to Mr. Barr,
2 do you think?

3 A. I don't know.

4 Q. Okay. Who's the recordkeeper for the
5 board? Is it Sentry?

6 A. Sentry.

7 Q. Would Sentry have that appraisal, or do
8 you know?

9 A. I don't know.

10 Q. Tell me about your relationship with
11 Alben Neighbors.

12 A. I've known Alben a long time. We went
13 to high school together.

14 Q. Okay.

15 A. But I -- you know, I lost -- you know,
16 after high school did not have any contact with him
17 until I moved to Mariners Cay and I found he was
18 living there, so...

19 Q. Are y'all friends socially?

20 A. On the dock, you know.

21 Q. Tell me about your relationship with
22 Dan Nekola.

23 A. I don't know Dan Nekola. I've met him.
24 I don't know him very well.

25 Q. Have you met him just relative to his

1 ownership at Mariners Cay?

2 A. I think just on the -- I didn't -- you
3 know, I just met him on the dock.

4 Q. Okay.

5 A. Didn't really know he had a place at
6 Mariners Cay.

7 Q. Have you talked to either Mr. Neighbors
8 or Mr. Nekola about their roles in this litigation?

9 A. No.

10 MR. O'KELLEY: Let me take a quick
11 break.

12 (A recess transpired from 11:01 until
13 11:05.)

14 BY MR. O'KELLEY:

15 Q. Mr. Heatley, we're back on the record.
16 Exhibit No. 2 that's in front of you, that seems to
17 be an email from 2012. Do you know who Butch Clark
18 is?

19 A. I do.

20 Q. Okay. Who is Mr. Clark?

21 A. He is a real estate developer.

22 Q. Did he develop or condominiumize the
23 docks at Mariners Cay, do you know?

24 A. I know he was involved.

25 Q. Okay.

1 A. But his name is not listed on anything,
2 but he was -- I remember seeing him out there and
3 he was involved in some fashion.

4 Q. Okay. Do you remember this email from
5 May of 2012? And it has an attachment on the next
6 few pages. A letter --

7 A. I don't really remember this one.

8 Q. Okay. There was a letter from Derek
9 Dean attached regarding some issues with Law Firm
10 Finance, LLC and Tiger River Capital, LLC. Do you
11 know if Mr. Clark was involved with either of those
12 LLCs?

13 A. I can't say that I know for sure that
14 he is. Like I said, he's been affiliated with the
15 whole marina redevelopment thing.

16 Q. And do you know who Tiger River
17 Capital, LLC -- do you know what that entity is?

18 A. I remember the name. It was Flint
19 River and Tiger River. I think they're the same
20 individual.

21 Q. And do you know if that's Mr. Clark, or
22 not?

23 A. I don't know.

24 Q. Do you know if the board took any
25 action back in 2012 as a result of this

1 correspondence from Mr. Dean?

2 A. Other than delinquent...

3 Q. Ms. Hull on the first page says:

4 I thought it would be good to send
5 official notice to Tiger River before we have a
6 problem.

7 Do you know if any notice was sent to
8 Tiger River?

9 A. I don't remember. I know we filed a
10 lien on them for not paying regime fees. Is that
11 what you're -- this is referring to?

12 Q. I'm asking you what you remember about
13 the communications contained in these emails and
14 the letter from Mr. Dean in May of 2012. Because
15 this letter from Mr. Dean seems to say that Law
16 Firm Finance and Tiger River Capital was suspended
17 from any use of the common areas at Mariners Cay.

18 And then there's an email that says
19 that the dockmaster from Sunset may try and lease
20 the condo or operate the gas docks, and then
21 Ms. Hull says: I think we need to send notice
22 before we have a problem.

23 A. Okay. I don't particularly remember
24 this, this one, but I see what the -- I do -- what
25 I do remember about it is that they never paid the

1 regime fees that were due, ever, ever, and we put a
2 lien on their units.

3 Q. And it appears you also suspended --
4 tried to suspend them through your lawyer from
5 using any of the common areas too.

6 A. It appears that way, yes.

7 Q. Okay.

8 A. I don't remember that part of it.

9 Q. That's fine.

10 A. Yeah.

11 Q. I just wanted to know what you recalled
12 about it. The next exhibit, Exhibit 3, seems to be
13 communications just updating you all about the
14 foreclosure. And you were on the board back in
15 August of 2014; correct?

16 A. Correct.

17 Q. Okay. And it also seems to be asking
18 if a vertical elevation was ever done for the
19 marina. Do you know if a vertical elevation survey
20 was ever done for the marina?

21 A. I know we had Rick Stringer working on
22 it.

23 Q. Okay.

24 A. And I don't think he finished it, and I
25 think he ran into some roadblocks. Don't remember

1 exactly what that was, but I never saw a finished
2 product.

3 Q. Do you know if a governmental entity of
4 any type required an elevation survey?

5 A. I do not. I do not.

6 Q. Why were you all asking Mr. Stringer to
7 do one?

8 A. I don't --

9 Q. If you recall.

10 A. I don't recall.

11 Q. But you do recall that Rick Stringer
12 was being asked to do one --

13 A. Yeah.

14 Q. -- for some purpose. You just then
15 can't remember what the purpose was.

16 A. There was -- I remember there was
17 issues with the elevations. It wasn't done
18 correctly and it was affecting the whole marina and
19 we tasked him to get that part done.

20 Q. And it just wasn't done or followed
21 through or it fell between the cracks? What
22 happened, if you know.

23 A. I don't remember exactly what happened.

24 Q. Just never was completed.

25 A. Never was completed.

1 Q. Okay. Exhibit 4 seems to be an email
2 from Mr. Bruner at Sentry advising that there is a
3 sale of the ship store and gas docks scheduled for
4 July 7th at the courthouse. Did you attend that
5 auction?

6 A. No.

7 Q. Do you know if anyone from Mariners Cay
8 attended the auction?

9 A. I don't remember. I think we -- that's
10 maybe the ones I was referring to that I thought
11 were canceled.

12 Q. Okay.

13 A. I know we were preparing to at one
14 date.

15 Q. Okay.

16 A. Then it was canceled.

17 Q. On -- and down --

18 A. I don't remember a second one.

19 Q. Down at the bottom of these exhibits
20 there's often a Bates stamp. This one -- I want to
21 go to MC-14.

22 A. Um-hum.

23 Q. This was an email between Mr. Bruner
24 and Mr. Sutton. It also cc's Michele Vargas and
25 Derek Dean about variations options with the

1 foreclosure and REO representative at Sabal
2 Financial and things the board could do.

3 Do you remember these discussions about
4 what the board's options were vis-à-vis the
5 foreclosure back in 2014?

6 A. What I remember about these is that we
7 were -- you know, we were trying to buy it. And
8 Laurie Hull was doing most of this. Or maybe it
9 was Michael, but --

10 Q. And on MC-15 --

11 A. The contacts with Sabal.

12 Q. On MC-15 on the next page it says the
13 total appraised value is \$269; 240K ship store and
14 29K gas docks.

15 Again, you stated earlier that you
16 thought there had been an appraisal, but you don't
17 know who might have that; correct?

18 A. Correct.

19 Q. Do you know where Mr. Bruner was
20 getting those values from then?

21 A. I do not.

22 Q. And this email also references Ron
23 McGuire. Do you know if that's the same
24 Mr. McGuire who serves on the board with you?

25 A. Yes.

1 Q. And then look with me, please, at
2 MC-18. I think that's 16.

3 A. Oh, sorry.

4 Q. Mike, who is Mike Sutton, says that
5 he's enclosing the appraisals of the two properties
6 which were formed in 2013 for the board to use in
7 their discussion today. Does that refresh your
8 recollection of the appraisals, or you just have to
9 rely on what it says here?

10 A. I don't remember those appraisals.

11 Q. Okay.

12 A. I really don't. I may have them in
13 emails. I don't remember.

14 Q. Because I'll represent to you there was
15 no attachment that we saw containing appraisals.
16 Would we have to ask Mr. Sutton about that?

17 A. I don't remember, so I would say yes.

18 Q. Okay.

19 A. I don't remember those appraisals.

20 Q. In his email Mr. Bruner says it's a
21 \$269,000 value, appraised value, on MC-15. Could
22 he be referencing those appraisals, or do you know?

23 A. I don't know.

24 Q. The next exhibit, Exhibit No. 5, if you
25 look at MC-20 Mr. Geiger is talking about annual

1 sediment and water quality test and wanted to know
2 if they had been conducted over the past five to
3 six years.

4 Do you have any knowledge about whether
5 these water quality and annual sediment tests were
6 done from the period of 2010 to 2015?

7 A. I don't remember any specific testings.
8 I mean, like I said, the dockmasters were handling
9 this. Ed was pretty good about those things.

10 Q. Do you know who was doing the testing
11 or if it was done while Mr. Geiger was not the
12 dockmaster?

13 A. I don't know.

14 Q. Do you know if OCRM has ever threatened
15 to pull the permit for the marina due to a lack of
16 testing?

17 A. Not to my knowledge.

18 Q. If you'll turn to Exhibit 6. On MC-22
19 and 23, what I'm specifically going to ask you
20 about, do you recall having Mr. Geiger make this
21 building repair suggestion report --

22 A. Yeah, I remember --

23 Q. -- in 2015?

24 A. Yeah, I remember doing some back -- you
25 know, background work on, you know, what the

1 repairs would need to be done if we did purchase.

2 Q. And he has an estimate of 115- to
3 \$138,000 on MC-22. Do you recall those numbers
4 being bandied about back in 2015?

5 A. Yeah. I wouldn't say I agreed with
6 them, but I remember the number. I remember
7 talking about it.

8 Q. And Mr. Geiger testified that that was
9 just his rough estimate. You say you didn't agree
10 with him. Do you think they were high or --

11 A. I don't know. I'm not a construction
12 expert. I don't know, I mean. Yeah, it needed
13 painting, it needed wood replaced. Pilings has
14 always been an issue. So, you know, I'm not a
15 construction estimator.

16 Q. And Mr. Geiger testified in his
17 deposition that the pilings had indeed been an
18 issue for years.

19 A. (Witness moves head up and down.)

20 Q. Tell me your knowledge about the
21 problems with the pilings.

22 A. Well, my knowledge is I've actually
23 been under there and dug around and looked at them
24 based on, you know, what Ed was telling me. You've
25 got to dig a lot to get to the bottom of it. It

1 looked pretty good from the ground up. He says
2 it's down in the soil.

3 Q. Are they failing, are they falling
4 apart, rotting?

5 A. I don't think they're failing.

6 Q. What's the problem?

7 A. They're rotting. They're rotting.
8 They've lost some of their volume.

9 Q. Has the board ever hired an engineer or
10 anyone to discuss the source of the rot or the loss
11 in volume?

12 A. We didn't hire -- I don't recall hiring
13 anybody. I personally met with the Ram Jack
14 company to come up with a proposal to repair that.

15 Q. Do you recall when that was?

16 A. Probably around this time. I don't
17 recall exactly.

18 Q. This report was from three years ago in
19 2015.

20 A. That's probably about right. This was
21 before Mr. Farmer purchased.

22 Q. Do you recall if Ram Jack gave you all
23 an estimate, or did they just came out and look?

24 A. He gave us an estimate.

25 Q. Do you recall what that amount was?

1 A. I think it was 55.

2 Q. Thousand?

3 A. Thousand.

4 Q. And do you recall what their proposed
5 scope of work was going to be?

6 A. Yeah. It was to essentially replace
7 all the pilings with their type piling, which is a
8 metal piling that they -- they screw into the
9 ground until it hits the bedrock, I guess. You
10 know, multiple different screwed in and then it's a
11 metal beam, basically.

12 Q. Do they somehow complement the existing
13 piles or do they take the existing pilings out or
14 do you know?

15 A. I believe they just do it beside the
16 existing piling. I don't recall exactly on that,
17 if they take the ones -- I don't think they were
18 taking anything out.

19 Q. Okay.

20 A. They were just going to supplement.

21 Q. And that work was never approved by the
22 board, was it?

23 A. No.

24 Q. And was any of the work -- any of the
25 repairs that are on MC-23 on the next page of that

1 exhibit, did the board authorize any of this work
2 to be done, items 1 through 17? And take a minute
3 to review.

4 A. Yeah. And you're asking if we ever
5 approved to do all of these?

6 Q. Any or all of 1 through 17 on MC-23 on
7 Exhibit 6.

8 A. I would say none of these -- I do know
9 No. 17. I know we removed a bunch of junk from
10 under there at one point. But to my knowledge,
11 none of these other items, 1 through 16, were
12 actually accomplished.

13 Q. Okay. So of all these repair
14 suggestions, only 17, removing all the junk under
15 the building, that was done. What about the
16 possibility -- no concrete floor was put in;
17 correct?

18 A. No.

19 Q. Okay. So only half of what's listed in
20 17 was done.

21 A. That's right. We got the junk that was
22 a fire hazard down there out.

23 Q. Do you know why none of these repairs
24 were made?

25 A. Well, I believe this was a suggestion

1 that -- of things that -- if we were to purchase
2 the property that would have to be taken care of --

3 Q. Okay.

4 A. -- as I recall.

5 Q. Because if you own it, you've got to
6 repair it; correct?

7 A. That's correct.

8 Q. I forgot to ask you this earlier. Have
9 you ever gone through any board of directors'
10 training or education classes or gone to any
11 community association type meetings in connection
12 with your service on the board?

13 A. No.

14 Q. Exhibit No. 7 is email between various
15 members of the board. You were included on that.
16 There's a statement. This is an email to Laurie
17 who was the board president. Do you know who
18 maiern006 is?

19 A. I believe that's Nelson. Nelson Maier.

20 Q. And he was on the board at one point;
21 correct?

22 A. That's Correct.

23 Q. And Mr. Maier says in this email:
24 I think the majority of the HOA board
25 are against having the fuel docks as part of the

1 HOA.

2 The HOA he's referring to, do you know
3 if that's the landward condos, or is he talking
4 about Mariners Cay Marina? If you recall this
5 discussion.

6 A. Well, I mean, the HOA board -- when you
7 say HOA board, to me that's the Mariners Cay condo
8 owners, because ours is called the marina.

9 Q. And if you'll turn over a page, the
10 answer may be included, because it discusses Roger
11 Camp, who was and is still the HOA president;
12 correct?

13 A. That's correct.

14 Q. So do you know why -- what the
15 discussion was at the Mariners Cay HOA about the
16 fuel docks becoming part of the HOA back in August
17 of 2015?

18 A. I'm trying to get the context. I mean,
19 at one point the HOA, the Mariner -- meaning the
20 condo HOA was trying to purchase --

21 Q. The fuel docks and the ship store?

22 A. -- the fuel dock and the ship -- well,
23 I don't know about so much the fuel dock. Maybe
24 so. But I'm guessing this is in reference to that.

25 Q. And do you know if they ever went

1 through with those purchases?

2 A. They did not.

3 Q. Okay. And were you involved in
4 discussions with Mr. Camp or other members of the
5 landward HOA about that purchase?

6 A. We had one meeting where -- a joint
7 meeting between the two associations to work
8 together; that maybe they would purchase it and we
9 would lease it from them.

10 Q. And you're a member of both
11 associations by virtue of your ownership?

12 A. I was -- well, yeah. Not on the board.

13 Q. Not on the board of both but a member
14 of both; correct?

15 A. Correct.

16 Q. And that --

17 A. And that never came to fruition.

18 Q. And that never came to fruition.

19 A. I believe they made a lowball offer
20 which was rejected.

21 Q. Do you know if they made that to Sabal
22 or to the bank or to whom they made that offer?

23 A. I think it was to Sabal, but this is
24 hearsay.

25 Q. Okay. Exhibit 8 is contained in pages

1 MC-27 and 28. If you'll turn to the second page of
2 that, MC-28, it seems to be an email from Mike
3 Sutton stating that you all would be interested in
4 working with them going forward and establishing
5 the facts we provide to Sabal.

6 Is this, again, more of those
7 negotiations you were discussing a few minutes ago
8 about the HOA and Sabal's --

9 A. Seems to be in the same context.

10 Q. Same vein; correct?

11 A. Correct.

12 Q. And again, none of that came to
13 fruition.

14 A. Correct.

15 Q. And then Exhibit 9 also discusses
16 possibly coming up with some long-term, workable
17 plan. And then it's an email exchange between you
18 and other board members; correct?

19 A. Appears to be.

20 Q. And do you know what document Roger
21 Camp had sent over back in September of 2015?

22 A. I'm not exactly sure which document
23 he's talking about.

24 Q. Okay. And he refers to an easement.
25 This email refers to an easement.

1 A. Okay.

2 Q. Do you know if that's the easement that
3 exists by and between the Mariners Cay Marina and
4 the HOA?

5 A. If they're talking about easement, it
6 has to be.

7 Q. And there's been testimony in this case
8 about that easement. What's your understanding of
9 that easement between the HOA and Mariners Cay
10 Marina?

11 A. Well, it's very -- lot of assets to it.
12 I'd have to read the whole easement. But it gives
13 us the right for ingress and egress across their
14 property. They own the property.

15 We have an easement that grants us, you
16 know, access to our property that we own. I don't
17 know all of the stipulations.

18 There's a certain amount that we pay
19 them for upkeep of the asphalt coming in, the gate,
20 all those things. It's 14 percent, I think, of
21 whatever kind of work they do.

22 But anyway, that's the easement they're
23 referring to that was granted to the marina in
24 perpetuity.

25 Q. Do you know who prepared that easement?

1 A. Who prepared the email?

2 Q. The lawyer who prepared the easement.

3 Do you know?

4 A. I don't know the lawyer, but I know it
5 was done by the HOA at the time, which I think was
6 probably around 2003 or '04 or something like that.

7 Q. But you have seen the document.

8 A. I have seen it, yeah. I haven't
9 reviewed it lately.

10 Q. Do you know if you have a copy of that
11 document?

12 A. I believe it's in the master deed.

13 Q. Okay. That was going to be my next
14 question, is whether it was part of the master deed
15 originally or a separate document. If you know.

16 A. I believe it was included in the master
17 deed. I'm not positive, but I believe it is. I
18 know I've seen it. I can't remember exactly where
19 I saw it.

20 Q. On MC-30 of this exhibit you state that
21 it is our fiduciary duty to hire legal counsel,
22 investigate our financial possibilities
23 independently and then present our case to the slip
24 owners for a vote.

25 You also say that you do not agree with

1 the statement that it is our opinion the existing
2 marina ship store has more value as a residential
3 condo property than a commercial ship store.

4 Tell me about the statement -- this
5 statement in paragraph 2, that you did not agree
6 with the statement referenced there.

7 A. I believe this was Roger Camp saying
8 that they believe that it's -- our ship store is
9 more valuable -- and I don't agree with that -- as
10 a residential condo.

11 Q. And what's your basis for disagreeing
12 with that?

13 A. Well, I mean, first of all, it's in the
14 master deed that it's a ship store and that's
15 what -- the only purpose that it can serve. From
16 the marina standpoint it's more valuable to be the
17 ship store, not a condo.

18 Q. Do you know if the ship store --

19 A. That's what we bought. We bought a
20 ship store and fuel dock.

21 Q. -- if the ship store ever made money
22 when it was running?

23 A. I hear that it didn't make much money,
24 but I look at it more as an amenity, like a
25 swimming pool or a clubhouse.

1 Q. Did y'all ever use it as a clubhouse?

2 A. It was before it was dockominiumed. It
3 was a gathering spot.

4 Q. I mean since it became dockominiums.

5 A. I mean, we've gathered up there for
6 events.

7 Q. And do you know if the Tuna Grill shut
8 down because it wasn't making any money?

9 A. I don't know the finances of it. I
10 know they were trying to get a liquor license, and
11 that got shut down and that's when they closed. So
12 I'm guessing they were planning on making their
13 money from liquor.

14 Q. And do you know, going back to MC-30,
15 did you all hire legal counsel and investigate your
16 financial possibilities independently and present
17 your case to the slip owners for a vote?

18 A. I would say no, we did not hire anybody
19 at that point.

20 Q. But that was your suggestion, was it
21 not?

22 A. That was mine.

23 Q. Okay. And do you know if the board
24 ever voted on your suggestion or anything or
25 they -- just kind of fell on deaf ears?

1 A. Probably fell on deaf ears.

2 Q. Do you know what attorney was
3 representing you all on a regular basis during that
4 time?

5 A. Well, we had Derek Dean, and Rick
6 Stringer was involved in some parts.

7 Q. But you didn't go to Mr. Dean or
8 Mr. Stringer and ask for their opinion as a result
9 of this email back in 2015; correct?

10 A. I did not.

11 Q. Okay. Going on to Exhibit 10, this
12 appears to be more discussions about Sabal and
13 their marketing of the property. You were included
14 in these emails; correct?

15 A. Yes.

16 Q. And then do you know who a fellow named
17 Jamie Williams is?

18 A. I believe he was a person who was
19 interested in purchasing.

20 Q. And did you have any discussions with
21 Mr. Williams yourself?

22 A. I think we met him as a -- as the
23 board --

24 Q. Okay.

25 A. -- and had discussions about it.

1 Q. And would that be sometime in December
2 of 2015?

3 A. I would guess so.

4 Q. And do you know if you met with
5 Mr. Williams at Mariners Cay Marina or where?

6 A. We met him at the ship store.

7 Q. Okay. And did y'all kind of show him
8 around the place, or what happened at that meeting?

9 A. Don't recall all the details. He
10 basically just introduced himself and was
11 interested in -- I think he was interested in
12 purchasing all the slips as well as the slips that
13 were still in limbo. I don't know exactly what
14 part of the foreclosure they were in at the time,
15 but they were going to do some kind of a boat
16 rental thing out of there or something like that.

17 Q. And he never ended up consummating
18 those purchases; correct?

19 A. No, he did not.

20 Q. If you'll flip to Exhibit 11 which goes
21 MC-40, 41 and 42. You were included in these
22 emails from Mr. Sutton about changing the deed to
23 restrict future use of the ship store to ensure the
24 usage of the restrooms and define the
25 responsibility for the exterior maintenance of the

1 ship store. Do you recall these discussions back
2 in April of 2016?

3 A. I do.

4 Q. Tell me, what was the genesis of this
5 discussion, if you recall. And there's an email on
6 the next page that looks like it's from Rick
7 Stringer's legal assistant, if that refreshes your
8 memory.

9 A. Yes. My recollection is, is that we
10 realized that somebody -- that a lot of people were
11 interested in purchasing. And if we weren't going
12 forward with it, then we needed to clean up some
13 things in the master deed to protect our access to
14 everything and to restrict the use of the property
15 to where it would be ship store only as in the
16 master deed.

17 Q. And do you know if the board had given
18 up the purchase option in April of 2016?

19 A. I'm sorry? Ask that again.

20 Q. Had the board decided not to purchase
21 in April of 2016?

22 A. I don't recall. I don't recall. I
23 mean...

24 Q. Do you know when the board abandoned
25 its pursuit of the purchase --

1 A. I don't think we -- I don't think we --
2 I mean, we were trying to purchase with Mr. Farmer.
3 So no, we don't think we abandoned it.

4 Q. I meant prior to Mr. Farmer's purchase.
5 Did the board ever give up the right to purchase or
6 the attempt to purchase?

7 A. I personally never did.

8 Q. Okay.

9 A. Maybe the president may have, but...

10 Q. Look at Exhibit 12. This appears to be
11 a draft amendment to the master deed. And there's
12 been testimony in this case that Mr. Stringer
13 prepared this at the direction of the board and
14 that it was either tabled or never passed due to
15 Mr. Farmer's entities purchasing. Does that sound
16 right to you? Or just if you --

17 A. As I recall, that was at the annual
18 meeting. We were -- we had a quorum. We were
19 going to try to vote on this, and then
20 Mr. Farmer -- we found out the day before
21 Mr. Farmer had purchased.

22 And I can't remember why we didn't vote
23 on it. I think it was just, okay. Let's work with
24 him. He wants to sell this. We heard he wants to
25 sell it. He had no interest in the ship store or

1 the fuel dock, and I think it was tabled,
2 basically, to work with him on a solution.

3 Q. And when you say he had no interest,
4 what do you mean by that?

5 A. That he did not want to operate a ship
6 store or a fuel dock interest.

7 Q. And did he tell you that, or was that
8 something you heard?

9 A. I heard it through the board members.

10 Q. And do you recall which board member
11 told you that?

12 A. I don't recall. Probably Laurie Hull.

13 Q. As the board president, correct, at the
14 time?

15 A. Actually, it was Michael Sutton, was
16 the president. He resigned that day.

17 Q. Okay.

18 A. The day of the meeting.

19 Q. And then Ms. Hull took his place as
20 president; correct?

21 A. Correct.

22 Q. And that was in the spring of 2016?

23 A. Yes.

24 Q. Did Mr. Sutton give a reason for his
25 resignation?

1 A. I don't recall the reason.

2 Q. Exhibit 14 is you asking Ms. Barnes for
3 Mr. Farmer's contact information in June of 2016.
4 Did you contact Mr. Farmer in June of 2016 after
5 getting his contact information?

6 A. I don't believe I ever contacted
7 Mr. Farmer.

8 Q. All right. Do you know -- can you tell
9 me why you were asking for his contact information?

10 A. I don't recall.

11 Q. Or did someone on the board ask you to
12 get it?

13 A. I don't recall.

14 Q. But your testimony earlier today, other
15 than seeing Mr. Farmer at the marina, you don't
16 recall any conversations with him; correct?

17 A. I don't recall a whole lot of
18 conversations other than speaking and at meetings
19 that we were at.

20 Q. Meetings of the Marina Council of
21 Co-Owners; correct?

22 A. Correct.

23 Q. The next exhibit, Exhibit No. 15, this
24 is an email from Roger Camp to the marina board
25 about a potential restriction or the restriction to

1 be agreed upon. Do you recall these discussions
2 from November of 2016? It references a 2002
3 agreement.

4 A. I mean, I think he's referring to the
5 master deed. Still talking about the easement
6 here. I believe he's -- what I get out of it is
7 he's referencing the -- you know what? I'm not
8 sure. This is going back to the 2002 agreement.

9 Q. But you do --

10 (The proceedings were interrupted.)

11 MR. O'KELLEY: Sorry about that.

12 THE WITNESS: Yeah. He's referencing
13 that we can conduct business there without control
14 by their association.

15 BY MR. O'KELLEY:

16 Q. Do you recall why that was an issue in
17 November of 2016?

18 A. 2016.

19 Q. Said you all had a discussion on the
20 evening of November 7th. Per our discussion this
21 evening.

22 A. I don't remember the exact meeting or
23 discussion. I know the general position that they
24 have, which is, you know, that the ship store is to
25 be the ship store per our master deed and per that

1 easement, the 2002 agreement, which is the easement
2 that they keep referring to.

3 MR. SESSOMS: I'm sorry. I can't hear
4 the witness. If you wouldn't mind speaking up.

5 THE WITNESS: Okay. What I just said
6 was that this paragraph or this email that he sent
7 is in reference to the master deed -- or not --
8 well, the easement, the 2002 agreement where we
9 have a ship store, commercial activity granted by
10 that agreement to operate as a commercial entity.

11 BY MR. O'KELLEY:

12 Q. And yet that HOA is not a party to this
13 lawsuit; correct?

14 A. Correct.

15 Q. Why are they not?

16 A. I have no answer to that. This is
17 between the marina. It's marina business.

18 Q. Well, you just testified that they have
19 an interest in having a ship store. Shouldn't they
20 be a party to this lawsuit?

21 A. That they have an interest?

22 Q. Yeah. Your testimony was -- when I was
23 asking about Exhibit 15 you stated that the HOA
24 that Mr. Camp is president of has an interest in
25 seeing that there is a ship store. Why are they

1 not a party to this lawsuit then?

2 A. I don't know the answer to that.

3 Q. Should they be a party to this lawsuit?

4 A. I don't think so.

5 Q. Why not, if they have an interest in
6 seeing that the property in question is a ship
7 store?

8 A. In my view, this is between -- we have
9 the easement that is there. According to the
10 agreement, we have the legal right to exist. And
11 this is between us and Mr. Farmer. This is between
12 the marina.

13 Q. Even though the landward HOA has some
14 sort of interest in the ship store. That's what
15 your testimony was a minute ago.

16 A. What do you mean by interest? Like
17 that they wanted to buy it or do they --

18 Q. No, sir. You said that they wanted to
19 see that there is a ship store per your agreement.

20 A. They want to abide by the easement.

21 Q. But yet they're not a party to this
22 lawsuit.

23 A. They aren't.

24 Q. If you'll turn to Exhibit 16, please.

25 MR. BARR: Oh, man.

1 MR. O'KELLEY: Something the matter,
2 Mr. Barr?

3 MR. BARR: Multiple questions asked so
4 many times. Gets a little old.

5 MR. O'KELLEY: Well, sorry about that.
6 BY MR. O'KELLEY:

7 Q. These are more emails in which you were
8 a party November -- to which you were a party in
9 November of 2016. Mr. Camp is also involved. He's
10 discussing various negotiations. Do you recall
11 these emails, sir?

12 A. Yes.

13 Q. And were these emails in connection
14 with -- if you'll turn to the next exhibit, Exhibit
15 No. 17, it seems that 16 would have led to 17 about
16 potentially making offers to Mr. Farmer to
17 purchase. Do you know if an offer was ever
18 officially made to Mr. Farmer to purchase his
19 interests?

20 A. Yes, we did. We made an offer.

21 Q. And do you recall the amount of that
22 offer?

23 A. I mean, it says right there 140. In my
24 mind it was 140 for the store and I think it was 40
25 for the fuel dock. I don't know if that's in

1 there.

2 Q. Do you know what Mr. Farmer paid for
3 the store and the fuel dock?

4 A. I believe he paid 240,000.

5 Q. So you all were going to pay him 60,000
6 less than he had in it; is that correct?

7 A. He paid 240 for the whole thing, the
8 three-bedroom thing up top.

9 Q. So your purchase --

10 A. That was just for the downstairs and
11 the fuel docks.

12 Q. Okay. Just the downstairs. Okay. Got
13 it.

14 A. We never negotiated with him to
15 purchase the upstairs part.

16 Q. Do you remember any discussions that
17 are set forth in Exhibit 18 about parking? And
18 there are also discussions continuing in Exhibits
19 18, 19, 20 and 21 about parking and an offer to
20 Mr. Farmer. If you'll just look at Exhibits 18
21 through 22.

22 THE WITNESS: Okay. Can I take a
23 bathroom break before I look through all of those?

24 MR. O'KELLEY: Absolutely, absolutely.
25 Anytime.

1 THE WITNESS: Okay.

2 (A recess transpired from 11:53 until
3 11:57.)

4 BY MR. O'KELLEY:

5 Q. Mr. Heatley, during the break were you
6 able to review Exhibits 18 through 23?

7 A. I did.

8 Q. Okay. And do you recall discussions
9 about Mr. Farmer and parking and offers and all of
10 the items contained in these emails?

11 A. This refreshed my memory.

12 Q. Okay. And Exhibit 24 and 25 and 26 are
13 also included in all of that.

14 A. I didn't read twenty -- it looks like
15 the same discussion over and over.

16 Q. Yeah, it does. And it goes through, I
17 think, possibly Exhibit No. 29 and 30 and 31.

18 A. And what is the question regarding all
19 these?

20 Q. Do you recall these discussions about
21 the offers you were going to make and options to be
22 put on the table as described by various board
23 members? Because your testimony was that you
24 thought you all eventually did make the offer.

25 A. Yeah. I don't recall all the stuff

1 about the parking and all that, but obviously we
2 discussed it.

3 Q. And the board at some point did
4 authorize Ms. Hull to make an offer to him;
5 correct?

6 A. Correct.

7 Q. And do you know if that offer -- have
8 you ever seen that offer made in writing to
9 Mr. Farmer? Because we're going to get to
10 something that looks like sort of an incomplete
11 offer that's going to be an exhibit later, but I
12 just want to know if you remembered seeing it.

13 A. I remember seeing the offer. I don't
14 remember seeing it as it was presented to him. I
15 remember us -- Laurie drew it up and we all looked
16 at it --

17 Q. Okay.

18 A. -- and submitted it.

19 Q. If you'll turn to Exhibits 34 and 35.
20 It's an email at Exhibit 34 from Amanda Barnes and
21 then what looked like two proposals for reserve
22 studies. One from a crowd called Miller Dodson and
23 another from a crowd called Reserve Advisors. Do
24 you remember the board trying to get reserve
25 studies done back in December of 2016?

1 A. Yeah, I believe -- yes, I believe we
2 were doing some background work to see what the
3 long-term projected maintenance costs of the marina
4 would be as it's becoming older.

5 Q. And do you know if you all hired either
6 Miller Dodson or Reserve Associates to -- or excuse
7 me -- Reserve Advisors to conduct these reserve
8 studies?

9 A. My recollection is that we did not hire
10 them to do this.

11 Q. And do you know why you didn't, did not
12 hire them?

13 A. I believe it was the cost, but I don't
14 recall what the cost was.

15 Q. Are there any plans in the offing, as
16 we sit here today, to do a reserve study?

17 A. Not to my knowledge.

18 Q. Exhibit 36 is a dockmaster report, I'll
19 represent, from Ed Geiger. Do you read these when
20 Mr. Geiger sends them to you?

21 A. I do.

22 Q. And it states in this report that
23 there's no way to access the pump-out station. And
24 this is in December of 26 [sic]. Do you know the
25 last time prior to this dockmaster's report the

1 pump-out station was accessible?

2 A. I do not.

3 Q. Do you know how long that system had
4 been -- well, let me ask it this way: Had the
5 pump-out station been used by owners prior to
6 December of 2016?

7 A. I do not know.

8 Q. Would we have to ask Mr. Geiger or
9 somebody else about that?

10 A. Yes.

11 Q. This is an email, Exhibit 37, about
12 discussions between Mr. Barr and Dolph's attorney.
13 Do you know what discussions were being had at that
14 time?

15 A. I don't remember the exact discussions.

16 Q. And Mr. Bessent says that he needs to
17 take a firm position that the master deed clearly
18 created a ship store consisting of two commercial
19 units, including restrooms and dockmaster space,
20 which are essential for the operation of a marina.
21 You'd agree that's consistent with your testimony
22 here today; correct?

23 A. That's correct.

24 Q. And then skipping Exhibits 38. Go all
25 the way with me to Exhibit 46, please. Do you

1 recall any violations of -- excuse me -- any fines
2 or violations assessed against Mr. Farmer for his
3 son's boat trailer being by the flagpole?

4 A. Yeah, I recall parking issues and a
5 fine, I believe.

6 Q. And do you recall --

7 A. I don't recall the amount.

8 Q. That was going -- well, Exhibit -- if
9 you go to Exhibit 55, there was a recommendation of
10 a fine of \$250. And then there's some more
11 discussion in Exhibit 56 by Mr. Nauheim that that's
12 inflammatory. And do you know what was actually
13 levied? Exhibit 57 says: Amanda, please proceed
14 with the \$250 fine. Do you know if that was
15 actually done?

16 A. I assume, if we sent the letter to
17 Amanda, that she did it.

18 Q. Okay. And would it be Amanda and the
19 folks at Sentry would have the best information
20 about the payment history for the ship store and
21 the fuel docks? Do you have anything to do with
22 collections, is basically what I'm asking.

23 A. I have nothing to do with collections.

24 Q. If you'll go to Exhibit 61. We've
25 taken Mr. Nauheim's deposition in this very room,

1 and he testified about his opinions expressed in
2 this email from February of 2017. Do you know why
3 Mr. Nauheim was giving you all his legal opinion
4 about easements? Did you all ask him to do this?

5 A. I don't recall this email here. I
6 guess I'm on it.

7 Q. And do you recall, if you don't recall
8 the email, why he wrote this? Or did you all ask
9 him to write it?

10 A. I don't know.

11 Q. Look at Exhibit 72, if you would,
12 please. Do you recall an issue at the fuel dock
13 resulting in Mr. Farmer being actually paid by the
14 board?

15 A. Yeah, I recall this.

16 Q. And can you tell me, did you have any
17 firsthand knowledge other than what Mr. Bessent and
18 Mr. Geiger told you about this issue?

19 A. I don't have any firsthand knowledge of
20 it.

21 Q. Okay.

22 A. I would like to say that from February
23 of 2017 until like November of 2017 I was in
24 Memphis, Tennessee. So everything -- my knowledge
25 of anything was emails or a phone conversation.

1 Q. And were you in Memphis as part of your
2 job?

3 A. Yes.

4 Q. Okay. So anything from that time
5 period would be via email or what someone told you;
6 correct?

7 A. That's correct.

8 Q. Look at Exhibit 80 for me, please, sir.
9 I'll represent to you that this is an example of
10 the list of the owners out at Mariners Cay. Have
11 you ever seen a document like this before?

12 A. Yes.

13 Q. And Ms. Barnes testified yesterday that
14 she keeps this list up to date based on proprietary
15 software that Sentry Management has.

16 During the time that Sentry's been
17 y'all's manager, has this substantially been the
18 form of the list that you've seen, meaning --

19 A. Yes.

20 Q. Okay. Tell me what you can, please,
21 Exhibits 89 and 90, what you recall. Well, let me
22 ask you this: Exhibit 89. Are these your notes?
23 I mean 90, not 89.

24 A. 90?

25 Q. Yes, sir.

1 A. No.

2 Q. Okay. Then we won't ask you about
3 them. Exhibit 89. Do you recall some issues
4 involving access out at Mariners Cay Marina in July
5 of last year?

6 A. Like I said, I was pretty busy in
7 Memphis at this time, setting up a new office. I
8 know I'm copied on the email. I'm not sure if I
9 read all of these.

10 Q. Sure. Because at that time --

11 A. I don't remember this incident here.

12 Q. Okay. And again, any issues regarding
13 access or security would have been what people have
14 told you because of your working in Memphis;
15 correct?

16 A. That's correct. I think I remember
17 this one here.

18 Q. But you weren't personally on site
19 regarding any of the issues?

20 A. No, definitely not on site.

21 Q. Yeah. And you wouldn't be offering any
22 testimony about a removal of a phone/gate box
23 referenced in Exhibit 91, would you, other than
24 what someone told you?

25 A. Yes. There again, just relying on

1 emails and phone calls.

2 Q. And do you know how -- what system is
3 in place for security on the dock these days?

4 A. Cipher lock.

5 Q. And did your company install that, by
6 any chance?

7 A. Nope.

8 Q. And the code for that given to owners
9 and their guests by the management company or...

10 A. Management company.

11 Q. Go to Exhibit 103, if you would,
12 please, sir. And I'm sorry. I've only got one
13 page of this, but this looks like a -- does this
14 refresh your recollection about a potential
15 purchase from Mr. Farmer sometime in the fall of
16 2016?

17 A. Yeah, I guess so.

18 Q. And it states the purchase price of a
19 hundred thousand dollars.

20 A. Correct.

21 Q. Okay. And this was never accepted, to
22 your knowledge; correct?

23 A. Correct.

24 Q. But it was authorized to be made.

25 A. Yes.

1 Q. Okay. And that's the offer you were
2 discussing a few minutes --

3 A. Well, okay.

4 Q. And I --

5 A. You know, we went through different
6 scenarios. I'm not sure if this was the one that
7 was actually presented to him. Like I said, I
8 never saw the final presentation.

9 Q. And I've only got this one page of it,
10 so I don't even know if this was ever signed.

11 A. Right. I don't either.

12 Q. Okay. That was going to be my next
13 question. Exhibit 108. Have you seen this
14 document before, sir?

15 A. I believe this is the one Laurie had
16 done.

17 Q. It's addressed to Ms. Hull.

18 A. Yep.

19 Q. And it shows an appraised value of
20 \$140,000.

21 A. Correct.

22 Q. And that was the 140 offer you were --
23 the board was willing to make was based on this
24 appraisal; correct?

25 A. Correct.

1 Q. And then again we don't have a copy of
2 those earlier appraisals we discussed today, do we?

3 A. No.

4 Q. Okay. Exhibit 117. Are these your
5 notes, sir?

6 A. Nope.

7 MR. O'KELLEY: Okay. Why don't we take
8 a quick break to discuss something with my
9 co-counsel, and I'll be right back.

10 (A recess transpired from 12:14 until
11 12:15.)

12 MR. O'KELLEY: Mr. Heatley, you and I
13 are finished for right now.

14 THE WITNESS: Okay.

15 MR. PERRIN: Mr. Heatley, are you ready
16 to continue?

17 THE WITNESS: Yes.

18 EXAMINATION

19 BY MR. PERRIN:

20 Q. Mr. Heatley, hi. My name is Whit
21 Perrin. We met earlier today. I am here along
22 with Hamlin for the two LLCs but also for Dolph
23 Farmer individually. Are you aware that Dolph
24 Farmer was sued individually in this matter?

25 A. Yes.

1 Q. Do you have any knowledge of anything
2 that Mr. Farmer has done or allegedly done wrong
3 that would require him to be sued individually in
4 this matter?

5 A. Tearing out our security system,
6 locking us out of common areas we've always had
7 access to.

8 Q. Other than --

9 A. Locking the fuel dock.

10 Q. Okay. Going through them one by one,
11 the security system that has been removed was
12 located on the ground floor nonlivable space below
13 the ship store.

14 A. No, no.

15 Q. Okay. Where was it located?

16 A. It was located in the aboveground
17 level, first level, but it is not on the ground.

18 Q. Okay.

19 A. It was located in a closet in the ship
20 store.

21 Q. Is that closet -- that closet is not
22 located within one of the bathrooms; correct?

23 A. Correct.

24 Q. Do you know if it was in that hall --
25 there's a -- the ship store on the second floor

1 level. There is a -- the bathrooms and the hallway
2 behind the bathrooms and access to what looked like
3 it was at one point in time a snack bar.

4 A. Right.

5 Q. And then there's a more open area
6 behind it. Is it in that front -- in the
7 hallway/snack bar area, or was it in the more
8 significant space?

9 A. It's in the more significant space.

10 Q. Is there a way to install a security
11 system similar to the key fob system that was in
12 use at the electrical junction boxes that exist at
13 the entrance to the docks?

14 A. There is always a way, I mean. It
15 would have to be weatherproofed. It's outside.

16 Q. Is there a reason that it was installed
17 in the ship store as opposed to out there in the
18 first place?

19 A. Well, it was convenient. I mean, we
20 had the ship store. We were operating in the ship
21 store. So we put it in there. It's much less
22 expensive than trying to put it out in a
23 weatherproof -- so environmentally it makes sense.

24 Q. Mr. Geiger testified that the -- at his
25 deposition that the reason it switched from a

1 cipher lock to the key fob originally was because
2 people would give out the cipher --

3 A. Exactly. Takes about a week.

4 Q. Okay. Fair enough. Are you aware if
5 the old cipher lock was just reactivated or if
6 y'all had to install a new cipher --

7 A. We installed a new one.

8 Q. All right. As it relates to access,
9 you're referring to access to the lower portion of
10 the ship store?

11 A. Well, all access to the common areas.

12 Q. Other than --

13 MR. PERRIN: Strike that.

14 BY MR. PERRIN:

15 Q. You've referred to common areas.
16 Common areas based off of prior use or common areas
17 based off of what was actually listed as a common
18 area for the ship store?

19 A. I'm not sure how to answer your
20 question. I mean, the common areas are the common
21 areas. I mean, this whole debate is about what is
22 a common area.

23 Q. Well, did the -- did people within the
24 HOA or for the dockominiums use the third floor of
25 the ship store for anything?

1 A. Not in the present configuration.

2 Q. In what configuration did they use it?

3 A. Well, when it was a -- I can't remember
4 exactly when it was converted, but at one point
5 there was a dockmaster that stayed up there. I
6 believe that was still when it was commercial. It
7 may have been like that for a little while. But
8 yeah, in current configuration, no, no dock -- slip
9 owners accessed the third level.

10 Q. On the second level, outside of the
11 bathrooms, did any of the dock slip owners use any
12 of the second floor spaces for whatever use?

13 A. Well, we've always used that space up
14 until we were locked out of it.

15 Q. For the dockmaster?

16 A. Dockmaster, meetings, social events.

17 Q. When was the last meeting that was held
18 in that space?

19 A. I don't recall.

20 Q. When was the last social event that was
21 held in that space?

22 A. I don't recall. I mean, we've had
23 several.

24 Q. When --

25 A. It was our regular meeting place for

1 the board when we had a -- now we have to find
2 another -- somebody's house or somebody's boat. We
3 always had our meetings there. We always had our
4 dockmaster there. And slip owners were free to
5 come and go in there, talk to the dockmaster, do
6 whatever.

7 Q. Did you hold the annual meeting in that
8 location?

9 A. We have.

10 Q. Do you know when the last time you held
11 an annual meeting there?

12 A. I can't recall the exact date, but, you
13 know, from the beginning, when we -- the first one
14 we had was there. Several after that. I can't
15 tell you the date of the last one. I don't know.

16 Q. Do you know if it was in the last three
17 years, or do you know?

18 A. Definitely not the last two.

19 Q. Fair enough.

20 A. I'm trying to think of the one prior to
21 that, where we had it. I just can't recall.

22 Q. Is it fair to say that the use that the
23 board had for that space, not the third floor but
24 the second floor conditioned space of the ship
25 store, the dockmaster facilities in that second

1 floor and access to the dockmaster by the dock unit
2 owners or dock slip renters is the reason that the
3 board sought to purchase that particular portion of
4 the ship store in its negotiations with Mr. Farmer?

5 A. Well, the -- I guess that's partially
6 true. I mean, our whole idea of purchasing was to
7 secure those spaces for the operation of the marina
8 that we need to operate the marina and the fuel
9 docks, and that's our purpose for trying to
10 purchase. The maintenance of the marina, the
11 operation of the marina, the master deed.
12 Everything.

13 Q. Is there -- access to the bathrooms has
14 not been restricted to the dock unit owners or
15 renters during Mr. Farmer's ownership of the ship
16 store or occupancy of the ship store; is that
17 correct?

18 A. Correct, for the bathrooms.

19 Q. Since it turned into an order regarding
20 access to the first floor area that contains the
21 clean-out -- I'm sorry -- pump-out station, has
22 access been restricted with prior approval?

23 A. With prior approval. It's always
24 locked, which it's never been locked before. Now
25 it's locked, and we have to get prior approval.

1 Q. Has it ever been --

2 A. To my knowledge, it hasn't been denied.
3 I don't know. I haven't been there. You'd have to
4 ask Ed Geiger.

5 Q. Mr. Geiger referred to one of the
6 necessities of the fuel dock being as a rescue dock
7 for boats that could not get into their slip or
8 should tides be so unfavorable as to not allow a
9 boater of a certain caliber to actually get into
10 their slip.

11 Other than that, are you aware of a
12 safety concern or necessity, absolute necessity
13 aspect of the fuel docks for the operation of the
14 marina?

15 A. Well, the accessible -- well, we have
16 to offer pump-out services by the permit. So
17 that's very important.

18 And the emergency docking thing was
19 always an option. I've used it myself many times.
20 I can't get in at low tides. If I come in and it's
21 dead low, I got to go somewhere to wait for the
22 tide to come up. I always pulled up on the fuel
23 dock, wait for the tide to come up, then get back
24 into my slip. But yeah, there's dangerous
25 situations, whether -- you know, storm's coming up,

1 people can't get into their slip and they need to
2 get tied up somewhere. That was always an option.

3 Q. Other than an area for the dockmaster
4 to maintain its -- maintain his files and a
5 security access point and free access to the pump
6 clean-out station and storage for bumpers and like
7 accoutrement or the docks themselves --

8 A. Right.

9 Q. -- is there any other aspect of the
10 ship store that would be required for the
11 operations by a dockmaster for the marina?

12 A. Place to keep the records. Any other
13 aspects? I mean, what are you referring to there?
14 Amenities? I mean...

15 Q. Well, in deposing Mr. Geiger we asked
16 what he needed to operate as a dockmaster.

17 A. Yes.

18 Q. He stated that he really didn't need a
19 significant office space.

20 A. Right.

21 Q. He needed a place to store the records
22 that was clean and free from, you know, getting
23 rained on.

24 A. Right.

25 Q. And the ability to potentially

1 access -- like such things would an intercom and a
2 location for the bumpers, cleats, anything that was
3 going to be used for maintenance for the docks
4 themselves and access to the pump clean-out
5 station. But other than that -- and free access to
6 the bathrooms -- he did not need any more
7 significant space for his operations as a
8 dockmaster.

9 Are you aware of anything else related
10 to the ship store building itself that is needed
11 for the dockmaster to function in the manner in
12 which the board would like the dockmaster to?

13 A. I'm sure there are other things that I
14 can't think of.

15 What I will say regarding this is when
16 I bought a slip there we had a functioning fuel
17 dock and functioning ship store, and we bought into
18 that. And since this foreclosure stuff has
19 happened, we have never had anything close to that.

20 And that's part of the value of what we
21 bought, was to have a -- not just a place to put
22 some tools and stuff. It was a ship store, a place
23 to go up there, buy some ice. Maybe not make a lot
24 of money, but a ship store, a place to, you know,
25 sell a few items that you might need on your boats.

1 Some bait and whatever and buy some fuel. That's
2 what we bought into.

3 Q. Do you know the last time the fuel was
4 sold at the docks?

5 A. I'm going to say probably -- it was
6 going on before the foreclosure. I mean, I can't
7 remember exact dates. But then when they were
8 operating it as a restaurant/bar for a while, they
9 were selling fuel. When that shut down, it all
10 shut down. It's never opened up since then.

11 Q. So since turnover, the board itself has
12 never actually operated the fuel dock in any --
13 sorry -- fuel sales in any manner.

14 A. The board has never operated it as a
15 fuel...

16 Q. Did the board ever do any maintenance
17 on the exterior of the ship store in the period of
18 time between turnover and the purchase of the ship
19 store by Mr. Farmer?

20 A. We have done some minor things and one
21 not so minor thing.

22 Q. What are they?

23 A. There was a partial fire at one point
24 that was caught real early. And, of course, the
25 fire department came out. And so we repaired that

1 little part of the wood and painted. And the fire
2 marshal noted some -- unrelated to the fire, some
3 electrical issues which we took care of.

4 Q. Anything else?

5 A. That's all that I can recall.

6 Q. Does the board have fire insurance on
7 the ship store?

8 A. I'm assuming it's -- yes, we have. We
9 have insurance.

10 Q. Is there a particular board member
11 that's better to ask that question?

12 A. Just have to look. I mean, we have it,
13 yes. Have to just look at the policy. We've
14 always carried the insurance on the marina and the
15 ship store. It's a joint policy.

16 Q. Have you ever served on the Mariners
17 Cay Racquet and Yacht Club board?

18 A. No.

19 Q. Has any member -- I'm sorry. Has any
20 board member of the Marina Council of Co-Owners
21 ever served on the Mariners Cay Racquet and Yacht
22 Club board?

23 A. Yes.

24 Q. Who?

25 A. Nelson's been on both. Nelson Maier.

1 Ron McGuire's been on both. And Tom Bessent has
2 been on both.

3 Q. To your knowledge, have any of those
4 three board members ever been on both boards at the
5 same time?

6 A. No.

7 Q. Do you know if there's any prohibition
8 against that?

9 A. I don't know, but it should be if there
10 isn't.

11 Q. Do you know if the docks are fully sold
12 at this time?

13 A. My understanding, that all slips are
14 sold.

15 Q. Do you know if there are any in
16 foreclosure?

17 A. I don't know.

18 Q. When do you believe that the docks
19 became fully sold?

20 A. I don't know that. It would only be a
21 guess, but I'd say probably 2016.

22 Q. Prior to 2016, was there a time when
23 the docks were so undersold or so many were in
24 foreclosure that there were essentially few actual
25 owners using the docks?

1 A. There's not many people using it now,
2 in my opinion. No. Yeah, it was empty. There
3 was -- there was -- half of the slips were unsold,
4 in foreclosure, in limbo, and there were not many
5 people down there.

6 Q. To your knowledge, has the board ever
7 not been able to meet its budget as a result of
8 those dock units not being sold?

9 A. We've always met our budget. When the
10 bank had it they were paying regime fees. And
11 while it was in the foreclosure we got nothing, but
12 the banks have paid, have paid it.

13 Q. Did the board have to adjust its budget
14 or make certain concessions in terms of what they
15 were doing for upkeep of the dock or the ship
16 store -- or sorry -- the common areas as a result
17 of the limited revenue from unit owner dues?

18 A. I mean, I would say we would like to
19 have more money, but I don't know that we've
20 sacrificed anything. I mean, we've gotten by.
21 We've made the repairs that we deemed necessary.

22 Q. The board recently had a -- issued a
23 special assessment; is that correct?

24 A. Correct.

25 Q. Have you -- has the board ever issued a

1 special assessment before the one most recently
2 issued in 2018?

3 A. Right. No, we have not.

4 Q. What was that special assessment for?

5 A. That was to replenish our reserves that
6 had been depleted.

7 Q. Other than rental of the one dock slip
8 owned by the HOA board -- HOA itself, is there any
9 other revenue stream for the HOA besides dock unit
10 owner dues?

11 A. There's supposed to be -- when there's
12 a sale of a slip we're supposed to get a certain
13 percentage.

14 Q. Is that in the master deed, that
15 percentage and the fact that there's supposed to be
16 a percentage on one of these sales?

17 A. I think it's in the master deed.

18 Q. Is that percentage calculated into the
19 budget in any manner for -- on a year-to-year
20 basis?

21 A. I'm not sure. Sentry does the budget.
22 I assume they include all revenue.

23 Q. Other than the dockmaster, are you
24 aware as a board member of any other contracts or
25 agreements with third-party providers for

1 maintenance or anything else for the docks
2 themselves or the ship store?

3 A. For somebody coming in and doing
4 maintenance?

5 Q. Well --

6 A. What do you mean?

7 Q. -- for Mariners Cay Racquet and Yacht
8 Club --

9 A. Right.

10 Q. -- I assume that there's a landscape
11 company that comes in and does the mowing --

12 A. Right.

13 Q. -- and does grass trimming. Typically
14 you'll have someone that will come in and do -- if
15 it's a multifamily, look at the fire sprinklers on
16 a yearly basis. Something like that. Someone
17 working on the tennis courts.

18 A. Right.

19 Q. Pumping out the ponds or whatever. Is
20 there anything other than the dockmaster that the
21 HOA board contracts with to do some form of work on
22 the HOA's facilities?

23 A. Not on a regular -- like a regular
24 contract?

25 Q. Right.

1 A. I mean, we bring people in to do, you
2 know, electrical repair work, things like that.
3 Whatever we need, we bring in a contractor.

4 Q. But it's as needed. It's not on a --

5 A. As needed as far as I know, yeah.
6 There's no other -- there's no regular maintenance.
7 I guess the HOA, they cut the grass when they come
8 around. It's their land. There's an easement,
9 so...

10 The dockmaster does landscaping things
11 that we need done. Not cutting the grass, but, you
12 know, he keeps the flagpole area clean and flowers
13 in there and stuff.

14 Q. Is the dockmaster typically who
15 provides notice of a maintenance issue to the
16 board?

17 A. Correct.

18 Q. I believe it was your prior testimony
19 that there has not been a reserve study in your
20 time --

21 A. Correct.

22 Q. -- at the board -- on the board. For
23 certain issues such as the extension of the pilings
24 for the docks not to float off in terms of -- in
25 circumstances of extremely high tide, how does the

1 board determine what should be allocated for
2 reserves to fund that kind of repair?

3 A. Well, we would -- in that particular
4 instance I believe we formed a committee. They
5 would make a study and find -- get different cost
6 estimates and present that.

7 And if we have to build our reserves to
8 do that, we would do that. I mean, it's just based
9 on committee study, I guess to answer your
10 question.

11 Q. Like you said, the board will determine
12 whether or not the dues need to be raised or if
13 there will be a onetime special assessment or --

14 A. Correct.

15 Q. Is it fair to say that the ship store,
16 the exterior of the ship store in particular, just
17 the paint, siding, decks and walk -- stairs, from
18 the period of time that the restaurant ceased
19 operations to the period of time that Mr. Farmer
20 purchased it, fell into disrepair?

21 A. Yes.

22 Q. Is the condition of the ship store
23 today exterior-wise better than what it was before
24 Mr. Farmer purchased it?

25 A. Yes.

1 Q. Are you aware of Mariners Cay Racquet
2 and Yacht Club complaining of the condition of the
3 ship store as essentially an eyesore for the
4 property?

5 A. Yes.

6 Q. I understand that the original purchase
7 dock units were purchased at a price that has not
8 been met again. However, has the sales gone up
9 over time?

10 A. They are going up gradually.

11 Q. Is there anything, to your knowledge,
12 on the Folly River in terms of other docks which
13 has essentially flooded the market and makes them
14 unsellable?

15 A. I don't know the answer to that.
16 Economy's picked up. I mean, this happened in
17 2007. You know what happened in 2008.

18 Q. Right.

19 A. My condo unit went from 400 to 200 too.

20 Q. Right.

21 A. So we bought right before the bubble.

22 Q. Well, the reason I ask is I know that
23 based off of what I do for a living that there is
24 no short supply of condos up and down the Folly
25 Beach area, and in every little place that you

1 would not expect something to have gone up there is
2 a four-story building that has got --

3 A. Exactly.

4 Q. -- 200 of them. However, I do not see
5 docks go in at that -- as significant as what is
6 the Mariners Cay at this time on a regular basis.
7 Are you aware of anything that has gone on since
8 the turnover that would flood the market with --

9 A. Since the turnover of --

10 Q. -- dock spots?

11 A. To --

12 Q. To the board of Mariners Cay.

13 A. No, not --

14 Q. Dock facilities.

15 A. You know, other than the economy thing.
16 But, I mean, prior to that there was three of them
17 right in the area that were dockominiumed.

18 Buzzards Roost became St. James Yacht Harbor. And
19 then Sunset Caye was -- that was done first, I
20 guess. But yeah. There's quite a few of them.

21 Tolars Cove dockominiumed. I mean, there's only --
22 to my knowledge, it's -- the city and Patriots
23 Point is the only two that aren't dockominiumed.

24 MR. PERRIN: I believe that's all I
25 have for you. Thank you.

1 THE WITNESS: Hum?

2 MR. PERRIN: That's all I have for you.

3 Thank you.

4 THE WITNESS: Oh, that's all you have.

5 Okay.

6 MR. MONTGOMERY: I have a couple
7 minutes of questions. Mr. Heatley, my name is
8 Andrew Montgomery. I'm here on behalf of Emerald
9 McDonough Road Holdings, LLC, which was the entity
10 that conveyed the properties to Mr. Farmer --
11 Mr. Farmer's LLCs.

12 EXAMINATION

13 BY MR. MONTGOMERY:

14 Q. You mentioned earlier that you never
15 had any personal interaction with Emerald
16 Portfolio, LLC. Did you have any interaction with
17 Emerald McDonough Road Holdings, LLC?

18 A. No.

19 Q. Or Sabal Financial?

20 A. Not personal. Other than just
21 reviewing, you know, offers that we were, you know,
22 talking about. We never made any.

23 Q. Any interaction with Sabal Financial?

24 A. No.

25 Q. You testified earlier about, you know,

1 sort of the disappointment over the years of --
2 since basically the foreclosure, that you didn't
3 really have the store like it was back when you
4 first purchased and also just talked about after
5 the restaurant that things sort of fell into
6 disrepair over the years.

7 Other than those sort of general
8 concerns, are you aware of any issues during the
9 time that the Emerald -- the respective Emerald
10 entities had an ownership interest or were listed
11 as the owners of record for the ship store and fuel
12 docks, which I'll represent to you was between
13 October 2015 and May 2016.

14 A. If I had any knowledge of it?

15 Q. Were there any issues with the Sabal
16 Financial, Emerald Portfolio, Emerald McDonough
17 Road Holdings?

18 A. I don't know of any issues other than
19 everything was in a limbo state and we couldn't
20 operate a marina.

21 MR. MONTGOMERY: No other questions.
22 Thank you.

23 MR. O'KELLEY: That's it.

24 MR. BARR: Are you giving up? I mean,
25 not giving up, but finished?

1 MR. O'KELLEY: I think we've been
2 rather thorough.

3 THE WITNESS: That's it?

4 MR. BARR: That's it.

5 MR. PERRIN: I've got one follow-up.

6 THE WITNESS: Okay.

7 EXAMINATION

8 BY MR. PERRIN:

9 Q. The board directed Sentry to no longer
10 accept the payments of -- the quarterly payments
11 from Mr. Farmer for his dues; correct?

12 A. That's correct.

13 Q. When did that happen?

14 A. I don't remember the exact date. It
15 was since -- since we've -- since Mr. Farmer's been
16 our attorney -- I mean, Mr. Barr has been our
17 attorney. I can't tell you the date.

18 Q. All right.

19 A. I know -- I know we made that decision.

20 Q. Do you believe it happened this year?

21 A. I think it happened this year.

22 Q. Are you aware of Mr. Farmer being in
23 arrears in any way for the prior payments during
24 his ownership?

25 A. Yes, he's been in arrears at different

1 times.

2 Q. Was he paid in full at the time that
3 the board determined that you should stop accepting
4 payment, that Sentry should stop accepting payment
5 of his dues?

6 A. I don't know if I can -- I know he was
7 in arrears and settled, paid up. I do know that
8 happened once. Whether -- I don't know follow-on
9 past that.

10 Q. Is that a better question for Amanda
11 Barnes?

12 A. That would be Amanda's question.

13 MR. PERRIN: That is all I have. Thank
14 you.

15 THE WITNESS: Okay.

16 MR. SESSOMS: No questions.

17 MR. BARR: No questions here.

18 (The witness, after having been advised
19 of his right to read and sign this transcript, does
20 not waive that right.)

21 (The deposition was concluded at
22 12:49 PM.)

SIGNATURE OF DEPONENT

DEPONENT: JEFFREY E. HEATLEY
DEPOSITION DATE: August 10, 2018
REPORTER: Sandra K. Bjerke
AWR JOB NO. 19283
CASE CAPTION: Neighbors vs. Mariners Cay

(Please return both Signature of Deponent pages.)

I, the undersigned, JEFFREY E. HEATLEY, do
hereby certify that I have read the foregoing
deposition and find it to be a true and accurate
transcription of my testimony, with the following
corrections, if any:

PAGE	LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: August 10, 2018
REPORTER: Sandra K. Bjerke
AWR JOB NO. 19283
CASE CAPTION: Neighbors vs. Mariners Cay

PAGE	LINE	CHANGE	REASON

JEFFREY E. HEATLEY

Date

I, Sandra K. Bjerke, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent page within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



Sandra K. Bjerke

Sandra K. Bjerke, RMR, RDR, CRR
My Commission Expires
June 18, 2020

CERTIFICATE OF REPORTER

I, Sandra K. Bjerke, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate,
and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 17th day of August,
2018 at Charleston, Charleston County, South
Carolina.



Sandra K. Bjerke

Sandra K. Bjerke, RMR, RDR, CRR
My Commission Expires
June 18, 2020

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Alben D. Neighbors and Dan G. Nekola,
on behalf of themselves and others)
similarly situated, and Mariner's Cay)
Marina Council of Co-Owners, Inc.,)

Plaintiffs,)

v.)

Mariners Cay Marina Condo, LLC,)
Mariners Cay Fuel Dock, LLC, George A.)
Farmer, and South Atlantic Bank,)

Defendants.)

Mariners Cay Marina Condo, LLC and)
Mariners Cay Fuel Dock, LLC,)

Third-Party Plaintiffs,)

v.)

Emerald McDonough Road Holdings,)
LLC,)

Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

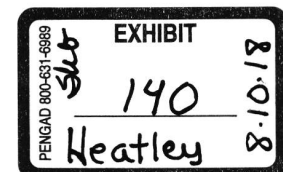
CASE NO. 2017-CP-10-03099

**AMENDED NOTICE OF DEPOSITION
OF
JEFF HEATLEY**

TO: *CAPERS G. BARR, III, ESQ.*
DAVID C. CLEVELAND, ESQ.
ATTORNEY FOR THE PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that at **10:00 a.m.** on **Friday, August 10, 2018**, at Clawson and Staubes, LLC, 126 Seven Farms Drive, Suite 200, Charleston, South Carolina, the Attorneys for the Defendants, Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer and South Atlantic Bank and Third Party Plaintiffs Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, will take the deposition of **Jeff Heatley**, on oral examination, pursuant to Rule 30, SCRCP, before a Notary Public, or before

{01116589.DOCX}



some other officer authorized by law to take depositions, said deposition to continue from day to day until completed.

You are invited to attend and take such part as is fit and proper.

LUZURIAGA MIMS, LLP

By: Kevin W. Mims

Kevin W. Mims, SC Bar No. 69418
Whidbee S. Perrin, SC Bar No. 100396
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Marina Condo, LLC and George A. Farmer and
the Defendant/Third-Party Plaintiff Mariners Cay
Marina Condo, LLC*

BUIST BYARS & TAYLOR, LLC

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*Attorneys for the Defendant/Third-Party Plaintiffs
Mariners Cay Marina Condo, LLC, Mariners Cay
Fuel Dock, LLC and South Atlantic Bank*

Mount Pleasant, South Carolina

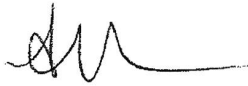
June 21, 2018

{01116589.DOCX}2

CERTIFICATE OF MAILING

I hereby certify that on June 21, 2018, I mailed, postage prepaid, to counsel of record in this matter, as follows:

Capers G. Barr, IV Barr, Unger & McIntosh, LLC 11 Broad Street Charleston, SC 29401 <i>Attorney for the Plaintiffs</i>	Andrew W. Montgomery, Esq. Rogers Townsend & Thomas PC 1221 Main Street, 14 th Floor (29210) PO Box 100200 Columbia, SC 29202 <i>Attorneys for the Defendant Emerald McDonough Road Holdings, LLC</i>
David C. Cleveland, Esq. Clawson and Staubes LLC 126 Seven Farms Drive, Suite 200 Charleston, SC 29492-8144 <i>Attorney for the Plaintiffs</i>	



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

{01116589.DOCX}3

STATE OF SOUTH CAROLINA

ISSUED BY THE Common Pleas COURT IN THE COUNTY OF Charleston

Alben D. Neighbors and Dan Nekola, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Mariners Cay Marina Condo, LLC et al.,
Defendant

Case Number: 2017-CP-10-3099

Pending in Charleston County

TO: Jeff Heatley
c/o Capers G. Barr, III, Esq.
Barr Unger & McIntosh LLC
11 Broad Street
Charleston, SC 29401

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Clawson and Staubes LLC 126 Seven Farms Drive, Suite 200 Charleston, SC 29492	DATE AND TIME August 10, 2018, 10:00 AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

PLACE	DATE AND TIME , AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



June 20, G. Hamlin O'Kelley, III
2018

Attorney/Issuing Officer's Signature

Date

Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number :

Attorney for Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC and South Atlantic Bank

Buist, Byars & Taylor, LLC

652 Coleman Boulevard, Suite 200

Mt. Pleasant, SC 29464

(843) 856-4488

Clerk of Court/Issuing Officer's Signature

Date

Print Name

Pro Se Litigant's Name, Address and Telephone Number :

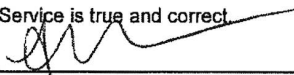
PROOF OF SERVICE

SERVED	DATE June 21, 2018	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$
	PLACE Barr Unger & McIntosh LLC	
SERVED ON Capers G. Bar, IV		MANNER OF SERVICE Regular Mail
SERVED BY Amanda C. Taylor		TITLE Paralegal to G. Hamlin O'Kelley, III

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on June 21, 2018


SIGNATURE OF SERVER

652 Coleman Blvd., Suite 200, Mt. Pleasant, SC 29464
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

In the Matter Of:

Alben D. Neighbors, et al vs.
Mariners Cay Marina Condo, LLC, et al

Laurene A. Hull

January 30, 2019



A. William Roberts, Jr. & Associates

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 ALBEN D. NEIGHBORS and DAN G. NEKOLA, ON BEHALF
4 OF THEMSELVES AND OTHERS SIMILARLY SITUATED,
AND MARINER'S CAY MARINA COUNCIL OF CO-OWNERS,
5 INC.,

6 Plaintiffs,

7 vs.

Case No. 2017-CP-10-03099

8 MARINERS CAY MARINA CONDO, LLC, MARINERS CAY
9 FUEL DOCK, LLC, GEORGE A. FARMER, and SOUTH
ATLANTIC BANK,

10 Defendants.

11 (Full Caption on Page 2)

12 DEPOSITION OF: LAURENE A. HULL

13 DATE: January 30, 2019

14 TIME: 10:12 AM

15 LOCATION: Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC

16 TAKEN BY: Counsel for the Defendants

17 REPORTED BY: SANDRA K. BJERKE, RDR, CRR, CBC

18
19 A. WILLIAM ROBERTS, JR. & ASSOCIATES

20 Fast, Accurate & Friendly

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22 (843) 722-8414 (843) 785-3263 (843) 839-3376

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A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO

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ALBEN D. NEIGHBORS and DAN G. NEKOLA,
ON BEHALF OF THEMSELVES AND OTHERS
SIMILARLY SITUATED, AND MARINER'S CAY
MARINA COUNCIL OF CO-OWNERS, INC.,

Plaintiffs,

vs. Case No. 2017-CP-10-03099

MARINERS CAY MARINA CONDO, LLC,
MARINERS CAY FUEL DOCK, LLC, GEORGE A.
FARMER, and SOUTH ATLANTIC BANK,

Defendants.

MARINERS CAY MARINA CONDO, LLC and
MARINERS CAY FUEL DOCK, LLC,

Third-Party Plaintiffs,

vs.

EMERALD McDONOUGH ROAD HOLDINGS, LLC,

Third-Party Defendant.

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFFS

ALBEN D. NEIGHBORS and DAN G. NEKOLA,
ON BEHALF OF THEMSELVES AND OTHERS
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(INDEX AT REAR OF TRANSCRIPT)

(EXHIBIT 161, Letter to Ms. Hull from
Mr. O'Kelley dated 1-15-19, with Attached Eighth
Amended Deposition Notice and Subpoena, marked for
identification.)

LAURENE A. HULL

being first duly sworn, testified as follows:

EXAMINATION

BY MR. O'KELLEY:

Q. Good morning, Ms. Hull.

A. Good morning.

Q. I'm Hamlin O'Kelley. We've met before,
and I'm glad we were finally able to all be here at
the same time for your deposition. Thank you for
coming here today.

Our Supreme Court requires me to tell
you a few things before we get started. You are
allowed to take any break you want to take.

I need you to provide a verbal
response. Do you understand that?

A. Yes.

Q. Okay. Because in conversations we say
um-hum or huh-uh and just nod our head, but that
doesn't read well when this lady's taking down all
your testimony.

You have the right to read and sign

1 your deposition. You can't change your testimony.
2 But, for example, if your last name's spelled with
3 an H instead of a U you can correct that. So you
4 will discuss that at the end of the deposition. Do
5 you understand that?

6 A. I do.

7 Q. Okay. I ask everyone these questions.
8 This is not personable -- or personal, rather. Are
9 you under the influence of any medication, drugs or
10 alcohol that would prohibit your testimony here
11 today?

12 A. No, sir.

13 Q. Have you ever been treated for
14 alcoholism or drug addiction or depression?

15 A. No, sir.

16 Q. Is there any reason you know of why we
17 cannot proceed today?

18 A. No.

19 Q. And have you ever been deposed before,
20 ma'am? A situation like this where we're in a room
21 where you're sworn in under oath and lawyers are
22 asking you questions.

23 A. No.

24 Q. Have you ever been a party to a lawsuit
25 before?

1 A. I was divorced.

2 Q. That's -- other than a divorce where,
3 you know, it's a civil action, not a family court
4 action or domestic court action.

5 A. No, not that I can recall.

6 Q. And do you know why we're here today,
7 ma'am?

8 A. I think so, yeah.

9 Q. And can you tell me why we're here
10 today?

11 A. I think that there's confusion on
12 master deeds for the marina and...

13 Q. And when you say the marina, are you
14 talking about the Mariners Cay --

15 A. Mariners Cay Marina.

16 Q. -- Marina Condo Association out at
17 Folly Beach?

18 A. Um-hum.

19 Q. And is that a yes?

20 A. Yes, yes.

21 Q. Thank you. Do you still own -- if I
22 use the term dockominium, do you know what that
23 means?

24 A. Yes, I do.

25 Q. All right. Do you still own a

1 dockominium at Mariners Cay?

2 A. Yes, I do.

3 Q. And which unit is that, or dock?

4 A. B10.

5 Q. B10. And how long have you owned that
6 unit?

7 A. 2004, I do believe.

8 Q. And have you owned any other
9 dockominium units at Mariners Cay?

10 A. No.

11 Q. I'm going to show you the exhibit
12 that's in front of you, Exhibit 161. That is your
13 notice of deposition. Have you ever seen that
14 document before, Ms. Hull?

15 A. Yes.

16 Q. And that's what brings us here today;
17 correct?

18 A. Yes.

19 Q. And have you talked to anyone other
20 than an attorney about the substance of your
21 deposition here today?

22 A. No.

23 Q. No one who's currently on the board at
24 Mariners Cay or was formerly on the board of
25 Mariners Cay?

1 A. No.

2 Q. Did you discuss the deposition with
3 anyone other than with Mr. Wilson?

4 A. Other than the issues with scheduling
5 this appointment, no.

6 Q. Okay. But nothing about the substance
7 of what brings us --

8 A. No.

9 Q. -- here today; correct? And are you
10 involved in this litigation in any way, shape or
11 form other than our requesting you sit for this
12 deposition?

13 A. No.

14 Q. Tell me your home address, please,
15 ma'am.

16 A. 918 East Cooper, Folly Beach.

17 Q. And what's the zip?

18 A. 29439.

19 Q. And how long have you lived at 918
20 East --

21 A. Since 1994.

22 Q. Let me just finish the question. 918
23 East Cooper on Folly Beach. 1994?

24 A. '94 or '5, yeah.

25 Q. And is that -- prior to that did you

1 live in the Folly Beach area?

2 A. I lived in Isle of Palms for a year
3 prior.

4 Q. Okay.

5 A. And Denver prior to that.

6 Q. Okay. We'll get to what brings you
7 here and all that fun stuff in a minute. Do you
8 have any family in Charleston County?

9 A. I have a brother-in-law and
10 sister-in-law in Wadmalaw.

11 Q. And what are their names?

12 A. Frank Hull, H-U-L-L, and Nancy Hull.

13 Q. And these are your husband's --

14 A. Yes.

15 Q. Is it his brother or his sister?

16 A. His brother.

17 Q. I'm thinking his brother since it's
18 Hull; right?

19 A. (Witness moves head up and down.)

20 Q. And what's your date of birth, ma'am?

21 A. 5-16-1958.

22 Q. Okay. And tell me about your
23 education. Where did you go to high school,
24 college?

25 A. I went to high school at Whitmer High

1 School in Toledo, Ohio.

2 Q. Spell that for us.

3 A. W-H-I-T-M-E-R.

4 Q. Okay. And you graduated in what year?

5 A. 1976.

6 Q. Okay. And what did you do after you
7 graduated from high school educationally?

8 A. I bounced around a little bit. I went
9 to the University of Toledo, I went to Lourdes
10 College.

11 Q. Where's Lourdes College?

12 A. In Toledo.

13 Q. Did you ever get a degree after
14 graduating from high school?

15 A. No.

16 Q. And you're currently married to a
17 fellow whose last name is Hull; correct?

18 A. Um-hum. That's true.

19 Q. What's his first name?

20 A. Edgar is his legal name.

21 Q. And you mentioned a divorce earlier.
22 When were you divorced?

23 A. 1991.

24 Q. Okay. And besides Mr. Hull --

25 A. No. I don't know.

1 Q. Okay.

2 A. Late '80s.

3 Q. Late '80s. All right. Besides
4 Mr. Hull and your former husband that you divorced,
5 any other marriages or just the two?

6 A. Just -- I was married for a short stint
7 when I was like 18. Six months.

8 Q. Those three marriages. And your
9 ex-husbands, do they live in Charleston County?

10 A. No.

11 Q. You hesitated. Why did you hesitate?

12 A. Because one's passed away.

13 Q. Okay. All right. Sorry about that.
14 And how many -- you mentioned before we got started
15 you have at least one child. How many children do
16 you have?

17 A. One.

18 Q. Okay. And that child is in college in
19 Ohio; correct?

20 A. Correct.

21 Q. Which college?

22 A. Kent State University.

23 Q. Tell me about your work experience
24 after graduating from high school. You said you
25 bounced around a little bit educationally. So tell

1 me about what jobs you've had after Lourdes
2 College.

3 A. I landed in the advertising business
4 working for Fahlgren --

5 Q. Is that --

6 A. -- & Ferriss. F-A-H-L-G-E -- R-E-N.
7 And Ferriss. F-E-R-R-I-S-S. I think it was a
8 double S.

9 MR. SESSOMS: Could I ask the witness
10 to speak up. I can barely hear you.

11 THE WITNESS: I worked for Fahlgren &
12 Ferriss in Toledo, Ohio.

13 BY MR. O'KELLEY:

14 Q. And that's an ad -- they did ads?

15 A. It's an advertising agency.

16 Q. And how long did you work there?

17 A. I was -- I'm not sure exactly.

18 Q. What did you do?

19 A. Four years.

20 Q. What did you do there?

21 A. Five years. I started out as a
22 receptionist. I was promoted to traffic manager.
23 I then was offered another job with Marketing
24 Communications Group in Toledo to create a traffic
25 system there. I went into -- I went into account

1 service. And Fahlgren wanted me back. So I went
2 back to Fahlgren & Ferriss, which was Fahlgren
3 Ferriss Phillips & Harrington.

4 Q. So there was a time --

5 A. I went into -- and I just -- yeah.

6 Q. There was a time you didn't work. You
7 worked for them for a few years, then went
8 somewhere else and then went back?

9 A. I worked for Fahlgren, I went to
10 Marketing Communications Group, I went back to
11 Fahlgren.

12 Q. What's Marketing Communications Group?

13 A. It's an advertising agency in Toledo,
14 Ohio.

15 Q. And how long were you there, with that
16 crowd?

17 A. I was there probably about four years.

18 Q. And then when you went back to Fahlgren
19 after they had changed their name to a longer
20 series of names, how long were you there in your
21 second iteration?

22 A. Let's see. I left Toledo when I was
23 32.

24 THE REPORTER: I'm sorry. I can't hear
25 you.

1 MR. O'KELLEY: She's thinking, I think.
2 I don't think she's answering the question yet.

3 THE WITNESS: So I was back at
4 Fahlgren, and its name changed again, for another
5 four years.

6 BY MR. O'KELLEY:

7 Q. Okay.

8 A. And left there.

9 Q. So we're talking 12 years after high
10 school. These are the --

11 A. Yes.

12 Q. -- first 12 years of your working?

13 A. Yes.

14 Q. 1976 to 1988 or so?

15 A. Yes.

16 Q. And then you left Toledo in 1988? Is
17 that what you just said?

18 A. Yes.

19 Q. And where did you go?

20 A. I traveled for a year and a half.

21 Q. Just around the country, around the
22 world?

23 A. Around the country mostly.

24 Q. Okay. And then after that year of
25 travel what did you do?

1 A. I spent a year in Denver.

2 Q. Okay. And what were you doing
3 workwise?

4 A. I worked for Karshen [sic] Hagan, which
5 is an advertising agency in Denver.

6 Q. Spell Karshen for us.

7 A. K-A-R-S-H-E-N.

8 Q. And Hagan?

9 A. And Hagan. H-A-G-E-N.

10 Q. And what were your job duties at
11 Karshen & Hagan?

12 A. I was an account director.

13 Q. And how many years were you there?

14 A. I was there a year.

15 Q. Just that one year? And after Denver
16 where did you go?

17 A. I headed to my parents' in Florida. I
18 reached out to Rawle Murdy in Charleston and they
19 hired me within a couple of weeks.

20 Q. And did you know anyone at Rawle Murdy
21 or you just looked up ad agencies in Charleston?
22 How did you --

23 A. I looked up ad agencies in Charleston.
24 I was looking at several markets, and Charleston
25 was one of them because it was coastal. And I

1 talked to them on the phone, sent them my resumé, I
2 came into town, they offered me a job.

3 Q. And what year was that; do you
4 remember?

5 A. Let's see. 1993.

6 Q. And how long did you work with
7 Mr. Rawle and crew at Rawle Murdy?

8 A. I was there for -- let's see. Samantha
9 was born in '98. So almost five years.

10 Q. And Samantha is your daughter, I take
11 it?

12 A. Um-hum.

13 Q. And then after 1998 did you resign from
14 Rawle Murdy to become a mom full time? Or tell
15 me -- or work somewhere else, or what happened in
16 '98?

17 A. I thought I was going to take a year
18 off, and I decided not to go back. And so I
19 consulted for Rawle Murdy and started a little
20 consulting firm, handled the golf resort in
21 Pinehurst.

22 Q. What was the name of your consulting
23 firm?

24 A. Indigo Marketing.

25 Q. Is it still around?

1 A. No.

2 Q. Okay. And how long were you sort of a
3 consultant for -- with Indigo Marketing for Rawle
4 Murdy or for other places?

5 A. I don't know. Four years.

6 Q. So that brings us up to about 2002 time
7 period, something like that?

8 A. Okay.

9 Q. What did you do after -- for work after
10 2002?

11 A. No. I got my real estate license --

12 Q. Okay.

13 A. -- in 2000, I do believe.

14 Q. And did you --

15 A. And so I was consulting and doing a
16 little real estate, you know, up until the bubble.

17 Q. 2007-ish?

18 A. 2007.

19 Q. '06, '07?

20 A. Yeah, um-hum.

21 Q. And when you got your real estate
22 license, what was your license? Were you a
23 salesperson, broker, brokerage --

24 A. I was a sales -- sales agent.

25 Q. And with whom? Who was your broker in

1 charge? Where did you hang your shingle, so to
2 speak?

3 A. Mary Ann Meyers, Century 21.

4 Q. Which office?

5 A. James Island.

6 Q. And you said you did -- you practiced
7 real estate until the bubble burst, I guess, in
8 2007-ish time frame?

9 A. Um-hum.

10 Q. Is that correct?

11 A. Um-hum.

12 Q. Is that a yes?

13 A. Yes.

14 Q. Okay. And then from -- what
15 happened -- what did you do for work after 2007?

16 A. I sort of took a break, and then I
17 reinstated my license in -- I guess it's been six
18 years now. Five or six years.

19 Q. So 2012?

20 A. Yeah.

21 Q. And who have you been practicing with
22 since 2012?

23 A. Dunes Properties.

24 Q. And who's the broker in charge?

25 A. Randy Walker.

1 Q. And are you on the Isle of Palms or
2 where?

3 A. Folly Beach.

4 Q. Folly Beach. Okay. And you've been
5 there since 2012 to the present; correct?

6 A. Correct.

7 Q. And your license, is it still sales
8 agent, sales associate?

9 A. Yes.

10 Q. Whatever that category is of licensure?

11 A. Yes.

12 Q. And do you take your required
13 continuing education classes to keep your license?

14 A. Yes.

15 Q. And as part of those continuing
16 education classes do you take any classes on
17 contracts?

18 A. Real estate contract, yeah, contract
19 law.

20 Q. And as a real estate agent you've
21 written contracts before; correct?

22 A. Yes.

23 Q. And I think you told me earlier you
24 purchased your dockominium in nineteen ninety --
25 what year did you purchase --

1 A. 2004.

2 Q. 2004. And do you remember from whom
3 you purchased it?

4 A. Shelly Sutton had -- Shelly Sutton was
5 the agent that conducted the purchase -- I think
6 she was on the buyer's side -- when the marina was
7 originally sold from private owner.

8 Q. When the marina became --

9 A. It was sold to a developer.

10 Q. When it was in the process of becoming
11 condos? Dockominium condos, rather.

12 A. Yes. Yeah.

13 Q. And did you ever own one of the
14 condominium units, I'll call it up on the hill, at
15 the racquet club?

16 A. No.

17 Q. How did you come to own your
18 dockominium?

19 A. Shelly told me that the slips were
20 being sold. My husband was tired of the boat
21 landing. We just bought a new boat or were getting
22 ready to buy a new boat, so we bought a slip.

23 Q. Do you recall what you paid for it?

24 A. \$78,000 or thereabouts.

25 Q. Do you recall who your closing attorney

1 was?

2 A. I have his card somewhere, but it was
3 an agent that -- you know, they sort of -- there
4 was an agent that was doing -- handling the
5 closings.

6 Q. When you say agent, do you mean an
7 attorney?

8 A. I mean an attorney that was handling
9 the closings, and so we just let him close it for
10 us.

11 Q. And do you recall if you read the
12 master deed at the time of your closing or prior to
13 closing?

14 A. I did attempt to read that master deed.
15 I forwarded it to Billy Hennessy who I had done --
16 who's a friend, an attorney, family attorney and
17 who had -- I had done real estate transactions
18 with.

19 Q. And do you recall if it was the
20 original master deed or the amended master deed or
21 both?

22 A. It has been amended more than once.

23 Q. Sure. But at the time of the closing
24 do you recall which --

25 A. At the time of the closing I do believe

1 there was an amendment in the master deed.

2 Q. And if you don't recall which one you
3 sent to Mr. Hennessy, that's fine. Do you recall
4 if there were any red flags raised prior to your
5 closing regarding the dockominium?

6 A. I sent it to Billy to go over and tell
7 me if this was like a real -- real deal and if the
8 document he felt was comprehensive and clear,
9 because I had trouble with the language and the way
10 that it was written. And Billy said not only is it
11 real, but I would like to buy two, and he bought
12 two.

13 Q. Okay. I hope you got a commission.
14 I'm being facetious. That doesn't come across on
15 the transcript, but...

16 A. Don't recall.

17 Q. At the time that you bought your unit,
18 do you know if the -- what I call -- if I say the
19 term ship store do you know what I'm talking about?

20 A. I do.

21 Q. Was the ship store in operation as a
22 ship store in two thousand --

23 A. Yes.

24 Q. And do you recall who was running the
25 ship store back then?

1 A. I do believe it was Sharon and Ed
2 Geiger.

3 Q. And Mr. Geiger has been the dockmaster
4 out at Mariners Cay for a long time; correct?

5 A. Correct.

6 Q. And was he -- when he was running the
7 ship store in 2002, do you know if he was also
8 wearing the hat of dockmaster at the time, if you
9 know.

10 A. I do believe he was.

11 Q. Okay. And when he was -- the ship
12 store was operational, do you know -- from 2002 to
13 what time --

14 A. I don't know about 2002. We didn't buy
15 our slip until -- I thought it was 2004.

16 Q. I'm sorry. 2004, not 2002. Pardon me.
17 So 2004. Do you know when the store ceased to
18 function as a ship store, what time frame that was?

19 A. Hum.

20 Q. And if you don't remember, that's fine.

21 A. That was when we formed -- I think all
22 of it kind of happened at the same time. That was
23 when we formed our own HOA.

24 Q. Would it have been about the time --
25 and when you say formed your own HOA, are you

1 talking about when the turnover occurred from the
2 developer to the owners at Mariners Cay?

3 A. When the slips fell back to the bank --

4 Q. Okay. That's what I was asking about.

5 A. -- Michael Sutton and I and Jeff
6 Heatley, I think -- I don't know who all
7 originally. I could think about that and figure
8 that out.

9 Michael Sutton took on the project of
10 forming our own HOA. Because the way that the
11 documents were written is that once it was passed
12 to certain ownership, private ownership and/or if
13 it went in -- anything -- if they went into
14 foreclosure we could control our HOA moneys and
15 make sure our insurance was paid. So we formed
16 Mariners Cay Marina Council of Co-Owners.

17 Q. And that was, again, pursuant to your
18 master deed based on number of slips being sold or
19 what you just termed a foreclosure or some
20 triggering event; right?

21 A. Right. Correct.

22 Q. And do you know if you were on that
23 initial board?

24 A. I was.

25 Q. And how long did you -- do you recall

1 what year that was?

2 A. I don't.

3 Q. And do you recall how long you served
4 on the board initially?

5 A. A while.

6 Q. Define a while for me, please, ma'am.

7 A. Well, I remember I stepped off for a
8 while, and then I stepped back on. So if -- I
9 would -- I don't know. I would have to look at
10 calendars.

11 Q. And there's some documents in here that
12 may refresh your memory.

13 A. Okay.

14 Q. I just didn't know if you remembered
15 off the top of your head.

16 A. I don't.

17 Q. During your time of ownership from 2004
18 to the present, have you had any problems with the
19 dockominium itself? Any problems related to
20 ownership or title or anything of that nature?

21 A. No, except there was a -- I had a lien
22 put on it last year because they did a special
23 assessment and there was a check that got lost or
24 whatever. I thought I had paid the whole thing.
25 And before I could figure it out, it had already

1 went into -- you know, so -- but besides that, no.

2 Q. A lien for nonpayment of that special
3 assessment?

4 A. A lien, right. Um-hum.

5 Q. And has that lien been paid and
6 satisfied?

7 A. Yes. Yes, it has.

8 Q. Ms. Hull, I forgot. What's your email
9 address?

10 A. LaureneHull1@gmail.com.

11 Q. And has that been your email address
12 for the last few years?

13 A. Yes.

14 Q. And do you have a work email address?

15 A. LHull --

16 Q. Yes, ma'am.

17 A. -- @DunesProperties.com.

18 Q. And how long have you had those two
19 email addresses; do you know?

20 A. Dunes Properties for five, six years.

21 Q. Okay.

22 A. LaureneHull1 for 10 years.

23 Q. And do you recall the first time you
24 met a gentleman who goes by the nickname Dolph,
25 Dolph Farmer?

1 A. I don't understand the question.

2 Q. When did you first meet Dolph Farmer,
3 if you recall.

4 A. Are you asking me for the date?

5 Q. No, ma'am.

6 A. Oh, okay.

7 Q. What I'm asking you is in what context
8 or how did you come to meet Dolph Farmer?

9 A. He bought the ship store, captain's
10 quarters and the two gas docks, and I met him down
11 at the marina.

12 Q. And what are the captain's quarters?

13 A. It's a condominium that sat on the
14 third floor of the ship store building.

15 Q. And I'll represent to you I've seen on
16 various things that says you were actually the
17 president of the Mariner's Cay Marina Council of
18 Co-Owners during that time frame. Do you --

19 A. I was.

20 Q. And during your time as president, do
21 you recall if y'all as a board were having
22 conversations about the association -- rather, the
23 council of co-owners purchasing the ship store and
24 what you've called the captain quarters and the
25 fuel docks?

1 A. Yes.

2 Q. And tell me about those conversations,
3 if you can, please.

4 A. I don't know where to start.

5 Q. Well, I'll parse it out for you. So
6 it's my understanding that the ship store and
7 captain's quarters and fuel docks were in
8 foreclosure; correct?

9 A. No.

10 Q. Okay. They weren't in --

11 A. Not when we talked about purchasing
12 them.

13 Q. Were y'all talking about purchasing
14 after the foreclosure was finished?

15 A. And Sabal --

16 Q. Okay.

17 A. Sabal owned them. Sabal owned them.
18 And we talked about purchasing it in order to keep
19 the mystery of use or whatever, to eliminate that
20 mystery.

21 Q. What mystery of use are you referring
22 to, ma'am?

23 A. Well, because in the master deed --
24 what I recall is in the master deed the ship store
25 was essentially a common element. It was called

1 the ship store. It was always the ship store.

2 And then when the foreclosure happened
3 they tried to make it a condominium, they tried to
4 make it a bar. And the homeowners' association and
5 we, but the homeowners' association --

6 Q. And you're talking about --

7 A. -- was always trying to block it from
8 being anything else but the ship store because
9 that's what it was supposed to be.

10 Q. And the homeowners' association you're
11 referring to, is that the same racquet club
12 association I just referred to earlier?

13 A. That is the Mariners Cay Homeowners'
14 Association. Whatever the legal name is for it.

15 Q. But separate and apart from the Marina
16 Council of Co-Owners; correct?

17 A. Correct.

18 Q. Okay. Just trying to make sure we're
19 clear. And you weren't involved in any way with
20 any amendments to the master deed wherein they
21 tried -- someone tried to make the ship store a
22 noncommon element, were you?

23 A. No.

24 Q. That was prior to your ownership, is my
25 understanding.

1 A. I don't know.

2 Q. Don't know. That's fair enough. Do
3 you know if you've ever read the amended master
4 deed where they tried to uncommon element those
5 units --

6 A. My very --

7 Q. -- for lack of a better term?

8 A. My very last board meeting I was
9 introduced to the fact that there were two master
10 deeds. In all the years that I was on the board I
11 worked off of the master deed that I was given when
12 I purchased my slip. And when the -- and the very
13 last meeting that we had someone had recognized
14 that there were -- there had been a change made to
15 it somewhere in the process. I don't know who made
16 that change. I don't know when it was made, and --
17 yeah.

18 Q. Were you on the board when the
19 foreclosure lawsuit was pending, if you remember.
20 And again, we'll get to some of that.

21 A. Yes.

22 Q. Okay. And were you aware that an
23 attorney named Derek Dean had actually filed an
24 answer for the Mariner's Cay Marina Council of
25 Co-Owners in that foreclosure?

1 A. Derek Dean was handling our legal needs
2 at the time.

3 Q. And since you're still an owner out at
4 the marina, besides getting sort of updates about
5 this lawsuit -- I think I asked this earlier --
6 you're not involved in this lawsuit in any way, are
7 you?

8 A. No.

9 Q. I mean, have you had any casual
10 discussions with anyone about the lawsuit while
11 you're out at the marina?

12 A. No.

13 Q. Okay. How about with any of your
14 friends who are co-owners out at the marina?

15 A. My husband.

16 Q. Besides discussions with your husband
17 about this matter, any discussions with anyone
18 else?

19 A. Only about the deposition issues and
20 scheduling and...

21 Q. And when you were on the board your
22 last time, Sentry Management was the management
23 company; correct?

24 A. Yes.

25 Q. And do you recall if y'all have had any

1 other management companies out at the marina?

2 A. No.

3 Q. Do you know if Sentry's been the
4 management company since you all formed your board,
5 so to speak?

6 A. Since we -- they were the first ones
7 that we hired.

8 Q. Okay.

9 A. And they were -- and I do believe they
10 still are. Yeah, they still are.

11 Q. And they're the ones that are tasked
12 with day-to-day management functions, keeping up
13 owner lists, assessing people, sending out notices,
14 things of that nature; correct?

15 A. Yes.

16 Q. And does Sentry keep an updated list of
17 names and addresses, as best they can, of owners
18 out at Mariners Cay?

19 A. Yes.

20 Q. And I asked you a few minutes ago about
21 the foreclosure, and you said Derek Dean was
22 handling your legal work at the time.

23 A. (Witness moves head up and down.)

24 Q. Do you recall any discussions with the
25 board about the foreclosure case? Not only

1 Mr. Dean but among the board members about the way
2 the foreclosure was proceeding or anything of that
3 nature?

4 A. No.

5 Q. And do you know --

6 A. Outside --

7 Q. Go ahead.

8 A. -- of knowing that it was happening,
9 you know, and that it had fell back into
10 foreclosure, no. That's all we knew.

11 Q. Did you all have any discussions that
12 they were going to actually sell certain units or
13 certain property as a result of that foreclosure?
14 Do you recall those conversations?

15 A. I don't know what you're asking me.

16 Q. Sure. Were you aware that as a result
17 of the foreclosure there was going to be a sale of
18 some property out at Mariners Cay?

19 A. The bank started to sell the slips.
20 They hired someone to sell the remaining slips.

21 Q. And I'm not talking about the remaining
22 slips. I'm talking about the two fuel docks,
23 specifically the fuel docks that bring us here, and
24 the ship store and what you call the captain's
25 quarters that bring us here. Were you aware that

1 those were part of the foreclosure?

2 A. I don't believe they were. What I
3 remember is hearing that the bank was surprised
4 that they weren't. Somehow they had kept the ship
5 store and the gas docks out of the foreclosure.

6 Q. Do you remember who told you that?

7 A. That's just a recollection.

8 Q. Okay.

9 A. No, I don't know who told me that.

10 Q. Did you have any knowledge that there
11 was an actual sale of the property for some
12 \$280,000 to a crowd called Emerald Portfolio? Any
13 information about that?

14 A. I recall an Emerald Portfolio. I don't
15 recall a sales price. I don't recall when that
16 was. I do recall a Sabal owning it.

17 Q. Do you know if Sabal --

18 A. If that's the same --

19 Q. Sorry.

20 A. Is that the same entity?

21 Q. I was going to ask you the same
22 question.

23 A. I don't know. I don't recall.

24 Q. And I'll represent to you that in the
25 spring of 2016 the fuel docks were transferred to

1 an entity called Mariners Cay Fuel Dock, LLC, and
2 the ship store and what you called the captain's
3 quarters were transferred to Mariners Cay Marina
4 Condo, LLC, and I'll further tell you those are
5 entities that are owned by Dolph Farmer.

6 A. Okay.

7 Q. So does that jog your recollection
8 about any of your first conversations with
9 Mr. Farmer?

10 A. Any of my first conversations with
11 Mr. Farmer?

12 Q. Yes, ma'am. Does that --

13 A. I mean, I knew that he had bought
14 the -- bought it --

15 Q. And --

16 A. -- from Sabal, I do believe. And then
17 the board had conversation about trying to purchase
18 the ship store and the gas docks from him in
19 order -- even though we didn't feel like -- we felt
20 that the ship store was the ship store, that we
21 thought that that might solve a big problem, which
22 was, you know, the changing of hands and the
23 closure of the ship store and them trying to change
24 the use of it.

25 Because our understanding, that the

1 ship store should always be a ship store and it was
2 a common element in the master deed. It was -- you
3 know, part of our ownership was to have a ship
4 store and gas, operating gas docks.

5 Q. And you're aware, though, that the ship
6 store didn't always operate; correct?

7 A. Yeah. Yes.

8 Q. And you were -- you testified you were
9 board president. And what -- do you recall your
10 term of office?

11 A. I don't recall.

12 Q. But in May of 2016 you were board
13 president. I'll represent to you there's some
14 stuff in this notebook that we'll get to that will
15 show me that.

16 A. Okay.

17 Q. So does that reflect -- give you any
18 sort of recollection about when you were president?

19 A. I was president -- Michael Sutton was
20 first president.

21 Q. Okay.

22 A. He did it for a year. Then I took
23 president because he didn't want to do it any
24 longer. I was president for several years. I
25 stepped off, and then I stepped back on, but I

1 don't remember dates. I don't know.

2 Q. And then you rotated off and haven't
3 been back on the board since; is that a fair
4 assessment?

5 A. Yes.

6 Q. Okay.

7 A. Three years ago. I think it was three
8 years.

9 Q. And a few minutes ago you said
10 toward -- there was -- one of your -- the last few
11 board meetings there was -- it was brought to your
12 attention that there was an amended master deed; is
13 that correct? Or was it your last --

14 A. My last --

15 Q. Last board meeting?

16 A. -- board meeting.

17 Q. And what was -- did you read the
18 amended master deed at that time, or did someone
19 just tell you that?

20 A. I read the portion that was of concern,
21 and that was that it had been amended or changed.
22 I don't know. I don't know if you would call it
23 amended, because it was changed. I don't know if
24 it was legally amended. I don't -- it wasn't
25 legally amended because it was without membership.

1 Q. And how did you come to that
2 conclusion, Ms. Hull?

3 A. But you know what? I don't know when
4 that amendment happened, so I can't -- I don't
5 know.

6 Q. Well, you just testified that it was
7 not a legal amendment and --

8 A. I don't -- no, I didn't testify it was
9 not a legal. I said I don't know --

10 Q. Don't know. Okay.

11 A. -- what -- when it was done or -- I
12 remember reading it that night, and there was
13 definitely a difference in the two deeds.

14 Q. When you said the portion of concern a
15 few minutes ago, which portion of concern were you
16 referring to, please, ma'am?

17 A. I don't know what you're -- I don't
18 know what I said exactly.

19 Q. I asked you if you read the amended
20 master deed, and you said you read a portion of
21 concern.

22 A. Okay, okay.

23 Q. And so I was trying to figure out --

24 A. Because it was -- in that meeting it
25 was brought to our attention that there was a

1 change in -- or there was two versions of the
2 master deed. And I read some of the difference in
3 those two which was in relationship to the ship
4 store. I don't remember the exact words of what
5 the differences were, but it -- you know.

6 Q. And that -- was that the,
7 quote/unquote, portion of concern you were
8 referring to?

9 A. Yes, that was the portion of concern.

10 Q. And do you know, since that was your
11 last board meeting, did you all authorize any
12 action to be taken related to that amended master
13 deed or portion of concern at that time, if you
14 recall.

15 A. What I recall was conversation about
16 looking at legal firms or attorneys that could look
17 at it for us.

18 Q. Okay. And then you got off the board,
19 and you didn't have any further control or
20 action --

21 A. No.

22 Q. -- related to that, did you?

23 A. No.

24 Q. And during your time of ownership out
25 at Mariners Cay, do you know if there's ever been a

1 problem with access to the restrooms? Have you
2 personally --

3 A. Not to my knowledge.

4 Q. I was going to ask you have you
5 personally had any problems with access to the
6 restrooms?

7 A. No.

8 Q. And do you know what year the ship
9 store ceased to operate or quit being operational?

10 A. No.

11 Q. In 2016 it was not operational, though;
12 correct?

13 A. No.

14 Q. And when you say no, you mean no, it
15 was not?

16 A. No, it was not operational.

17 Q. Okay. And this is a way to sort of
18 short circuit a bunch of my questions today. Once
19 you got off the board, do you know what year that
20 was, when you rotated off?

21 A. I think it was three years ago.

22 Q. 2016?

23 A. I think so.

24 Q. So at the board meeting in 2016 --
25 excuse me -- the annual meeting in 2016, when

1 Mr. Farmer appeared, would that have been your last
2 service as a board member?

3 A. No. My last service was a board
4 meeting. It was not an annual meeting.

5 Q. Okay.

6 A. It was a board meeting.

7 Q. Do you know when that was? You said
8 three years ago shortly, but do you recall what
9 month?

10 A. No, I don't.

11 Q. Was it after the annual meeting or
12 before?

13 A. I would presume after. I don't
14 remember.

15 Q. And there may be some stuff in the
16 notebook that will jog your memory, but I'm just
17 trying to get the general picture.

18 A. (Witness moves head up and down.)

19 Q. You don't have any testimony to offer
20 about whether or not the Mariner's Cay Marina
21 Council of Co-Owners accepted payments from
22 Mr. Farmer for his dues, do you, ma'am?

23 A. No.

24 Q. And do you have any testimony to offer
25 about whether or not the Mariner's Cay Marina

1 Council of Co-Owners placed any liens on the units
2 he says he owns?

3 A. No.

4 Q. Okay. And I've seen documentation in
5 here that you were involved in negotiations in 2016
6 and maybe 2017 regarding the attempt by the
7 Mariner's Cay Marina Council of Co-Owners to
8 purchase the units from Mr. Farmer. Do you
9 remember those negotiations?

10 A. Yes.

11 Q. And were you doing that as a board
12 member or as a real estate agent for --

13 A. As a board member.

14 Q. Okay. As a board member. Nothing to
15 do with your being a sales agent at Dunes
16 Properties; correct?

17 A. No.

18 Q. Did any other board member say, hey,
19 Ms. Hull or hey, Laurie, since you're a real estate
20 agent why don't you run with this, or were you just
21 running with it as the board president at the time,
22 if you recall.

23 A. No. We made a decision. The board
24 made the decision to make him an offer and made a
25 decision on what that offer amount would be and I

1 drafted it.

2 Q. Okay. And without looking at the
3 documents in this notebook that's in front of you,
4 do you know what the amount of that offer was?

5 A. I think \$80,000.

6 Q. And was that 80,000 for the ship store
7 or 80,000 for the fuel docks; do you recall?

8 A. I think it was for all of it.

9 Q. Okay. And that offer was not accepted,
10 was it?

11 A. No.

12 Q. And as we sit here today, can you tell
13 me anything you remember specifically about those
14 negotiations with Mr. Farmer?

15 A. I remember giving him the offer, and he
16 counteroffered in an email, I do believe. It was
17 in the 500 range. 500,000 range. And the board
18 essentially decided not to, you know, try and deal
19 with it or, you know, move forward on it.

20 Q. So no further response to his counter
21 of 500,000; correct? The board just said that's
22 enough, something of that nature?

23 A. Yeah.

24 Q. And I'll represent to you in this
25 document there's an appraisal in here. Do you

1 recall -- and it's got your name on it, you know,
2 appraisal for. Do you recall the circumstances of
3 your obtaining an appraisal for the ship store?

4 A. There was an appraisal. I remember
5 there was an appraisal.

6 Q. But let me ask it this way: Were y'all
7 getting an appraisal in connection with attempting
8 to make an offer, or did you just want to know what
9 you thought it was worth? Tell me about that, if
10 you can remember.

11 A. I don't know why. I don't remember.

12 Q. Whether it was in the context of making
13 an offer or just generally?

14 A. I don't remember.

15 Q. And we'll get to it. Maybe that will
16 jog your memory.

17 A. (Witness moves head up and down.)

18 Q. And do you know a fellow named Alben
19 Neighbors?

20 A. I know his name.

21 Q. You're not personal friends with him or
22 anything?

23 A. No.

24 Q. How about a fellow named Dan Nekola?
25 Do you know Mr. Nekola?

1 A. No.

2 Q. Have you ever heard that name?

3 A. No. Not that I recall, no.

4 Q. Oh, I forgot to ask you. During your
5 time at -- as a board member, did Mr. Geiger ever
6 tell you that you all were in violation of any
7 DHEC, OCRM permits or regulations or rules, if you
8 recall.

9 A. No. There was much concern and
10 conversation about making sure we fulfilled our
11 OCRM permit.

12 Q. And to your knowledge, were you all
13 fulfilling the requirements to keep that --

14 A. Yes.

15 Q. -- permit in place?

16 MR. O'KELLEY: I need to run, make one
17 quick call because I've got -- forgot to do
18 something, and we've been going -- it's been about
19 an hour, so it's a good time for a quick break.

20 (A recess transpired from 10:57 until
21 11:04.)

22 BY MR. O'KELLEY:

23 Q. Ms. Hull, thank you for letting me take
24 that quick break. We've got a notebook to go
25 through with a bunch of exhibits. The first one in

1 front of you is Exhibit 2. Do you know if you were
2 on the board back in May of 2012?

3 A. I don't know.

4 Q. All right. And do you know -- recall
5 any involvement in this email back in May of 2012?
6 At the bottom it says from Laurene Hull, and it's
7 Laurie@Indigomc.net. Is that an email address you
8 had back in --

9 A. Yes.

10 Q. -- 2012?

11 A. Yes.

12 Q. And do you know what discussions you
13 were asking about involving Sunset Caye or Mike
14 Yount who works for Butch Clark?

15 A. I don't understand what you're asking
16 me.

17 Q. I'm asking -- this is an email from
18 you, correct, that says hi everyone?

19 A. Yes.

20 Q. As some of you may know, and then it
21 goes on. It says: Best, Laurie. And then it
22 talks about I thought it would be good to send
23 official notice to Tiger River before we have a
24 problem. Lease is on the property. Attached is a
25 letter that was sent.

1 I'm asking -- and so then there's
2 another -- if you turn to the next page it's
3 correspondence from Debbie at Simons & Dean. And
4 then a letter from Derek Dean in May of 2012, and
5 you were cc'd on that letter. And then there's an
6 email from you about that letter about Tiger River
7 Capital and Law Firm Finance and negotiations with
8 Mike Yount, the dockmaster at Sunset Caye.

9 I just wanted to know what you remember
10 about this correspondence from 2012. Because it
11 looks in the letter that you asked Mr. Dean to
12 basically send correspondence telling these folks
13 that their accounts are delinquent and past due
14 against four units.

15 A. What I recall is that the owners of the
16 ship store and gas dock had not paid their HOA fees
17 and we understood that there was a possibility that
18 they were going to lease the property and we let
19 Derek know about that. That's --

20 Q. And do you recall whether Law Firm
21 Finance, LLC and/or Tiger River Capital, LLC, which
22 units they owned? Because in the letter from
23 Mr. Dean it says units C-21, C-22, 1-A and 1-B;
24 correct?

25 A. Correct.

1 Q. And are those the fuel docks and/or
2 ship store, to your knowledge?

3 A. Yes. It's the ship store, the
4 condominium above the captain's quarters and the
5 two fuel docks.

6 Q. So back in May of 2012, the board was
7 acknowledging that those units were owned by Tiger
8 River Capital and/or Law Firm Finance; correct?

9 MR. BARR: Object to the form. You can
10 answer.

11 MR. SESSOMS: Join in the objection.

12 THE WITNESS: Excuse me?

13 BY MR. O'KELLEY:

14 Q. He made an objection for the record,
15 but you answer the question.

16 A. Yes, I guess.

17 Q. Well, let me ask it this way: You said
18 that the owners of the ship store and the gas docks
19 had not paid their dues; correct?

20 A. Correct.

21 Q. And the board was objecting to any
22 leasing based on that delinquency; correct? If you
23 look at the third paragraph of Mr. Dean's letter it
24 states:

25 In addition, MCCCCO objects to and will

1 take such steps as are legally required and
2 available to prevent any alleged tenant or other
3 agent or representative of either Law Firm Finance,
4 LLC and Tiger River Capital, LLC from accessing the
5 property for whatever purpose.

6 Did I read that correctly?

7 A. Yes.

8 Q. Okay. So was the point of this letter
9 to block any tenant or agent from accessing these
10 units based on the delinquency?

11 A. It appears so.

12 Q. If you would, please, ma'am, turn to
13 Exhibit 3. And these are emails from 2014.
14 There's also emails from a fellow named Louis Lang,
15 who's an attorney, to Derek Dean regarding the
16 foreclosure.

17 Do you know if you were aware in 2014
18 of the foreclosure process that was going on
19 against Tiger River and Law Firm Finance, if you
20 recall. Or was this when you were on a break from
21 being on the board, if you recall.

22 A. I don't recall.

23 Q. Okay. If you'll turn to Exhibit 4 is
24 next. And if you look in the middle of the page
25 there's an email that says from, and it says

1 Laurene Hull.

2 A. Um-hum.

3 Q. LaureneHull1@gmail.com, that's an email
4 address you gave me earlier today; correct?

5 A. Yes.

6 Q. And there are emails from Collin Bruner
7 to Mike Sutton and about a -- on the next page it
8 says:

9 Michael: Derek has informed me that
10 the master in equity sale of the ship store and gas
11 docks has been rescheduled for 7-7-15 at 11:00 am
12 at the courthouse on Broad/Meeting Street.

13 Do you recall receiving this email back
14 in June of 2015 --

15 A. No.

16 Q. -- about that sale?

17 A. No.

18 Q. But you are on the email chain;
19 correct? I'll ask it this way: You are the
20 Laurene Hull at LaureneHull1@gmail.com; correct.

21 A. Yes.

22 Q. And did you take any action, to your
23 knowledge, to try and stop the sale in any way back
24 in July of 2015?

25 A. No.

1 Q. If you would, please, ma'am, in that
2 same exhibit, do you recall if you got -- there's
3 a -- down at the bottom of the page it says MC-14.
4 Do you see where it says that on the bottom of the
5 page?

6 A. Yes.

7 Q. All right. There's an email from
8 Collin Bruner to Michael Sutton, Michele Vargas and
9 Derek Dean. I don't see your name anywhere on this
10 email. Do you know if you were on the board back
11 in November of 2014?

12 A. No.

13 Q. No, you don't know or no, you weren't
14 on the board?

15 A. No, I don't know.

16 Q. Okay. Mr. Bruner states in this email
17 that there was -- I have spoken with the REO
18 representative at Sabal or Sabal Financial. He let
19 me know that 400,000 is owned -- his word, not
20 mine, but I think he means owed -- on the note and
21 that is his starting point for negotiations.

22 Were you -- do you recall any
23 discussions with Sabal about a \$400,000 starting
24 point --

25 A. No.

1 Q. -- to purchase? All right. And do you
2 recall any discussions on the next page, MC-15,
3 about a total appraised value of 269,000? Do you
4 recall any discussions about that back in 2014?

5 A. No.

6 Q. Exhibit 5 is the next exhibit. You and
7 I just discussed the OCRM permitting issues. And
8 do you remember my questions about that a few
9 minutes ago?

10 A. Yes.

11 Q. All right. At the bottom of this
12 document, Exhibit 5, MC-19 and 20, you are listed
13 as one of the email recipients from Ed Geiger on
14 August 5th, 2015. Do you recall if you were back
15 on the board in August of 2015?

16 A. No.

17 Q. Okay. But do you recall receiving this
18 email about the OCRM permit?

19 A. I don't.

20 Q. Okay. But that was your email address
21 back in August of 2015 --

22 A. Yes.

23 Q. -- correct? And your testimony earlier
24 was that as a board you all were -- I wouldn't say
25 strict in compliance, but you tried to comply to

1 make sure your permit was always in good
2 standing --

3 A. Yes.

4 Q. -- correct? And you relied on
5 Mr. Geiger to help with that; correct?

6 A. Yes.

7 Q. Exhibit No. 6. If you would, please
8 turn with me to that. And this is -- it's got
9 MC-21 and MC-22 and then MC-23 and it's -- and 24.
10 There's a memo from Ed Geiger to -- you're one of
11 the recipients about repairs to the ship store.

12 Do you recall discussions about repairs
13 to the ship store that were needed back in August
14 of 2015?

15 A. Yes.

16 Q. Tell me about those discussions, if you
17 remember them.

18 A. I just remember that we were concerned
19 about the upkeep, and I remember that the air
20 conditioning unit wasn't working at one point.

21 Q. And were y'all ever holding -- did
22 y'all ever hold board meetings in that space or use
23 the space during that time period? And when I say
24 the space --

25 A. I don't know.

1 Q. -- I mean the ship store or captain's
2 quarters.

3 A. I don't know the dates of when the ship
4 store was operational. I don't recall. We did
5 have a membership meeting up there a couple of
6 times, couple of board meetings up there.

7 Q. When you say up there, you're talking
8 about what you've labeled the captain's quarters or
9 the --

10 A. The ship store.

11 Q. Okay. And do you know if these repairs
12 that Mr. Geiger set forth on MC-23 in Exhibit 6, if
13 the board ever authorized those repairs to be done?

14 A. We did make repairs.

15 Q. Do you recall --

16 A. I don't know if it was specifically
17 these or not.

18 Q. If you'll go to MC-23 which is part of
19 Exhibit 6, and that's the list of -- and I'll
20 represent to you Mr. Geiger said yes, I did come up
21 with this list on my own, and the board wanted me
22 to go look at the building to kind of figure out
23 the state of affairs there.

24 Looking at this list, does this refresh
25 your recollection about what repairs the board did

1 or did not do back in 2015?

2 A. No.

3 Q. Okay. Do you know if the board removed
4 the tin overhead and inspected beams for water
5 damage and repaired, No. 1?

6 A. No.

7 Q. All right. You testified a minute ago
8 that you did think that HVAC unit was repaired or
9 replaced.

10 A. (Witness moves head up and down.)

11 Q. That would be No. 15, correct, on this
12 list that's MC-23?

13 A. Yes.

14 Q. All right. Besides that, you just
15 don't have a memory, as we sit here today, about
16 what the board did or did not do; correct?

17 A. Correct.

18 Q. Except for the HVAC that you've already
19 told me about; correct?

20 A. Correct. I don't know if -- I remember
21 we had it looked at or serviced or fixed. I don't
22 remember if it was in relationship to this email or
23 not. Don't know.

24 Q. Do you know if you ever billed anyone
25 for that work that was done by the board? In other

1 words, asked to be reimbursed by --

2 A. I don't know.

3 Q. Okay. Would that have been something
4 that would have been handled by the management
5 company and/or Mr. Geiger, or do you know?

6 A. I don't know.

7 Q. If you'll turn with me to Exhibit 7.
8 This is an email exchange, Exhibit 7, MC-25 and 26.
9 It appears to be emails from August of 2015. On
10 page 26 you sent an email that said can you tell us
11 what their position is, what did you learn, and
12 then there's a reply about a meeting. Do you
13 recall what meeting these emails reference?

14 Because the first email states that
15 Roger Camp, the HOA president, is willing to meet
16 with us for an update on the position Mariners Cay
17 HOA is taking regarding the ship store, and it's
18 signed regards, Nelson. Do you recall any of these
19 discussions from August of 2015?

20 A. No.

21 Q. All right. And the HOA board that's
22 listed here, that's not the Mariners Cay council
23 board; correct?

24 A. I'm not sure what you're asking me.

25 Q. Sure. In this email to you from

1 Monday, August 31st, 2015, 9:19 PM, it says Laurie,
2 and then it references the HOA board. Do you know
3 what board is being referred to by them being
4 called the HOA board in this email?

5 A. No.

6 Q. All right. And it says:

7 The HOA board does not believe they can
8 sell the idea of purchasing the ship store building
9 to the residents. Therefore, they hope to work
10 with Sabal to prohibit a commercial business from
11 purchasing the building.

12 Do you recall any discussions about
13 trying to prohibit a commercial --

14 A. That I do --

15 Q. Hold on. Let me finish.

16 A. Um-hum.

17 Q. -- a commercial business from
18 purchasing the building? Just so we can get the
19 full question in.

20 A. I recall that the homeowners -- the
21 Mariners Cay homeowners board -- I don't recall. I
22 don't know.

23 Q. Well, you started to say you recalled
24 and then said they [sic] don't recall. Were they
25 trying to limit some outside commercial crowd from

1 purchasing the building and making it into a
2 commercial entity or a restaurant? Or just tell me
3 what you remember, if anything.

4 A. I recall conversations about the
5 Mariners Cay homeowners' board purchasing the ship
6 store. I don't remember if the gas docks were
7 included in that, and --

8 Q. Well, it says here --

9 A. But they would have had to have their
10 membership approval in order to do that, and they
11 didn't believe that they would get the support from
12 their membership.

13 Q. And it states here:

14 I think the majority of the HOA board
15 are against having the fuel docks as part of the
16 HOA.

17 Does it not?

18 A. Your question again?

19 Q. Yes, ma'am. Did I read -- am I reading
20 this correctly?

21 I think the majority of the HOA board
22 are against having the fuel docks as part of the
23 HOA.

24 Did I read that correctly?

25 A. Yes.

1 Q. And I think you stated a minute ago
2 that the majority of the HOA, meaning the Mariners
3 Cay HOA, did not want the gas docks, to your
4 knowledge; correct?

5 A. Yes.

6 Q. Okay. And I didn't know if that would
7 refresh your recollection about that issue.

8 A. Okay.

9 Q. And other than getting a copy of this
10 email when you were asking can you tell us what
11 their position is, do you recall any other
12 discussions other than what we've just talked
13 about?

14 A. No.

15 Q. All right. Did you -- do you know if
16 you personally -- do you know a gentleman named
17 Roger Camp?

18 A. Yes.

19 Q. Okay. And did you have any discussions
20 personally with Mr. Camp about his HOA and the --

21 A. No.

22 Q. Let me just finish it. The purchase of
23 the ship store or fuel docks?

24 A. No.

25 Q. The next document, Exhibit No. 8 from

1 September 6, 2015, from Michael -- they're emails
2 between you and Michael Sutton. And in the middle
3 of this page it says:

4 Michael, I have received and read the
5 discussions outline and would like to know Laurie's
6 concerns.

7 Do you know what concerns were being
8 referred to in that email?

9 A. No.

10 Q. All right. And then on the email below
11 that from the same date a couple hours earlier it
12 says:

13 I've received confirmation from Laurie
14 that she did receive the letter I forwarded
15 yesterday from Roger.

16 Do you know what correspondence that
17 would be?

18 A. No.

19 Q. Okay. If you would, please, ma'am,
20 turn to Exhibit 9. And these are emails again from
21 September of 2015. There's also attached emails
22 from Ronald McGuire, Jeff Heatley, you're included,
23 Nelson Maier is included, about reviewing the
24 documents sent over by Roger Camp. Just as we sit
25 here today, you don't remember what that document

1 was, do you?

2 A. No.

3 Q. And in September of 2015 where it says
4 MC-30, which I think is the next page, please,
5 ma'am, item No. 2 from Mr. Heatley says that he
6 does not agree that it is our position the existing
7 marina ship store has more value as a residential
8 condo property than a commercial ship store.

9 Do you remember any discussions about
10 the value or the use of the ship store as either a
11 residential condo or commercial ship store back in
12 September of 2015?

13 A. No.

14 Q. But you did receive this email back in
15 2015, did you not?

16 A. I am on the email.

17 Q. Yes, ma'am. But do you recall
18 specifics about this email or any of the
19 discussions that are referenced herein or the
20 concerns you might have had back in that time
21 period?

22 A. No.

23 Q. All right. Do you remember any
24 discussions about any easement issues regarding the
25 ship store or any easement across the HOA property

1 or any of those issues back in 2015?

2 A. I don't remember when it was. I do
3 remember conversations about the easement.

4 Q. All right. And do you recall with whom
5 you were having -- those conversations took place?

6 A. No.

7 Q. If you'll go to Exhibit 10, please,
8 ma'am. And I'll represent to you you're still on
9 this email exchange from December of 2015. It's
10 got the LaureneHull1@gmail.com email address. Do
11 you see that in the middle of page MC-33 to Exhibit
12 10?

13 A. Yes.

14 Q. And it appears from this email that
15 someone was trying -- your attorney was trying to
16 be in touch with Sabal, S-A-B-A-L, and that your
17 calls were not being returned.

18 Do you recall what discussions the
19 board was having with Sabal by and through your
20 attorneys back in December of 2015? And if you
21 need to read the next page to refresh your memory
22 it's MC-34.

23 A. No.

24 Q. Do you have any information, as you sit
25 here today, about what Sabal was doing to market

1 the properties back in December of 2015? Do you
2 recall seeing any signs or listings or anything of
3 that nature?

4 A. No.

5 Q. Do you know -- and you were -- were you
6 with Dunes Properties at this time, back in 2015?

7 A. Yes.

8 Q. All right. Do you know if you looked
9 up the properties on MLS or anything of that
10 nature?

11 A. I remember looking up tax map numbers,
12 and --

13 Q. Okay.

14 A. But that was -- I don't know when that
15 was.

16 Q. Was that -- do you know if it was
17 before these entities were trying to market, or
18 were you looking them up just out of curiosity or
19 general research? Tell me about that.

20 A. It was to understand the ownership.

21 Q. Okay.

22 A. I do believe it was earlier than this.

23 Q. And to understand the ownership of the
24 ship store, captain's quarters and fuel docks or --

25 A. Um-hum. Yes.

1 Q. -- portions -- okay. And do you
2 know -- this email references a gentleman by the
3 name of Jamie Williams. Do you know who that is?

4 A. No.

5 Q. No discussions with Jamie Williams
6 about potential purchasing of the ship store or gas
7 docks; correct? You had no discussions.

8 A. No.

9 Q. Exhibit 11. You are on, I'll represent
10 to you, MC-40 of Exhibit 11. In the middle of the
11 page it shows the LaureneHull1@gmail.com email
12 address and references an attorney named Rick
13 Stringer about restricting the use of the ship
14 store and ensuring the usage of the restroom,
15 defining exterior maintenance.

16 Do you recall these emails regarding
17 the ship store and potentially amending the master
18 deed for restrictions as to the ship store back in
19 April of 2016?

20 And if you want to look at Exhibit 12
21 in conjunction with that to refresh your memory
22 that might help. It's a proposed amendment to the
23 master deed that I will represent to you -- I think
24 this was the attachment that Ms. Gretchen
25 Stringer-Robinson was referencing in her email from

1 April of 2016.

2 My question to you is: Do you remember
3 any discussions about amending the master deed to
4 restrict the use of the ship store in 2016?

5 A. No.

6 Q. And so you didn't help write this
7 amendment that's Exhibit 12, did you, ma'am?

8 A. No.

9 Q. And do you know if this amendment was
10 ever presented or voted upon by the council of
11 co-owners' members?

12 A. I don't recall.

13 Q. And it's not that you don't know -- you
14 just don't know whether or not you all presented it
15 to the membership; is that correct?

16 A. I don't recall.

17 Q. Exhibit No. 13 is from May of 2016.
18 It's an email from Michael Sutton. You're included
19 on it, and it discussed a conversation with Dolph
20 Farmer.

21 Does that refresh your recollection as
22 to when you first knew about Mr. Farmer's potential
23 purchase of the units that bring us here today?

24 A. Would you repeat the question?

25 Q. Yes, ma'am. Earlier today I asked you

1 if you recalled when Mr. Farmer purchased these
2 units, and you said you didn't remember. And I was
3 just trying to ask if this refreshes your memory as
4 to when he might have purchased these units.

5 A. I'm looking at the date on the email
6 and the conversation about Dolph Farmer, the
7 potential buyer, but I don't -- I don't know when
8 he bought them specifically.

9 Q. Okay. Do you know, did you have any
10 conversations with him personally in May of 2016
11 about his purchase?

12 A. Yes. No. I don't know when the date
13 was.

14 Q. Sure.

15 A. I had a conversation with him after he
16 had purchased it.

17 Q. Post purchase.

18 A. (Witness moves head up and down.)

19 Q. And you've already told me about that
20 conversation; correct?

21 A. Yes.

22 Q. I'm asking prior to purchase do you
23 recall any conversations with him personally?

24 A. No.

25 Q. Exhibit 14. This seems to be passing

1 on some contact information from Mr. Farmer in June
2 of 2016. But again, your one conversation with him
3 was post purchase; correct? And when I say him I'm
4 referring to Dolph Farmer.

5 A. I -- yes. I do think -- I do believe
6 so.

7 Q. Exhibit 15. If you will turn to that,
8 please, ma'am. It's an email from Roger Camp to
9 Tom Bessent, Ron McGuire, David Nauheim and Jeff
10 Heatley. Do you know if you were off the board by
11 November of 2016?

12 A. I'm not sure, but I think so.

13 Q. Do you know who took your place on the
14 board?

15 A. No.

16 (The proceedings were interrupted.)

17 BY MR. O'KELLEY:

18 Q. And we'll take a second. Turn to
19 Exhibit 16, please, for me. These are emails from
20 August of 2016 to you and Mr. Farmer from Mr. Camp.

21 Do you remember these discussions
22 regarding the objectives, as Mr. Camp calls it, and
23 what people can do to maintain Mariners Cay,
24 Marshview, slip owners and ship store? Do you
25 remember these emails and discussions back in

1 August of 2016?

2 A. Vaguely.

3 Q. Okay. Do you know if this email was
4 done just out of the blue by Mr. Camp or what the
5 genesis of this email was or what the discussions
6 were going on since you just said you vaguely
7 remember?

8 A. What I do remember is that the
9 homeowners' association had great concerns about
10 the business conducted in the ship store or what it
11 would become or couldn't become or -- because it's
12 in their neighborhood.

13 Q. They didn't want it to become -- and
14 this is an extreme example -- like a drive-through
15 restaurant or something of that nature. I mean,
16 they were concerned about the use; is that a fair
17 statement?

18 A. Yes.

19 Q. And was this Mr. Camp expressing his
20 concerns or did you ask him for this or he just
21 sent it to you all on his own or we would have to
22 ask him about it?

23 A. You would have to ask him.

24 Q. Okay. Fair enough. But there was
25 no -- at this time, to your knowledge, back in

1 August of 2016, there were no lawsuits pending
2 between the Mariners Cay Homeowners' Association
3 and/or Mr. Farmer and/or the council of co-owners,
4 to your knowledge; correct?

5 A. Not that I'm aware of.

6 Q. Exhibit 17. I'm going to kind of short
7 circuit it because there are a lot of emails to go
8 through. And if you're not on them I'm just going
9 to confirm that you're not on them and you don't
10 have any knowledge about them. Is that a fair
11 enough way to do it?

12 A. Fair enough.

13 Q. Okay. So Exhibit 17. This is an email
14 from November of 2016. And again, I think your
15 testimony was you weren't sure when you got off the
16 board; correct?

17 A. Correct.

18 Q. But this email from David Nauheim is to
19 Roger Camp, Ron McGuire, Tom Bessent and Jeff
20 Heatley. You are not on this email, correct,
21 ma'am?

22 A. Correct.

23 Q. So you don't have any knowledge about
24 what this email contains or the substance of it;
25 correct?

1 A. Correct.

2 Q. All right. Go to Exhibit No. 18.

3 Well, actually, one question for you about Exhibit
4 17. It describes an offer that was made to Dolph.
5 Is that the offer you've already testified about
6 here today, or do you know?

7 A. I don't know.

8 Q. Okay. We'll move to Exhibit 18. This
9 is from November of 2016 and, again, emails between
10 Ronald McGuire, Roger Camp, Thomas Bessent and
11 Jeffry Heatley, and it says joint offer is the
12 subject. Again, you don't have any testimony to
13 offer about this email, do you, ma'am?

14 A. No.

15 Q. Moving to Exhibit 19 which begins at
16 MC-84, MC-85, MC-86. Same question. This email is
17 between David Nauheim, Ronald McGuire, Tom Bessent
18 and Jeff Heatley. You don't have any testimony to
19 offer about Exhibit 19, do you, ma'am?

20 A. No.

21 Q. And I'll represent to you that Exhibit
22 20, the next exhibit, also is between Mr. McGuire,
23 Mr. Nauheim, Mr. Bessent and Mr. Heatley. You
24 don't have any testimony to give about that
25 exhibit, do you, ma'am?

1 A. No.

2 Q. Same questions about Exhibit 21. If I
3 tell you that the same email recipients and senders
4 are involved, no testimony about Exhibit 21;
5 correct?

6 A. Correct.

7 Q. And how about Exhibit 22 if I tell you
8 it's the same senders and recipients?

9 A. Correct.

10 Q. Same question as to 23. Same senders
11 and recipients. No testimony from you; correct?

12 A. Correct.

13 Q. And how about Exhibit 24? Same
14 question. Same senders and recipients. No
15 testimony from you; correct?

16 A. Correct.

17 Q. Same questions for 25, 26, 27, 28, 29,
18 30, 31, 32, 33 --

19 A. I would like to read them, though.

20 Q. -- 34. I'm just going to tell you --
21 we'll go up to 34. I'll represent to you you were
22 not on any of these emails, senders or recipients
23 from November through December of 2016. And if
24 you're not on them, you don't have any testimony to
25 offer as to Exhibits 25 through 34; correct?

1 A. Correct.

2 Q. Exhibit 35 I do want to ask you about.
3 This is a reserve study from December of 2016 from
4 Miller Dodson. Do you recall ever being involved
5 with asking -- or obtaining a reserve study while
6 you were on the board or after you were on the
7 board?

8 A. No.

9 Q. And do you know if during your time on
10 the board you were involved with any reserve study
11 or proposal for a reserve study at all?

12 A. No.

13 Q. Looking at Exhibit 36, I'll represent
14 to you this is the December 27, 2016 dockmaster's
15 report. Do you know if you've ever seen this
16 document before?

17 A. No.

18 Q. And do you know -- at the bottom it
19 says:

20 We have no way for boats to access the
21 waste pump-out system. There is no power and water
22 for the gas dock for Mr. Farmer. At some point
23 there will be a need to extend services to the end
24 of C dock if it is to be used for dockage.

25 Do you know when the waste pump-out

1 system first became inaccessible?

2 A. No.

3 Q. Do you know if you and your family use
4 the waste pump-out system?

5 A. We do not.

6 Q. Okay. Exhibit 37 I'll represent to you
7 I don't see your name on as a sender or recipient
8 from Exhibits 37, 38, 39, all the way through --
9 and I haven't finished, madam reporter. I'm just
10 trying to figure out my end date. All the way
11 through 78, okay?

12 If I represent to you that you're not
13 on those emails as a sender or recipient, you would
14 agree with me you have no testimony to offer as to
15 those issues; correct?

16 A. Correct.

17 Q. If you'll turn to Exhibits 79 and 80,
18 just quick question for you. You testified earlier
19 that Sentry does keep the list of owners updated;
20 correct?

21 In other words, you -- the board has
22 tasked Sentry with the management of the
23 association, and part of that -- part of those
24 duties include keeping a list of owners; correct?

25 A. Yes.

1 Q. Okay. And if you look at Exhibit 80,
2 does that look like a list of owners that you've
3 seen in the past for Mariners Cay?

4 A. Yes.

5 Q. Okay. And it's got it listed by
6 account number, name and property address; correct?

7 A. Yes.

8 Q. And do you know if -- is it safe to say
9 you were off the board in 2017? Would that be a
10 fair statement?

11 A. Yes.

12 Q. Okay. But you're just not sure when?
13 Maybe it was late 2016 or early 2017 when you got
14 off the board, if you recall.

15 A. Sometime in 2016 --

16 Q. Okay.

17 A. -- I do believe.

18 Q. Okay. So if the emails are from 2017,
19 you don't have any testimony to offer; correct?

20 A. Correct.

21 Q. So I'll represent to you Exhibits 81,
22 82, 83, 84, 85, 86, 87, 88, 89, 90 are all from
23 2017. So you have no testimony to offer as to
24 those issues; correct?

25 A. Correct.

1 Q. Exhibit 90, it says 7-15-17, walk the
2 docks with Ed. It's a series of notes. Do you
3 know whose notes these are, ma'am?

4 A. No.

5 Q. That's not your handwriting, is it?

6 A. No.

7 Q. And I'll represent to you Exhibits 91,
8 92, 93, 94, 95 -- excuse me -- 94 are all from
9 2017, emails that are referenced with those exhibit
10 numbers I just read into the record. You don't
11 have any testimony to offer as to those emails, do
12 you, ma'am?

13 A. No.

14 Q. Exhibit 95 is a dockmaster services
15 agreement. Have you ever reviewed this type of
16 document related to Folly River Management, LLC and
17 Mr. Geiger's services for Mariners Cay?

18 A. Not this document.

19 Q. But have you ever reviewed a dockmaster
20 services agreement for Mr. Geiger?

21 A. Yes.

22 Q. And the same question I had for you
23 earlier. Again, you weren't on the board in 2017,
24 so you have no testimony for any emails from 2017
25 which would be Exhibits 96, 97, 98, 99, 100 through

1 101, is that correct, ma'am?

2 A. Correct.

3 Q. Exhibit 102. It's board meeting
4 minutes from September of 2016. It's the next
5 page, MC-906. And it list board members Tom
6 Bessent, Jeff Heatley --

7 A. Oh. I don't know where you're at.

8 Q. I'm sorry. I'm on Exhibit 102.

9 A. Okay.

10 Q. Sorry about that. On the second page
11 of that, MC-906, and at the top it lists certain
12 board members: Tom Bessent, Jeff Heatley, David
13 Nauheim and Ron McGuire. It does not list you as a
14 board member at that time.

15 And in fact, under new business it says
16 3A, announcement of board positions. Tom Bessent
17 announce -- it says announce there. It's not me
18 being grammatically incorrect -- that Laurie Hull
19 has resigned from her position on the board. Do
20 you know if that refreshes your recollection as to
21 when you resigned?

22 A. I'm sure it was sometime around then.

23 Q. Okay. And what were the reasons for
24 resignation?

25 A. I was no longer able to serve on the

1 board.

2 Q. And was it just a conflict of time in
3 terms of your job duties or something of that
4 nature or --

5 A. Yes.

6 Q. No one asked you to resign or you
7 didn't resign because of some issue --

8 A. No.

9 Q. -- with other board members or anything
10 like that?

11 A. No.

12 Q. If you will, please turn to Exhibit
13 103. You mentioned earlier -- and I'll represent
14 to you this looks rather incomplete to me. It's
15 Exhibit 103, but it's only the first page, and
16 generally real estate contracts have more pages
17 than this.

18 Do you know if this was the agreement
19 or offer that you all presented to Mr. Farmer back
20 in October or September of 2016 to purchase the
21 boat slips C-21 and 22 along with the commercial
22 unit 2 and commercial unit 1? Does this look
23 familiar to you?

24 A. No.

25 Q. All right. Do you know if you prepared

1 this document, by any chance?

2 A. No.

3 Q. All right.

4 A. I don't know.

5 Q. It states purchase price, \$100,000, in
6 the middle of the page; correct?

7 A. Yes.

8 Q. All right. Earlier today I think you
9 testified you thought there was an \$80,000 purchase
10 price. Do you recall if this might change your
11 memory about the price that was offered?

12 A. I don't remember -- recall ever
13 offering a hundred thousand dollars.

14 Q. Okay. And do you know whose
15 handwritten notes are these?

16 A. No.

17 Q. The strike-through that says October
18 30th, and then it looks like co -- I can't
19 remember. Cooperate or something like that under
20 2B.

21 A. No.

22 Q. But that's not your handwriting, is it?

23 A. No, it is not.

24 Q. If you'll turn to the next page from
25 September of 2016. It's an email from Mr. Geiger,

1 and you're included on this email about supplying
2 electrical power and water to the gas docks for
3 Mr. Farmer. Do you recall this email or any
4 discussions about supplying electrical power and
5 water to the gas docks?

6 A. No.

7 Q. Do you recall receiving this email?

8 A. No.

9 MR. SESSOMS: Hamlin, was that 104?

10 MR. O'KELLEY: Yes, sir. Exhibit 104
11 dated September 16, 2016.

12 MR. SESSOMS: Thank you.

13 BY MR. O'KELLEY:

14 Q. So you could have received it? You
15 just don't have any independent recollection of it
16 as we sit here today; is that correct?

17 A. That's correct.

18 Q. Exhibit 105. It looks like handwritten
19 notes. It says 11-10-16 [sic]. Is that your
20 handwriting, Ms. Hull?

21 A. No.

22 Q. And then I have no questions to ask you
23 about 106 because it's from November of 2017, and
24 we've established you were not on the board at that
25 time; correct?

1 A. I don't know precisely when I was off
2 the board.

3 Q. All right. Because at the bottom of
4 the email there it says Friday, April 17, 2015.
5 It's -- you were on the board, it looks like,
6 because your name is on that email from Mr. Sutton.
7 The LaureneHull1@gmail is listed therein; correct?

8 A. Correct.

9 Q. And it states that apparently the bank
10 which holds the lien on the fuel dock and the ship
11 store has completed all foreclosure proceedings and
12 is now planning to have them sold at auction on May
13 5th; correct? I mean, did I read -- I read that
14 correctly; correct?

15 A. Correct.

16 Q. And then Exhibit 107, it seems like a
17 bunch of emails from May of 2016 on through an end
18 period that I'm not sure of. Sometime in the
19 summer of 2016. Do you recall any of these emails,
20 Ms. Hull, or who they're from?

21 Because the reason I'm asking you is we
22 don't have any recipient names or sender names on
23 these emails. This is the way they came to us.
24 And take your time to review them.

25 A. I don't recognize any of this.

1 Q. Okay. But you don't remember if you
2 received these or who they're from; correct?

3 A. I have no idea.

4 Q. If you'll turn to Exhibit 108, please,
5 ma'am. I asked you earlier about an appraisal, and
6 your name is in the middle of this page. Do you
7 see that, where it says Mariners Cay Marina Condo
8 LLC Council of Co-Owners, care of Ms. Laurie Hull,
9 Dunes Properties, 31 Center Street, Folly Beach --

10 A. Yes.

11 Q. -- 29439. And this report is dated
12 July 5 of 2016. Do you see that at the top of the
13 page? It says report date, July 5, 2016.

14 A. Yes.

15 Q. All right. Do you recall the
16 circumstances of you all obtaining this appraisal?

17 A. No.

18 Q. It states on the next page at MC-1284
19 on July 5, 2016:

20 Dear Ms. Hull: In accordance with your
21 request, we have performed an appraisal of the
22 above-referenced property.

23 Do you recall whether or not you
24 contacted anyone at Valbridge to have this
25 appraisal done?

1 A. No.

2 Q. And on the next page the appraisal is
3 signed by Christopher Donato. Do you know
4 Christopher Donato?

5 A. I vaguely remember.

6 Q. Okay. What do you vaguely remember
7 about the appraisal?

8 A. I remember that we did an appraisal. I
9 don't remember it being with Valbridge.

10 Q. Okay.

11 A. I don't remember it being then. I do
12 recognize Christopher Donato's name, just -- just a
13 recollection of.

14 Q. And do you recall seeing that
15 Mr. Donati gave a value conclusion of \$140,000 as
16 of June 29, 2016?

17 A. Yes.

18 Q. Okay. And do you know if you all did
19 anything as a result of -- and when I say you all
20 I'm talking about the board -- as a result of
21 receiving this appraiser -- appraiser's opinion
22 back in July of 2016?

23 A. I mean, I do recall an appraisal being
24 conducted. I don't remember if this is the
25 specific one. I assume maybe it is. And it was

1 just for the board to understand, have an
2 understanding of its value at the time.

3 Q. Was it in connection with any proposed
4 negotiations with Mr. Farmer about purchasing the
5 units, or do you know?

6 A. I don't recall.

7 Q. Did the -- you testified earlier you
8 don't recall any reserve studies. Do you recall
9 any other appraisals that were ordered by the board
10 during your time in office?

11 A. No.

12 Q. Is this the only one you remember?

13 A. I remember one appraisal.

14 Q. Okay. As to only the ship store or as
15 to anything else, is this the appraisal you
16 remember, if you can tell us today.

17 A. I think it is.

18 Q. Okay. And do you recall any
19 discussions -- if you'll turn with me, please, to
20 Exhibit 109. You are listed on page MC-1424, which
21 is two pages over from where you are now, as being
22 a potential cc on this letter from Pat Stringer.

23 Do you recall if this letter was ever
24 sent to Mr. Farmer from the Mariners Cay Council of
25 Co-Owners about the usage of his units and bathroom

1 access and things of that nature?

2 A. I do recall this letter being drafted
3 and sent.

4 Q. Okay. It was sent, you think.

5 A. I think it was sent.

6 Q. And was Mr. Stringer y'all's attorney
7 at the time? And when I say y'all, I mean the
8 board's. He represents himself to be in this
9 letter.

10 A. He did represent the board.

11 Q. Okay. Do you know if anything happened
12 as a result of this letter being sent?

13 A. No.

14 Q. Okay. You just don't know; correct?

15 A. I'm not even sure if it was sent.

16 Q. Okay.

17 A. I don't know. I don't recall. I
18 remember we asked Rick to help us. I don't
19 remember what he -- what all he did.

20 Q. If you will, please turn to Exhibit
21 113. This looks like an agenda of an annual
22 meeting for Mariners Cay from May 20th, 2017.
23 These aren't your notes, are they, ma'am?

24 A. No.

25 Q. And then if you'll turn to Exhibit 117.

1 Are these your notes, ma'am?

2 A. No.

3 Q. If you would, please turn with me to
4 Exhibit 126. This, I'll represent to you, states
5 it is a master's deed from Mikell Scarborough,
6 who's the master in equity for Charleston County,
7 dated September 25th, 2015. Have you ever seen
8 this deed before, ma'am?

9 A. No.

10 MR. O'KELLEY: Okay. Let me take
11 two --

12 THE WITNESS: Not that I recall.

13 MR. O'KELLEY: -- two seconds to
14 discuss one thing with Mr. Perrin, and we might be
15 finished.

16 THE WITNESS: Okay.

17 MR. O'KELLEY: With me, at least.

18 THE WITNESS: Okay.

19 (A recess transpired from 12:01 until
20 12:04.)

21 BY MR. O'KELLEY:

22 Q. Ms. Hull, have you ever seen Mr. Farmer
23 operating any commercial -- or engaged in any
24 commercial activities at the ship store during his
25 time of ownership?

1 A. No.

2 Q. All right. And do you have any
3 information about the lawsuit that is pending by
4 the racquet club HOA against Mr. Farmer and his
5 entities?

6 A. No. Just except that they're on
7 paperwork. They were named somewhere, I saw.

8 Q. Okay.

9 A. But no, I don't.

10 MR. O'KELLEY: Thank you, ma'am.
11 That's all I have.

12 MR. PERRIN: I'll be very quick. Do
13 you need a break?

14 THE WITNESS: No.

15 MR. PERRIN: My name is Whit Perrin.
16 I'm here on Dolph Farmer's behalf personally and
17 also for Mariners Cay.

18 EXAMINATION

19 BY MR. PERRIN:

20 Q. What was the condition of the ship
21 store prior to Mr. Farmer's purchase in 2016?

22 A. They had done little to it over years,
23 but I'm not really -- really couldn't say what -- I
24 don't know what you're asking me.

25 Q. Well, when you say they --

1 A. It needed painted. It needed -- the
2 air conditioning unit was struggling. It hadn't
3 been updated, upgraded. They hadn't done anything
4 with it. It had sat. They'd -- yeah. So...

5 Q. When you say they, do you mean the bank
6 owners or the California entity owners or any other
7 owner of the ship store at that time?

8 A. All or any of them.

9 Q. Okay. And did the HOA itself perform
10 any maintenance to the exterior or interior of the
11 ship store during your period of time on the board?

12 A. Yeah, I do believe they did.

13 Q. Do you know what they did?

14 A. Specifically, no. I don't remember
15 what they did, but...

16 Q. Do you have any idea of the general
17 area of work? And when I say that I mean the
18 difference between replacing an air conditioning
19 unit versus there's a deck board that's loose and
20 needs to be nailed down.

21 A. For the most part we felt that it was a
22 privately held property and that we didn't really
23 have the rights, without permission, to do anything
24 big; any big, large repairs.

25 Q. Since Mr. Farmer's purchase of the ship

1 store, has the condition of the exterior
2 dramatically improved from what it was?

3 A. Yes.

4 Q. As you sit here today, do you have any
5 knowledge as to what he has actually done to the
6 ship store in terms of repairs?

7 A. Not specifically.

8 Q. Was there any talk, prior to
9 Mr. Farmer's purchase, of potentially condemning
10 the ship store due to its condition of the pilings?

11 A. No.

12 Q. Did the HOA ever employ an engineer or
13 any other company to assess the actual structural
14 condition and exterior conditions of the ship
15 store?

16 A. I do believe they did.

17 Q. Do you know who that was?

18 A. No.

19 Q. Do you remember when it was?

20 A. No. The homeowners' association, not
21 the dock owners. The homeowners did some sort of a
22 inspection on it which is why I don't know much
23 about it.

24 Q. Did the homeowners' association have as
25 much access to the ship store as the dockominium

1 unit owners for the period of time between its
2 operation as a full commercial operation until its
3 purchase by Mr. Farmer?

4 A. The homeowners' association is a
5 separate entity and it's the members and the owners
6 of the condominiums, and there's eight or ten of
7 those people that also own boat slips. So they
8 have the rights to the marina as any member of the
9 Mariners Cay Council of Co-Owner membership.

10 Q. Do you know if anyone on the board of
11 the racquet and yacht club HOA has also or
12 currently also serves as a member of the board of
13 the dockominium HOA?

14 A. Yes.

15 Q. Do you know who that is?

16 A. Well, maybe not now. I don't know when
17 you're talking about, when you're -- I know that
18 Ron McGuire was on the marina board. I do believe
19 at the same time he was on the homeowners' board.
20 Or maybe he'd stepped off the homeowners' board.
21 But many of -- let's see. So Ron McGuire was
22 definitely on both boards at one time or another.
23 I don't know if they overlapped. I think maybe
24 they were right up against each other. As soon as
25 he went off the homeowners' board he stepped on

1 ours.

2 Q. Do you know if there's any restriction,
3 whether it be with the racquet and yacht club or
4 the dockominium HOA board membership, for allowing
5 you to contemporaneously serve on both boards?

6 A. I don't. I don't know of any.

7 Q. Do you have any knowledge of anything
8 related to Mr. Farmer and the key fob security box
9 that was located below the ship store?

10 A. I heard that he ripped it out and threw
11 it over the rail and onto the sidewalk.

12 Q. Who did you hear that from?

13 A. One of the boat owners. One of the
14 slip owners. I don't know who. Don't recall who.

15 Q. Is there currently a security measure
16 for access to the docks that you're aware of?

17 A. Yes. There's a push-button code door
18 on the door to the marina.

19 Q. To your knowledge, prior to the key fob
20 access, was it a push-button access to get onto the
21 docks?

22 A. Yeah, I think so. I think we had both
23 for a while.

24 Q. And as a dock owner, do you have any
25 knowledge of why Mr. Farmer was personally named in

1 this lawsuit as opposed to his entities?

2 A. No.

3 MR. PERRIN: That's all I have for you.

4 Thank you.

5 THE WITNESS: Thank you.

6 MR. MONTGOMERY: Maybe a real quick
7 question. Ms. Hull, good morning. Or good
8 afternoon now. My name is Andrew Montgomery. I'm
9 here on behalf of Emerald McDonough Road Holdings,
10 one of the former owners of the property who
11 conveyed it to Mr. Farmer.

12 EXAMINATION

13 BY MR. MONTGOMERY:

14 Q. I believe you testified earlier you
15 don't recall any of your interaction with Sabal
16 Financial? Like any specific discussions about the
17 property, about the ship store or fuel docks?

18 A. No.

19 Q. Do you recall --

20 A. I recall -- I recall making phone calls
21 at some point to a person. I can't remember her
22 name. It was a woman. Trying to find out if their
23 intent was to sell it.

24 Q. And no recollection of any specific
25 discussions with Emerald McDonough Road Holdings or

1 Emerald Portfolio?

2 A. I don't recall specifically who -- who
3 the -- who that was.

4 Q. Sure.

5 A. If I heard the name I might remember
6 her. But I did talk to a woman a couple of times.
7 I just don't remember which one.

8 Q. Do you recall if Sabal Financial or
9 Emerald McDonough and Emerald Portfolio were ever
10 assessed dues during their time of ownership of the
11 property?

12 A. I don't know.

13 Q. Okay. Just for clarification, earlier
14 there was some talk about the foreclosures of the
15 docks and foreclosures of the ship store and the
16 fuel docks separate from the other docks. Was it
17 your understanding that there were two separate
18 foreclosures over -- perhaps a couple years apart?

19 A. No. My recollection is that there was
20 one foreclosure, and that's when the slips -- the
21 bulk of the -- the remaining slips fell back to the
22 bank. If there was a foreclosure on the rest of
23 it, I don't recall that.

24 Q. Okay. Do you know what bank that was?

25 A. I don't know. They listed them for

1 sale. The bank did. So whoever that was.

2 Q. Sure.

3 A. I don't recall.

4 MR. MONTGOMERY: No further questions.
5 Thank you very much.

6 MR. BARR: No questions from me.

7 MR. SESSOMS: No questions.

8 MR. O'KELLEY: You can read and sign it
9 to correct. If you want to do that you've got to
10 give her your address, and she'll send you
11 everything to look at.

12 THE WITNESS: Okay.

13 (The witness, after having been advised
14 of her right to read and sign this transcript, does
15 not waive that right.)

16 (The deposition was concluded at
17 12:15 PM.)

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SIGNATURE OF DEPONENT

DEPONENT: LAURENE A. HULL
DEPOSITION DATE: January 30, 2019
REPORTER: Sandra K. Bjerke
AWR JOB NO. 24403
CASE CAPTION: Neighbors vs. Mariners Cay

(Please return both Signature of Deponent pages.)

I, the undersigned, LAURENE A. HULL, do
hereby certify that I have read the foregoing
deposition and find it to be a true and accurate
transcription of my testimony, with the following
corrections, if any:

PAGE	LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: January 30, 2019
REPORTER: Sandra K. Bjerke
AWR JOB NO. 24403
CASE CAPTION: Neighbors vs. Mariners Cay

PAGE	LINE	CHANGE	REASON

LAURENE A. HULL Date

I, Sandra K. Bjerke, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent page within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



Sandra K. Bjerke

Sandra K. Bjerke, RMR, RDR, CRR
My Commission Expires
June 18, 2020

CERTIFICATE OF REPORTER

I, Sandra K. Bjerke, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate,
and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 6th day of February,
2019 at Charleston, Charleston County, South
Carolina.



Sandra K. Bjerke

Sandra K. Bjerke, RMR, RDR, CRR
My Commission Expires
June 18, 2020

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January 15, 2019

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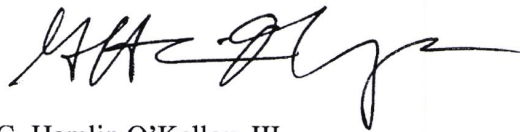
Re: *Alben D. Neighbors v Mariners Cay Marina Condo, LLC et al.*,
C/A No.: 2017-CP-10-3099
Client File No.: 1219.0019

Dear Ms. Hull:

Enclosed for service upon you please find the eighth amended deposition notice and subpoena for the taking of your deposition in the above-referenced matter.

Should you have any questions, feel free to contact our office at your convenience. With warm regards, I remain

Yours very truly,



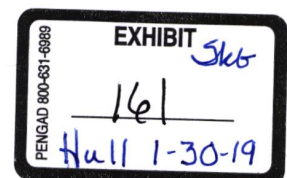
G. Hamlin O'Kelley, III

GHOIII/act

Enclosures

Cc: (w/ Encl. via email only)
Capers G. Barr, IV, Esq.
David C. Cleveland, Esq.
Bobby Sessoms, Jr., Esq.
Kevin W. Mims, Esq.
Whidbee S. Perrin, Esq.
Andrew W. Montgomery, Esq.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Alben D. Neighbors and Dan G. Nekola,) CASE NO. 2017-CP-10-03099

on behalf of themselves and others)
similarly situated, and Mariner's Cay)
Marina Council of Co-Owners, Inc.,)

Plaintiffs,)

v.)

**EIGHTH AMENDED NOTICE OF
DEPOSITION
OF
LAURIE HULL**

Mariners Cay Marina Condo, LLC,)
Mariners Cay Fuel Dock, LLC, George A.)
Farmer, and South Atlantic Bank,)

Defendants.)

Mariners Cay Marina Condo, LLC and)
Mariners Cay Fuel Dock, LLC,)

Third-Party Plaintiffs,)

v.)

Emerald McDonough Road Holdings,)
LLC,)

Third-Party Defendant.)

YOU WILL PLEASE TAKE NOTICE that at **10:00 a.m.** on **Wednesday, January 30, 2019**, at Clawson and Staubes, 126 Seven Farms Drive, Suite 200, Charleston, South Carolina, the Attorneys for the Defendants, Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer and South Atlantic Bank and Third Party Plaintiffs Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, will take the deposition of **Laurie Hull**, on oral examination, pursuant to Rule 30, SCRCF, before a Notary Public, or before some other

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officer authorized by law to take depositions, said deposition to continue from day to day until completed.

You are invited to attend and take such part as is fit and proper.

LUZURIAGA MIMS, LLP

By: Kevin W. Mims *ESQ*
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*Attorneys for the Defendants Mariners Cay
Marina Condo, LLC and George A. Farmer and
the Defendant/Third-Party Plaintiff Mariners Cay
Marina Condo, LLC*

BUIST BYARS & TAYLOR, LLC

By: G. Hamlin O'Kelley
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*Attorneys for the Defendant/Third-Party Plaintiffs
Mariners Cay Marina Condo, LLC, Mariners Cay
Fuel Dock, LLC and South Atlantic Bank*

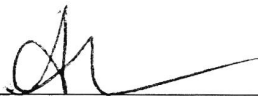
Mount Pleasant, South Carolina
January 15, 2019

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CERTIFICATE OF MAILING

I hereby certify that on January 15, 2019, I mailed, postage prepaid, to counsel of record in this matter via electronic mail only, as follows:

Capers G. Barr, IV, Esq. Barr, Unger & McIntosh, LLC 11 Broad Street Charleston, SC 29401 <i>Attorney for the Plaintiffs</i>	Andrew W. Montgomery, Esq. Rogers Townsend & Thomas PC 1221 Main Street, 14 th Floor (29210) PO Box 100200 Columbia, SC 29202 <i>Attorneys for the Defendant Emerald McDonough Road Holdings, LLC</i>
David C. Cleveland, Esq. Bobby Sessoms, Jr., Esq. Clawson and Staubes LLC 126 Seven Farms Drive, Suite 200 Charleston, SC 29492-8144 <i>Attorney for the Plaintiffs</i>	



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

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STATE OF SOUTH CAROLINA

ISSUED BY THE Common Pleas COURT IN THE COUNTY OF Charleston

Alben D. Neighbors and Dan Nekola, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Mariners Cay Marina Condo, LLC et al.,
Defendant

Case Number: 2017-CP-10-3099

Pending in Charleston County

TO: VIA ELECTRONIC MAIL AND US MAIL
Ms. Laurie Hull
c/o Joseph Wilson, Esq.
Pierce Sloan Wilson Kennedy & Early
321 East Bay Street
Charleston, SC 29401

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION
Clawson and Staubes LLP

126 Seven Farms Drive, Suite 200
Charleston, SC 29492

DATE AND TIME Wednesday, January 30, 2019,
10:00 AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

PLACE

DATE AND TIME , AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

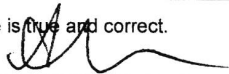
PROOF OF SERVICE

SERVED	DATE January 15, 2019	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$
	PLACE	
SERVED ON Laurie Hull		MANNER OF SERVICE Electronic Mail and US Mail
SERVED BY Amanda C. Taylor		TITLE Paralegal to G. Hamlin O'Kelley, III

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on January 15, 2019


SIGNATURE OF SERVER

652 Coleman Blvd., Suite 200, Mt. Pleasant, SC 29464
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

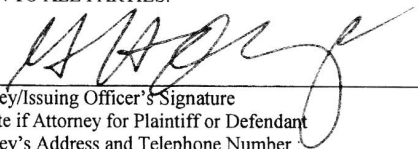
(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



January 15, 2019

G. Hamlin O'Kelley, III

Attorney/Issuing Officer's Signature

Date

Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number :

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Pro Se Litigant's Name, Address and Telephone Number :

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
Elizabeth Heatley, Neal B. McCann, Jr., et al.,
Plaintiffs,
vs. CASE NO. 2017-CP-10-3099
Mariners Cay Marina Condo, LLC, et al.,
Defendants.

Hearing (WebEx) before the Honorable
Mikell R. Scarborough, reported by Christine A.
Smith, Court Reporter and Notary Public, at
10:02 a.m. on at April 5, 2021 100 Broad Street,
Courtroom 2A, Charleston, South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
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P R O C E E D I N G S

THE COURT: Good morning, folks.

MR. O'KELLEY: Good morning, Judge.

THE COURT: Very good. I hope everybody can hear me and hopefully be able to see me.

This morning we've got two separates names for this case, but they've got the same case number. I'm looking at the fourth amended complaint that reads Elizabeth Heatley, Neal McCann, David Monk, Thomas Bessent, and the Mariners Cay Marina Council of Co-Owners as Plaintiffs versus Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, George Farmer, and South Atlantic Bank.

It must have originally been filed -- I think that's what happens at the clerk's office. It's the name when it was originally filed -- Alben Neighbors, is what it said, verus Mariners Cay. Anyway, the case number is 2017-CP-10-3099.

We had a status back in January. I set the matter today for summary judgment, and that's what we're going to proceed with this morning. I have received both Motions for Summary Judgment from Plaintiffs and Defendants as well as memoranda and supporting documentation to that effect.

1 I did receive from Mr. Barr, Capers Barr, some
2 objection, so I'll get into that in just a second.
3 Mr. Barr, you represent the Plaintiffs in this case,
4 correct?

5 MR. BARR: I do, Your Honor.

6 THE COURT: And we've got some of those
7 Plaintiffs on with us today in the WebEx hearing?

8 MR. BARR: Yes, we do, Your Honor, as well as
9 some of the members of the board of the council.

10 THE COURT: Very good. And then Mr. O'Kelley
11 is present for the Defendants, and I believe also
12 Mr. Perrin. Is he for the Defendants as well?

13 MR. O'KELLEY: That's correct, Your Honor. We
14 represent all of the Defendants, and Mr. Perrin and
15 Mr. Mims represent Mr. Farmer individually in this
16 matter.

17 THE COURT: Thank you for keeping that
18 straight for me.

19 MR. O'KELLEY: And Your Honor, to answer
20 another question: This case was originally filed as
21 a class action. Mr. Neighbors and a few other people
22 have since sold their dockominiums so there have been
23 some party substitutions to answer your question
24 about who's on first. Ms. Heatley got substituted
25 and a few other folks got substituted for

1 Mr. Neighbors and Mr. Nekola by consent.

2 THE COURT: Very good. That clears that up
3 for me.

4 MR. BARR: Judge, David Cleveland is also
5 making an appearance. He is representing the
6 Plaintiffs on a counterclaim, which is not in your
7 Court. The counterclaims were not referred.

8 THE COURT: Okay. Very good. I do see
9 Mr. Cleveland's name on here, but it sounds like he's
10 not going to participate this morning.

11 MR. O'KELLEY: Your Honor, I think Mr. Farmer
12 is also on, but he's on mute. I think he's the 843
13 number you see on the screen.

14 THE COURT: Very good. Glad to have him. So
15 we've got these cross claims for summary judgment.
16 Let me start.

17 I know I set them up, and I think the
18 Defendants filed first and then supplemented their
19 record with the memorandum on Friday of last week.
20 Mr. Barr, I've got some type of objection from you.
21 Did you want to put that on the record before we
22 proceed this morning?

23 MR. BARR: Yes, Your Honor. At the status
24 conference -- I know it was not in the record, but I
25 expressed the intent of the Plaintiffs to file a

1 Motion for Summary Judgment. I'm not suggesting they
2 were barred by it, but Your Honor set the 12th of
3 everywhere I think as the deadline -- the 12th of
4 March is the deadline for filing the motions.

5 My friend, Mr. O'Kelley, filed a very cursory
6 Motion for Summary Judgment on March 9th without any
7 supporting authorities or affidavits or recitations
8 to deposition testimony or even any legal authority.
9 Then I filed mine on March 12th supported with
10 arguments of law and supporting evidence.

11 Then on Friday, Mr. O'Kelley filed on behalf
12 of the Defendants' motion -- not in reply to the
13 Plaintiffs' motion but in support of his own -- a
14 memorandum as well as recitals to deposition
15 testimony. So my intention is that the Friday
16 filings in support of the Defendants' Motion for
17 Summary Judgment are improper because they should
18 have been served on the Plaintiff at least ten days
19 before today so that we would have the opportunity to
20 respond to them.

21 I don't dispute what was filed on Friday. It
22 may be considered by the Court in reply to our Motion
23 for Summary Judgment to the extent that Mr. O'Kelley
24 goes first in the arguments today because he filed
25 first, object to any reference to any of the

1 supporting authorities he filed because they're
2 not -- the motion is not properly supported by an
3 affidavit or deposition recitals, that is to say the
4 Defendant's motion.

5 THE COURT: Okay. So your position would be
6 that that could be used in defense of your motion but
7 not in support of their motion; is that a fair
8 statement?

9 MR. BARR: That is correct, Your Honor. My
10 friend did nothing improper, but filing that cursory
11 filing before mine, the Defendants take the position
12 that they should go first in the arguments today. I
13 don't dispute that that might not be the way to
14 proceed. All I'm saying is: If the Defendants go
15 first, I object to any reference whatsoever or any
16 reliance whatsoever on this Court on those improperly
17 and untimely filed filings last Friday.

18 THE COURT: Okay. Mr. O'Kelley, do you want
19 to be heard on that?

20 MR. O'KELLEY: Absolutely, Your Honor. We
21 filed our motion, and we intended, as you know from
22 the status conference, to file a Motion for Summary
23 Judgment as well. You said you had until March 12th
24 for the parties to file the motion. So on March 9th
25 we filed a motion, and contrary to Mr. Barr's

1 assertion, we reference statutes, we represent the
2 Horizontal Property Act, we represented the case that
3 Your Honor heard back in 2013 in which Your Honor
4 granted a judgment and a deed.

5 In 2015 the case of Emerald Road Portfolio
6 versus Tiger River Capital, Case No. 2013-CP-10-0850,
7 we further evidenced our motion based on dues paid,
8 and then we say this, Your Honor, which put the whole
9 world on notice. Lastly, the motion will be based
10 upon testimony of board members and owners in
11 Mariners Cay.

12 None of this comes as a surprise to Mr. Barr
13 or his clients. If he wants further time to rebut
14 our evidence, that's fine. If he needs to go through
15 depositions, that's fine, but Your Honor this is the
16 practice that been in your Court and in many courts
17 for years.

18 Depositions don't have to be filed with the
19 actual motion, and affidavits in response have
20 two days before the hearing, but this testimony that
21 we specifically said we would be relying on today,
22 it's board testimony. It's testimony of named
23 Plaintiffs. It's testimony of the dockmaster out at
24 Masters Cay. None of this is a surprise. None of it
25 is prejudicial, and frankly, Your Honor gets to hear

1 it over the objection of Mr. Barr.

2 THE COURT: Mr. Barr?

3 MR. O'KELLEY: And we did file our motion
4 first, and we think we should be heard first as well.

5 THE COURT: Mr. Barr?

6 MR. BARR: Your Honor, I've made my point for
7 the record. I'll defer to Your Honor.

8 THE COURT: All right. What prejudice would
9 you suffer in the event they're allowed to review
10 these records, to utilize these records in support of
11 their motion? That would be my first question.

12 MR. BARR: As Your Honor may recall from your
13 days in the pit here, typically when another party
14 deposes your witnesses, you don't ask questions. You
15 let the other party discover what they want, and
16 maybe not what they can find.

17 So the answer to your question is that had we
18 had the deposition testimony as identified by
19 Mr. O'Kelley on Friday been timely identified, then I
20 would have had the opportunity to prepare -- to
21 obtain affidavits from these witnesses further
22 clarifying this testimony. So that's a very simple
23 answer.

24 THE COURT: All right.

25 MR. O'KELLEY: Your Honor, just briefly in

1 reply to that? There's a legion of case files out
2 there that says an affidavit can't come in and change
3 testimony. These depositions that I've cited, many
4 of which were from 2018 -- we let Mr. Barr and the
5 Court know that we would be relying on them today.

6 So to say that he would have had more time is
7 sort of a bit of a red herring. The deposition
8 testimony has been in the case for almost three years
9 now, and there was plenty of time to get affidavits
10 explaining what they meant. They can't explain what
11 they meant because they told the truth and swore to
12 tell the truth.

13 Bringing in some affidavit now to change it
14 would be barred under the rules of evidence and under
15 case law. So I understand Mr. Barr's objection, but
16 I think it's spurious at best.

17 THE COURT: What I'm going to do -- the issue
18 before the Court at summary judgment is to determine
19 whether or not there's strictly a question of law and
20 that there's no genuine issue of material fact.

21 In preparing for this morning's hearing I
22 reviewed the records and I've got some questions of
23 fact. I just need to find out whether or not they
24 are disputed and genuine. So I'm going to have those
25 questions for you based upon that record. I did note

1 that those depositions were relatively old, but to
2 the extent that -- Mr. Barr, you would seek to
3 address some of the questions of fact and/or
4 supplement your record? I'm going to give you
5 additional time to do that.

6 I'm not going to foreclose the Defendants from
7 utilizing or referencing the deposition testimony.
8 So that would be my ruling as to the allowance or the
9 admissibility of the deposition testimony in support
10 of the Defendants' Motion for Summary Judgment. I'll
11 be glad to give you an additional ten days to
12 supplement the record to the extent that it addresses
13 those issues that they bring about, but like I said,
14 I did have some questions myself just looking at the
15 facts. You'll hear some of those questions as we go
16 forward.

17 Anything further before we address the record?

18 MR. BARR: No, Your Honor. Thank you.

19 THE COURT: Very good. Mr. O'Kelley, you did
20 file first. I'm going to allow you to go first. All
21 right?

22 MR. O'KELLEY: Thank you, Your Honor. Again,
23 for the record I'm here with Mr. Perrin today. He
24 and Kevin Mims and I do represent the Defendants.
25 Mr. Mims and Mr. Perrin are here for Mr. Farmer

1 individually. His name is George Farmer, but you'll
2 see in the record that he's often referred to as
3 Dolph, D-O-L-P-H.

4 If Your Honor's read the record, then you're
5 familiar that this is a dockominium, which is sort of
6 a strange concept, but it came about in the 2000s at
7 Folly Beach.

8 There are 90 boat slips there and a building.
9 That building is often known as the ship store. It's
10 where Mr. Farmer and his family are actually living
11 right now. The Mariners Cay Marina Condo, LLC owns
12 the ship store, and the Mariners Cay Fuel Dock, LLC
13 owns two dock slips which was where the fuel dock was
14 for the marina.

15 Your Honor, as I stated earlier, my client
16 obtained title as a result of a foreclosure which
17 Your Honor conducted in the First South Bank versus
18 Tiger River case. Again, that's 2013-CP-10-0850.

19 Your Honor granted a master's deed in that
20 matter. In that case the Mariners Cay Marina Council
21 of Co-Owners, which is a named Plaintiff here, filed
22 an answer and made an appearance. They did not file
23 any objections. They did not say, Wait a minute.
24 This sale should be stopped. You can't foreclose on
25 a common element. Absolutely nothing of that nature.

1 At the time we have testimony that the board
2 actually thought about purchasing the ship store and
3 fuel docks as a result of the foreclosure sale. My
4 clients, the two LLCs, got their title back in 2016.

5 They went through a loan closing. That's why
6 South Atlantic Bank is named. Mark Weeks' law firm
7 did the closing. The Plaintiff has since alleged in
8 2017 that the amended master's deed, Your Honor,
9 which has been of record since 2007 was improperly
10 changed to D Condo. Again, that's a term of art --
11 this is just Hamlin O'Kelley calling it that --
12 D Condo the Ship Store in the master's deed.

13 My clients, Your Honor, are subject to the
14 Horizontal Property Act, and unfortunately our
15 Supreme Court is very quiet on interpretations of the
16 Horizontal Property Act. Section 27-31-60 of the Act
17 has basically no case law. There is one reference,
18 Your Honor, in an unpublished opinion out of a
19 decision you made in the case of River's Point Road
20 Horizontal Property Regime versus Palms Property.
21 It's unpublished and it's per curiam, and all it says
22 is -- it quotes the Horizontal Property Act that
23 says, Percentage shall have a permanent character and
24 shall not be altered without the acquiescence of
25 co-owners representing all of the apartments of the

1 property.

2 So the issue for us, Your Honor, is what is
3 acquiescence? The Supreme Court has not defined it.
4 The Court of Appeals has not defined it, but our
5 friends in Black's Law Dictionary defined it as,
6 Conduct recognizing the existence of a transaction
7 and intended in some extent at least to carry the
8 transaction permitted to be carried into effect.
9 That's the sixth edition of Black's Law Dictionary
10 from 1990.

11 So Your Honor, we're left to wonder, did in
12 fact our friends at Mariners Cay Council of
13 Co-Owners -- did the other owners out there, the
14 other owners of all of the apartments actually
15 acquiesce? We say they have, Your Honor.

16 The testimony that Your Honor is going to look
17 at or has already seen is that they took dues from
18 Mr. Farmer's LLCs. They accepted his payments. They
19 filed liens against the property. They authorized
20 the property to actually have the liens be lifted
21 once payments were caught up for dues. They don't
22 have any plans to refund that money to Mr. Farmer.

23 They have acknowledged him as an owner in the
24 deposition testimony, then they actually released the
25 liens. During the time Mr. Farmer's entities owned

1 these properties, the board actually went out and got
2 an appraisal to purchase the property and made him an
3 offer of \$100,000, so why would you offer to purchase
4 something that you claim you already own, Your Honor?

5 The ship store has not been in operation since
6 2011. We think because of the acquiescence shown in
7 the case and judicial estoppel arguments and again
8 with other arguments about estoppel, laches, and
9 waivers, well, the time has gone by. They can't come
10 here now today with an inconsistent position from
11 their position in the foreclosure case, Your Honor.

12 We think judicial estoppel does apply here
13 based on the fact that they made the answer in the
14 original foreclosure. They did nothing to protect
15 their interest, and now, there's a different position
16 which they are trying to take to use to their
17 advantage in another action. Their positions are
18 totally inconsistent.

19 Your Honor, I'm happy to send you the cases of
20 Cothran versus Brown or Federal Credit Union versus
21 Bailey, both of which are cited in our memo. There
22 are five factors that must be complied with, two
23 inconsistent positions taken by the same parties or
24 parties in privity. Well, this is the same party.

25 The positions must take in the same or related

1 proceedings involving the same party or parties in
2 privity with each other.

3 So this is a related proceeding and it
4 concerns the same dirt, the same dockominiums, and
5 the same ship store. The party obtaining the
6 position must have been successful in maintaining or
7 received a benefit. Well, they were successful.
8 They filed an answer. Their interest was protected,
9 and they got a dues paying member of the association.

10 The inconsistency must be part of an
11 intentional effort to mislead the Court. I hate to
12 say this, but they are misleading the Court. They
13 can't say that we -- I'm getting a lot of feedback.
14 I'm sorry about that, Your Honor. It is an
15 intentional effort to mislead the Court.

16 What they did in the earlier case is say,
17 Protect our interest. Now in this case they say,
18 It's ours to begin with. They can't have it both
19 ways, and those positions are totally inconsistent.

20 We think for the reasons of the statute,
21 27-31-60 and reason through judicial estoppel, that
22 they should be estopped from having any sort of
23 ownership interest in this dirt and in the
24 dockominiums and in the ship store.

25 Your Honor, if you are going to actually grant

1 their Motion for Summary Judgment, Mr. Farmer and his
2 family could be turned out and rendered homeless by
3 this decision.

4 I'm happy to answer any questions the Court
5 may have, but our position is clear in our
6 memorandum. I know Your Honor said there were some
7 factual issues you wanted to bring up, and I'm happy
8 to answer questions, Your Honor.

9 THE COURT: Let me ask you directly about the
10 second prong of the judicial estoppel, the one about
11 positions taken or in same or related proceedings.
12 How is this proceeding related to the prior
13 proceeding?

14 MR. O'KELLEY: The prior proceeding affected
15 the title to the dirt. It actually transferred via
16 foreclosure of the title to the condominiums. This
17 case, Your Honor, is directly related in that
18 Mr. Barr's clients have come in seeking a declaratory
19 judgment as to the title. It's exactly related,
20 Your Honor. They're both matters affecting title to
21 real estate.

22 THE COURT: All right. You keep making
23 reference to dirt. I'm going to try to get you to
24 stop doing that, because once you've created a
25 Horizontal Property Regime you don't have dirt.

1 MR. O'KELLEY: Correct, Your Honor. I'm sorry
2 for saying that, but title to the condos is what I
3 should have been saying, Your Honor.

4 THE COURT: There you go. In fact --

5 MR. O'KELLEY: Title to the dockominium and to
6 the ship store which is a separate condo after they
7 amended the master's deed, or attempted to amend the
8 master's deed. Your Honor, I just want to say this:
9 We're really all here victims
10 of some bad lawyering because when everyone -- when
11 we amend master's deeds to change common elements we
12 actually get every unit owner to sign off and every
13 lender to sign off. That's why it's almost
14 impossible to do. Because we don't know what
15 acquiescence means, if we had signatures from
16 everyone we wouldn't be here, but unfortunately when
17 they amended the master's deed back in 2007 they
18 didn't do it that way.

19 THE COURT: I was going to take you back
20 there. So let's go back to when the master's deed
21 was amended. Tell me what your position is relative
22 to that, and have you looked into that? Do you
23 recall why that was going on?

24 MR. O'KELLEY: Yes, sir. The original
25 developer was still in control. It was a declarant

1 control period not yet expired, so the declarant at
2 the time -- and Mr. Barr thankfully submitted both
3 sets of the master's deed so I didn't have to, but
4 there before you, the original declarant was still in
5 charge. He had not reached the end of the declarant
6 control period, and he and his lawyer amended. There
7 were powers of attorney they had gotten from the then
8 unit owners saying they were authorizing him to
9 amend, but unfortunately I don't know that that
10 counts as acquiescence or not.

11 The problem was that he just did it
12 unilaterally, Your Honor, back in 2007 without having
13 everyone sign off.

14 THE COURT: I understand that. Is it your
15 position that he still had the control and the
16 authority to do that?

17 MR. O'KELLEY: He had the control and the
18 authority. The problem is the statute -- the one
19 we've cited about acquiescence states specifically
20 that you have to have all unit owners acquiesce. It
21 doesn't tell us how that acquiescence is supposed to
22 work. What it says is that the common elements are
23 permanent in character and shall not be altered
24 without the acquiescence of the co-owners
25 representing all apartments of the property.

1 So I think they were just going fast and loose
2 and just did it this way hoping it would work, not
3 realizing that anyone would challenge it some ten
4 years later. So Your Honor, again, we say that they
5 missed their time to challenge it because they
6 started taking payments from Mr. Farmer's entities.
7 They didn't object at the foreclosure hearing. It's
8 all the arguments we just made in the last
9 20 minutes.

10 THE COURT: I'm with you. Okay. All right.
11 Very good. Mr. Barr, let me start there with your
12 argument if you would. Tell me why that master's --
13 the amended master's deed is not effective if he, in
14 fact, got some authorization from the owners, and
15 would it be effective as to all unit owners who are
16 subsequent purchasers of the property either from the
17 declarant or downstream purchasers.

18 MR. BARR: Thank you, Your Honor. If I may
19 start off with a few comments? As you know, I'm a
20 bit long in the tooth now. I always enjoy being
21 educated by my young colleagues. Mr. O'Kelley has
22 done a superb job by first preempting the arguments
23 by filing first. I don't criticize that. That was a
24 shrewd tactic.

25 It's somewhat oversimplifying the law but not

1 the facts. The facts are quite simple. What
2 Mr. O'Kelley overlooks is Code Section 27-31-70,
3 which is the code section immediately following the
4 code section that he's beating the drum about which
5 uses the word acquiescence. 27-31-70 is not wrong.
6 It says, The common elements, both general and
7 limited shall remain undivided and shall not be the
8 subject of an action for partition or division of the
9 ownership.

10 Any covenant to the contrary shall be void.
11 So the very simple points are these -- are the
12 linchpin of this case. I represent four individuals
13 and the council of co-owners. What Mr. O'Kelley
14 failed to point out is that in that foreclosure
15 action, although the council of co-owners was a
16 party, these four plaintiffs were not.

17 Now, we're talking about interests in real
18 property, Judge. The Horizontal Property is a real
19 property interest. There is no -- the council has
20 cited no authority for the proposition that by naming
21 a council of co-owners that either they're the agent
22 of the owners or they're not, or that that somehow
23 binds these individual owners.

24 So perhaps Your Honor might find, although you
25 shouldn't, that there was some acquiescence on behalf

1 of the board of directors back whenever it was that
2 this foreclosure occurred. These four Plaintiffs in
3 the case, Elizabeth Heatley, Neal McCann, David Monk,
4 and Tom Bessent, were not parties to that. You have
5 Elizabeth Heatley's affidavit as Exhibit A in support
6 of our motion. So there's no getting around the
7 principal of Code Section 27-31-70 which says that
8 these common elements cannot be divided or alienated
9 and covenant to the contrary of a shell being void.

10 So what happened here, and this is undisputed,
11 is that the four Plaintiffs in this case bought slips
12 under the original master's deed, the 2006 master's
13 deed. 34 additional boat slips were sold before this
14 master's deed was amended. So there are 38 title
15 interests vested in these common elements in owners
16 who bought under the first master's deed.

17 Mr. O'Kelley candidly admits that the 2007
18 master's deed was amended without notice or the vote
19 or acquiescence at the time of any of those 38 slip
20 owners. As Ms. Heatley's affidavit points out -- she
21 didn't know and I don't think -- certainly the four
22 Plaintiffs did not know that these title interests
23 have been divested until Mr. Farmer purchased these
24 units in 2015 or 2016.

25 MR. O'KELLEY: Actually --

1 MR. BARR: And immediately then ousted the
2 dockmaster from the ship store building. That ship
3 store building, Judge, consists of two commercial
4 units which were original and are now, we suggest,
5 common elements and included in that ship store
6 building are men's and women's restroom facilities
7 with showers, each labeled men's and women's. The
8 men's has urinals.

9 How many condominiums, how many residential
10 condominiums have we ever seen in our practice that
11 have urinals in the men's room? Or are labeled men's
12 and women's? The reason for the creation of those
13 restroom facilities in the ship store building is
14 because of DHEC regulations require a marina, in
15 order to be permitted, to provide for such
16 facilities.

17 There's absolutely no question, Judge, but
18 that the intent of the creation of that ship store
19 was to serve as a common element for the entirety.
20 Now, honestly, if the question is well, why didn't
21 they do something beforehand? And did they -- there
22 are those who did. The Plaintiffs never did. These
23 Plaintiffs never did negotiate. There's no evidence
24 that they negotiated. One, there's a deposition
25 excerpt that he was aware of the negotiation. I

1 can't remember which one. This where I would
2 supplement the record, but I don't think it's
3 necessary, Judge, because it really doesn't matter.

4 So very specifically, the -- it's undisputed
5 that these 38 owners of the boat slips that were sold
6 before the master's deed was amended acquired vested
7 title interest in the common elements. If those
8 title interests cannot be dismissed with some
9 argument that what you did -- you didn't say that in
10 the foreclosure although they weren't parties in the
11 foreclosure.

12 The individuals -- let me say to you, Judge --
13 this morning I happened to pull up the hard copy of
14 the code, which I never look at because I always look
15 at it online. I looked in the pocket part of the
16 code and I found a citation to a case called Roland
17 versus Heritage Litchfield, Inc., It's not cited in
18 any of my papers. It's a 372 S.C. 161, 641 S.C.2d
19 465, 2007 Court of Appeals decision.

20 In essence what that case holds is that the
21 homeowners' association is not the agent of the
22 property owners. In that case, the Court of Appeals
23 said further, neither the master's deed nor the
24 bylaws of the homeowners' association grants the
25 homeowners' association an ownership interest in the

1 common elements.

2 We therefore find no question of material
3 practices regarding ownership of the compound
4 elements. So the fact that the homeowners'
5 association -- the fact that this board of directors
6 didn't catch this issue of the master's deed during
7 the foreclosure has no bearing on divesting my
8 individual slip owner/clients of their title to this
9 real property. That's the real issue.

10 I struggled about this. Mr. O'Kelley has not
11 cited a single case where a condominium owner has
12 been divested of title in these circumstances. I was
13 wondering why. Aside from the fact that he couldn't
14 find one, why is there no law on this question?

15 Well, the answer is this, I think, Judge.
16 Again, recognizing that these are vested title
17 interests in land, that the concepts of acquiescence
18 and estoppel are all encompassed and subsumed in the
19 law of adverse possession. In order for the
20 Defendants in this case to successfully make their
21 claim that these owners, these four individual
22 Plaintiffs, have been divested of their title
23 interests in these common elements, it will be
24 encumbered on the Defendants both to allege, which
25 they have not, and prove, which they cannot, the

1 elements of adverse possession because acquiescence
2 and estoppel are subsumed within that doctrine.
3 That's the point of fact in the case.

4 The bright line in this case, Judge, is
5 Section 27-31-70. Common elements shall not be
6 divided. Any covenant to the contrary shall be void.
7 Admittedly, the prior section which is 27-31-60,
8 which relates to the percentage ownerships which may
9 be altered by acquiescence -- uses the phrase
10 acquiescence -- but there's no thought that a
11 person's percentage interest can be reduced to zero,
12 which is what they were arguing here.

13 The percentage interest in the ship store is
14 reduced to zero. There's no way that that can be
15 reconciled with the succeeding section, which is
16 27-31-70, any covenant to the contrary shall be void.

17 So I think 27-31-60 dealt with circumstances
18 where condominiums are being developed in phases.
19 Your Honor has probably dealt with those kinds of
20 residential condominiums where in Phase 1 there are
21 vested percentage ownerships. Based upon the
22 relative percentages in Phase 1 to the whole.

23 When Phase 2 is constructed, those percentages
24 change. Usually the master's deed provides for that.
25 Those percentages also change because the owners

1 acquiesced because the master's deed provided for it.
2 There is no way in the world that 27-31-60 can be
3 construed to hold a percentage interest can be
4 acquiesced and get down to zero, that these common
5 interests, the interests in the common property can
6 be reduced down to zero. It's impossible. Two
7 sections have to be reconciled, otherwise they are
8 diametrically opposed. You can't have acquiescence
9 under 60. You then cannot have any covenant to the
10 contrary under -- you can't reconcile those two
11 except (unintelligible). That is dealing with a
12 circumstance where a condominium development is being
13 constructed in phases, and therefore those percentage
14 interests change, but they've never changed down to a
15 zero interest in the common elements.

16 Judge, you have been here before in the case
17 that Mr. O'Kelley referred to, and the case that I
18 cited in our memorandum. It was in your case of
19 River's Point Road versus Palms Properties, LLC. In
20 that case Your Honor directed summary judgment under
21 identical circumstances.

22 That is to say that the declarant, River's
23 Point Road, LLC recorded a master's deed creating the
24 HPR. The master's deed designated properties as
25 common elements. Then the declarant executed a deed

1 conveying a common element to Palms Properties, LLC.

2 The homeowners' association moved for summary
3 judgment. Your Honor granted it. Your Honor granted
4 it because of 27-31-70. I suggest it's an unreported
5 decision. It's a common element that shall not be
6 divided. The Court of Appeals has affirmed you,
7 Your Honor, but they affirmed you in an unreported
8 decision.

9 As an unreported decision will do, they cited
10 as authority Code Section 27-31-60. They also
11 recited 27-31-100 and 27-31-70 and but they also
12 cited the case of Reyhani, R-E-Y-H-A-N-I versus Stone
13 Creek. That case holds the bright line for our
14 position that once common elements are set aside and
15 vested in the co-owners, such co-owners may not be
16 unilaterally deprived of their interest in the common
17 elements by the actions of the developer.

18 That's what was attempted. That was what was
19 attempted at River's Point Road, which Your Honor
20 held could not be done. That's what's being
21 attempted in this case, which Your Honor once held
22 could not be redone, cannot be done.

23 Mr. O'Kelley makes an equitable argument that
24 poor Mr. Farmer is going to lose his home. Well,
25 Your Honor, Mr. Farmer went to a lawyer, which closed

1 it for him. This is not in this record, but their
2 interest that Mr. Farmer has for a separate legal
3 opinion or title opinion from them, and he asked for
4 them to hold the opinion of whether he could live in
5 this place, and they gave him a letter saying, We
6 can't conclude that under the circumstances of this
7 master's deed. That's not on this record.

8 I'll say this much: It was not until this
9 association (technical interruption) it was not until
10 the association came to this law firm and my
11 partners, my son, Capers, and my partner, Tommy
12 McIntosh -- Your Honor knows that the two of them
13 believe in dotting I's and crossing T's carefully
14 read these two master's deeds and went back to the
15 code and realized that that 2007 master's deed did
16 something which is simply prohibited under the
17 statutes.

18 It unilaterally divested of owners and
19 prospective owners interest in the common elements
20 which it cannot do. It's a very simple case, Judge.
21 Counsel is doing an excellent job of trying to make
22 it complicated because that's what you have to do to
23 try to argue that there's a disputed material issue
24 of fact. It cannot be disputed that the second
25 master's deed stripped the owners of boat slips of

1 their vested title interests in these common
2 elements. That cannot be disputed. It absolutely
3 cannot be disputed. It cannot be disputed that not
4 one of them was a party to this foreclosure in which
5 counsel argues that judicial estoppel applies.
6 Judicial estoppel as argued by Mr. O'Kelley
7 containing the elements.

8 One of the elements is that the Court must
9 find that the parties deliberately intended to
10 mislead the Court. Well, not only were these four
11 individual Plaintiffs not party, but I convey they
12 are said to not be deliberately intending to mislead
13 the Court.

14 It wasn't until Mr. Farmer dislodged the
15 dockmaster from this building that my clients
16 realized what had happened. It took them a long
17 time, but what happened over the years is that lawyer
18 after lawyer rubber stamped the prior lawyer's title
19 work assuming it was right.

20 I do a little bit of title insurance defense,
21 Judge, and I am horrified to see the mistakes that
22 closing lawyers make and most often assuming that
23 because Joe Blow passed title on this case before me,
24 therefore this title must be good. That's a fatal
25 error.

1 In this case the fatality is clear because
2 that 2007 master deed did something that is
3 absolutely and specifically under the code of laws.
4 So for that reason, Judge, not only must the Court
5 deny the Defendant's Motion for Summary Judgment, we
6 think the Court must prevent summary judgment to the
7 Plaintiffs in the circumstances. Thank you for your
8 patience. I'll answer any questions you have.

9 THE COURT: So Mr. Barr, let me go into this
10 because I do want to inquire a little bit further.
11 So is it your position that acquiescence does not
12 matter, or would it matter on the front end at the
13 time of the 2007 amendment of the master's deed, or
14 does it apply over the course of time?

15 So those are three separate questions couched
16 into one. If I hear you correctly you're saying
17 under the code section ending in 70, acquiescence
18 doesn't matter. That's what I'm hearing, but to what
19 extent -- I guess my question becomes: To what
20 extent does the fact that the master's deed was
21 amended in 2007, thereby impacting anybody who
22 purchased after that date, assuming it's valid, to
23 what extent is acquiescence required at that time?

24 I think Mr. O'Kelley has stated that there has
25 been no -- nobody else signed off on it other than

1 the developer.

2 MR. BARR: Your Honor, the phrase acquiescence
3 appears only in the code statute that deals with the
4 percentage of property -- the relative property --
5 the relative percentage interests of property owners,
6 the only place where the word acquiescence appears in
7 the statute.

8 To answer your question about acquiescence,
9 acquiescence is not sufficient alone to divest title
10 of a vested title interest unless it is in the aspect
11 of a claim for adverse possession. There is no claim
12 for adverse possession in this case.

13 Ms. Heatley, Mr. McCann, Mr. Monk, and
14 Mr. Bessent cannot lose their vested title interest
15 in these common elements by the simple notion that
16 they acquiesce to something. Aside from the fact
17 that they did not acquiesce to the 2007 master's deed
18 amendment because they didn't know about it.

19 There's no evidence. Mr. O'Kelley can't point
20 to any evidence that anybody was notified of this
21 amendment to the master's deed in 2007. The only
22 place where acquiescence actually raises its head is
23 during the foreclosure. I don't even remember what
24 year that was. There's no dispute that the
25 individual parties were not parties to that

1 foreclosure.

2 So I don't know whether I've answered your
3 question. I don't want to dodge it, so if I haven't
4 I hope you'll clarify it, Judge. What I'm saying is
5 that, yes, under 27-31-70, acquiescence is not
6 adequate because in order for that master's deed to
7 have been amended, it would have required the
8 affirmative vote of the owners of those 38 slips.

9 If that did not happen, acquiescence is
10 insufficient to that change. The amendment of the
11 master's deed clearly required their affirmative
12 vote, not their acquiescence.

13 As to the status of title, under the master's
14 deed, citing the amended master's deed, I suppose
15 we'll have to visit that on another day. That's not
16 the issue before the Court here today. These four
17 Plaintiffs clearly acquired title under the 2006
18 master's deed, which gave them these vested title
19 interests.

20 Now, we tried to make this a class action,
21 Judge, to make it more convenient. For some reason
22 the Defendants objected, and the circuit judge found
23 that he wasn't going to grant class action. We
24 resorted to having these four Plaintiffs named. All
25 of them took title under the '06 master's deed.

1 So we're not here to decide what right goes
2 into the '07 master's deed. I'm sure we're probably
3 going to visit that one day, but we have to take it a
4 step at a time based on that ruling. So the case
5 here today is the these four Plaintiffs -- not the
6 council of co-owners, Judge, is simply named as a
7 nominal party. They don't have a title interest in
8 this property. We're not claiming that they do.
9 Their interest is in this case clearly, but they
10 don't have a title interest in this property.

11 The only parties who have a title interest are
12 the four individual Plaintiffs. The Defendants are
13 trying to divest them of that. The declarant
14 unilaterally divested them of that.

15 Your Honor ruled in the River's Point Road
16 case that a declarant can't do that. You cannot
17 divest a vested interest in common elements and the
18 Court of Appeals in Reyhani has clearly said that as
19 well.

20 THE COURT: I think I follow that line of
21 reasoning. As to the issue of adverse possession --
22 one, it wasn't pled. Clearly the elements, the in
23 choate elements: Time, the hostility, all that,
24 that's not come close to showing that; is that
25 correct?

1 MR. BARR: That's -- absolutely. Mr. Farmer
2 took title in 2016, Judge. We filed this suit in
3 2017.

4 THE COURT: Okay. All right. Thank you,
5 Mr. Barr.

6 Mr. O'Kelley, let me come back to you then.

7 MR. O'KELLEY: Thank you, Your Honor.
8 Mr. Barr keeps hammering 27-31-70, but that code
9 section is pretty clear, Your Honor, that common
10 element percentages are not subject to a partition or
11 a division. It is absolutely ridiculous to say that
12 you can't un-condo something because the general
13 assembly allows you to un-condo something under
14 27-31-60. In Mr. Barr's arguments to the contrary,
15 you can't override the clear law that states 27-31
16 allows for acquiescence to un-condo something.

17 Mr. Barr didn't answer your question about
18 whether acquiescence doesn't matter, whether it
19 matters in an amendment or matters over time. We say
20 it would matter over time, Your Honor.

21 Adverse possession in this case, again, is
22 another red herring. Why would Mr. Farmer need to
23 allege adverse possession when he has a valid deed?
24 It's of record. The master deed was changed in 2007.
25 It's of record.

1 This is the first time I've heard, some five
2 minutes ago, that there are now only four Plaintiffs
3 claiming an interest in this common element or what
4 used to be a common element. Prior to this we heard
5 it was everyone who bought up prior to 2007 and
6 everyone who bought after.

7 We defeated the class action matter in this
8 because there are only 90 slip owners. We know who
9 they are, Your Honor, and Judge Brown agreed with us.
10 The whole idea that you don't read 27-31-60 and
11 27-31-70 together makes absolutely no sense, Your
12 Honor. The facts are clear. Ms. Hall testified that
13 they actually made a \$100,000 offer to Mr. Farmer to
14 buy this unit and he countered with a \$500,000 offer.
15 Then it became personal and they hired Mr. Barr's law
16 firm and that brings us to you today.

17 I'm happy to answer anything else, Your Honor.
18 I just want to point out -- you read the code section
19 as a whole, Your Honor. This case is very different
20 from the River's Point Road case because in that case
21 the declarant gave title out, transferred title.
22 There wasn't a foreclosure, there wasn't
23 acquiescence, and they stopped the process. The
24 facts are very different, Your Honor.

25 THE COURT: Back to the argument on judicial

1 estoppel, there's no evidence that the four
2 individual Plaintiffs were in that prior action;
3 isn't that correct?

4 MR. O'KELLEY: That's correct, Your Honor, but
5 common elements are generally held by the board in
6 trust for everybody else. There's no title on your
7 condo saying you get your percentage interest. If
8 that be the case then every foreclosure attorney in
9 South Carolina is doing it wrong because they will
10 now have to name everyone that owns a unit in a
11 foreclosure development instead of naming just the
12 counsel of co-owners or the HOA if it's an HOA
13 property.

14 I don't know any foreclosure attorney that's
15 going to go and look up every unit owner to sell a
16 condo.

17 THE COURT: Well, I hate to tell you, but I
18 just ruled that way in a construction case, and so I
19 know that case is going up on appeal. One of my --

20 MR. O'KELLEY: We'll finally get some law.

21 THE COURT: One of my problems with being a
22 judge is kind of like being a parent. You may be
23 wrong, but you want to be consistent about it. To
24 some degree I'm splitting hairs with you, however, as
25 I think about it -- I'm going to go back and look at

1 my River's Point decision. I do remember it vaguely
2 because it's over on James Island. They were subject
3 to a lot of foreclosures at that time as I recall. I
4 do recall that the new developer -- I think it was
5 purchased by a new developer -- wanted to sell what
6 were common elements, and a number of people stepped
7 up and said, Hey, you can't do that. You can't take
8 away our swimming pool. They wanted to construct new
9 units is my recollection of that particular case.
10 They wanted to take away a swimming pool that
11 everybody had a right to use. I think that one was
12 very simple and straightforward.

13 I thought that I made some notes that I wanted
14 to ask some specific questions about facts. I know
15 that I made the notes. I have just got to find them.

16 Let me go back to the status of the ship store
17 as a ship store. Was that what was subject to the
18 foreclosure? Was that the foreclosure part?

19 MR. O'KELLEY: Yes, Your Honor. That was part
20 of it. The actual building where the ship store is
21 consists of two units, and your foreclosure deed was
22 for both of them. Mr. Geiger, who was the
23 dockmaster, his testimony was that the ship store had
24 not been in operation since 2011.

25 Mr. Barr said today that my client ousted

1 somebody. There was nobody to oust. Nobody was
2 operating a store. They weren't selling peanuts.
3 They weren't selling beer. The place was empty from
4 2011 until my client moved in.

5 MR. BARR: Judge, may I respond to that?
6 That's factually misleading. It is correct that the
7 building comprising the ship store had at one time
8 been a variety store, a marina store kind of
9 operation, and then a restaurant and that those were
10 closed.

11 It is factually incorrect, and counsel
12 restated the fact that the DHEC regulations for
13 Operation Marina require a marina of this size to
14 have a full-time dockmaster. It is factually
15 undisputed that the dockmaster's office has been, at
16 all times, in this building.

17 The dockmaster was Mr. Geiger. There might be
18 a different one now. He has a radio system in there
19 where he can talk to boats offshore. He has
20 emergency equipment. As I said before, the building
21 houses those restaurants including a urinal for men,
22 and so the ship store has been used by all of these
23 slip owners and was being used by them and a
24 dockmaster who was there physically in the building,
25 at least most of the time, at all times, since its

1 creation until Mr. Farmer kicked him out.

2 Your Honor, let me also say -- I'm a little
3 confused by Mr. O'Kelley's reference to de-condoing
4 under 27-31-60. I don't see any reference in that
5 code section to any kind of notion of de-condoing. I
6 suggest that you cannot de-condo without the
7 affirmative consent of every unit owner, period.

8 It's not something that can be done by
9 acquiescence and simply to say that this -- what
10 happened in this case does not constitute a division
11 of common elements is more than splitting hairs
12 because if you cannot divide them under 27-31-70 --
13 my friend says 27-31-70 says you cannot divide them.

14 He says you cannot totally take them away.
15 That is just absolutely and totally nonsensical.
16 That just defies all logic and common sense.

17 THE COURT: Very good.

18 MR. BARR: Thank you, Judge.

19 THE COURT: Here is what I would like to do.
20 I want to take it under advisement. My usual
21 procedure if I'm not real clear on the law and real
22 clear on the facts, is to deny summary judgment. I
23 would like to take this one under advisement. There
24 seems to be some dispute about the status of the
25 dockmaster or when he was gone. Mr. O'Kelley, to

1 your knowledge is there a dockmaster there today?

2 MR. O'KELLEY: Absolutely, Your Honor.

3 Mr. Geiger testified that he's been in position ever
4 since. DHEC regulations about bathrooms and
5 dockmasters are separate and apart from issues under
6 the Horizontal Property Act.

7 THE COURT: I'm with you there. Are the
8 restrooms still open to the public and people are
9 still going in?

10 MR. O'KELLEY: Absolutely, Your Honor.

11 Mr. Barr filed a TRO to ensure that they would not be
12 closed down, and Capers before did, to make sure that
13 they wouldn't be closed down, and by consent and by
14 order of Judge Nicholson the bathrooms have never
15 been shut down. They're always ready to go.
16 Judge McCoy modified that order about times he used
17 the bathrooms in her order about a second TRO about
18 them being open basically from dawn to dusk and
19 during the summer months.

20 So the bathrooms are there and he operates
21 them. My client's paying for them. He's paying the
22 water bill. He's paying the insurance on them.
23 Again, more evidence of ownership, Your Honor.
24 Whether or not someone has a urinal in his house or
25 not I think is irrelevant.

1 MR. BARR: Judge, I hate to carry this on.
2 Mr. Farmer locked the bathrooms. He locked us out of
3 the bathrooms. He denied access. We had to go to
4 the Circuit Court and seek an injunction to open them
5 back up. It is correct that the circuit judge opened
6 them up from dusk to dawn, but the DHEC regulations
7 don't require that. Those bathrooms have always been
8 open 24 hours because a lot of the boats at this
9 marina are large. Folks come to stay on their boats,
10 but they like to take a shower in the bathrooms. He
11 locked them out of it.

12 It is factually incorrect -- not factually
13 incorrect. It is also, Your Honor -- if you take a
14 look at Elizabeth Heatley's affidavit, when you talk
15 about disputed facts, Mr. Farmer has not filed a
16 counteraffidavit to this effect. Ms. Heatley, in her
17 affidavit says that the dockmaster was out in 2016.

18 These are the facts before you. They have not
19 been supplemented. She says, To my best knowledge
20 and recollection the ownership relating to the ship
21 store building until docks arose in about May of
22 2016.

23 Mr. Farmer, who I understand, claims to hold
24 title to his LLC, to the ship store and fuel docks,
25 ousted our dockmaster from his office in the ship

1 store building. So there are no other facts to look
2 for here. The facts on this record are established.
3 They're fixed. Mr. Farmer has not disputed that.
4 The undisputed fact is that the dockmaster was ousted
5 from that building. I will tell you, Judge, he was
6 ousted from that building.

7 THE COURT: Very good. I'm going to ask that
8 you-all submit proposed orders to me within, say,
9 30 days. Today is the 5th of April. If you could do
10 it sometime that first week of May? Let's look at
11 May. How about the 7th of May? Can you-all do that,
12 May 7th? That's a Friday.

13 MR. O'KELLEY: Yes, sir.

14 THE COURT: Let me do that. I'm going to do a
15 little more research, and I'll take a look at this
16 record a little further. It's an interesting legal
17 question.

18 The one thing I will say is that I've gotten
19 an education since I've been on this bench about
20 condominiums because when you start looking at that
21 statute, it's all over the place. They don't even
22 call them condos. They call them apartments all the
23 time.

24 MR. CLEVELAND: Units.

25 THE COURT: Units or apartments. Anyway,

1 there has not been that much decision-making
2 authority from our Appellate Courts on this. I did
3 find one of the older cases I had, the old dockside
4 case, and the Queen's Grant case, were like the first
5 two, and I seem to recall struggling for some
6 authority back when we were doing the River's Point
7 case.

8 We'll see if we can't keep making some law. I
9 don't know why they are not making it in these other
10 parts of the coast down there. They have plenty of
11 condos there, too.

12 Good to see you-all this morning, and I
13 will -- my plan, just for those of you who aren't
14 parties in the case, my typical procedure is to take
15 these under advisement for some 30 days, request
16 proposed orders, and give you-all an answer within 30
17 days of that. That's my goal. Okay? I wanted to
18 let you-all know that at this point in time and go
19 from there. Thank you-all very much for coming this
20 morning. I'm going to move on to my next case which
21 is at 11:00 a.m. All right? Thank you-all.

22 (The proceedings were concluded at 11:05 a.m.)
23
24
25

1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 1st day of July, 2021 at
13 Charleston, Charleston County, South Carolina.

14
15
16
17
18 _____
Christine A. Smith
Notary Public
My Commission Expires
19 March 10, 2031
20
21
22
23
24
25

4 ELIZABETH HEATLEY, NEAL B.)
MCCANN, JR., DAVID NEIL)
5 MONK, THOMAS V. BESSENT,)
AND MARINER'S CAY MARINA)
6 COUNCIL OF CO-OWNERS, INC.,) **VOLUME I**
Plaintiffs,)
-versus-)
MARINER'S CAY MARINA CONDO,)
9 LLC, AND MARINER'S CAY FUEL)
10 DOCK, LLC, GEORGE A.)
FARMER, JR., AND SOUTH)
11 ATLANTIC BANK,)
Defendants.)

Hearing before the Honorable Mikell R.
Scarborough, reported by Jennifer M. Huggins,
Court Reporter and Notary Public, at 10:00 a.m.
on March 22, 2022 at 100 Broad Street, Courtroom
2A, Charleston, South Carolina.

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1 THE COURT: All right. So we're
2 here, this is the case that's captioned Heatley
3 vs. Mariner's Cay Marina Condo, LLC. It's a 2017
4 case, number 3099. Mr. Capers Barr is here for
5 the plaintiff. I note the presence of Mr. Capers
6 Barr, IV. Mr. Barr, how are you doing?

7 MR. BARR: Well, thank you.

8 THE COURT: Good to see you. I
9 thought you'd given up the practice of law.

10 MR. BARR: I had to come back and
11 see this one through.

12 THE COURT: All right. All right.
13 Well, I'm glad to have you. You look well
14 rested, and you've got a good suntan. You must
15 of been somewhere nice. There's a lot better
16 things than practicing law, I know that. And
17 Mr. Hamlin O'Kelley is here for the defendant.

18 MR. O'KELLEY: Good morning, Your
19 Honor. Hamlin O'Kelley here for Mariner's Cay
20 Marina Condo, Mariner's Cay Fuel Dock, LLC, and
21 also South Atlantic Bank. And Whit Perrin is
22 here for Mr. Farmer, individually. And
23 Mr. Farmer has run to the restroom. So he's
24 here.

25 THE COURT: Okay. That's fine.

1 Tell him we won't start without him.

2 Mr. O'KELLEY: Thanks.

3 THE COURT: All right. Mr. Perrin,
4 glad to have you, too, sir.

5 This case is a little unusual. I
6 entertained cross-motions for summary judgment
7 about --

8 MR. O'KELLEY: That was almost a
9 year ago. It was in April of last year.

10 THE COURT: Yeah, in April of last
11 year. And I'm assuming -- was that done on the
12 WebEx?

13 MR. O'KELLEY: It was, Your Honor.

14 THE COURT: All right. That's what
15 I'm blaming my bad decision making on. Okay?

16 MR. O'KELLEY: We thought it was a
17 brilliant decision.

18 THE COURT: Well, seldom do I grant
19 summary judgment and then turn around and reverse
20 myself, but I did in this case. And that's how
21 we ended up where we are today. We are set for
22 trial. I know this is a matter of great concern
23 to the Mariner's Cay Regime out there, and as
24 well as Mr. Farmer, who picked up the regime.

25 So I have done some additional homework.

1 I've even broke out my condominium law and South
2 Carolina book. Okay? So I'm trying to prepare
3 for y'all's trial. I have received pretrial
4 briefs from both Mr. Barr as well as Mr. Mims, I
5 guess.

6 MR. O'KELLEY: It's mine, Your
7 Honor.

8 THE COURT: Okay.

9 MR. O'KELLEY: It's my brief, but
10 we -- they're included on it, but I don't
11 think --

12 THE COURT: I do see Mr. O'Kelley
13 on it, and I saw Mr. Mims as well. Very good.
14 All right.

15 So I've had a chance to review those,
16 and that led me then to the statutory scheme,
17 which I will give y'all my basis for my decision
18 to overturn my original decision, which was,
19 Mr. Barr is going to have to be citing the
20 statutory authority for me to change my mind.
21 The first thing I read was some statutory
22 authority, and I changed my mind.

23 So that's where we are. So we've got
24 some interpretation of South Carolina statutes as
25 they pertain to condominium law. There's not a

1 lot of case law out there in the State of South
2 Carolina. There's a lot of case law in the State
3 of Florida. So that's fairly persuasive to the
4 Court. I just give y'all that for informational
5 purposes.

6 But there are un -- I think the word
7 that Mr. O'Kelley used was undefined terms in the
8 statute and what do they mean. So the Court may
9 have to make that decision as well. All right.
10 That's my background. That's what got us here.

11 Mr. Barr, I will not foreclose the
12 opportunity to give you a little short opening if
13 you'd like, but I want y'all to know that I have
14 been preparing for this day, and I,
15 unfortunately, have been preparing for it I guess
16 for over a year -- almost a year now.

17 MR. O'KELLEY: And, Your Honor, for
18 housekeeping purposes, Mr. Barr and I have both
19 prepared extensive notebooks. Most of the items
20 we agreed and stipulate are -- most of it is
21 public record. Those are the items that we've
22 agreed to. If there are issues, we will get to
23 them.

24 But I think it's -- we're going to have
25 to talk to the court reporter and maybe do this

1 like we did in the Balfour Beatty trial and then
2 just use the numbers and the tabs for Plaintiff's
3 Exhibits and for Defendant's Exhibits, and then
4 leave them marked that way, if Your Honor --

5 THE COURT: That's fine.

6 MR. O'KELLEY: I think it makes
7 life easier for all of us than marking each one
8 individually.

9 THE COURT: It does. It does.
10 They just need their own number. I don't care
11 what order they come in. They just need a number
12 so that we can identify them in the record.
13 Based upon that, I'm going to presume that
14 everything is admissible unless I hear an
15 objection. So I won't ask. If there's an
16 objection, that --

17 MR. O'KELLEY: We've agreed to
18 that, too.

19 THE COURT: -- then we go forward
20 in that regard.

21 Any other matters that we should take up
22 before we start? Mr. Barr?

23 MR. BARR: No, Your Honor. I do
24 have an opening.

25 THE COURT: Sure, sure. And then

1 for the benefit of the folks that are here in the
2 audience, some of you, I'm sure, are a part of
3 the case. If you need to take a break, you're
4 free to come and go. I just ask that you keep
5 down the noise so I can hear what's going on in
6 here.

7 What's most important of all is that
8 this young lady to my right over here can hear
9 what's being said because that makes the record,
10 and in the event someone is aggrieved and they
11 wish to appeal, the only thing that matters is
12 what's in the written record and not actually
13 what you recall from in -- being in the
14 Courtroom.

15 So I find that to be sometimes
16 different, just so you know. So it needs to be
17 in the written record in order to be preserved
18 for Appellate review. And we do have a fairly
19 novel issue here, and so that's what we're going
20 to have to deal with.

21 All right. I generally run until about
22 12:30 or 1 and break for lunch. I have
23 discovered that you cannot get lunch and back in
24 an hour in downtown Charleston. So we'll
25 probably set you at somewhere between an hour and

1 15, an hour and a half to come back. So that's
2 just sort of the way we run our day.

3 I typically try and run until about 5 in
4 the afternoon. It depends on how we are going.
5 I got this case scheduled really for the next
6 three days, so we don't need to be in a rush, but
7 I was told we shouldn't need that much time. I
8 always find that lawyers are the worst judges of
9 time. Why they let them bill by the hour, I will
10 never understand. But that's what we do.

11 All right. With that then, Mr. Barr, I
12 will be glad to hear from you, sir.

13 MR. BARR: Thank you, Your Honor.
14 May it please the Court?

15 THE COURT: Yes, sir.

16 MR. BARR: I would -- maybe I could
17 claim the advantages of my seniority. If Your
18 Honor would indulge me with a little more than a
19 brief opening because the plaintiff's case is
20 really quite short. We have four witnesses.

21 THE COURT: Okay.

22 MR. BARR: And I expect that the
23 cross-examination and the defendant's case will
24 be quite extensive. I'm glad to hear that Your
25 Honor has done some homework, which doesn't

1 surprise me at all.

2 But perhaps I can present now --
3 particularly now that I know that Your Honor has
4 done some homework and sort of put things in
5 context and help you receive the elements you're
6 about to hear. Procedurally, as counsel has
7 said, we've got some exhibit notebooks up here,
8 which we've stipulated in.

9 We have a very thick exhibit notebook,
10 which is our Exhibit Notebook No. 1, which
11 contains a full copy of the 2006 master deed and
12 the 2007 master deed at issue and then the first
13 amendment to it. Then we have in that thick
14 notebook, all deeds that were recorded in --
15 under the 2006 master deed before it was amended
16 in '07. There are 39 of them.

17 THE COURT: Okay.

18 MR. BARR: Then we have in the
19 thick notebook, the master's deed for Mariner's
20 Cay Racquet and Yacht Club, which is the
21 condominium on the hill.

22 THE COURT: Okay.

23 MR. BARR: Which was the parent of
24 this particular regime in a manner of speaking
25 and an amendment to that. So that's all in the

1 thick notebook.

2 THE COURT: Okay.

3 MR. BARR: In the thin notebook --
4 and if I may approach -- I made copies for Your
5 Honor and for your law clerk, and this will
6 actually be the working -- predominantly, this
7 will be the working exhibit notebook by which we
8 will proceed in the trial.

9 THE COURT: All right, sir.

10 MR. BARR: The plaintiffs, that is.

11 THE COURT: Okay.

12 MR. BARR: We may have reason to
13 refer to the master deed on the hill in the
14 course of the testimony.

15 But the bulk of what we're presenting
16 will be coming from these excerpts that Your
17 Honor sees in the -- what we call Exhibit
18 Notebook 2. So we've got Exhibit Notebook 1,
19 Exhibit Notebook 2, each of which have lettered
20 tabs. And that's how we will make reference to
21 it.

22 If I may begin by inviting the Court's
23 attention to tab M in the notebook that I just
24 handed up, and I won't belabor this greatly
25 because Your Honor has already seen some of

1 these. But these are the photographs of the
2 property that's at issue here.

3 THE COURT: All right.

4 MR. BARR: And the first several
5 ones are the aerial photographs of Mariner's Cay
6 Marina and Yacht Club -- Mariner's Cay Yacht
7 Club -- Racquet and Yacht Club or something like
8 that, the condominium on the hill, I'll refer to
9 it, and then the Mariner's Cay Marina.

10 THE COURT: Okay.

11 MR. BARR: And then you can see on
12 that first photograph, you can see where all of
13 the boats are docked, and you see a more
14 prominent gray building there. It's right sort
15 of in the center. That's the ship store, which
16 becomes an issue here.

17 THE COURT: Okay.

18 MR. BARR: Now, then the next one
19 is a straight overhead shot, an L photograph of
20 all of these boat slips.

21 And that building in the center with the
22 boat ramp is the ship store building, in the
23 front of which you see is a deck, a very
24 prominent deck, which as Your Honor will hear in
25 the course of testimony, was formerly a social

1 gathering place for all of these boat users whose
2 boats are docked there, until we ran into the
3 problems associated with what brings us here.

4 THE COURT: Okay.

5 MR. BARR: The next photograph is
6 simply another aerial, and there's several
7 different aerials from different perspectives.
8 So we can flip on beyond those.

9 I thought they were rather attractive in
10 the sense that one of them is showing the Folly
11 River with the Atlantic over there to the east.
12 Of course, the condominium -- the marina is on
13 the north shore of the Folly River opposite Folly
14 Island -- Folly Beach.

15 Then we get into a series of
16 photographs, Judge, that show the ship store
17 building, which is the building at issue here,
18 and you see now -- we saw an aerial view of this,
19 but you now see a ground level view of that
20 building showing the decks.

21 It shows a handicap ramp up the side of
22 the building adjacent to what, I think, might be
23 the boat ramp. There's a photograph that shows
24 the VHF antennae that -- where the former --
25 where the dock master formerly was able to

1 communicate with boats until we ran into the
2 problems associated with this case. And then
3 there are other perspectives of the -- of the
4 marina itself.

5 This marina, Judge, was created in 1982.
6 So that's a part of why we have the master deed
7 for the marina on the hill. You will see its
8 date is 1982. And it was constructed in '82 as a
9 private marina, the boat slips of which were
10 leased.

11 So for years, and several of these
12 witnesses will testify, actually leased boat
13 slips there in -- beginning in the '80s or '90s.
14 The marina consists of 90 boat slips of which two
15 are dedicated for fuel dock purposes, and not
16 only is it a fuel dock, but it's also the source
17 for waste water pump out, so that under the --
18 well, so that was the case under the former
19 ownership.

20 The building was constructed under the
21 former ownership. The dock master, under the
22 former ownership, had offices and the radio and
23 all of the controls there in the building under
24 the former ownership.

25 In 2006, the ownership was changed to

1 Mariner's Cay -- whatever it is -- the declarant
2 under the 2006 master deed that did extensive
3 renovations. A lot of -- virtually all of the
4 decking was changed over.

5 So one of the witnesses told me it's --
6 a lot of it is now decked with Hippy wood, which
7 is the Brazilian hardwood, which is quite durable
8 Marine wood product. And in 2006, the slips were
9 then converted to condominium units; second
10 cousins to apartment condominium units under the
11 Horizontal Property Act.

12 THE COURT: Right.

13 MR. BARR: And under the 2006
14 master deed, the master deed designated
15 properties as common elements. And there we can
16 look at Exhibit E in the -- in the notebook, too.

17 So Exhibit E should be from recorded
18 page V583-599 and article Roman 7 is the
19 description of common elements. And then if we
20 turn the page, subsection 7.1, parentheses small
21 E sets the stage for the case.

22 THE COURT: All right.

23 MR. BARR: So it defines -- in
24 2006, the master deed defines the common elements
25 shown on Exhibit B, I think, which is a drawing,

1 and more specifically, below the sub-subparagraph
2 parentheses small IV, which designated an
3 ingress, egress easement. In capital letters,
4 note, commercial units number 1A and 1B and
5 commercial unit number 2 are common elements for
6 limited common elements.

7 I don't think there's any dispute that
8 commercial units 1A and 1B are the first and
9 second floors of the ship store building.
10 Commercial unit 2 were the fuel docks.

11 THE COURT: Okay.

12 MR. BARR: Between March the
13 19th -- I'm sorry. Between the recording date of
14 the first master deed -- and I didn't note it
15 down, but it's in 2006 -- until March the 19th of
16 2007, when the amended master deed was recorded,
17 39 boat slips were sold.

18 So 39 boat slips were sold
19 representing -- and the exhibit is in the record.
20 I would suggest a value of more than 3 million
21 dollars invested by those individual unit owners
22 in the package of rights. It was conveyed to
23 them by their individual deeds.

24 The plaintiffs in this case, we can add
25 that, their deeds are also attached in there.

1 The cumulative total of the considerations made
2 by them in '06 and '07. And their deeds are in
3 tabs A through B, but it's \$362,250.

4 Now, under the 2007 master deed, which
5 was recorded March 19th of '07, after these 39
6 slips had been sold, the problem begins. And
7 that's under tab F.

8 THE COURT: All right.

9 MR. BARR: Tab F should be -- begin
10 with recorder's page X618, page 620.

11 THE COURT: All right. It's under
12 G in my book, but that's --

13 MR. BARR: It is, and I apologize.

14 THE COURT: Okay.

15 MR. BARR: But it ought to be X
16 618, 620, if you have that.

17 THE COURT: I do. I've got it.

18 MR. BARR: Then we go to page --
19 recorder's page 621, and you go down to small
20 parentheses -- subparagraph parentheses small E.

21 THE COURT: All right.

22 MR. BARR: And you see that those
23 elements that were described in the '06, master
24 deed as common elements, you see what disappears
25 in the '07 master deed. What disappears was the

1 prominent note, commercial units number 1A, 1B,
2 and commercial units 2 are common elements -- or
3 limited common elements.

4 So this is what operated -- this
5 particular page is what operated to purportedly
6 strip away from these 39 property owners, and
7 more specifically, the four plaintiffs in this
8 case, the vested property rights they acquired
9 with their deeds.

10 THE COURT: Okay.

11 MR. BARR: Now, this amendment
12 occurred, Your Honor -- the '07 amendment
13 occurred during the period of time under the 016
14 when the declarant still controlled the board of
15 directors, and the '06 master deed provides that
16 the declarant could unilaterally amend the master
17 deed.

18 THE COURT: Provided he had the
19 authority, right?

20 MR. BARR: Exactly.

21 THE COURT: Okay.

22 MR. BARR: But then we go -- and
23 I'm sorry your tabs are upside down, but my tab G
24 is recorded page V583-614.

25 THE COURT: V583?

1 MR. BARR: Yes, sir, 614.

2 THE COURT: That one I think got
3 omitted.

4 MR. BARR: Maybe you can borrow
5 your clerk's. I apologize.

6 THE COURT: All right. That's all
7 right. Let me ask you this: In the initial
8 master deed, was there -- what was the triggering
9 mechanism where the declarant would have lost the
10 authority to unilaterally do that?

11 MR. BARR: I think it was 90
12 percent.

13 THE COURT: Okay. All right. 90
14 percent.

15 MR. BARR: But 90 percent or so
16 many years, but this thing got recorded -- the
17 amendment was recorded less than a year after the
18 first one.

19 THE COURT: Right.

20 MR. BARR: The first one was in May
21 of '06.

22 THE COURT: Yeah.

23 MR. BARR: The second was in March
24 of '07. In the meantime, these 39 slips had
25 sold.

1 THE COURT: Okay.

2 MR. BARR: But what you now have,
3 Your Honor, at Book V583 page 614 is article
4 Roman XVI amendments under the '06 master deed.

5 And at the bottom of that page, it says,
6 this master deed shall be amended except as
7 below, only by a vote of governing owning 75
8 percent, blah, blah, blah. But that's after
9 (inaudible). Then flip the page over, and yours
10 might be double-sided.

11 THE COURT: It is.

12 MR. BARR: So it's recorded as page
13 615, subparagraph parentheses small b says, for
14 so long as the declarant has the right to appoint
15 and remove directors of the council co-owners,
16 the declarant may unilaterally amend this deed
17 for any purpose. Let's stop there and drift down
18 to the last sentence.

19 THE COURT: Okay.

20 MR. BARR: And this is so
21 prominent, Judge. This case is just fraught with
22 legal error. What I mean is, fraught with
23 mistakes made by lawyers, none of whom are in
24 this Courtroom, quite frankly, thankfully.

25 But we are here because lawyers screwed

1 up. That last sentence, permitting that
2 unilateral amendment says, however, any such
3 amendment shall not adversely affect the title to
4 any unit unless the owners shall consent in
5 writing.

6 And you're going to hear each of these
7 four say, I didn't know it was happening, much
8 less consent in writing, and what I consent in
9 writing, I would be crazy to, to give up the
10 rights in the ship store building and fuel docks.

11 Interestingly, Judge, the declarant,
12 whose probably the villain here -- I'm not
13 painting Mr. Farmer as the author of this at all.
14 He inherited it, to an extent, but his lawyers
15 missed it.

16 But interestingly, the declarant, a guy
17 named Larry McNair, went to a different lawyer.
18 John Blinker drew the first deed and Don Furtado
19 at McNair, who may or may not be a witness in
20 this case, did this amended deed.

21 Somebody missed that sentence. Somebody
22 missed that caveat. Somebody missed that
23 proviso. And notwithstanding it's provision,
24 took away from these four plaintiffs and their 35
25 colleagues there at the marina, these vested

1 title rights in the marina store building and the
2 fuel dock.

3 Now, the declarant -- all right. Your
4 Honor, you will hear the testimony in this case
5 managed the council of co-owners until about
6 2010. And in 2010, outside directors were
7 elected.

8 THE COURT: Okay.

9 MR. BARR: Of course, by 2010,
10 these inside directors, who I don't know who they
11 were, that Mr. McNair, the original declarant --
12 and there might have been a different declarant
13 by then because this thing changed hands multiple
14 times, and you're going to hear all kind of
15 testimony about foreclosures and who did what and
16 who shot John and all of that.

17 But the present board, the genesis of
18 the present board didn't begin until 2010, but by
19 then, this master deed had been amended. And by
20 then, people were practicing under it. But very
21 good interestingly, you're going to see a lot of
22 these deeds still referred to the '06 master
23 deed, the deed to the individual dock sites.

24 Again, lawyers not paying attention.
25 For a time in my practice, I represented title

1 companies, which I enjoyed the work. I just
2 couldn't put up with their bureaucratic methods
3 of time accounting, and I couldn't get into their
4 way of billing.

5 But I enjoyed it a lot because I came up
6 as a lawyer across the street helping index
7 books, checking titles because I started off with
8 real property law over Joe Riley's real estate
9 office, who would send us closings. And then,
10 from that, we'd handle wills, and then we'd
11 handle car wrecks and criminal cases, and I got
12 into litigation.

13 THE COURT: All right.

14 MR. BARR: But I couldn't check a
15 title today if my life depended upon it because I
16 can't work the computers. But I understand the
17 dynamics of what we're dealing with here.

18 THE COURT: Okay.

19 MR. BARR: So the outside board of
20 directors was formed in 2010. Your Honor is
21 going to hear testimony about a foreclosure in
22 2013. One of the defenses has been -- there have
23 been all kind of estoppel defenses, judicial and
24 whatever asserted here.

25 Very importantly, although the council

1 of co-owners was named in the foreclosure, they
2 were only named because they claimed assessments
3 on the property that was being foreclosed, which
4 admittedly were the common elements that we're
5 fighting about here. But not a single individual
6 plaintiff was named in that.

7 Mr. Farmer ended up buying from a
8 successor to the buyer at the foreclosure sale,
9 who I think might have been the foreclosing
10 financial institution. I'm not sure. It's
11 probably not important.

12 So the legal issues in this case focus
13 most importantly, on the terms of that master
14 deed amendment that specifically prohibited the
15 declarant from doing what he did. And the
16 prudent title examiner should have caught that.

17 When Mr. Farmer bought these units his
18 title examiner, his abstractor, when they saw
19 that he was about to buy some property under an
20 amended master deed, should have asked
21 themselves, how is it amended? As an aside, I
22 will say that the Court, Tommy McIntosh did that
23 when these clients came to us.

24 THE COURT: Okay.

25 MR. BARR: And that's how this was

1 discovered. Because many of the clients really
2 didn't understand what happened to them. How in
3 the world did what was there one day, go away the
4 next? Doesn't sound right. It absolutely does
5 not.

6 Mr. Farmer's lawyers, any prudent title
7 examiner, should have read what's on the record,
8 and they didn't read it, which gets back to my
9 experience in defending title companies. I was
10 shocked.

11 I was shocked, as they quote the line
12 from Casablanca. I was shocked to read the
13 mistakes that lawyers make in handling real
14 estate closings, just assuming because the guy
15 before him passed the title; therefore, it must
16 be good. And I'm sure to an extent, that's what
17 happened here.

18 THE COURT: Welcome to my world.

19 MR. BARR: Yes, sir, absolutely.
20 This is not unfamiliar terms to the Court, and I
21 know it's not unfamiliar to my colleague at all.
22 And that's what brings us here.

23 THE COURT: All right.

24 MR. BARR: So the first -- as I
25 referred to in my trial brief, the first pole

1 star, the first bright line here is that master
2 deed provision that says, however, any such
3 amendment shall not adversely affect the title to
4 any unit.

5 Even if the lawyer did not understand
6 the condominium statutes provisions, a lawyer who
7 read that could understand those words and say,
8 wait a minute, my client is about to buy what was
9 formerly common elements. I can't certify this
10 title to him, but they must have.

11 Now, unfortunately, Mr. Farmer's
12 knowledge -- Mr. Farmer is charged with the
13 knowledge of his lawyers. If you state it
14 differently, his lawyers' knowledge or lack
15 thereof, is imputed to Mr. Farmer.

16 THE COURT: Right.

17 MR. BARR: So that when Mr. Farmer's
18 lawyers missed this, unfortunately, Mr. Farmer
19 missed it and shouldn't have gone with it. So
20 that's the first pole star, which is prominent in
21 the record.

22 The second pole star is a statutory one,
23 which is what any lawyer should have known, any
24 lawyer with any experience in real estate
25 properties. And those are the code sections.

1 And I've made copies of them. I've given a copy
2 to counsel, just to hand up to the Court and your
3 clerk.

4 THE COURT: All right, sir.

5 MR. BARR: And I'm going to go in
6 inverse order of these statutory numbers because
7 there -- what is invoked here is section 27-31-70
8 and 27-31-60, which is an earlier number, but 70
9 is the controlling one.

10 I think you will hear differently from
11 my friend, and I saw when I walked in here this
12 morning, he's got 60 prominently portrayed on
13 something even larger than what we're looking at.

14 THE COURT: Okay.

15 MR. BARR: But code section
16 27-31-70 controls here. It's so short. It's
17 just so simple. It's so unambiguous, and I'm
18 reading it. The common elements, both general
19 and limited, shall remain undivided and shall not
20 be the object of an action for a partition or
21 division of the co-ownership.

22 Any covenant to the contrary shall be
23 void. The amended master deed is a covenant to
24 the contrary. It's void. And that's what we're
25 asking Your Honor to declare in this case. It's

1 as simple as that.

2 And it gets complicated perhaps
3 factually under the who shot John thing or who
4 should have known what when. But certainly,
5 Mr. Farmer's lawyer should have known that to be
6 the law. I know who they are, and I know they're
7 very prominent and experienced with estate
8 partitions. We all miss something one day.

9 THE COURT: Okay.

10 MR. BARR: So the two pole stars
11 here are the unequivocal terms in the master deed
12 and 27-31-70.

13 Now, what my friend has blown up and
14 what my friend argued as summary judgment in his
15 trial brief is 27-31-60. To argue that -- do you
16 have that one, Your Honor?

17 THE COURT: I do.

18 MR. BARR: All right. To argue
19 that -- well, let's take a look at 60. 60 deals
20 with the property rights of an apartment owner,
21 and it provides that -- I'm reading subparagraph
22 A, not the whole thing.

23 An apartment owner shall have the
24 exclusive ownership of his apartment and shall
25 have a common right to a share with the other

1 co-owners in the common elements of the property
2 equivalent to the percentage representing the
3 value of the individual apartment with relation
4 to the value of the whole property. This
5 percentage shall be computed. I'm going to stop
6 right there.

7 THE COURT: That's the essence of a
8 condominium regime, is it not?

9 MR. BARR: Sir?

10 THE COURT: That's the essence of a
11 condominium regime, is it not?

12 MR. BARR: Absolutely, absolutely.

13 THE COURT: Everybody gets to own
14 their own unit, and then whatever their
15 percentage value in the whole --

16 MR. BARR: Absolutely.

17 THE COURT: -- in the commons?

18 MR. BARR: Absolutely.

19 THE COURT: That's why they pay
20 those regime fees.

21 MR. BARR: Absolutely. And this
22 statute is exclusively focused on that percentage
23 issue. It's not focused on title. This statute
24 does not say, you can acquiesce to give up your
25 rights under 70, which is what the defendants say

1 in this case. And why do they use the word
2 acquiescence, though, because if you read on
3 in --

4 THE COURT: It goes into statute,
5 that's why.

6 MR. BARR: Exactly. In the second
7 paragraph --

8 THE COURT: Right.

9 MR. BARR: -- it says, the
10 percentage shall be expressed at the time the
11 horizontal property regime is constituted, shall
12 have a permanent character and shall not be
13 altered without the acquiescence of the co-owners
14 representing all of the apartments of the
15 property.

16 So shall not be altered without the
17 acquiescence of the co-owners representing all of
18 the apartments of the property. Now, what the
19 defendants are arguing here is that,
20 notwithstanding what's said in 70, that common
21 elements shall not be the object of division.

22 Any covenant to the contrary shall be
23 void is that this allows -- this allows -- this
24 covenant in 60 allows the depravation of the
25 title interest of the four plaintiffs in the

1 common elements. So on the one hand, 70 says you
2 can't take it away, any covenant to the contrary
3 notwithstanding. And the defendants are arguing,
4 well, it can be taken away by acquiescence under
5 60.

6 Now, those statutory terms under the
7 defendant's interpretation conflict. His
8 interpretation -- but you can't reconcile that.
9 You can't reconcile the proposition that any
10 covenant to the contrary shall be void doesn't
11 mean what it says. Because they're saying it
12 means except if you acquiesce under 60.

13 The Court -- the Courts in general are
14 charged with the duty and the law says -- the
15 case law clearly says, the Courts have the duty
16 to reconcile apparently conflicting provisions of
17 statutes. And this is easily reconciled with
18 this simple point.

19 Section 60 deals only with percentage
20 interests. I think -- I suggest 60 was created
21 because many condominiums are created in phases.
22 So under phase 1 -- under phase 1, the buyers
23 obtain interests in a unit and common elements,
24 and the percentage interest is calculated.

25 But that percentage interest is not

1 permanent because when phase 2 is introduced,
2 then phase 2 changes the overall percentages in
3 relation to each other because they're new units
4 and in relation to the common elements because
5 they're either new common elements or in phase 2,
6 if they're using the same common elements, that
7 ratio changes and acquiesces.

8 It's created in that first master deed
9 when it says that -- whatever it says about the
10 phasing. This is not a phase development, but
11 the phased master deeds provide for that. The
12 phased master deeds say, now, you're buying in
13 phase 1.

14 We're going to have phases 2, 3 and 4,
15 and so that these numbers may change, but never,
16 never under the wildest imagination would a
17 master deed be saying, and when we record phase
18 2, we're going to take away from you your right
19 to use the tennis court or to swim in the pool,
20 which is what's happened here. They're saying,
21 you can't -- you can't come into this building
22 anymore. It's my private residence.

23 60 deals only with percentage interest
24 in the property and never can that percentage
25 interest be reduced, as the defendants now

1 contend to zero. And that's their position.

2 THE COURT: Okay. So the
3 acquiescence is in relation to the percentage
4 interest?

5 MR. BARR: Absolutely.

6 THE COURT: But not the ownership?

7 MR. BARR: Not the title. Not the
8 title interest.

9 THE COURT: Okay. Okay.

10 MR. BARR: This title defect,
11 Judge, is just so open and obvious to any prudent
12 examiner. And when I say this title defect, I
13 mean, the defect created by the amended master
14 deed, as pointed out by these bright lines.

15 Now, Mr. Farmer, as Your Honor will
16 hear, ultimately bought the -- his unit, I think,
17 in May of 2016. He took a deed, which is in
18 Mr. O'Kelley's exhibits. He took a deed to the
19 ship store building and to the fuel docks, which
20 were formerly the common elements that we're here
21 about.

22 Now, very importantly, Judge, hearing
23 about problems with the -- financial problems
24 with the declarant and the fact that you're going
25 to hear that there was a foreclosure filed in

1 2013. You're going to hear testimony from the
2 plaintiffs, at least, that until what I'm about
3 to describe with Mr. Farmer occurred, they
4 controlled the building.

5 The owners -- the slip owners controlled
6 the building. They had a key to it. The dock
7 master had an office in there. All of his files
8 and records were in there. They had a two-way --
9 you should see the antennae for the VHF radio.
10 If someone needed him, they could call him on the
11 radio.

12 He controlled the security gate to get
13 in. If someone forgot their code or whatever it
14 is, they buzzed him on the intercom and said,
15 hey -- I forgot his name -- Ed. Ed Geiger was
16 the dock master. Ed, how about buzzing me in? I
17 forgot my card. Okay. Okay, Tom. Tom Bessent
18 is one of our witnesses. Come on in, and they
19 buzzed him in.

20 Well, Mr. Farmer bought in 2016 in May.
21 In October -- I think it was about October 1st of
22 2016, Mr. Farmer, for lack of a better word,
23 ejected everybody, the dock master and all of
24 these activities from the building.

25 And, in fact, you will hear testimony

1 that he actually cut the gate control system and
2 put it outside. Removed it. That's a story for
3 another day. The complaint, you will see, has a
4 damages claim against Mr. Farmer for that, but
5 that's not on your plate today.

6 So Mr. Farmer cut all of this stuff out
7 and put it on the deck, and I can't -- I'm not
8 trying to say he did it politely or impolitely.
9 It doesn't matter. But Mr. Farmer told the dock
10 master to leave, and the dock master had to
11 leave.

12 Now, marinas are permitted in South
13 Carolina by DHEC, the sub-office, the OCRM. And
14 primarily, they're permitted because of water
15 quality control. And I won't belabor it here in
16 the opening, but it's to turn the -- well, I'll
17 go through it with one of the witnesses at least.

18 The OCRM permit conditions for this
19 marina require a number of things. One is the
20 presence of a dock master. Now, it doesn't
21 require that he have an office. It requires that
22 there be a dock master, that he retains certain
23 documents on the property, and you will see under
24 the rules and regulations, even under the '07
25 deed, it referred to the records being maintained

1 in the office.

2 This is under the '07 deed, under which
3 Mr. Farmer purchased and ousted everybody. So
4 their own regulations under the deed that
5 Mr. Farmer bought it under, said there's an
6 office, but he made that not so, as you will
7 hear.

8 From a standpoint of water quality, the
9 OCRM regulations require that there be waste
10 water pump out in every marina and that there be
11 onshore restrooms for men and women, and for
12 every marina under 100 slips, it's required two
13 toilets and one lavatory for women and one toilet
14 and one urinal and one lavatory for men.

15 And in fact, in the ship store building,
16 there are two restrooms, which have those
17 facilities, plus a shower in each. Although the
18 rules of this marina and the permit contemplate
19 that the restrooms would be open from I think 9
20 to 5, these restrooms were open 24/7 from 1982
21 until COVID.

22 Because even after Mr. Farmer took
23 possession in 2016, he still kept the restrooms
24 open, but he took advantage of COVID, when it was
25 closed. We had to take him to Circuit Court

1 seeking an injunction to open them back up, and
2 Judge McCoy opened them up but only for certain
3 hours. So in October of 2016, Mr. Farmer ousted
4 us from the property. The dock master's office
5 was no on longer available, although the waste
6 water pump access is still there.

7 In an earlier injunction, Judge
8 Nicholson ordered that Mr. Farmer could still tie
9 a boat there, but any boat owner who wanted to
10 use it had to contact Mr. Farmer, to get a boat
11 removed, Your Honor, where they put the boat that
12 was there so that a boat could come up and pump
13 out the waste. That is just -- has been so
14 unworkable.

15 You will hear the first witness in this
16 case testify that after he learned about that, he
17 now goes all the way up to the Stono River to the
18 marina up by -- on Johns Island. He takes a boat
19 runner, you know, five or six miles for his pump
20 runner. And he's got a small boat so he needs it
21 maybe once a quarter. That's Mr. Monk that you
22 will hear from. Anyhow, that was the
23 consequence.

24 THE COURT: I found a statute,
25 27-31-100, which in subsection F talked about

1 submerged lands and the right of DHEC to control
2 that. So what we're talking about here is
3 marinas, is it not?

4 MR. BARR: Correct.

5 THE COURT: Okay. I saw that in
6 there. I was interested to see that. But that's
7 because of the nature of the beast, is it not?

8 MR. BARR: That's probably their
9 jurisdictional statute.

10 THE COURT: Right.

11 MR. BARR: That gives them
12 jurisdiction to impose these water quality
13 standards on marinas.

14 THE COURT: Right.

15 MR. BARR: But they also impose --
16 well, I guess the requirement that there be a
17 dock master does relate to water quality because
18 the dock master can call folks down for dumping
19 refuse -- affluent into the water. And maybe
20 that's a part of his duty.

21 So at the end of the day, Your Honor,
22 unfortunately, I must suggest that the negligence
23 of the attorneys here are imputed to the clients,
24 Mr. Dalton, Mr. Farmer. Mr. Farmer inherits the
25 negligence of his lawyers who just missed this

1 open and obvious defect.

2 So as for the plaintiffs, their
3 investments of \$362,250, and as to the other 35
4 owners, their investments of over 3 million
5 dollars -- we could add it up, but I did a quick
6 averaging of it. If the law of this case is that
7 they lose the rights to these common elements,
8 they're really left with little more than a hole
9 in the water.

10 Now, maybe that's hyperbole to an extent
11 because it includes the docks and the pilings. I
12 guess it still includes the electric to some
13 extent and the water. But it does not include
14 the 24/7 access they previously enjoyed to the
15 restrooms, the location for the dock master,
16 unfettered access to the waste water pump out.

17 And moreover, Your Honor, Mr. Farmer
18 has, since he took possession, made residential
19 use of this property that he full knows he has no
20 right to occupy as a residence. An alternative
21 prayer in this case is that Your Honor so find --
22 I'm not going to present that full case in
23 opening, but it's founded in the conditions
24 imposed by the Mariner's Cay on the Hill master
25 deed and the conditions associated with the

1 easement creating this marina in the first place.

2 This is not a case, as often occurs,
3 where maybe acquiescence could enter into it,
4 where you've got a piece of property and you know
5 where your line is and your neighbor comes in and
6 builds a house and you see him build a house on
7 your property.

8 And you don't say anything about it, and
9 we know -- we know the law in that area is -- and
10 I don't recall. That's some form of estoppel. I
11 don't remember which, but it's based on some
12 notions of acquiescence.

13 None of that can be said about the
14 plaintiffs in this case, absolutely nothing as to
15 the individual plaintiffs. And the acquiescence
16 we're talking about is the switch and bait
17 associated with eliminating these common
18 elements, which was really only brought to light
19 in full graphic form when Mr. Farmer ousted them.

20 So the drum that is being beaten by
21 Mr. Farmer and his LLCs, that this case is
22 controlled by 60 is a hollow drum. It doesn't
23 have any skin on the cover, and you can't hear
24 it, simply because 60 relates only to percentage
25 interest and not to title interest.

1 You cannot strip the title interest away
2 because 70 specifically precludes it, and you've
3 got to reconcile 60 and 70. That's the only way
4 to do it. Thank you for hearing me, Your Honor.
5 I look forward to presenting the evidence.

6 THE COURT: All right. Thank you,
7 Mr. Barr.

8 MR. O'KELLEY: Okay. Your Honor,
9 Hamlin O'Kelley again for the two LLCs of which
10 Mr. Farmer is the single member and controlling
11 interest, Mariner's Cay Marina and Condo, LLC,
12 and Mariner's Cay Fuel Dock, LLC.

13 THE COURT: All right.

14 MR. O'KELLEY: I, of course,
15 disagree with Mr. Barr. We've got a fully
16 timpani section here, Your Honor. It's not a
17 hollow drum in any way, shape, or form.

18 THE COURT: Okay.

19 MR. O'KELLEY: Your Honor, 27-31-60
20 does control. I've highlighted the term
21 acquiescence. As Your Honor knows, there is no
22 case law on how this applies. So I want to go
23 through some practitioner condo issues.

24 THE COURT: Okay.

25 MR. O'KELLEY: There is no doubt

1 that a master deed can be amended to change
2 common elements. People do it all the time. And
3 how do they do it? The practitioner comes to
4 27-31-60 and reads the second paragraph in A
5 regarding the percentages of common elements.

6 And how is it -- how can that be
7 changed? Well, if the declarant owns all the
8 property -- and in this case, the declarant was
9 the marina and Mariner's Cay, LLC. If they own
10 all the property and they haven't sold a single
11 unit, they can just change it. Easy as pie.

12 THE COURT: Right.

13 MR. O'KELLEY: If a unit has been
14 sold, in practice, what our firm does, and most
15 prudent firms do is, they go to every single
16 owner and get them sign an acknowledgement that
17 the common elements have changed. It's called --
18 this is a term of art. It's called de-condoing
19 in the practical world.

20 There were a series of townhouses along
21 Windermere Boulevard that were condos. They are
22 now townhouses again, and it took years for our
23 firm to get that done, to get every single owner
24 to sign, and we got every single lender to sign
25 because that's the way to do it.

1 And there's no doubt it wasn't done when
2 the new master deed was recorded in 2007. The
3 declarant retained all the rights to amend it and
4 amended it unilaterally, and there are plenty of
5 lawyers -- I agree with Mr. Barr -- who think
6 that's sufficient.

7 Unfortunately, this section of the condo
8 act doesn't make it sufficient because you have
9 to show that someone, who has a vested right in a
10 common element, agreed to get rid of that vested
11 right.

12 THE COURT: Okay.

13 MR. O'KELLEY: And here, Your
14 Honor, we've got something more important.
15 Mr. Barr has mentioned that he has four clients.
16 He has five. The Marina Council of Co-Owners.
17 And in his brief, he admitted that, and then in
18 the next sentence, he said that not a single
19 plaintiff in this case was a party to your
20 foreclosure.

21 But they were, Your Honor. They hired
22 Derek Dean, who filed an answer in this case.
23 They knew that the property was being sold to
24 Mr. Farmer. And in fact, what you'll hear, Your
25 Honor -- or to his entities. What you'll hear,

1 Your Honor, is that the board members, some of
2 whom are in this room right now, were actually
3 attempting to buy the unit from the entity that
4 you agreed had title as a result of your
5 foreclosure.

6 So they've got a big problem with that,
7 Your Honor. They also knew in 2007, that the
8 master deed had been amended because, as Mr. Barr
9 said, they were charged with knowing it because
10 it's a matter of public record. They either had
11 constructive notice at a minimum, actual notice,
12 a lot of.

13 And we are here because Mr. Farmer
14 didn't do anything wrong, Your Honor. He spent
15 \$250,000 to buy these units. He spent another
16 \$250,000 to update them and bring them into
17 livable condition.

18 There is a board member named Ron
19 Maguire, who might -- who I think is in the room
20 with us right now, who you will hear met with
21 Mr. Farmer and walked him around the unit and
22 said, oh, this has been foreclosed. No one
23 said -- no one came to you in the Court in 2013,
24 '14 and '15 and said, we object to this
25 foreclosure because we think this is a common

1 element.

2 So they allowed the process to go
3 through, and they were actually going to bid and
4 try to outbid Mr. Farmer. Mr. Farmer buys the
5 unit, and the next day goes to the annual meeting
6 to discuss the units with them.

7 And you will hear in the testimony that
8 there were offers made to Mr. Farmer and
9 counteroffers made. Why would they be making
10 offers if they hadn't acquiesced and realized
11 this was no longer being treated as a common
12 element. The statute is clear, acquiescence.

13 Of course, we have no case law on
14 acquiescence, so then you look at what's the
15 common definition of acquiescence. And
16 acquiescence has been defined as conduct
17 recognizing the existence of a transaction and
18 intended, to some extent at least, to carry the
19 transactions or permit it to be carried into
20 effect. And that's exactly what happened here.

21 You will also hear testimony from the
22 property manager that they accepted dues from
23 Mr. Farmer. You will hear testimony from the
24 property manager that the board actually said
25 lien this property because he's not paying dues.

1 You will actually hear from the property manager
2 that they fined Mr. Farmer's entities as a result
3 of the violations of what they considered part of
4 the master deed rules and regulations.

5 Your Honor, it's important to note also
6 that we sent out -- and this is Exhibit 65 in
7 our -- well, first of all, Exhibit 2 is the
8 answer to the condo association in the
9 foreclosure suit. Exhibit 65 is important to
10 note in our exhibit -- because we sent requests
11 to admit out early on in this case.

12 And it's important to walk through what
13 was admitted. They admitted that we had a true
14 and accurate copy of the amended and restated
15 master deed recorded on March 9th, 2007. They
16 admitted the schedule of interest, and they
17 admitted that there was a summons and complaint
18 filed in the case of First South Bank vs. Tiger
19 River Capital, case number 2013-CP-10-0850.

20 We've all been calling that the
21 foreclosure case, but I just wanted to put into
22 the record what we were talking about. They also
23 admitted that they were a named defendant. They
24 also admitted that there was a mortgage
25 foreclosure, but they denied that it was on the

1 units in question.

2 They also admitted that there was --
3 Your Honor entered an order of judgment and
4 foreclosure, which the Marina Council Co-Owners
5 was a party to, Your Honor. And that's important
6 because it again shows that they knew that the
7 property was being foreclosed upon and they knew
8 that the property has -- was no longer a common
9 element.

10 The case law is clear that you can't
11 mortgage or partition common elements. But
12 someone mortgaged this common element, the prior
13 owner, thinking that they didn't have -- it was
14 mortgage-able as a separate unit.

15 From 2007, Your Honor, to 2017, the
16 council of co-owners knew about this property.
17 We will hear in a few minutes knew about this
18 acquiescence, that this -- these units were no
19 longer being treated as common elements.

20 Mr. Geiger testified that he knew about
21 the foreclosure. The board certainly knew about
22 the foreclosure and did nothing about it. Your
23 Honor, this case started out as a class action
24 lawsuit. That was doing -- a class action was
25 denied. Yes, there have been injunction hearings

1 in this.

2 And with Mr. Farmer, you'll -- it's
3 important to note that those injunction hearings
4 were basically consent order hearings, Your
5 Honor. We agreed to the relief. The pump out
6 station is still there. No one has contacted
7 Mr. Farmer about using it. It's there.

8 Importantly, Your Honor, since 2016 to
9 the present, my client has paid for the bathroom
10 use. He's paid the insurance on the buildings.
11 He's paid the real property taxes. He's paid his
12 dues. Not one time has he been offered
13 reimbursement from any of those payments. And
14 that's -- we're up to about \$500,000 in costs at
15 this point, Your Honor.

16 Mr. Farmer, will you stand up a minute?
17 This is Dolph Farmer, Your Honor. I forgot to
18 introduce him. His wife, Laura Farmer, is here
19 with him.

20 THE COURT: Okay.

21 MR. O'KELLEY: Your Honor, it's
22 important to note that if the relief that
23 Mr. Barr's clients seek is granted, these people
24 are homeless. They live in that community. This
25 is a Court of Equity.

1 The most equitable thing to do here is
2 to find that there's been acquiescence for quite
3 some time, that the behavior of the board and the
4 plaintiffs in this matter shows that they all
5 knew this was a separate unit.

6 And they've gone back due to the smart
7 work of Tommy McIntosh and both (inaudible) here
8 to say, oh, we didn't see a signature from all
9 the unit owners showing that they acquiesced to
10 this not being a common element, so we gotcha,
11 Mr. Farmer.

12 The board doesn't like Mr. Farmer, Your
13 Honor. You will hear testimony about that.
14 They're mad that Mr. Farmer is living there, but
15 what you'll also hear is that these units have
16 been residentially used in the past. They've
17 been rented out to people overnight. So that's
18 again showing that this was not being treated --
19 these units were not being treated as a common
20 element for years.

21 THE COURT: All right. So there's
22 a distinction clearly between the council of
23 co-owners and the individual unit owners in a
24 condominium regime?

25 MR. O'KELLEY: Absolutely.

1 THE COURT: So the counsel itself
2 was named a defendant, I assume, because they had
3 liens against the property for nonpayment of
4 rent?

5 MR. O'KELLEY: They're named often
6 in condo cases. We always named them in
7 foreclosure cases because whether the -- it's an
8 inchoate lien. So either it's got a zero balance
9 and there's nothing in the public record or
10 there's some sum there. But why do we name them?
11 To wipe out their interest in the property.

12 THE COURT: Correct. Well, to --

13 MR. O'KELLEY: To the --

14 THE COURT: To foreclose whatever
15 lien they've had.

16 MR. O'KELLEY: Yes, sir. Yes, sir.

17 THE COURT: Right.

18 MR. O'KELLEY: Not to wipe out
19 their title interest. I didn't mean that.

20 THE COURT: But because of the
21 nature of a condominium regime, no owners were
22 named. No individual owners were named of any
23 unit.

24 MR. O'KELLEY: They're never named
25 because --

1 THE COURT: And they shouldn't be
2 unless you are attempting to foreclose some right
3 that those people would have.

4 MR. O'KELLEY: Correct.

5 THE COURT: So I'm going to section
6 70 of Mr. Barr's argument, how is it then that
7 you can foreclose the individuals in
8 particular -- I think he's representing four
9 owners and the council, but there's 35 other
10 people. So there's 39 people who had vested
11 rights in common elements. And how does that get
12 changed unilaterally?

13 MR. O'KELLEY: It shouldn't have
14 been.

15 THE COURT: Right.

16 MR. O'KELLEY: It should not have
17 been. We're in agreement with that.

18 THE COURT: Okay.

19 MR. O'KELLEY: But it was, and they
20 agreed to it, over the course of their conduct
21 through the years.

22 THE COURT: Okay. And that's
23 despite the fact that any -- under 70, any
24 covenant to the contrary would be void?

25 MR. O'KELLEY: What that statute

1 says is this, Your Honor, shall remain undivided.

2 The common elements shall remain undivided.

3 THE COURT: You can't partition
4 common elements?

5 MR. O'KELLEY: You can't partition
6 them.

7 THE COURT: You can't give it to
8 some of the owners and not --

9 MR. O'KELLEY: And shall not be the
10 object of a partition or division of the
11 co-ownership.

12 THE COURT: Right.

13 MR. O'KELLEY: They can be changed.
14 27-31-60 allows common elements to be changed.
15 You just have to have the permission of the
16 owners.

17 THE COURT: You would change, but
18 do you not change the percentage ownership
19 interest? Not the fact that they have an
20 ownership interest.

21 MR. O'KELLEY: You do change the
22 percentage ownership interest, but again, things
23 are taken out of being common elements all the
24 time.

25 For example, we represented a condo

1 association on Daniel Island. They had a piece
2 of property that was supposed to be green space
3 permanently. Well, guess what? The developer
4 went to all of the owners and said, we would like
5 to put in more condos.

6 All those owners said, great, our dues
7 will go down, fine. We had to have every single
8 one of those people sign off on it. Why?
9 Because we were changing their percentage in the
10 common elements.

11 THE COURT: Right.

12 MR. O'KELLEY: It happens all the
13 time. So if that be the case and you take
14 Mr. Barr's view, every single amendment changing
15 a common element percentage is void and of no
16 effect. 27-31-70 has to do with partition
17 actions, Your Honor, and dividing them
18 accordingly. For example, the Rohani (ph) case,
19 which is seminal about that.

20 THE COURT: Right.

21 MR. O'KELLEY: That was very
22 different from what we have here.

23 THE COURT: Yeah. Yeah. I found
24 another case I want you-all to take a look at, at
25 some point in time, and that's Heritage Federal

1 versus Eagle Lake. That's another one I picked
2 up on.

3 MR. BARR: Who is the plaintiff,
4 Judge?

5 THE COURT: Heritage Federal
6 Savings and Loan, Court of Appeals, 1995, in
7 which in this particular case, there was an
8 ownership of a clubhouse, and it goes through
9 several analyses. But they get this case cited
10 to section 100, which is the one I referenced
11 earlier about DHEC.

12 MR. BARR: Was that the Myrtle
13 Beach case?

14 THE COURT: It was out of Myrtle
15 Beach, yep. It sure enough is. And so the Court
16 found that the clubhouse was a common element,
17 and therefore, was not subject to that. So I
18 just bring that to y'all's attention. You know,
19 you've got some other case law, and there may be
20 something out of Florida I'll have to look at,
21 but I hope not. But anyway --

22 MR. O'KELLEY: Your Honor, in terms
23 of our witnesses, Mr. Farmer is planning on
24 testifying. We have Trey Mathisen, who is an
25 appraiser, who has been qualified as an expert in

1 this Court before who is going to testify as to
2 the value. And then we have various board
3 members that are under subpoena who will be here,
4 and we'll be asking them questions about their
5 course of conduct showing that they complied with
6 27-31-60.

7 THE COURT: Okay. All right,
8 Mr. O'Kelley.

9 MR. O'KELLEY: Your Honor, one
10 other thing, we also have our judicial estoppel
11 arguments, which we made before you in the past.
12 We'll be renewing those and showing the testimony
13 about the knowledge from that as well.

14 THE COURT: Very good. Thank you,
15 sir.

16 MR. O'KELLEY: Yes, sir.

17 THE COURT: All right. Well, those
18 were both -- actually, Mr. O'Kelley was closer to
19 five minutes than Mr. Barr was.

20 MR. O'KELLEY: I was quick because
21 I --

22 THE COURT: Mr. Barr is from the
23 old school of lawyering. All right. Why don't
24 we take five minutes and then let's start with --
25 we will just take a break and then we will start

1 with our first witness. Okay? I've got 11:30.

2 We will run for at least an hour or so. Okay?

3 Let's do that. Thank you.

4 (A recess transpired.)

5 THE COURT: All right. Mr. Barr?

6 MR. BARR: Your Honor, I call Neil

7 Monk.

8 (NEIL MONK, having first been duly
9 sworn, testified as follows:)

10 THE COURT: Please give me your
11 full name and address for the record.

12 THE WITNESS: David Neil Monk.
13 Mailing address, PO Box 1110, Folly Beach, South
14 Carolina 29439-1110.

15 THE COURT: Thank you, sir. All
16 right. Mr. Barr?

17 MR. BARR: We've got two Neils in
18 this case.

19 THE COURT: All right.

20 MR. BARR: And this Neil spells his
21 name N-E-I-L, and the next one is going to spell
22 it N-E-A-L.

23 THE COURT: Okay. Well, thanks for
24 correcting me already.

25

1 DIRECT EXAMINATION

2 BY MR. BARR:

3 Q. Good morning, Mr. Monk. Yes, it's still
4 morning. Where do you live, Mr. Monk?

5 A. I lived at -- where you mentioned, the
6 top of the hill earlier. I live at Mariner's Cay
7 Condos. For the Condo Association, that's beside
8 the one we're talking about today. I live at
9 number 33 Mariner's Cay. I've lived there since
10 1994.

11 Q. Okay. So well before the times that
12 we're here talking about?

13 A. Yes, sir.

14 Q. And going back, though, what's your age,
15 sir?

16 A. I am 57 years old.

17 Q. And what is your education?

18 A. I have an electrical engineering degree
19 from University of North Carolina, Charlotte.

20 Q. And where are you employed?

21 A. I own a company called Applied
22 Automation, and I work for a company called
23 Hoffman Building Technologies.

24 Q. Okay. Now, just so the Court might
25 understand, if you're interrupted from being here

1 today, tomorrow, and the next day, is there an
2 ongoing project right now that's taking your
3 time?

4 A. Yes. We're working on a very large
5 energy project with the State of South Carolina
6 at the Medical University and some of our
7 partners are from Canada. They're just now able
8 to come in, and they flew in this week. So it's
9 been tough to juggle the --

10 THE COURT: Okay.

11 BY MR. BARR:

12 Q. So you may have to deal with the
13 visiting firemen from Canada?

14 A. That's right.

15 Q. But it doesn't mean that you're not
16 vitally interested in this case?

17 A. That's correct.

18 Q. What size boat do you have?

19 A. I have a 26-foot Sea Hunt center console
20 with twin Yamaha 150 4 stroke that has an onboard
21 head with pump out. And I primarily use it for
22 taking my buddy's fishing offshore.

23 Everybody is aware that we're fairly
24 close to the Gulf Stream, and so we go out, and
25 especially late April, it starts to pick up. We

1 go dolphin fishing, wahoo fishing, and we catch
2 fish and enjoy the boat very much.

3 MR. BARR: All right. I don't know
4 if the court reporter has yet marked our
5 exhibits, but I'm going to hand the witness the
6 Plaintiff's Exhibit notebook 2, which has the
7 tab, the smaller ones. And I also want to ask
8 the court reporter, this will be Plaintiff's
9 Exhibit 2 in evidence.

10 BY MR. BARR:

11 Q. Now, Mr. Monk, let me invite your
12 attention to tab C of Exhibit 2, which I guess
13 would become Exhibit 2C. Are you there?

14 A. Yes, sir.

15 Q. Okay. Then you told us that you bought
16 your place on the hill there at Mariner's. Is
17 your section called Mariner's Cay or something
18 else?

19 A. It's called Mariner's Cay Racquet and
20 Yacht Club.

21 Q. Okay. And you bought that in '94.
22 After you bought it in '94 -- when you bought it
23 in '94, was the marina in existence?

24 A. Yes, but it was separate. It wasn't
25 condos at that time. It was a lease, individual

1 lease.

2 Q. Okay. Leased out boat slips. Did you
3 lease a boat slip there?

4 A. No, sir.

5 Q. Okay. So when did you first obtain a
6 slip in the marina?

7 A. Well, I bought it in -- it looks like
8 in --

9 Q. Okay. It would be this date then?

10 A. Right. Right.

11 Q. All right. And then for the record,
12 then we're looking at Exhibit 2C, which is a deed
13 from marina at Mariner's Cay to David Neil Monk
14 for \$89,250 of dock unit B-17. Did I say that
15 correctly?

16 A. Yes, sir.

17 Q. And that was recorded on?

18 A. May 18th, 2006.

19 Q. No. March the 12th of '07.

20 A. Okay.

21 Q. Which I will say that was serendipitous
22 because it was only seven or nine days before the
23 amended master deed was recorded.

24 Now, if you look at the first page of
25 your deed, down at the very bottom of the

1 sentence reads, said master deed may thereafter
2 be amended from time to time, together with
3 undivided interest to the pertinent common
4 elements, all as described more fully in the
5 master deed. Did I read that correctly? Did you
6 see where I was reading?

7 A. Yes, sir.

8 Q. All right. So what was your
9 understanding when you bought your slip of the
10 common elements, the bundle of rights, the
11 package you were buying into when you paid
12 \$89,250?

13 A. Well, there was quite a lot of
14 excitement with this because it had just been
15 refurbished. They had redone the docks, put the
16 etrex boards in, new electrical, the water. So
17 it was a pretty good deal. So my perception of
18 common elements would be the fuel dock, the ship
19 store, the bathrooms, the pump out, of course,
20 and the water and the power sources.

21 Q. All of those elements make it a marina,
22 right?

23 A. Yes, sir.

24 Q. And you told us that your boat does have
25 a bill, it does have a waste water compartment

1 that requires emptying from time to time?

2 A. Yes, sir.

3 Q. With what frequency does yours require?

4 A. Well, that's related to how many times
5 you go offshore.

6 Q. Obviously, yeah.

7 A. But the -- probably about once every two
8 or three months.

9 Q. Okay. And do you have the same boat
10 that you had when you bought it?

11 A. Yes, sir.

12 Q. All right. Now, did you ever learn that
13 the master deed, by which you purchased on
14 Exhibit 2C, did you ever learn that that '06
15 master deed had been amended?

16 A. No, sir.

17 Q. I mean, you know it today, right?

18 A. Yes, sir.

19 Q. And so when you did you first learn it?

20 A. Well, I started asking questions because
21 I went to pump my boat out and I was approached
22 by Mr. Farmer's wife, and she asked me what I was
23 doing on the pump out dock.

24 And so I started asking questions at
25 that point, maybe something was going on here

1 that I needed to be aware of, you know. So
2 that's about when I started trying to get
3 inquisitive as to what was going on.

4 Q. And do you remember when that would have
5 been?

6 A. I do not. I don't know the date.

7 Q. All right. Well, had the lawsuit been
8 filed at that time?

9 A. I don't think so.

10 Q. Okay. So it was some time before the
11 lawsuit and after Mr. Farmer's arrival; is that
12 correct?

13 A. Yes, sir.

14 Q. Now, in what manner did Ms. Farmer
15 inquire of you about the --

16 MR. O'KELLEY: Your Honor, I'm
17 going to object to that. Hearsay. Ms. Farmer is
18 not a party to this case, and he's telling you an
19 out-of-court statement.

20 THE COURT: Overruled. You can go
21 ahead.

22 MR. BARR: Yeah. I don't think
23 it's hearsay.

24 THE COURT: Yeah.

25 BY MR. BARR:

1 Q. Go ahead.

2 A. Well, when I was coming -- I used the
3 pump out. The pump out makes quite a bit of
4 noise because the motor is up underneath the deck
5 near the ship store. I think that's where they
6 reside now. But the pump out is actually on the
7 end of the fuel dock.

8 And so when you put the hose in there,
9 it comes on automatically and makes this pump
10 come on, which makes a good bit of noise. So I
11 guess that made her aware that someone was down
12 there. But when I came off the dock from using
13 the pump out, she had asked me what I was doing
14 using the pump out.

15 Q. All right. Let me invite your attention
16 over to the photographs that begin at M -- at tab
17 M and flip back maybe -- what we want to look for
18 is the flat overhead view of the boat slips,
19 which would be about four photographs back.

20 A. Okay.

21 Q. And we see in that aerial photograph, if
22 everybody is with me, we see four finger piers
23 extending out into the river; is that correct?

24 A. Yes, sir.

25 Q. Okay. Where were the fuel docks located

1 then, that you're talking about, with respect to
2 this photograph?

3 A. In reference to this picture, you have
4 four areas that stick out, dock A, dock B, dock C
5 and dock D.

6 Q. Okay.

7 A. The fuel docks are on the end of dock C,
8 which is the third pier that sticks out there.

9 Q. From the left?

10 A. Yes.

11 Q. Okay.

12 A. And so at the end of dock C, there are
13 two areas designated for fuel services.

14 Q. All right.

15 A. And pump out. And you currently see
16 a -- it looks like a large white boat sitting
17 there at the fuel area.

18 Q. All right. And then how does that --
19 how does that waste water pump out work then? I
20 mean, is there some sort of line from the end of
21 that finger pier back to some pump?

22 A. Yes. If you've ever had an inhouse
23 vacuum cleaner system, that you had a house where
24 your inhouse vacuum cleaner system is, where you
25 plug the hose into the wall, and it comes on.

1 Q. Right.

2 A. It's very similar to that, but -- and
3 the connection is out at the fuel dock, but the
4 piping runs underneath the dock up to the city
5 sewer. And there's a sump that makes that happen
6 underneath the ship store.

7 Q. Okay. So the pump is underneath the
8 ship store building that I described for the
9 Court in the opening, right --

10 A. Right.

11 Q. -- which we see back on the land side,
12 right?

13 A. Right.

14 Q. Okay. Now, after this conversation with
15 Ms. Farmer, did you ever use the pump out again?

16 A. No. I was a little hesitant to go over
17 there, and most of the time, there were boats
18 there because I think they were subleasing them
19 out to other people.

20 Q. All right. When you say they, who was
21 subleasing them out?

22 A. The Farmers.

23 Q. And so is that when you learned that the
24 Farmers claimed ownership of the fuel docks?

25 A. Yes.

1 Q. All right. And since that date, which
2 you recall was sometime after Mr. Farmer and
3 before the lawsuit.

4 MR. BARR: I think that lawsuit was
5 filed in June of '17, Your Honor.

6 BY MR. BARR:

7 Q. What do you do to pump out your waste
8 water?

9 A. Well, I drive 10 miles up the Stono
10 River to the St. Johns Yacht Harbor, which costs
11 quite a bit in fuel, and it's half a day to go up
12 there to make that possible.

13 Q. Do you know whether other -- any other
14 slip owners who acquire waste water pump out
15 continue to use the pump out service at the end
16 of pier C?

17 A. I have not seen the pump out service
18 used in quite a while because I think people are
19 just trying to avoid the situation and having to
20 move boats out of the way and to go there.

21 Q. All right. In any event, I think this
22 is the answer to my question. When did you
23 learn -- I think it might be the answer to my
24 question, how you learned that the deed had been
25 amended. So back in '06 and in '07, did you

1 learn that the deed had been amended?

2 A. No.

3 Q. Okay. So this is the first time you
4 knew about it?

5 A. Yes.

6 Q. All right. So therefore, you certainly
7 weren't given an opportunity to vote on it,
8 right?

9 A. No, sir.

10 Q. And had you been given an opportunity to
11 vote on the removal of these common elements from
12 your bundle of rights, would you have voted for
13 it?

14 A. No, sir.

15 MR. O'KELLEY: Your Honor, I'm
16 going to object to that on speculation purposes.

17 MR. BARR: I don't know that that's
18 speculation, Your Honor.

19 MR. O'KELLEY: Would you, could
20 you, should you. I mean, that is speculation.

21 THE COURT: I'm going to allow it.
22 Go ahead.

23 BY MR. BARR:

24 Q. Would you have voted for it?

25 A. No, sir.

1 Q. Now, in what -- in what other ways, if
2 there are other ways, if any, were your uses --
3 well, let me back up. Maybe I haven't asked you
4 this specific question.

5 Can you recite what you believe to be
6 when you bought the property, to be the common
7 elements that were included in your bundle of
8 rights? You mentioned -- we talked a lot about
9 the fuel pump out, but what else?

10 A. The sewage pump out, the bathrooms that
11 used to be open 24/7 for people that were getting
12 in late from boating, the sewer, the water, the
13 deck up on the back of the ship store used to be
14 an area to congregate.

15 People would hang out there, after
16 finishing or day or so. You'd have a beer or a
17 sandwich or cookout sometimes up there. The
18 common pier going out to the finger piers and the
19 security gate.

20 Q. And who was the dock master at Mariner's
21 Cay in '06, '07 when you -- when you had this
22 conversation with Ms. Farmer?

23 A. This would have been -- it would have
24 been Ed Geiger and possibly Randy Smith.

25 Q. All right. And prior to the events

1 you're describing, where did -- from what
2 location did Mr. Geiger do his business?

3 A. Up on the first level of the ship store,
4 there was an area that was designated a ship
5 store, which had a desk and more like a service
6 that you would work behind for a business and a
7 radio up there. So Mr. Geiger worked out of the
8 ship store on the first level.

9 Q. And this is within the building,
10 correct?

11 A. Yes.

12 Q. All right. And after this conversation
13 with Farmer -- I mean, Ms. Farmer or thereabouts,
14 what happened to Mr. Geiger and his location and
15 his office?

16 A. Well, the dock master obviously didn't
17 have a place to work inside, so we know the harsh
18 weather conditions you have outside. So
19 Mr. Geiger's age, he was walking to -- he also
20 lives at Mariner's Cay. He was walking to his
21 house to try to work out of his house as much as
22 possible and then come down and visit at random
23 times. Instead of being on the dock at all
24 times, he would have to work out of his house
25 some.

1 Q. So are you saying that Mr. Geiger was
2 required to leave the previous dock master's
3 office?

4 A. Yes.

5 Q. All right. And how long had the dock
6 master's office been in the marina building, the
7 ship store building?

8 A. Since its inception.

9 Q. All right. Forever. Now, do you recall
10 any change in the use of the restrooms after the
11 COVID limitations, the restrictions?

12 A. Yeah. That's been an inconvenient
13 problem for most of the people. A lot of people
14 there have larger boats than I have, and they
15 spend the weekend there.

16 So they look for access to restrooms and
17 showers at times that aren't operating times like
18 from 8 to 5 a.m. So when they limited the amount
19 of times for the restrooms, a lot of those people
20 weren't able to use the facilities until the
21 following morning at 8 o'clock.

22 So if you were in a boat and you didn't
23 get back until -- to the marina until 8 p.m. and
24 you wanted to take a shower to go out to eat, you
25 couldn't use the restroom or get a shower. I

1 think the hours have increased recently, but I'm
2 not sure. But they're not 24/7 any longer.

3 Q. All right. Mr. Monk, have you ever
4 agreed or even intended to agree to give up any
5 of your ownership interest in these common
6 elements?

7 A. No, sir.

8 Q. And have you paid all assessments owed
9 to the counsel of co-owners when due without
10 fail?

11 A. Yes, sir.

12 Q. What would be the impact on you and the
13 affect on your ownership interests if it was
14 determined that the ship store building, its
15 restrooms, storage spaces, the dock master office
16 space, the fuel docks, free access to pump out,
17 were not restored as common elements? What would
18 be the effect of that on you?

19 A. Well, I would assume that the marina
20 would have to cease to exist because it wouldn't
21 have the required entities to maintain the OCR
22 implement, such as pump out, bathrooms, fuel kit.
23 But the affect on me would be obviously the value
24 of -- the monetary value of my slip, and -- which
25 has already taken a significant hit, from what I

1 paid for it originally, due to these actions.

2 Q. Now, in the course of your -- of the
3 years, did you ever hear anything about a
4 foreclosure?

5 A. No, I did not.

6 Q. All right. So when was the first time
7 your use of these common elements were -- became
8 interrupted? Was it the incident you've
9 described with Ms. Farmer?

10 A. Yes, sir.

11 Q. And what are you asking from this Court?

12 A. I would like the Court to restore what's
13 rightfully mine and what I paid \$89,250 for that
14 was wrongfully removed from my deed.

15 MR. BARR: Thank you, Mr. Monk.

16 Answer any questions from Mr. O'Kelley.

17 CROSS-EXAMINATION

18 BY MR. O'KELLEY:

19 Q. Good afternoon, Mr. Monk. How are you
20 doing, sir?

21 A. How are you doing?

22 Q. I'm fine. How are you?

23 THE COURT: This is Plaintiff's
24 Exhibit 1?

25 MR. O'KELLEY: Those are

1 Plaintiff's Exhibit 1, yes, sir.

2 BY MR. O'KELLEY:

3 Q. And this is for you to follow along,
4 sir. In the large notebook I just handed you,
5 sir, the original master deed is at tab A. Turn
6 with me up at the top --

7 MR. O'KELLEY: And, Your Honor, if
8 I could approach the witness. It might be easier
9 if I can take it to him.

10 THE COURT: Watch your step.

11 MR. BARR: What's the page going to
12 be?

13 MR. O'KELLEY: I'm going to get to
14 it.

15 THE COURT: He's trying to find out
16 now. It's only 60 pages long.

17 MR. O'KELLEY: It's V58 at page
18 670.

19 MR. BARR: 670?

20 MR. O'KELLEY: Yes, sir.

21 THE COURT: So under the operations
22 and maintenance manual?

23 MR. O'KELLEY: Yes, sir.

24 THE COURT: All right.

25 BY MR. O'KELLEY:

1 Q. When you took title to your unit, did
2 you read the master deed?

3 A. I have a title of real estate, which I
4 read which references the master deed.

5 Q. That wasn't my question. Did you read
6 the master deed?

7 A. Nope.

8 Q. Have you read it since?

9 A. Yes.

10 Q. When did you first read the master deed?

11 A. Once this became knowledgeable that we
12 were having to do this.

13 Q. When was that, sir?

14 A. 2018.

15 Q. Okay. And you weren't originally a
16 party to this lawsuit, were you, sir?

17 A. I was originally a party to the one that
18 was going to be a -- what's the word, where you
19 get everybody on it?

20 THE COURT: Class action.

21 THE WITNESS: Class action.

22 BY MR. O'KELLEY:

23 Q. You were not named as a party to that
24 suit. You were only named in this suit in the
25 last year, correct, in the fourth amended

1 complaint?

2 A. I'm not aware.

3 MR. BARR: I would agree to that.

4 MR. O'KELLEY: Well, I was just
5 going to pull it, but --

6 THE COURT: You will stipulate to
7 that?

8 MR. BARR: Right.

9 MR. O'KELLEY: That's fine.

10 BY MR. O'KELLEY:

11 Q. Looking at the Exhibit A that I've given
12 you, section 2.1.2, when are the restrooms
13 supposed to be available, sir?

14 A. It says 9 to 5 p.m.

15 Q. And that's according to the master deed
16 that you say controls this matter, correct?

17 A. I'm not sure what master deed I'm
18 looking at. I'd have to look at when it's --

19 Q. Well, I'll represent to you that --

20 A. There's so many of them in here that
21 we're talking about. Is this the master deed
22 from March 8, 2007, or is this the master deed
23 that was amended on March 19th, 2007? Which
24 master deed do I have?

25 Q. You've got the master deed that was

1 recorded first back in 2006. It was recorded May
2 18 of 2006.

3 A. Okay.

4 Q. How many times have you contacted
5 Mr. Farmer to use the pump out station?

6 A. I have not contacted him because I did
7 not want to cause any confrontation. There's
8 been many confrontations with this matter and a
9 lot of stress and strife, and I aim to avoid that
10 kind of situation. So I would rather just drive
11 my boat up to St. Johns Yacht Harbor and pump it
12 out there without having to go through the motion
13 of getting everybody riled up.

14 So in the event that I wanted to contact
15 him and use it, there's a boat in there, a very
16 large boat in there. The boat has to be moved.
17 And there's nowhere to move that boat. So it's
18 not really a truthful option to use that pump
19 out.

20 Q. Are you aware there are Court orders in
21 this case that set forth the mechanism to contact
22 Mr. Farmer to use that pump out station?

23 A. Yes, but the --

24 Q. And you haven't done that, have you?

25 A. It's physically not able to be done.

1 Q. Because you haven't tried to do it to
2 comply with the Court order?

3 A. If you can ask him how it can be done by
4 moving a 40-foot sailboat when it has nowhere to
5 go. It's impossible to do that.

6 Q. You are a named plaintiff in this case,
7 correct?

8 A. Uh-huh.

9 Q. Is that a yes? We need a yes or no for
10 the court reporter.

11 A. What was the question?

12 Q. You're a named plaintiff in this case,
13 correct?

14 A. Yes.

15 Q. You're aware that a court order is
16 governing the process in this case, correct?

17 A. That's correct.

18 Q. And you haven't done it, have you?

19 A. Nope, because I didn't --

20 MR. O'KELLEY: Thank you. That's
21 all I have.

22 MR. BARR: Briefly.

23 THE COURT: All right.

24

25

1 REDIRECT EXAMINATION

2 BY MR. BARR:

3 Q. Mr. Monk, Mr. O'Kelley asked you
4 questions from the big master deed book, which is
5 Exhibit G -- from Exhibit G, which is the
6 operations and maintenance manual, to establish
7 that it says that the -- on the page that he read
8 was the MCM marina facility is accessible 24
9 hours a day, seven days a week; however, the
10 restrooms are only available during the normal
11 operating hours of 9 to 5. Is that the paragraph
12 you were looking at?

13 A. Yes, sir.

14 Q. Okay. Notwithstanding what that says,
15 since you've begun -- since you've had this boat
16 slip, what have been the hours -- what were the
17 hours of the restrooms until Mr. Farmer arrived?

18 A. They had a code lock, which allowed
19 people at the marina to use them 24/7.

20 Q. And did that change when Mr. Farmer took
21 possession?

22 A. Yes.

23 Q. And then in terms of the alternative
24 that was imposed by the Court that Mr. -- the
25 alternatives to the waste water pump out, is it

1 correct -- what I'm hearing you say is it just
2 wasn't feasible?

3 A. That's correct.

4 MR. BARR: Thank you. I don't have
5 any further questions.

6 RECROSS-EXAMINATION

7 BY MR. O'KELLEY:

8 Q. But you never tried, did you, sir?

9 A. Well, it was --

10 Q. Answer my question. Did you ever try?

11 A. No.

12 MR. O'KELLEY: Thank you.

13 THE COURT: And if you would like
14 to explain, you can.

15 THE WITNESS: Yeah. Well, if we --
16 let's go back to the picture that we were looking
17 at earlier.

18 THE COURT: You can just explain it
19 to me. I remember the picture.

20 THE WITNESS: Okay. If you see
21 that the fuel dock has two slips at the end, and
22 that's where you pull up to do your pump out.
23 Mr. Farmer has subleased both of those.

24 The people he subleased to, the owners
25 of those boats, they are not there. They're

1 rarely there. He receives money for rent for
2 them. So if you went to approach Mr. Farmer and
3 you asked him to move one of those boats, I would
4 say there's a pretty good chance it's not going
5 to happen.

6 The second thing is, where would you put
7 the boat? There's no free docks to put them
8 anywhere, especially boats that are that size.
9 So there's no way to really utilize that without
10 moving a bunch of stuff around. That's
11 impossible to get the people in place to do, and
12 it's not very easy to do.

13 MR. O'KELLEY: Your Honor, I'm
14 going to move to strike all of that. It calls
15 for speculation. He's under oath, and he
16 testified that he never once attempted to contact
17 Mr. Farmer to comply with Judge McCoy or Judge
18 Nicholson's order.

19 THE COURT: Okay. I will deny
20 that. Okay. He's finished. Thank you.
21 Mr. Monk, you can step down.

22 All right. It's 12:15. Do you want to
23 go ahead and take a lunch break now?

24 MR. BARR: Why don't we do that,
25 Judge. I didn't time Mr. Monk, but the next

1 witness will probably be about his length, but
2 then the next ones will be longer.

3 THE COURT: Well, let's go ahead
4 and knock out a short one, and then let's take a
5 break. Okay. All right.

6 MR. O'KELLEY: Famous last words.

7 MR. BARR: I call Mr. McCann, Neal
8 McCann. This is the N-E-A-L, Neal.

9 THE COURT: Okay. Let's get that
10 out of the way. Mr. McCann, come on up.

11 (NEAL MCCANN, having first been
12 duly sworn, testified as follows:)

13 THE COURT: Thank you, sir. Please
14 state your full name and address, please, sir.

15 THE WITNESS: My full name is Neal
16 Russ McCann, Jr., and I live at 1105 Bright
17 Court, Charleston, South Carolina 29412.

18 THE COURT: Thank you, sir.

19 DIRECT EXAMINATION

20 BY MR. BARR:

21 Q. Good afternoon, Mr. McCann. What is
22 your age, Mr. McCann?

23 A. I'm 76.

24 Q. And what is your business or profession?

25 A. I retired from the airlines, US Air in

1 2005. I came to Charleston, started a charter
2 company with a guy named Gary Davis, and we
3 operated Davis Air out of Charleston
4 International. I did that for seven years and
5 went to work for a packing company, which I still
6 do.

7 Q. So you're a pilot, a professional pilot?

8 A. Yes, sir.

9 THE COURT: What kind of company
10 was it? I'm sorry.

11 THE WITNESS: Davis Air.

12 THE COURT: Davis was charter air.

13 THE WITNESS: And they're a
14 packaging company.

15 THE COURT: Packaging?

16 THE WITNESS: Yes, sir. They have
17 a facility in North Charleston and headquartered
18 out of Wilmington, North Carolina.

19 THE COURT: All right. Thank you.

20 BY MR. BARR:

21 Q. And in addition to owning a boat slip,
22 have you also owned a condominium unit on what
23 I'm calling the hill?

24 A. Yes, sir. I owned it from 2006 to 2017.

25 Q. Did you live there or --

1 A. Yes, sir.

2 Q. All right. Let me invite your attention
3 to the exhibit book in front of you, the smaller
4 one.

5 A. This one?

6 Q. Yeah, that one. The smaller one, which
7 is for the record, Plaintiff's Exhibit 2, to tab
8 B, bravo. Are you there?

9 A. Yep.

10 Q. Okay. Do you recognize that -- if
11 counsel would permit a little bit of leading
12 here. Do you recognize that to be your deed to
13 dock unit B-8?

14 A. That's correct.

15 Q. And at Mariner's Cay and that you paid
16 \$89,250 for it?

17 A. That's correct.

18 Q. And flipping over to the very last page
19 of tab bravo, your deed was recorded March 6th of
20 2007; is that correct?

21 A. That's correct.

22 Q. All right. Now, at the time you bought
23 this dock unit, did you already -- did you
24 previously use that marina?

25 A. No, sir.

1 Q. All right. And so what were you aware
2 of that was going on at this marina when you
3 purchased the boat slip there?

4 A. It was -- had been bought by a group, I
5 guess, of individuals, and they were converting
6 it into a dockominium, basically. And it was
7 convenient in that I had bought a condo there, to
8 purchase a slip, you know, in the facility --

9 Q. All right.

10 A. -- that was close by.

11 Q. So you had purchased your condo on the
12 hill on a date earlier than the date you bought
13 the slip?

14 A. Yes, sir.

15 Q. All right. And what size boat do you
16 have?

17 A. It was a 194 Cobia, center console.

18 Q. Okay. And we looked at a photograph
19 earlier, so I think the previous witness
20 explained the configuration of the finger docks.
21 So you were at B, bravo, finger dock B?

22 A. Yeah, straight down the ramp and just a
23 little zigzag and just --

24 Q. And do you still own it?

25 A. Yes, I do.

1 Q. All right. And when you bought the
2 slip, who was the dock master? Who was operating
3 that?

4 A. Ed Geiger.

5 Q. Ed Geiger was. Now, before buying the
6 boat slip, did you have some sense of what
7 condominium ownership meant?

8 A. Yeah. I pretty much understood the
9 concept of, you know, you buy your unit and then
10 you have common property that's, you know, via
11 tennis courts or swimming pools or, you know,
12 whatever.

13 Q. Common elements?

14 A. Common elements, yes, sir.

15 Q. And so when you bought this boat slip,
16 what was your understanding of the common
17 elements, the other bundle of rights and
18 ownerships that you acquired?

19 A. I think, you know, when you buy it, you
20 understand -- you think in general of big terms,
21 like, you know, the docks, of course, and then
22 the fuel dock. The pump out station wasn't major
23 to me because I only had a 20-foot boat.

24 Q. Right.

25 A. But then, you know, the ramp, the ship

1 store, you know, the -- I guess the underneath
2 section is important as they keep the emergency
3 equipment there, but pretty much the whole
4 complex in essence.

5 That's really -- including the place
6 that you tie your boat to. So it's -- you know,
7 through this process, you get a better
8 understanding of what really is the regime, you
9 know, the horizontal regime.

10 Q. And so it was your understanding then
11 that the ship store building was part of the
12 common elements that you bought into?

13 A. Yes.

14 Q. And that you shared a percentage
15 interest in it with others?

16 A. Yes, sir.

17 Q. All right. And how was the ship store
18 building used, to your recollection, prior to
19 Mr. Farmer's --

20 A. When I came there, they actually sold
21 like snacks and a few boat parts, like maybe dock
22 lines and different things like that.

23 And, you know, it was pretty much --
24 they had a record. You went and paid your yearly
25 dues there or monthly dues for your fees. And,

1 you know, I think they actually sold bait out of
2 there. There was -- a lot of it was actually a
3 functioning little store, you know, at one time.

4 Q. And was the dock master's office always
5 inside the building?

6 A. Yes, it was.

7 Q. And did you attend the annual meetings
8 at any time?

9 A. You know, it was hard for me because I
10 was out of town a lot doing charter. So over the
11 years, I didn't make a lot of meetings. I made
12 some but not very many.

13 Q. And where were they held?

14 A. Where were they held?

15 Q. Yeah.

16 A. There's a recreational center, a
17 community center there at Mariner's Cay. It was
18 usually in that building.

19 Q. That's on the land?

20 A. That's right by the swimming pool, yeah.

21 Q. That's on the place on the hill, as we
22 call it, right?

23 A. Yeah. I never went to any that were in
24 the ship store.

25 Q. Okay. All right. Now, you now know, of

1 course, that the master deed was amended; is that
2 correct?

3 A. That's correct.

4 Q. When did you first learn that the master
5 deed had been amended?

6 A. I didn't realize there was a change to
7 it until the conflict with Mr. Farmer. It
8 started, and he had ousted the ship -- Ed Geiger,
9 the dock master, and you know, the access through
10 the gate was cutoff, you know.

11 Q. All right. So there came a time that
12 you learned that Mr. Geiger, the dock master, was
13 required to leave?

14 A. That's correct.

15 Q. All right. Now, during your -- at any
16 time, did you hear about a foreclosure?

17 A. No, I did not.

18 Q. All right. Had you been given an
19 opportunity to vote for removing these common
20 elements, would you have -- how would you have
21 voted?

22 MR. O'KELLEY: Same objection as to
23 the prior witness, Your Honor. It calls for
24 speculation.

25 THE COURT: So noted. Overruled.

1 Go ahead.

2 THE WITNESS: I would have voted
3 no.

4 BY MR. BARR:

5 Q. Have you ever agreed or intended to
6 agree to give up your rights to these common
7 elements that are in dispute in this case,
8 specifically the ship store building, its
9 restrooms, the presence of the dock master, the
10 availability of VHF radio, the storing of
11 emergency equipment, and of course, you said you
12 didn't use the sewage pump out. But whether you
13 used it or not, did you -- have you ever intended
14 to give those up?

15 MR. O'KELLEY: Objection, leading.
16 Mr. Barr is testifying.

17 THE WITNESS: No. I did use the
18 fuel dock, though. I did use the pump out.

19 BY MR. BARR:

20 Q. You say you?

21 A. I did use the fuel -- I did buy fuel
22 there.

23 Q. All right. And so where do you buy it
24 now?

25 A. Actually, truthfully, I bring, you know,

1 two and a half gallon cans of fuel down there.

2 Of course, I am a pilot. I'm cheap.

3 Q. Now, was there any social relevance to
4 the ship store building?

5 A. Yes, there was. There was Mariner's Cay
6 Yacht Club, which was kind of separate from the
7 actual marina. And I think it was run by Ed
8 Geiger's wife and maybe Ed. But it was a social
9 event.

10 They would have -- you know, cook
11 hamburgers and hotdogs, and -- on a particular
12 holiday. And they would do outings. Everybody
13 would take their boat and go to some river up on
14 the Stono or something and tie up and, you know,
15 spend the day up there.

16 Q. And where in relation to the building
17 were the hamburgers and the --

18 A. Right outside.

19 Q. On the dock that we saw from the photo?

20 A. Yeah. They used the deck and then the
21 pad down below because it was wood. They would
22 grill.

23 Q. So Mr. McCann, what relief are you
24 asking to be granted by this Court?

25 A. I want to be made whole again for, you

1 know, all of the common elements of the
2 horizontal regime, you know, as it was stated in
3 the master deed, you know, when I bought it.

4 Q. So you said made whole as it was stated
5 in the master deed?

6 A. That's correct.

7 Q. That means confirm that you own it?

8 A. That's right.

9 MR. BARR: All right. Thank you.
10 Please answer any questions from Mr. O'Kelley.

11 CROSS-EXAMINATION

12 BY MR. O'KELLEY:

13 Q. Mr. McCann, look at the exhibit Mr. Barr
14 first asked you about, the deed to your -- and if
15 I use the word dockominium, do you understand
16 what that means?

17 A. Yeah, sure.

18 Q. Okay. Look at that for me. On the
19 first page down at the bottom, there's -- read
20 that language. Said master deed may thereafter
21 be amended from time to time. Did I read that
22 correctly? In your property description
23 paragraph, the very last sentence.

24 MR. O'KELLEY: And may I approach,
25 Your Honor?

1 THE COURT: Sure.

2 THE WITNESS: Oh, I see it, yes,
3 sir.

4 THE COURT: On the deed.

5 THE WITNESS: It's about the third
6 sentence or fourth.

7 BY MR. O'KELLEY:

8 Q. It's the last full sentence of the
9 paragraph on the bottom, yes, sir.

10 A. Yep.

11 Q. Did I read that correctly?

12 A. That's correct.

13 Q. Okay. Mr. Barr asked you: Do you go to
14 annual meetings of the condo association. When I
15 say condo association, I'm talking about the
16 marina.

17 A. No, not a lot, because I -- you know,
18 just due to my scheduling.

19 Q. Were you at the meeting in 2016? Do you
20 recall?

21 A. I was not.

22 Q. All right, sir. The large notebook
23 that's in front of you.

24 A. Uh-huh.

25 Q. 2.1.2, I asked the prior witness about

1 that document. What does it say the hours of
2 operation for the bathroom should be?

3 A. 9 to 5.

4 Q. All right, sir. And then if you will
5 turn to the next Exhibit B, the amended master
6 deed. 618 and page 709, sir.

7 THE COURT: I'm sorry, what page
8 again?

9 MR. O'KELLEY: I'm sorry, Your
10 Honor. X618 and page 709 in Exhibit B, notebook
11 1.

12 THE COURT: 709?

13 MR. O'KELLEY: Yes, sir.

14 BY MR. O'KELLEY:

15 Q. 2.1.2 says, when will the bathrooms be
16 open according to the amended master deed?

17 A. It says 9 to 5.

18 Q. Okay. And you got into this case kind
19 of late, didn't you, sir, as a named plaintiff?

20 A. Yeah, I would say so.

21 Q. Okay. You weren't one of the original
22 named plaintiffs in the matter, correct?

23 A. No, I wasn't.

24 Q. And yet you are here today asking the
25 Court to kick my clients out of the property,

1 correct?

2 MR. BARR: Objection, Your Honor.

3 A. I'm here for the interest of my \$89,250
4 that my deed says the common -- what the common
5 elements are for the horizontal regime.

6 Q. You paid that 89,000 for the boat slip,
7 correct?

8 A. Yeah. And every -- for all the
9 horizontal regime that goes with it.

10 Q. But you paid it for the boat slip.
11 Let's go back to your deed and tell me what
12 you --

13 A. Yeah. But this says that all of those
14 other parts were included.

15 Q. Well, look at it. Tell me what it says.
16 I will turn you to it. Dock unit B-8 is what it
17 says, correct?

18 A. That's correct.

19 Q. All right. Mariner and Associates, and
20 it says, dock B-8, Mariner's Cay Marina and
21 Horizontal Property Regime. Are you -- have you
22 read any of the deposition testimony in this
23 case?

24 A. I did.

25 Q. Did you read Mr. Geiger's deposition?

1 A. I don't know for sure.

2 Q. All right. Then I won't ask you about
3 it.

4 A. Okay.

5 Q. You've always had access to your slip,
6 correct?

7 A. That's correct.

8 Q. You've always had access to the
9 restrooms, correct?

10 A. I don't use the restrooms a whole lot.
11 Mostly my better half does because she has a
12 smaller bladder than I do. But I flew across
13 this country, East Coast to West Coast and never
14 went to the bathroom.

15 Q. Are you aware of anyone not having
16 access? Has your wife ever complained to you of
17 not having access?

18 A. No, I don't think so. We kind of know
19 the day boaters, so usually it was open. And we
20 don't sleep on our boat.

21 Q. Are you aware that there hasn't been
22 fuel service out at the marina since 2011?

23 A. Yes.

24 MR. O'KELLEY: All right. Thank
25 you. That's all I have.

1 MR. BARR: One more.

2 THE COURT: Sure.

3 REDIRECT EXAMINATION

4 BY MR. BARR:

5 Q. Mr. O'Kelley asked you -- do you still
6 have your deed in front of you?

7 A. Yes.

8 Q. And in a somewhat dramatic fashion, to
9 read the description, which says that you bought
10 dock unit B-8. Do you see that?

11 A. That's correct.

12 Q. All right. Drop all the way down to the
13 second line from the bottom. And beginning with
14 the word together, what does it say?

15 A. Together with an individual interest in
16 the appruent (ph) common elements, all as
17 described more in the master deed -- more fully
18 in the master deed.

19 Q. Well, you're on the witness stand, but
20 does it read, together with an undivided interest
21 in the appurtenant common elements, all as
22 described more fully in the master deed?

23 A. That's correct.

24 Q. And it's that language that gives you
25 the right to the ship store, right?

1 A. That's correct.

2 MR. BARR: Thank you.

3 RE CROSS-EXAMINATION

4 BY MR. O'KELLEY:

5 Q. Are you contending that you have --

6 MR. BARR: Your Honor, I object.

7 We've had enough time on him. We've had direct,
8 cross, redirect.

9 MR. O'KELLEY: He just brought up
10 something new, Your Honor.

11 THE COURT: In the deed?

12 MR. BARR: I'm following up on
13 cross.

14 THE COURT: I'm with you. All
15 right. I'm going to allow him -- I'll allow one
16 inquiry.

17 BY MR. O'KELLEY:

18 Q. Are you contending that you have an
19 \$89,000 interest in the common elements?

20 A. My \$89,250 bought me the rights to have
21 some say in the common elements.

22 Q. But are you contending that interest is
23 worth the full 89,000 plus dollars you paid for
24 the unit?

25 A. It's worth a lot less without it.

1 Q. What's that interest worth?

2 A. I don't know what the monetary value
3 would be, but a lot less.

4 THE COURT: Mr. McCann, before you
5 leave that deed, let me ask you about this:
6 You've been reading from the property
7 description. Read the bold language that refers
8 to -- that starts with Exhibit B, certain plat
9 entitled Exhibit B, right in the middle of the
10 description on it.

11 THE WITNESS: Okay. Exhibit B?

12 THE COURT: Yeah.

13 THE WITNESS: It says, the master
14 deed of the Mariner's Cay Marina and Horizontal
15 Property Regime survey showing ship store,
16 easement, and marina facilities, Mariner's Cay
17 Marina, Mariner's Cay, City of Folly Beach,
18 Charleston, South Carolina.

19 THE COURT: Is that what you're
20 referring to when you referred to the common
21 elements?

22 THE WITNESS: Yes, sir.

23 THE COURT: Your right to use the
24 ship store and your right to --

25 THE WITNESS: That all came with

1 it. That's all part of the value of the \$89,250.

2 THE COURT: All right. So my next
3 question is, are there other common elements --
4 which I wasn't sure. Do you still own a unit
5 there?

6 THE WITNESS: No. I sold it in
7 2017.

8 THE COURT: But you retained your
9 dock unit?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay. With the dock
12 unit, do you have the right to use the other
13 common elements, the swimming pool, the tennis
14 courts?

15 THE WITNESS: No, sir.

16 THE COURT: That would have gone
17 with the condominium unit?

18 THE WITNESS: That's with the
19 condo.

20 THE COURT: With the condominium
21 unit. Okay. Since the change in the use of the
22 ship store, the fuel docks, et cetera, has your
23 percentage interest in the common elements
24 changed? In other words, have you been sent
25 anything that says you owe less than what you

1 used to own on a percentage basis?

2 THE WITNESS: Not yet.

3 THE COURT: Okay. All right. And
4 I'm assuming then that the fees for the regime
5 charges have either remained the same or gone up
6 based on inflation, but there's been no change in
7 your percentage ownership in the total element --
8 common elements; is that right?

9 THE WITNESS: No.

10 THE COURT: All right. Thank you.
11 Any follow-up to that, gentlemen? I opened up a
12 new line of inquiry for you.

13 MR. BARR: There may be, Judge.

14 REDIRECT EXAMINATION

15 BY MR. BARR:

16 Q. While we're looking, Mr. McCann, would
17 you turn in the big, thick book to the recorded
18 page X618, page 671. All right. So your dock
19 unit is B-8; is that correct?

20 A. That's correct.

21 Q. Okay. So are you on page -- are you on
22 page 618 with 671 at the top?

23 A. That's correct.

24 Q. Okay. And you see there B-8?

25 THE COURT: It's on 672.

1 BY MR. BARR:

2 Q. It's on the next page. You see over
3 there -- do you see a column that's entitled
4 percentage interest?

5 A. That's correct.

6 Q. And what is that percent?

7 A. 1.0769 percent.

8 Q. Okay. Now, flip over to the first part
9 of that big notebook, and you look for page B583,
10 I'm sorry, book B583, page 637. Tell me when you
11 are there.

12 A. I'm there.

13 Q. Are you there?

14 A. Yes, sir.

15 Q. Okay. Go down to unit B-8.

16 A. Right.

17 Q. And you see the column percentage value?

18 A. That's correct.

19 Q. And what is that percentage value?

20 A. 11.112 percent.

21 Q. So when you originally purchased in '06,
22 your basic -- your percentage interest in the
23 common elements was 11.112 percent, correct?

24 A. Correct.

25 Q. And the master deed that's at issue here

1 in '07 changed that from 11 percent to 1.0769
2 percent. Do you see that?

3 A. That's correct.

4 Q. So asking the question again, would you
5 say that the use of the ship store building has
6 changed your percentage interest?

7 A. Yes, it has.

8 Q. It's dropped, hasn't it?

9 A. Yep, 10 percent.

10 Q. It's reduced, right?

11 A. Well, a little more than 10 percent,
12 yes, sir. Well, no, 10 percent.

13 Q. Right. That's not anything that you
14 agreed to, is it?

15 A. No. And I didn't know.

16 Q. You didn't acquiescence to that, did
17 you?

18 A. No.

19 MR. BARR: Thank you very much.

20 MR. O'KELLEY: No questions, Your
21 Honor.

22 THE COURT: Okay. All right.
23 Probably a good time for lunch.

24 MR. BARR: Yes, sir. Thank you.

25 THE COURT: All right. So it's a

1 little after 12:30. Let's just plan to be back
2 at 2 o'clock and start back at that time. Okay?
3 Thank you.

4 MR. O'KELLEY: You said 2 o'clock,
5 Your Honor?

6 THE COURT: 2 o'clock, yeah.

7 MR. O'KELLEY: Yes, sir.

8 MR. BARR: Thank you.

9 (A recess transpired.)

10 THE COURT: Mr. Barr, still on your
11 case.

12 MR. BARR: Yes, sir. I call
13 Elizabeth Heatley.

14 (ELIZABETH HEATLEY, having first
15 been duly sworn, testified as follows:)

16 THE COURT: Ma'am, give us your
17 full name and address, please.

18 THE WITNESS: Elizabeth Heatley, 48
19 Partridge Circle, Beaufort, South Carolina 29907.

20 THE COURT: Thank you, ma'am.

21 DIRECT EXAMINATION

22 BY MR. BARR:

23 Q. Good afternoon, Ms. Heatley.

24 A. Mr. Barr.

25 Q. I happen to know your maiden name was

1 Cribb.

2 A. Yes.

3 Q. She told me recently that Ms. Heatley is
4 not only from Georgetown, but her very older
5 brother and I were in high school together. How
6 long have you lived in Beaufort, Ms. Heatley?

7 A. We lived there three years now.

8 Q. And where did you live before that?

9 A. We lived at Mariner's Cay, the
10 homeowner's association on the hill.

11 Q. Okay. And when did you acquire the unit
12 on the hill, the residence?

13 A. That was in 2003.

14 Q. Okay. And your husband's name?

15 A. Jeff Heatley.

16 Q. And he's here in Court with you?

17 A. Yes.

18 Q. Let me ask you some questions about your
19 background. I think you went to the University
20 of South Carolina for a while?

21 A. Yes.

22 Q. And then what generally was your work
23 history?

24 A. I was always in IT.

25 Q. Technology -- information technology?

1 A. Yes.

2 Q. And you're now retired?

3 A. That's correct.

4 Q. So what was your last position in the IT
5 field?

6 A. My husband and I owned a company, a
7 technology company.

8 Q. And what was that called?

9 A. It was called CodeLynx.

10 Q. And that sold?

11 A. Yes.

12 Q. In what year?

13 A. In 2020.

14 THE COURT: Is that L-Y-N-X?

15 THE WITNESS: L-Y-N-X, yes, sir.

16 MR. BARR: L-Y-N-X, yes, sir.

17 BY MR. BARR:

18 Q. All right. So you acquired your
19 apartment, again, in what year?

20 A. 2003.

21 Q. All right. You have a smaller notebook
22 in front of you, and tab A, I invite your
23 attention to tab A. Do you recognize that to be
24 a copy of the deed to your boat slip?

25 A. Yes, I do.

1 MR. BARR: So if I may again again
2 away with leading on this aspect, Your Honor?

3 THE COURT: Okay.

4 BY MR. BARR:

5 Q. It appears then that you -- you and your
6 husband, Jeff, purchased stock unit D-8 for a
7 purchase price of \$105,000, correct?

8 A. That's correct.

9 Q. By deed recorded August the 15th, 2006;
10 is that correct?

11 A. That's correct.

12 Q. And why did you and Jeff pay 105 and
13 everybody else paid 89?

14 A. It was based on the size of the dock.

15 Q. So you have a larger -- so if we go back
16 to that aerial photo, D-8 would be on that finger
17 pier at the far right as we look at that --

18 A. From the land.

19 Q. -- aerial photo down, correct?

20 A. Correct.

21 Q. Okay. And what make and size boat do
22 you and Jeff have?

23 A. We have a 42-foot sailboat. It's a CSY.

24 Q. Okay. And is that what you had all
25 along?

1 A. Yes.

2 Q. And do you keep it there all the time?

3 A. We do. Right now it's in the dry dock.
4 It's being repaired, but --

5 Q. Okay. But you don't keep it in
6 Beaufort?

7 A. Not yet. We're thinking that we're
8 going to do that, but up until this point, it's
9 always been at Mariner's Cay.

10 Q. Okay. All right. Now, you say you
11 obtained your condominium in 2003. When you
12 bought your condominium in 2003, did you have a
13 boat?

14 A. Yes. We had the same boat, and it was
15 at the marina there prior to us buying the condo.
16 In fact, we bought the condo because the boat was
17 at the dock.

18 Q. I understand. So initially, your use of
19 Mariner's Cay Marina was simply on a lease basis
20 because they didn't sell slips yet?

21 A. That's correct.

22 Q. All right. So what enticed you to buy a
23 slip?

24 A. Well, boating was our absolutely
25 lifestyle. We were busy running a company, and

1 the boat was very important to us as our weekend
2 getaway.

3 Q. That was your escape?

4 A. Exactly.

5 Q. And so even though you acquired the boat
6 slip as we saw in 2006, you were familiar with
7 the marina package -- the amenities of the marina
8 that was associated with the use of a boat slip,
9 correct?

10 A. Yes, sir, I was.

11 Q. And did you understand when you acquired
12 your boat slip in 2006, that you obtained a form
13 of ownership in those amenities?

14 A. Absolutely.

15 Q. And what do you know -- by now I guess
16 you know what they're referred to legally --

17 A. They're the common elements.

18 Q. -- as common elements. And so what was
19 your understanding of the common elements that
20 you bought for \$105,000 together for this boat
21 slip?

22 A. Well, it was all the docks and the
23 gangway down to the docks. It was the ship
24 store, specifically the place for the dock
25 master. It was the pump out station. It was the

1 fuel docks. Let's see. Was there anything else?

2 Q. Okay. And since you had a condominium
3 on the hill and a boat in the slip, to what
4 extent did you use the restrooms in the building,
5 in the ship store building?

6 A. Well, we still used them because we
7 would be down on the boat, and it would be much
8 faster to go to the ones at the marina than it
9 was to go, you know, up to the condo.

10 Q. Okay. Now, did you have an
11 understanding of the OCRM permit?

12 A. Yes, I did. Because when we purchased
13 our dock, as somebody else mentioned earlier, all
14 of the slips were not rebuilt.

15 Q. Right.

16 A. And so we looked into that to make sure
17 that they had the adequate permits to rebuild the
18 docks.

19 Q. Okay. Let me invite your attention to
20 tab K.

21 A. The OCRM marina regulations?

22 Q. Right.

23 MR. BARR: And for the record, Your
24 Honor, we're looking at a document that's on the
25 recorder's page, B583, page 688, which is drawn

1 from Plaintiff's Exhibit 1A. I guess it would be
2 the '06.

3 THE COURT: The '06 master deed?

4 MR. BARR: The '06 master deed.

5 THE COURT: Okay.

6 BY MR. BARR:

7 Q. And if you go to the second page of
8 that -- I thought there was a date on here
9 somewhere. Well, let me do it this way then.
10 Turn to tab L then.

11 MR. BARR: And I will represent to
12 the Court that this is a part of the 2007 master
13 deed. This page begins at recorder's page X618,
14 page 720.

15 THE COURT: Okay.

16 BY MR. BARR:

17 Q. If you -- first of all, compare the
18 cover pages of the two exhibits. Do they refer
19 to the same OCRM marina regulations?

20 A. R-30, I-2E.

21 Q. Correct?

22 A. Correct.

23 Q. All right. And then go to the first
24 substantive page, the '06 substantive page being
25 B583, page 689, and the '07 version being X618,

1 page 721. Do those appear to be the same
2 documents?

3 A. With a quick perusing, yes.

4 Q. Right. And I will say, the '07 version
5 in this notebook is -- unfortunately, it sort of
6 garbles, so I'm going to follow the '06 one. So
7 as a component of your permit, what was your
8 understanding of the relationship between the
9 marina's permit and the OCRM regulations?

10 A. There are a list of requirements that a
11 marina has to have to function in order to have
12 the OCRM permit.

13 Q. Okay. Then let me invite your attention
14 at tab K over to what is on page 4 of 5,
15 recorder's page V583, page 692.

16 A. Okay.

17 Q. And more specifically on that page, if
18 everybody is with me, I will invite your
19 attention to subparagraph B(i) beginning with
20 adequate waste water pump out facilities. Do you
21 see that?

22 A. Yes, I do.

23 Q. Okay. So let me publish it. Adequate
24 working waste water pump out facility shall be
25 provided at each marina. I'll skip the

1 parentheses. These facilities must be adequate
2 to handle all waste water generated at the
3 marina. The marina operator may charge a
4 reasonable fee. So did you understand that to be
5 a condition of the marina's permit?

6 A. Absolutely. As I recall, to dump
7 overboard is a fine of somewhere around \$10,000,
8 at least the last time I checked on it.

9 Q. Right. Okay. And with a 42-foot boat,
10 did you have occasion to use the pump out
11 services?

12 A. Yes, we did. We had two heads on board.

13 Q. Okay. Then a small (ii) on the same
14 page four of five of regulations provides
15 adequate -- requires adequate bathroom facilities
16 must be provided in order to discourage any
17 overboard discharge of sewage from boats.

18 The number of toilets required for any
19 given marina shall be determined by the nature
20 and size of the marina by its specific site
21 location; however, two toilets and one lavatory
22 for women and one toilet and one urinal and one
23 lavatory for men shall be required for all
24 marinas with 100 or fewer slips.

25 I think we've established that Mariner's

1 Cay was 90. So tell the Court what -- what
2 bathroom facilities existed at -- exist at
3 Mariner's Cay and where they are.

4 A. They're on the -- what we could call the
5 first floor of the ship store and not the storage
6 underneath.

7 Q. Right.

8 A. It's rather up and (inaudible). They're
9 on the first floor, and there's a ladies room and
10 a men's room, and they have lavatories. I think
11 the men's has a urinal in addition to the
12 lavatory, and they have showers.

13 Q. And showers as well. Okay. So the
14 marina complies with that?

15 A. Correct.

16 Q. Do you understand the purpose of having
17 an onshore bathroom facility?

18 A. Well, you can't discharge. If you are
19 staying on your boat, you have to have access to
20 restrooms. You know, if you have a smaller boat
21 that doesn't have one, you have to have a place
22 to take your grandchildren.

23 Q. Okay. And I think if we look down on
24 this same page, in parentheses, small vii. Do
25 you see it?

1 A. I think I --

2 Q. Page 405, small vii.

3 A. The discharge of sewage?

4 Q. Right.

5 A. The discharge of sewage from boats is
6 prohibited unless it is treated by a marine
7 sanitation device and complies with all
8 applicable federal laws and regulations. The
9 discharge of any other kind of waste into state
10 waters, including without limitation, garbage,
11 refuge, trash or debris is prohibited.

12 Q. So does that reenforce your sense that
13 the need -- that the requirement for the
14 bathrooms is to prevent discharging into the
15 waters?

16 A. Absolutely. I think that goes back to
17 the Clean Water Act, but I'm not positive.

18 Q. Right. And then, if you will summarize,
19 right above that -- the two paragraphs above
20 that, being numbered in parentheses, small b and
21 small vi.

22 A. Would you like me to read them?

23 Q. Yeah. Go ahead.

24 A. Depending on the size and type of boats
25 used in the marina, adequate booms must be

1 available to isolate any spill around the fuel
2 dock, a leaking boat or a sunken boat.

3 Q. All right. And then six?

4 A. Absorbent pads must be available at the
5 marina for boat use and for removing incidental
6 spills during fueling operations.

7 Q. All right. Now, did the marina store
8 that kind of equipment?

9 A. Yes.

10 Q. And where was it?

11 A. My understanding is that it was stored
12 underneath the ship store.

13 Q. Okay. Now, let's -- is it correct that
14 the master deed also includes an operations and
15 maintenance manual?

16 A. That's correct.

17 Q. Okay. Let me invite your attention to
18 tabs I and J; I being the '06 master deed, and J
19 being the '07 master deed. Let me do this before
20 I go into that. Did you at any time learn that
21 the '06 master deed had been amended?

22 A. I did.

23 Q. Okay. And do you remember when that
24 was?

25 A. My recollection is that it was three

1 years after it was done in 2010.

2 Q. All right. And that's when you learned?

3 A. Correct.

4 Q. Now, when did you learn that the '07
5 master deed had removed the common elements at
6 issue in this case from the '06 one?

7 A. I don't really recall when. I don't
8 recall when.

9 Q. Well, do you remember what was going on
10 at the time you learned that the master deed --
11 amended master deed had converted these common
12 elements to individual units?

13 A. There was a lot going on during that
14 time.

15 Q. Okay. All right. What was your general
16 sense then in 2010 of what had been changed in
17 the master deed?

18 A. My understanding was that it was
19 administrative type changes.

20 Q. Okay. So then would you include the
21 operations and maintenance manual as
22 administrative type things?

23 A. Yes, I would.

24 Q. Okay. Let's take a look then at tab K,
25 which is from the '07 master deed. And then

1 let's flip over to the page that's the recorder's
2 page V583, page 692, up at the top. Do you see
3 the stamp at the top? Are you on tab K?

4 A. I'm sorry. 583?

5 Q. V583, page 692. Are you there?

6 A. Yes.

7 Q. Okay. And I will represent this is
8 the -- well, wait a minute. Maybe I'm wrong
9 here.

10 THE COURT: That's what we just
11 went over, right?

12 MR. BARR: I apologize. I
13 apologize.

14 BY MR. BARR:

15 Q. I want to take you over to tab J. Are
16 you there?

17 A. Yes.

18 Q. Okay. I will represent to you that this
19 is the operations and maintenance manual of
20 Mariner's Cay in the 2007 master deed, which is
21 the -- that's all. This is the 2007 master deed.
22 Now, the -- I will invite your attention to page
23 X618. I'm sorry, book X618, page 709 at the top.
24 It says, the MCM will maintain.

25 A. Yes, sir.

1 Q. All right. And did you understand MCM
2 to mean Mariner's Cay Marina?

3 A. Correct.

4 Q. And it reads, the MCM will maintain a
5 copy of the operations and maintenance manual,
6 which contains all marina permits and amendments
7 in the facility office. The manual is available
8 for review during normal operating hours from 9
9 a.m. to 5 p.m. Do you have an -- do you have an
10 idea of what the facility office was?

11 A. That was the ship store, the first floor
12 specifically of the ship store.

13 Q. The dock master's office?

14 A. Correct.

15 Q. All right. What became of that facility
16 office?

17 A. In 2017 -- no -- 2016, when Mr. Farmer
18 took over, they were ousted from the facility.

19 Q. Okay. So you're saying that when
20 Mr. Farmer ousted the owners from the ship store,
21 the operations and maintenance manual for the
22 horizontal property regime provided that permits
23 and amendments would be maintained in an office
24 in the ship store building?

25 A. That's correct.

1 Q. Let me invite your attention to the
2 bottom of that page, paragraph 2.1.2, the last
3 sentence reads, there are absorbent pads and
4 containment booms available at the ship's store
5 in case of incidental fuel spills, leaking boats
6 or a sunken boat. I think you've already
7 addressed this. But where would they be at the
8 ship's store?

9 A. To my knowledge at that time, they were
10 still underneath the ship store.

11 Q. Okay. And do you know where they're
12 stored today?

13 A. I believe they're stored on the dock.

14 Q. Okay. And then do you know why?

15 A. Because we don't have access to
16 underneath the ship store.

17 Q. Okay. Let me refer you to the next
18 page, recorder's page 710, under paragraph 2.1.3.
19 This next to the last sentence reads, emergency
20 spill kits containing absorbent booms are located
21 in the ship's store at the fixed pier. I don't
22 know that I will beat this up too much, but
23 that's referring to the same space to which you
24 no longer have use, correct?

25 A. That's correct.

1 Q. Then all the way back to almost the last
2 page of this tab, but it's page -- recorder's
3 page X618, page 713. Are you there?

4 A. Yes.

5 Q. Okay. And the first sentence reads,
6 marina rules and regulations for the MCM marina
7 facility are available at the facility office and
8 a copy is included in appendix one. Once again,
9 does that refer to an office in the ship store?

10 A. Yes, it does.

11 MR. O'KELLEY: Your Honor, I'm
12 going to object to that. All it says is a
13 facility office. It doesn't say anything about a
14 facility office in the ship store.

15 BY MR. BARR:

16 Q. Where was the facility office?

17 A. In the ship store on the first level.

18 Q. Thank you. And then, at the bottom, the
19 last sentence reads, disaster preparedness of
20 equipment, which may include items such as first
21 aid kits, stretchers, flares, personal flotation
22 devices, blankets, radios and batteries shall be
23 stowed in or near the harbor master's office.
24 Where was the harbor master's office?

25 A. On the first level of the ship store.

1 Q. And after he was ousted, where was the
2 harbor master's office?

3 A. Well, when it was Ed, he was using his
4 own personal home.

5 Q. When you say Ed, you mean Mr. Geiger, Ed
6 Geiger?

7 A. Mr. Geiger, I'm sorry.

8 Q. No, Ed's okay, but for the last name.
9 Ed Geiger. It was his personal home?

10 A. That's correct.

11 Q. Which was nearby?

12 A. That's correct.

13 Q. And how about today? Do you know?

14 A. I don't know where they're storing it
15 today.

16 Q. All right. So when you purchased your
17 unit, and I think you've told the Court what you
18 understood to be the common elements; is that
19 correct?

20 A. Yes, sir.

21 Q. And you have probably already -- you've
22 certainly already touched on this, but the
23 question is, did there come a time when those
24 package of things, your right to use these common
25 elements changed or were denied to you?

1 A. When Mr. Farmer purchased -- purchased
2 the building.

3 Q. And can you recall when that was? I
4 don't mean when he purchased, but when it was
5 denied?

6 A. I believe it was 2016.

7 Q. Say it again.

8 A. I believe it was 2016.

9 Q. Okay. Thank you. Now, you testified
10 that you had learned about an amended master deed
11 and understood -- and I don't recall how you
12 characterized it -- but that referred to what
13 kind of things?

14 A. Administrative.

15 Q. Administrative things. Before it was
16 amended, were you ever notified that it was going
17 to be amended?

18 A. No, I was not.

19 Q. Were you ever given an opportunity to
20 vote on it?

21 A. No, I was not.

22 Q. Had you understood that it was being
23 amended to remove from the common elements, the
24 ship store building, all of the accoutrements the
25 way we've described and the fuel docks, would you

1 have voted for it?

2 MR. O'KELLEY: Same objection as
3 with the prior two witnesses, Your Honor. This
4 calls for speculation.

5 THE COURT: So noted. Overruled.
6 Go ahead.

7 THE WITNESS: I would not because
8 it would put the permit in jeopardy.

9 BY MR. BARR:

10 Q. What would it do to your dock slip?

11 A. Well, pretty much what it's done now. I
12 mean, it makes it very hard for us to utilize the
13 boat as we had in the past.

14 We don't have access to the pump out
15 station. We -- if I may be frank, it feels as if
16 the restrooms are in someone's home and not in
17 the ship store as it always had been, which
18 discourages me from, you know, using it and
19 taking my grandchildren up there, quite frankly.

20 The security gate was removed, which
21 created a problem for me personally because
22 there's now a cipher lock, and my grandson when
23 he was five, figured the cipher lock out and went
24 out on the piers by himself, which scared me.
25 And I guess, from my perspective, it's probably a

1 little different from some of the other folks'
2 perspective.

3 But I was always concerned about the
4 risk that these situations could create for us,
5 and I was concerned about the life safety aspect
6 of it. I mean, from my perspective, having the
7 dock master on that first level, that raised
8 area, allowed him to see all of the docks better
9 because when you are down to the ground level,
10 you can't see over the boats, all of the boats
11 anyway.

12 MR. O'KELLEY: Your Honor, I'm
13 going to object to this. She's really close to
14 giving opinions here, and she hasn't been
15 qualified as an expert witness.

16 THE WITNESS: I'm sorry. I
17 apologize.

18 MR. BARR: No, no. You don't need
19 to apologize. That was just an objection. I
20 think you were right on course, but let's let the
21 Judge rule on it.

22 THE COURT: I'm going to overrule
23 it.

24 MR. BARR: All right. Keep going.

25 THE WITNESS: Now, I forgot where I

1 was.

2 THE COURT: You were on life safety
3 issues.

4 BY MR. BARR:

5 Q. Yeah. You were talking about life
6 safety issues and the ability of the harbor
7 master from that raised first level, to look over
8 the operation of the marina, and then take your
9 thought from there.

10 A. Right. Well, we've seen accidents occur
11 because we've been at marinas a lot over the
12 years. In fact, Tom Bessent pulled someone out
13 of the water when the winter -- at our marina,
14 and we have seen people lose their lives at
15 marinas that we have been at in the past. And so
16 that liability really has always concerned me at
17 a personal level, is all I'm saying.

18 Q. Meaning the absence of that oversight
19 provided by a dock master on that raised first
20 level?

21 A. That's correct. And the ability to
22 access the dock master via the VHF radio was
23 important. If Jeff and I were in the boat, and
24 he fell and hit his head and I've got to navigate
25 the boat back, I would have call Ed on the VHF.

1 And Ed would have had people at the fuel
2 docks, you know, which would have been clear, you
3 know, to meet us and grab us and have emergency
4 folks there. I mean, that -- from my
5 perspective, all of those were reasons that I
6 bought the dock and paid \$105,000 for it.

7 Q. Now, you had mentioned your boat is a
8 sailboat?

9 A. That's correct.

10 Q. I'm assuming it also has power?

11 A. Yes.

12 Q. But are you ever presented with
13 difficult navigational problems because of tidal
14 weather?

15 A. Yes. And when that happens, especially
16 weather, but the tide and weather combined was
17 even worse, we would dock at the fuel docks if we
18 couldn't get into the slip or if we were having
19 trouble. It's easy to get T-boned in our marina,
20 and then that can damage other boats or cause
21 life safety issues as well.

22 Q. And to your knowledge, the other boats
23 used the fuel docks for that purpose?

24 A. Yes, they did.

25 Q. For emergency mooring and bad weather

1 conditions?

2 A. Yes, they did.

3 Q. And is that use of the fuel docks
4 enabled today?

5 A. No, it's not.

6 Q. Why?

7 A. Because by the time that happened, you
8 wouldn't have time to move boats.

9 Q. No. What I mean is, do you have access
10 to that emergency mooring today?

11 A. No.

12 Q. Why?

13 A. Because there are two boats moored
14 there.

15 Q. Okay. Now, you alluded to a lock
16 system. And in your company code links, did that
17 include some form of electronic security devices
18 and was there an electronic security device at
19 this marina?

20 A. Yes, there was.

21 Q. Before Mr. Farmer's arrival, would you
22 describe to Judge Scarborough what that security
23 system consisted of and where the gates were and
24 you -- there's a -- there are photographs at tab
25 M.

1 Yes, there are photographs at tab M, and
2 the third one in is a straight on drop vertical
3 oversight of the marina, and then there are
4 photographs of the building, several back. So
5 describe for the Court what sort of physical
6 security was provided to secure this area?

7 A. It was an electronic security device on
8 the gate, and we each had a credential that
9 enabled us to get into the gate.

10 Q. Okay. Let's look at that straight on
11 arrow shot and tell the Court, if it can be seen,
12 where was the gate? Can you see the location of
13 it on this photograph?

14 A. As far as I can tell -- I can't really
15 tell if it is the first or the second one. It's
16 after you make the turn and as you go down.

17 Q. All right. Tell me where you're
18 turning. Are you on the pier, or are you on the
19 land?

20 A. When you come -- when you're on the land
21 and you get on the pier and then you make a
22 right.

23 Q. Okay. So you walk down the land. You
24 turn left onto a pier and then right, right
25 behind the boat ramp, correct?

1 A. Yes. And the gate is there, and then
2 after the gate is the ramp that goes down for --
3 to the docks.

4 Q. All right. So is the gate out on the
5 pier?

6 A. Yes.

7 Q. Okay. So the gate is not up by the
8 building, the gate is at the pier?

9 A. Yes. I call it the gangway.

10 Q. Okay. At the gangway. So the gate is
11 to protect nonowners -- or to prevent nonowners
12 from entering the boat slip area?

13 A. That's correct.

14 Q. Is that correct? All right. And how is
15 that gate accessed by you as a -- as a slip
16 owner?

17 A. We had a credential.

18 Q. And what was the credential? What was
19 in the slip? Was it a flash card or --

20 A. It was a key fob.

21 Q. It was what?

22 A. We would call it a key fob.

23 Q. A key fob. And is that something that
24 electronically unlocks a lock?

25 A. Yes.

1 Q. On that walkway?

2 A. That's correct.

3 Q. Okay. Now, is there also an ability for
4 the dock master to control that gate?

5 A. Yes. They could buzz people in.

6 Q. Okay. So does that gate on that
7 walkway, does it have some sort of intercom that
8 someone can call Geiger and say, hey Ed, can you
9 buzz me in?

10 A. You know, I can't remember. I don't
11 think I had to use it; so I can't remember.

12 Q. All right. We will keep going further.
13 Now, what, if anything, happened to that security
14 system after Mr. Farmer ousted you from using --
15 the owners from using the ship store?

16 A. I was told that he --

17 MR. O'KELLEY: Your Honor, I'm
18 going to object. She's saying, I was told.
19 Either she knows or she doesn't. This is hearsay
20 she's getting into.

21 BY MR. BARR:

22 Q. Did there come a time in that --

23 THE COURT: I will sustain that
24 one. Go ahead. That's sustained. But go ahead.
25 You're going to have to ask it again.