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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 XII of XV

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1 BY MR. BARR:

2 Q. Did there come a time when that security
3 system was no longer useable?

4 A. Yes.

5 Q. And why was that?

6 A. It was disabled.

7 Q. It was disabled. Okay. Thereafter, was
8 another security system installed?

9 A. A cipher lock was installed.

10 Q. And what is a cipher lock?

11 A. You have a code for it that's five keys,
12 and it's a series of numbers that you can change
13 monthly so that it's not --

14 Q. And what is the -- this may not be your
15 field, but what are the advantages and
16 disadvantages of the former system versus the
17 cipher lock?

18 MR. O'KELLEY: Your Honor, that
19 definitely calls for an opinion, what are the
20 advantages and disadvantages.

21 MR. BARR: Well, let me ask you
22 differently then.

23 THE COURT: Okay.

24 BY MR. BARR:

25 Q. What was the difference using one or the

1 other?

2 A. Well, you had to have one in your
3 possession.

4 Q. Being the fob?

5 A. Correct.

6 Q. Okay.

7 A. And as I said, my five-year-old grandson
8 figured out the cipher lock.

9 Q. That's not the fob. That was the
10 alternative one?

11 A. Correct.

12 Q. Okay. So the five-year-old son figured
13 out, what, the code? Is it a key punch thing?

14 A. Yes.

15 Q. And what happened when he figured it
16 out?

17 A. He went down on the docks by himself
18 without a life jacket.

19 Q. Okay. Now, back before you were ousted
20 from the ship store building, how did you use
21 the -- what was your experience with the use of
22 that building?

23 A. Well, it was sort of the -- well, it
24 was -- I want to say it was the heart of the
25 marina, but I don't know if that is, you know,

1 the appropriate response. We had get-togethers
2 on the decks.

3 You know, there would be -- you know,
4 the annual meetings were there. There were just
5 get-togethers with friends. It was just kind of
6 the gathering spot, you know, for everyone to go
7 and hang out and enjoy.

8 Q. Okay. And until Mr. Farmer's arrival,
9 what were the restroom hours?

10 A. They were 24/7.

11 Q. Okay. And did that change?

12 A. It changed with COVID.

13 Q. Okay. And so when COVID restrictions
14 were imposed, what happened?

15 A. The hours were restricted. Well,
16 actually, it closed for a while, and then when it
17 reopened, the hours were changed.

18 Q. Ms. Heatley, have you ever agreed or
19 intended to agree to give up your ownership
20 interest in these common elements, the ship store
21 building and the floors and the restrooms and the
22 fuel docks and the pump out?

23 A. I have absolutely never agreed.

24 Q. Have you paid all assessments owed to
25 council without fail?

1 A. I have.

2 Q. What would be the impact on you and your
3 slip if these common elements are not restored to
4 the use of the duty?

5 MR. O'KELLEY: Objection, Your
6 Honor. Again, that calls for speculation. What
7 would be the impact.

8 MR. BARR: You're right.

9 BY MR. BARR:

10 Q. What is the impact on you now of having
11 been deprived of these common elements?

12 A. It has greatly diminished our enjoyment
13 of the marina because we can't use our boat to
14 the extent that we used to use it. We're in
15 constant worry that we're going to lose the OCRM
16 permit and our investment is going to be
17 worthless. We've -- we've just -- it's changed
18 the whole complexion of the marina.

19 Q. Do you have an opinion of whether it's
20 affected the value of your slip?

21 MR. O'KELLEY: Objection, Your
22 Honor. He's asking for an opinion.

23 MR. BARR: I think an owner can
24 testify the opinion of her property.

25 THE COURT: She can, sure.

1 BY MR. BARR:

2 Q. Go ahead.

3 A. I think value is determined by
4 marketability, and I would have a hard time
5 representing to a buyer that it's a fully
6 functioning marina. And therefore, I don't know
7 what the marketability would be.

8 Q. Okay. And what relief are you seeking
9 from the Court?

10 A. I would like the Court to restore our
11 interest in the common elements.

12 MR. BARR: Thank you very much,
13 Ms. Heatley. I'm sure that Mr. O'Kelley has some
14 questions.

15 MR. O'KELLEY: Ms. Heatley, are you
16 all right? Can we keep going? Do you need to
17 take a break, water or anything?

18 THE WITNESS: I'm okay.

19 CROSS-EXAMINATION

20 BY MR. O'KELLEY:

21 Q. Okay. I hope you're enjoying living in
22 my hometown.

23 A. I had understood you were from Beaufort.

24 Q. Yeah. And Beaufort is 70 miles from
25 here, isn't it?

1 A. Well, I think technically it's supposed
2 to be about 55, but it takes about an hour and a
3 half with traffic.

4 Q. Well, trust me, I'll represent to you,
5 having done it my whole life, it's 70 miles. And
6 you've been -- you've been living there for three
7 years?

8 A. Yes.

9 Q. How often do you come to Mariner's Cay
10 during this --

11 A. We're here --

12 Q. And let me just finish my question. I
13 know you know what I'm going to ask.

14 A. I'm sorry.

15 Q. It's just so this nice lady can write it
16 down.

17 A. I apologize.

18 Q. It's fine. We tend to think we're in
19 conversation, but we'll just go a little -- I
20 will go slower. So you said you were here every
21 weekend?

22 A. We're here every week.

23 Q. And are you staying onboard your ship,
24 your sailboat?

25 A. No. We are staying in our condo.

1 Q. Okay. Jeff Heatley is your husband,
2 correct?

3 A. That's correct.

4 Q. And he's been on the board at the
5 marina, has he not?

6 A. Yes.

7 Q. Do you know how many times he's served?

8 A. He's served almost continuously since
9 about 2010.

10 Q. Okay. And you're aware that there was a
11 foreclosure in this case, are you not?

12 A. I'm aware now.

13 Q. Okay. Did your husband ever discuss the
14 foreclosure with you?

15 A. Well, there was a foreclosure of 40 of
16 the slips. And then there was -- later on, there
17 was a foreclosure on what were the common
18 elements.

19 Q. On the ship store and the fuel docks,
20 correct?

21 A. Correct.

22 Q. And your husband was on the board in
23 2013, right?

24 A. Yes.

25 Q. And are you aware that the board hired

1 an attorney to file an answer in that case?

2 A. Yes.

3 Q. Are you aware that the board hired an
4 attorney to try and negotiate some deals with the
5 bank on behalf of the association to see about
6 purchasing the ship store and the fuel docks?

7 A. I don't know what the terms of the
8 engagements were.

9 Q. But you do know that there were
10 negotiations between the association and the bank
11 about you-all buying the ship store and the fule
12 docks, correct? And remember, you're under oath.

13 MR. BARR: Objection, Your Honor.
14 That's not necessary.

15 THE COURT: Sustained.

16 THE WITNESS: Would you repeat the
17 question?

18 BY MR. O'KELLEY:

19 Q. Yes. Were you aware there were
20 negotiations about trying to purchase the ship
21 store and the fuel docks by Mariner's Cay Marina
22 Council of Co-Owners? And if you know, great.
23 If you don't --

24 A. Well, and I don't know what's
25 appropriate, but it's just that I wouldn't

1 characterize it that way.

2 Q. How would you characterize it?

3 A. I would characterize it that they were
4 exploring the options of how to solve the
5 problem.

6 Q. Okay. And one of the options was going
7 to be to buy the ship store and fuel docks,
8 correct?

9 A. Correct.

10 Q. Why would you buy something you already
11 own?

12 A. Because I think that they were trying to
13 make the best business decision for the marina --
14 for the council of co-owners.

15 Q. Well, you testified that you found out
16 about the amendment in 2010, and you didn't do
17 anything about it, correct?

18 A. I, personally?

19 Q. Yes, ma'am.

20 A. No.

21 Q. Okay. Why not?

22 A. Because I thought that it was -- I
23 thought the master deed that was amended was
24 legally amended.

25 Q. What do you mean by that?

1 A. Well, I don't -- now, my belief is that
2 this -- the revised and amended master deed
3 wasn't done legally, but at the time, I assumed
4 it was.

5 Q. All right. And the OCRM has never
6 threatened to pull the permit at the marina, have
7 they, ma'am?

8 A. I don't know.

9 Q. Have you seen anything from OCRM
10 threatening --

11 A. I haven't received anything from anyone.

12 Q. Threatening to pull the permit?

13 A. I'm sorry.

14 Q. That's okay. If you'll just answer
15 again, so the record is clean. You haven't seen
16 anything from OCRM?

17 A. I have not.

18 Q. Okay. Are you aware that there's a boom
19 still on the property? It could be in boxes on
20 the dock.

21 A. I believe that is the case.

22 Q. All right. So there are booms in case
23 of a spill or something like that, correct?

24 A. Yes.

25 Q. So the intimation that there's no boom

1 out there and the permit is going to be pulled is
2 just plain out false, isn't it?

3 Your testimony a few minutes ago is you
4 were concerned about the permit. Mr. Barr walked
5 you through the elements about the boom being
6 there. The boom is there, and it can be used,
7 correct?

8 A. To my knowledge.

9 Q. Exactly. So your testimony a few
10 minutes ago was just false, right? You were
11 saying -- I mean, if I'm wrong, I am wrong. I
12 thought you were saying that you were concerned
13 about the OCRM permit being pulled, correct?

14 A. For other -- other --

15 Q. One of the things Mr. Barr asked you
16 about was the boom, correct?

17 A. Yes.

18 Q. And the boom is there, correct?

19 MR. BARR: Are you saying boom?

20 THE COURT: Boom.

21 MR. O'KELLEY: B-O-O-M.

22 THE COURT: Yeah, boom.

23 MR. O'KELLEY: Yes, sir.

24 BY MR. O'KELLEY:

25 Q. The boom is there, and it can be used in

1 the event of an emergency, can't it, Ms. Heatley?

2 A. To my knowledge.

3 Q. Yes. And the bathrooms are able to be
4 used, correct?

5 A. Yes.

6 Q. Between 9 and 5, as set forth in your
7 regulations. You've heard your two other
8 co-plaintiffs testify as to that today, did you
9 not?

10 A. Yes.

11 Q. And when you testified everything shut
12 down because of COVID, literally, everything
13 everywhere shut down because of COVID about two
14 years ago, did it not?

15 A. That is true.

16 Q. There was no -- it wasn't my client
17 closing the bathrooms, saying, you can't use it.
18 The governor literally shut everything down, did
19 he not?

20 A. That's true.

21 Q. Okay. What does ousted mean to you,
22 ma'am, and when did you hear it first? I'll ask
23 you that.

24 A. Ousted?

25 Q. Uh-huh.

1 A. It means to be removed.

2 Q. And when did you first hear that term?

3 A. Probably in 2016 with regard to this
4 obviously.

5 Q. And the harbor master's office and the
6 regulations that Mr. Barr asked you about, that's
7 not defined as being in a certain location, is
8 it?

9 A. I had --

10 Q. You can look at it. The word ship store
11 is nowhere in there, is it?

12 A. Not by that name, no.

13 Q. No. All it says is harbor master's
14 office, correct?

15 A. From what I just --

16 Q. From what you just testified to; is that
17 correct?

18 A. Right.

19 Q. And facility office is not defined in
20 there, is it, as to a location?

21 A. Not based on what I saw just now.

22 Q. You've always been able to have access
23 to the boat slips, have you not?

24 A. The boat slips themselves?

25 Q. Yes, ma'am.

1 A. Yes.

2 Q. Even with the electronic -- I have one
3 in my pocket -- the key fob type situation --

4 A. Correct.

5 Q. -- or with a push pad, or what's the
6 lock you say is there now?

7 A. Cipher lock is what they call it.

8 Q. Okay. But was there always a push pad
9 there where you could enter numbers?

10 A. There may have been one of those at one
11 time, too.

12 Q. Okay.

13 A. It's been a lot of years.

14 Q. And you just testified as to you had
15 some concerns about your five-year-old grandson?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes, I'm sorry.

19 Q. If you'll turn, I think it's tab M with
20 the pictures. You testified as to where the
21 location of the gate is. Your five-year-old
22 grandson could have entered the water prior to
23 the location of that gate, could he not?

24 A. He could.

25 Q. Why didn't he have a life jacket on?

1 A. Because he was walking with my husband
2 and around the ponds, which are just out of this
3 picture.

4 Q. Did he just run away from y'all? Did
5 y'all not keep an eye on him? What was going on?

6 A. They just missed each other.

7 Q. You're not aware of anyone claiming any
8 life or safety injuries in the last -- since
9 2016, since my client owned this unit because of
10 my client, are you?

11 A. I'm not.

12 Q. All right. And were you privy to any
13 discussions between Mr. Farmer and Mr. Geiger
14 about Mr. Geiger moving his office?

15 A. I was not.

16 Q. Were you privy to any discussions
17 between Mr. Farmer and Mr. Geiger about removing
18 the security panel that was on my client's
19 property?

20 A. I was not.

21 Q. All you know is it got moved, correct?

22 A. Correct.

23 Q. And in fact, what you said a few moments
24 ago is what someone told you?

25 MR. BARR: Was what?

1 BY MR. O'KELLEY:

2 Q. What someone told you?

3 A. Correct.

4 Q. But you don't know what happened?

5 A. I do not have any firsthand knowledge.

6 Q. And do y'all leave your five-year-old
7 grandson alone around deep water a lot?

8 A. No, we don't.

9 Q. I didn't think so. You testified a few
10 minutes ago on -- let me make sure I get this
11 right -- that the heart of the marina was the
12 ship store.

13 A. Yes.

14 Q. And the ship store hasn't been operating
15 since 2011, correct?

16 A. As a ship store selling commercial
17 items, it hasn't operated, but we had complete
18 access to it until 2016.

19 Q. But in terms of it being -- operating as
20 a ship store, it's been quite some time since it
21 operated as a ship store, correct?

22 A. As a -- commercially selling items?

23 Q. Yes, ma'am.

24 A. 2011 may be correct.

25 Q. All right. And again, you've had no

1 notices to your mind from OCRM saying, you're in
2 violation of the permit, correct?

3 A. That's correct.

4 MR. O'KELLEY: Thank you, ma'am.

5 MR. BARR: Just a couple, Your
6 Honor.

7 REDIRECT EXAMINATION

8 BY MR. BARR:

9 Q. You were asked by Mr. O'Kelley about the
10 ship's store and whether or not it sold items.
11 What has that building been referred to at all
12 times in all the documents and by all members?
13 What is it called?

14 A. The ship store.

15 Q. Whether it sells materials or not, what
16 is it called?

17 A. The ship store.

18 Q. After it closed down from selling the
19 items, what was it called?

20 A. The ship store.

21 Q. When you defined it as the heart of the
22 marina, what was it called?

23 A. The ship store.

24 Q. And so how is it the heart of the marina
25 if nothing was being sold in it?

1 A. Because that didn't have anything to do
2 with our access.

3 Q. No. What I mean is, you called it the
4 heart of the marina. And so what did you mean by
5 the heart of the marina, it not being a store?
6 In other words, was it still the heart of the
7 marina even though it was not a store?

8 A. Yes.

9 Q. All right. How was it the heart of the
10 marina?

11 A. Because we all congregated there and
12 used the space.

13 Q. It was the social gathering place,
14 right?

15 A. Correct.

16 Q. It was where you had parties?

17 A. Correct.

18 Q. You testified you had owner's meetings
19 there, correct?

20 A. Correct.

21 Q. It was the heart of the marina?

22 A. (No audible response.)

23 Q. You were also asked questions about the
24 quote, facility office and whether the quote,
25 facility office, as referred to in the -- in the

1 regs, in the operations and maintenance manual,
2 about whether the facility -- there's nothing in
3 there to say that it has to be in a ship store.

4 If a facility office is not in the ship
5 store, where would it be on this property? Is
6 there another office place?

7 A. There is not.

8 Q. All right. What is the only place where
9 a facility office could be located?

10 A. In the ship store.

11 MR. BARR: Thank you. That's all I
12 have.

13 RECROSS EXAMINATION

14 BY MR. O'KELLEY:

15 Q. The heart was in bad condition, wasn't
16 it?

17 A. I'm sorry, I couldn't hear you.

18 Q. The heart was in bad condition, wasn't
19 it? There were plenty of repairs that were
20 deferred and hadn't been done, correct?

21 MR. BARR: Judge, I object.

22 MR. O'KELLEY: No. He just asked
23 about the heart, Your Honor. I think I'm allowed
24 to --

25 MR. BARR: Well, I did ask about

1 the heart, but I didn't ask her about the
2 conditions.

3 MR. O'KELLEY: She just stated it
4 was the heart, and we've got to get to the fact
5 that they were letting that heart die.

6 MR. BARR: I will withdraw it,
7 Judge. Let's get it over with.

8 THE COURT: All right. Yeah. Go
9 ahead. Go ahead.

10 BY MR. O'KELLEY:

11 Q. That building was in terrible condition
12 when it was foreclosed upon, wasn't it?

13 A. Yes, it was.

14 Q. And my client made a lot of
15 improvements, did they not?

16 A. I can't attest to what they've done. I
17 haven't --

18 Q. You're there every week, but you haven't
19 seen what they've done?

20 A. Not in the interior, no.

21 Q. How about the exterior? Have you seen
22 what they've done?

23 A. I don't see it as being that much.

24 Q. Okay. Boards were rotten on the
25 outside, correct? It needed paint. You hadn't

1 had any special assessments as an owner, correct,
2 for repairs?

3 A. For repairs? Probably not for repairs.

4 Q. The heart was dying, wasn't it? It was
5 in bad shape?

6 A. I don't know how to answer that, I think
7 in the proper fashion, is what I'm trying to say.
8 My perception of the situation was that because
9 we didn't know who owned this, we were not going
10 to go in and do those repairs. Because for a
11 number of years early on, we didn't know who held
12 the declarant rights, and I just -- I can't
13 imagine that we would have tried to do that.

14 Q. But y'all didn't do anything about the
15 state of the building from the time it was built,
16 correct?

17 A. I seem to recall a volunteer project of
18 the dock owners where they did repairs especially
19 to the gangway that goes up.

20 Q. I'm talking about to the actual building
21 itself.

22 A. As in the pilings?

23 Q. As in the pilings, the boards on the
24 outside, painting, caulking, things that are
25 done, roofs, checking to make sure the roof

1 doesn't leak, all of the things an owner would do
2 for his or her property.

3 A. Well, I wasn't on the board.

4 Q. Your husband was.

5 A. What I'm saying is, I know that they
6 got -- had someone come out and look at the
7 pilings, and I know they had other folks looking
8 into things, electrical and those kinds of things
9 over the years.

10 Q. But, again, no repairs were made to your
11 knowledge, correct?

12 A. I don't know what repairs the board
13 made.

14 MR. BARR: Is that all?

15 MR. O'KELLEY: That's all.

16 REDIRECT EXAMINATION

17 BY MR. BARR:

18 Q. Regardless of the physical condition of
19 this building, was it the heart of the marina?

20 A. Yes, it was.

21 MR. BARR: Thank you. I have
22 nothing further.

23 THE COURT: Ms. Heatley, we've made
24 reference to Mr. Ed Geiger a number of times. He
25 was the harbor master. He was the guy that ran

1 the ship store. He was the one that was in
2 charge. Is there someone that does that today?

3 THE WITNESS: Yes. I think two
4 gentlemen are sharing that responsibility.

5 THE COURT: Okay. All right. So
6 there is somebody onsite that sort of manages
7 what's going on out there?

8 THE WITNESS: That's correct.

9 THE COURT: Okay. They're just not
10 in that ship store location since 2016?

11 THE WITNESS: That's correct.

12 THE COURT: Okay. Thank you very
13 much.

14 MR. BARR: May I clarify one
15 follow-up, Your Honor?

16 THE COURT: Sure.

17 BY MR. BARR:

18 Q. Where do they locate themselves, if you
19 know?

20 A. I think they're just out walking the
21 docks and in the elements, trying to take care of
22 things.

23 Q. Okay. So they have no space?

24 A. Correct.

25 THE COURT: All right. Thank you.

1 You may step down.

2 MR. BARR: Ready?

3 THE COURT: Yes, sir.

4 MR. BARR: I call Tom Bessent.

5 (TOM BESSENT, having first been
6 duly sworn, testified as follows:)

7 THE COURT: Mr. Bessent, good
8 afternoon, sir.

9 THE WITNESS: Afternoon.

10 THE COURT: Full name and address,
11 please, sir.

12 THE WITNESS: Thomas V. Bessent,
13 now residing at 8 Sweet Marsh Court, Bluffton,
14 South Carolina 29910.

15 THE COURT: Thank you, sir. All
16 right. Mr. Barr?

17 DIRECT EXAMINATION

18 BY MR. BARR:

19 Q. Mr. Bessent, how long have you lived
20 there at Bluffton?

21 A. About a year.

22 Q. Okay.

23 A. Well, less than a year.

24 Q. And before that, where were you?

25 A. I was at -- in Charleston at Stiles

1 Drive on James Island.

2 Q. All right. And then was that your
3 long-term residence?

4 A. Yes.

5 Q. Okay. What's your age?

6 A. 66.

7 Q. And where did you live on Stiles Drive?
8 That's on James Island?

9 A. That's on James Island.

10 Q. And what was your occupation or
11 profession?

12 A. I was a land surveyor.

13 Q. And how long were you a land surveyor?

14 A. 35 or 36 years.

15 Q. Okay. What were your companies' names?

16 A. I started out with ESP, Incorporated,
17 which stood for Engineering, Surveying and
18 Planning, for about 20 years. I became an owner
19 of that firm after about the first six years.
20 And then they got bought out or merged with a
21 firm called DS Atlantic, and then very quickly,
22 less than a year, that firm got bought out by a
23 large firm called Stantec.

24 Q. Okay. So were you still with them when
25 they were Stantec?

1 A. I was. I served out my three-year
2 agreement with them, and then I was gone.

3 Q. And so was that your last active
4 practice as a land surveyor?

5 A. No. I started my own company, Island
6 Surveying on James Island.

7 Q. All right. And how long did you do
8 that?

9 A. About 10 years.

10 Q. About what?

11 A. About 10 years.

12 Q. Okay. And was that your last active?

13 A. That was my last active.

14 Q. And when did you retire?

15 A. I sold out in 2014.

16 Q. Okay. Now, you owned a dock slip at
17 Mariner's Cay?

18 A. Yes, actually two.

19 Q. Okay. Let's invite your attention to
20 the notebook in front of you, tab D.

21 MR. BARR: This is Plaintiff's
22 Exhibit Notebook 2 and tab D, Your Honor.

23 THE COURT: Okay.

24 BY MR. BARR:

25 Q. Are you there?

1 A. Yes, I am there.

2 Q. All right. Now, this is a deed from
3 Marina at Mariner's Cay to Thomas V. Bessent for
4 \$78,750 of dock unit D-1. It looks like you got
5 in at a lower price than the others.

6 A. I think a lot of that had to do with the
7 size and the length of the slips, but also --

8 Q. Yes.

9 A. -- yeah, supposedly we got this great
10 deal by buying early. That's another story.

11 Q. Right. Well, I will say that your deed
12 was recorded August 18th of 2006.

13 A. Yes.

14 Q. So that was rather early on, right?

15 A. Correct.

16 Q. In the relative scheme of the existence
17 of the marina -- of the condominium marina?

18 A. Yes.

19 Q. Now, did you have a slip there before it
20 was placed in the current condominiums?

21 A. I leased a slip there starting around
22 the year 2000. So, yeah, for around five or six
23 years, I had had a boat in that same slip.

24 Q. At D-1?

25 A. At D-1. So when that became available

1 for sale, I liked it and so I bought it.

2 Q. Okay. So you had experience, at least
3 as a slip lessee, a user, both before and after
4 it became a condominium?

5 A. Yes.

6 Q. And when you bought in 2006 as a
7 condominium, were you familiar with the concept
8 of unit ownership and common element ownership --

9 A. Yes.

10 Q. -- before that? And what was your
11 understanding of the common elements that you
12 acquired when you bought the slip D-1?

13 A. Well, we -- it was clear to me, and I
14 think everybody I talked to, that at the time we
15 were buying into everything that was there. We
16 liked the marina, and it was being improved. It
17 was being rebuilt.

18 So we would get a new, rebuilt, nice,
19 new set of docks, and we would get the use of
20 ship store, the fuel docks, the pump outs, all of
21 the other common elements, utilities, water,
22 electrical hookups at each slip, dock master's
23 office.

24 Q. And what is the size of your boat?

25 A. Back then I had a 30-foot boat.

1 Q. Okay.

2 A. And this is a 30-foot slip.

3 Q. All right. And do you still have that
4 same boat?

5 A. I have another -- a different boat now.

6 Q. And how big is it?

7 A. We have a 44-foot boat.

8 Q. All right. Now, we've had a
9 conversation about this. Do you require a pump
10 out with your particular boat?

11 A. I have a Coast Guard approved marine and
12 sanitation device, and that is in the documents.

13 Q. Right.

14 A. We still use the marina bathroom because
15 they're nice. They are big. They're more
16 convenient to use.

17 Q. Okay.

18 A. And that's -- I'm sorry. That's in slip
19 E-4, by the way.

20 Q. That's what?

21 A. That would be in my second slip. My
22 present boat is in the second slip that I
23 purchased.

24 Q. Okay. Well, I stand corrected. So do
25 you still own D-1?

1 A. I still own D-1, and I'm leasing it out
2 to another person.

3 Q. I understand. And so when did you
4 acquire E-4?

5 A. In 2015.

6 Q. Did I hear E -- is there an E?

7 A. E-4. E is the main dock that is
8 parallel to the shore.

9 Q. Okay. E.

10 A. It runs the whole length of the marina.

11 Q. Off of which the finger piers extended?

12 A. Correct.

13 Q. I understand. All right. And after you
14 acquired D-1 under the condominium regime, how
15 did you use the common elements?

16 A. The exact same way that I had used them
17 since the year 2000.

18 Q. And what was that?

19 A. Like I say, free access to the ship
20 store, the pump outs. They were still -- they
21 were selling fuel at that time. It was like a
22 complete functioning commercial marina, just like
23 is described in the master deed.

24 Q. You heard Ms. Heatley allude to its
25 social importance. Can you comment about that?

1 A. Yeah. I remember -- it seems like
2 Friday afternoon, the dock master would drag out
3 a grill, and we would bring burgers or chicken or
4 whatever, have a little impromptu gathering, all
5 during the day. The porches and the decks and
6 inside the ship store also were open, people
7 coming and going. You could hang out on the
8 porch and talk about how many fish you didn't
9 catch today and stuff like that.

10 Q. You talked about the ones that had got
11 away?

12 A. Right.

13 Q. Did you have a -- did your boat have a
14 radio capacity?

15 A. Yes.

16 Q. All right. And so would you have
17 occasion to use that to communicate with the dock
18 master?

19 A. Yes. Occasionally, yes.

20 Q. All right. So what became then when --
21 after Mr. Farmer ousted the dock master in front
22 of you, the ship store building, how did that
23 change your usage of this marina?

24 A. It was drastic. I mean, it took a while
25 for it to sink in. But really, just as you've

1 heard from Beth in the previous testimony, it was
2 the heart. It was the center. It was the
3 business center -- the ship store was the
4 business center of the whole place.

5 Without the ship store and these other
6 common elements that we're talking about, it's
7 just a dock. And that is not what we bought. We
8 bought the whole package.

9 Q. Now, how did you first learn of the
10 ouster?

11 A. I was in almost daily contact or
12 certainly frequent contact with Ed, the dock
13 master. I was president of the council of
14 co-owners at that time, and Ed and I would meet
15 and talk about the dock repairs and the status of
16 things in general. So he -- he just told me one
17 day, he said, I was told to leave --

18 MR. O'KELLEY: Your Honor, I'm
19 going to object to him telling you what
20 Mr. Geiger said. That is hearsay.

21 THE COURT: Okay. I will sustain
22 that. Tell him how -- you can tell me how he
23 found out about what happened, but just don't
24 tell me what he said unless he's here.

25 MR. BARR: Okay.

1 THE WITNESS: Ed Geiger, our dock
2 master, who I was in frequent contact with, was
3 ousted from the ship store.

4 BY MR. BARR:

5 Q. All right. Now, until COVID, what were
6 the hours of the restrooms?

7 A. 24 hours a day, seven days a week.

8 Q. And that was -- was that from your
9 original leasing of it in the '90s until the
10 COVID closure?

11 A. Yeah. I actually started leasing there
12 in around -- around 2000.

13 Q. Oh, I'm sorry.

14 A. From that time, continuously until
15 October 2016 is when we had complete access to
16 the ship store, and then the restrooms we had
17 complete open access until the COVID crutch,
18 which I think was early 2020.

19 Q. Okay. Now, you're aware that the
20 internal -- what do they call it -- the
21 operations manual provides that the restrooms
22 were open from, I think, 9 to 5 or whatever it
23 says. Were they ever limited to those hours?

24 A. They were never limited.

25 Q. So you're saying in practice, it was

1 always 24/7?

2 A. It was always 24/7.

3 Q. And how is it that the owners were able
4 to get the restrooms reopened after COVID?

5 A. Actually, it took an injunction. It was
6 a compromise, I guess, and they did reopen with
7 increased cleaning three times a day, cleaning,
8 and that was sanitizing with a fogger. We hired
9 this company to come in and fog disinfectant and
10 fog in there three times a day. And the hours
11 were limited to -- I forgot -- about 8 to 5.

12 Q. And what are there hours now? Do you
13 know?

14 A. I think it's still about that.

15 Q. Okay. Now, when did you learn that the
16 master deed -- the '06 master deed had been
17 amended to eliminate, to delete as common
18 elements, the properties we're here talking
19 about, the ship store building and the fuel
20 docks?

21 A. Okay. I was first aware of the second
22 master deed, just aware that it existed probably
23 about 2010 or 2011, but it was quite a while
24 later before I realized the actual implications
25 of what was in that second deed.

1 Q. And by implications, let me invite your
2 attention to tab 2F -- well, no, 2E and F. And
3 2E being the 2006 master deed, and 2F being the
4 2007 master deed. And 2E is on the second page
5 of that or it's on the reverse of the first page.

6 A. Okay. So which one are we going to
7 first?

8 Q. Well, the '06 master deed is 2E. Do you
9 see it?

10 A. Okay. I'm on tab E, first page.

11 Q. This is going to be recorder page B583,
12 page 599.

13 A. 599.

14 Q. All right. Flip a page over and go down
15 to subparagraph, in parentheses, small e.

16 A. Okay.

17 Q. Which describes the following common
18 elements as shown on Exhibit B.

19 A. Yes.

20 Q. And do you see the reference there to
21 commercial units number 1A and 1B and 2? Do you
22 see that under common elements?

23 A. Yes.

24 Q. You understood those to be the ship
25 store building and the fuel docks?

1 A. Yes.

2 Q. All right. And then flip over to F, tab
3 F. Tell me when you're there.

4 A. I'm there.

5 Q. Okay. And then flip that page over and
6 you see a subparagraph, small e on that page?

7 A. Yes, I see it.

8 Q. And you see that those commercial units
9 have been deleted?

10 A. That's correct.

11 Q. So when did you first realize that that
12 had been done?

13 A. I don't know what year. Some time
14 between I guess 2012, 2011.

15 Q. Okay. Did you appreciate what had
16 happened when you realized that?

17 A. No, I did not like it. I did not
18 understand it. But we assumed it was something
19 legitimate. It was approved and recorded, and we
20 started trying to figure out what to do about it.

21 Q. Now, in terms of the owners' use of the
22 ship store building, whatever year it was, did
23 the use change? Did your physical use of it
24 change?

25 A. At what time period?

1 Q. At any time until '16.

2 A. No time until 2016 did our use change.
3 Now, the ship store itself, as we've established
4 here, it kind of came and went. It was a full
5 fledged ship store selling life jackets and
6 t-shirts and bait and tackle and soft drinks and
7 snacks. And I think they even had like little
8 breakfast pastries and coffee in the mornings.

9 It went from that level to just kind of
10 a bare necessity type ship store and part of the
11 time it was just occupied by us, by the slip
12 owners for the marina office.

13 Q. Well, I was going to ask that. So at
14 all times, though, was the dock master in that
15 space?

16 A. At all times, the dock master was there,
17 yes.

18 Q. And who had the key to the building?

19 A. The dock master.

20 Q. And so what changed that?

21 A. Was when we were told to leave in
22 October of 2016.

23 Q. Okay. And when did you first learn that
24 the amendment to the master deed might violate
25 some statute or other master deed provision?

1 A. That I do remember clearly because I was
2 at a meeting in your office with Tommy McIntosh,
3 and Capers IV and you and all of the board
4 members. Y'all invited us down and said, hey,
5 we've found something.

6 And you laid it out before us, and it
7 was that moment that it first sunk in that the
8 second master deed had not just amended some
9 things, it actually took away property that I had
10 bought and paid for and owned.

11 Q. And when was this action commenced with
12 relation to that discovery?

13 A. Promptly. Well, I think I first
14 contacted Capers IV about September of 2016. We
15 said, we needed some clarity here. We need some
16 help because we know we have rights to the ship
17 stores, but please help us figure out what kind
18 of rights.

19 We need our ship store back, and that
20 evolved for a few months. And this meeting that
21 I'm talking about was -- I guess it was early
22 2017, when you pointed out the big news about the
23 first master deed and second master deed. And we
24 filed suit very soon thereafter.

25 Q. Okay. Now, do you recall what -- do you

1 recall the date of the ouster?

2 A. October 1st, 2016.

3 Q. Okay. And what, if anything, happened
4 to the security system of the building after you
5 were ousted from it?

6 A. Around that time, Mr. Farmer disabled
7 and cut out our dock security system.

8 Q. And what did it consist of? What did it
9 look like physically when you call it -- refer to
10 it as a system?

11 A. You know, I don't even know if I saw the
12 actual box, but it was an electrical component
13 that was inside of the building along with all of
14 our other electrical controls. And we can get
15 into that if you want.

16 But it was inside the building, and I
17 guess he didn't want anything to do with the
18 marina inside of the building. I don't know what
19 his motivations were, but he cut it loose, cut
20 the wires, and put it outside.

21 Q. All right. And, Mr. Bessent, what
22 effect would it have on you and your boat slip,
23 if any, if these rights associated with the
24 common elements are not restored?

25 A. Well, if they're not restored, then it

1 will be the way it has been for the last few
2 years, which has not been acceptable. We are
3 surviving and calling ourselves a marina and
4 crossing our fingers that -- that we don't run
5 into further trouble with OCRM.

6 But certainly, the overall marina
7 experience is gone. Now I feel like that I own a
8 dock in the Farmers' backyard. And it feels like
9 you're walking kind of through somebody's house
10 and yard to get to your dock. It's just not the
11 feeling that it was.

12 Q. All right. So what relief are you
13 asking for this Court?

14 A. To restore our full rights -- full
15 rights of ownership and use.

16 Q. To these common elements?

17 A. To all the common elements.

18 Q. All right. Let me also address some
19 other issues with you, and you're going to need
20 the big notebook for that.

21 A. This one?

22 Q. Yes. Let me invite your attention to
23 Plaintiff's Exhibit Notebook No. 1. And let's go
24 back to the -- it's tab E.

25 MR. BARR: And this will take some

1 looking through, tab E --

2 THE COURT: Okay.

3 MR. BARR: Which is the master deed
4 for Mariner's Cay Racquet and Yacht Club.

5 THE COURT: Is there a page number
6 for that one?

7 MR. BARR: Do what?

8 THE COURT: Is there a page number
9 you've got access to?

10 MR. BARR: There ought to be a
11 physical tab on your --

12 THE COURT: Okay. Got it.

13 MR. BARR: -- on your notebook
14 there.

15 THE COURT: Thank you. Okay. Got
16 it. J128, page 300, it says.

17 MR. BARR: This is book J128.

18 Thank you, Your Honor. J128, page 300, master
19 deed for Mariner's Cay Racquet and Yacht Club,
20 which we've referred to as the condominiums on
21 the hill, which Your Honor has published -- we've
22 published the recording book and page, and the
23 date of recording this was May the 12th, 1982.

24 BY MR. BARR:

25 Q. Are you with me, Mr. Bessent?

1 A. Yes, I'm on page 300.

2 Q. Okay. Let's turn now to book -- to page
3 26 of that, which is book J128, page 300. Wait a
4 minute. They're all 300. This is page -- oh,
5 yeah. This is back in the old days. So this is
6 page 26 of that document.

7 THE COURT: Page 26, okay.

8 BY MR. BARR:

9 Q. Are you there?

10 A. Okay. I'm there.

11 Q. And we're looking at article 9, unit
12 restrictions for residential purposes. Have you
13 studied that before?

14 A. No, I don't believe I have.

15 Q. Okay. It reads, buildings and all units
16 contemplated in the development shall be, and the
17 same hereby are restricted exclusively to
18 residential use, with the exception of the ship
19 store, which shall be located within the confines
20 of the regime as reflected on the site plan in
21 Exhibit E for the benefit of all co-owners, as
22 well as to service the grantor's adjacent marina.
23 So this is the first time you've seen that
24 language?

25 A. I may have read it sometime in the past,

1 but it's basically new to me.

2 Q. Did you have any knowledge of the
3 relationship between the condominium on the hill,
4 that is to say Mariner's Cay Racquet and Yacht
5 Club, and this marina?

6 A. The relationship between the two?

7 Q. Yes.

8 A. I did know that the marina on the hill
9 was first, and they granted the easement for the
10 purpose of constructing a marina. They granted a
11 master easement. I'm not sure if that's the
12 right term, an easement to the marina for ingress
13 and egress and to physically use the shoreline
14 area and to build a ship store.

15 Q. Okay. So the creation of the ship store
16 was on an easement and created by Mariner's Cay
17 Racquet and Yacht Club?

18 A. Yes.

19 Q. And it being the grantor of that
20 easement, the language we're reading on page 26
21 provides that the units in development are
22 residential except for the ship's store. Did I
23 read that correctly?

24 A. Yes.

25 Q. Then flip over to page 29.

1 A. Okay.

2 MR. BARR: And I'm referring now,
3 Your Honor, to section 4.

4 THE COURT: Okay.

5 MR. BARR: Which I will publish now
6 for the record, reservations of the developer's
7 marina and boat ramp easements is hereby reserved
8 under Mariner's Cay Development Corp, its
9 successors and assigns, and alienable easement in
10 perpetuity, for unlimited ingress and egress
11 over, across and upon the interior streets,
12 roadways, sidewalks, walkways, and parking lots
13 to the marina and associated facilities,
14 parentheses.

15 Ownership of which is and remains vested
16 in Mariner's Cay Development Corp. Such
17 easements shall be for the benefit of Mariner's
18 Cay Development Corp, its successors and assigns,
19 the lessees of marina slip spaces, and their
20 respective agents, licensees, and invitees, and
21 for customers of the ship's store, together with
22 an alienable easement and perpetuity along,
23 across, over, through and adjacent to the
24 horizontal property regime as shown on Exhibit F,
25 attached hereto.

1 In order to allow Mariner's Cay
2 Development Corp, its successors and assigns, the
3 right and privilege to attach, affix, and
4 maintain the docking and structure, constituting
5 the marina facilities to the horizontal property
6 regime and such space, size, shape, width and
7 depth as grantor and sole discretion means
8 necessary to sufficiently moor and maintain the
9 marina to the horizontal property regime.

10 I'm going to stop there, Your Honor.
11 That's quite a long paragraph, and I think I've
12 published the essence of what I had intended to.

13 BY MR. BARR:

14 Q. Now, earlier, you had testified your
15 understanding of the source of the existence of
16 the marina being an easement?

17 A. Yes.

18 Q. And is this -- do you think this is
19 probably it?

20 A. This is not the one -- I'm not sure this
21 is the one I was thinking about.

22 Q. Okay.

23 A. This seems to say that the Mariner's Cay
24 Development Corp is going to develop the marina.

25 Q. Okay. But nevertheless, you heard and

1 understood the language relating to the
2 restrictions of use, correct?

3 A. Yes.

4 Q. Then tab F, if we could flip to that.
5 The published tab F is the recorded amendment to
6 the master deed for Mariner's Cay Racquet and
7 Yacht Club recorded in Book H131, page 292 on
8 April the 25th, 1983.

9 The last for sale, which is to say the
10 whereas paragraph on recorded book 131, page 292
11 reads, whereas the association, which is
12 Mariner's Cay Development Corps, as grantor, and
13 Mariner's Cay Racquet and Yacht Club Homeowner's
14 Association, being the association.

15 The association used the relocation,
16 construction, and operation of said ship store to
17 be an additional convenience to the residents of
18 Mariner's Cay Racquet and Yacht Club, horizontal
19 property regime, and an important component in
20 the continued success of Mariner's Cay Racquet
21 and Yacht Club horizontal property regime.

22 And then on the next page, it says, now,
23 therefore, Mariner's Cay Racquet and Yacht Club
24 homeowner's association hereby expressly --
25 subparagraph 2 amends the master deed of

1 Mariner's Cay Racquet and Yacht Club by adding
2 thereto as article 10, easement section seven,
3 easement the following, the association has
4 granted an exclusive alienable easement in
5 perpetuity to Mariner's Cay Development Corp, its
6 successors and assigns to construct a ship store
7 on a parcel of land, et cetera, et cetera.

8 And then inviting your attention over to
9 recorder's page H131, page 292, entitled Exhibit
10 B.

11 A. I'm sorry, which exhibit? I'm sorry.

12 Q. It's page 292, and it's -- there's also
13 Exhibit B typed at the top of the page. Do you
14 see that?

15 A. They -- all of these are labeled page
16 292.

17 THE COURT: They're all the same
18 page.

19 MR. BARR: Oh, I'm sorry. I'm
20 sorry. It's the second page from the back.

21 THE COURT: It's an easement that
22 says Exhibit B?

23 MR. BARR: Yes, sir.

24 THE WITNESS: Exhibit B, I've got
25 it.

1 BY MR. BARR:

2 Q. Back in the old days, they didn't move
3 the numbers on these. To publish it, for and in
4 consideration of \$5, the lease attached to is
5 Exhibit A, and the grantee's promise to pay the
6 real estate taxes, et cetera, et cetera. The
7 undersigned, Mariner's Cay --

8 MR. BARR: We're about five lines
9 down, Your Honor.

10 BY MR. BARR:

11 Q. Mariner's Cay Racquet and Yacht Club
12 Homeowner's Association, Inc., a South Carolina
13 nonprofit corporation does hereby grant unto
14 Mariner's Cay Development Corp, its successors
15 and assigns, exclusive alienable easement in
16 perpetuity to construct and operate a, quote,
17 ship store, closed quote, owning parcel, which is
18 thereafter described, and it's signed and dated
19 April, it looks like, 22nd, 1983. Did I publish
20 that correctly?

21 A. Yes.

22 Q. All right. So throughout, have you ever
23 seen the property that's at issue here referred
24 to anything other than a ship's store?

25 A. No.

1 Q. Have you ever seen anything to say that
2 its use as a residence would be allowed?

3 A. No. And I've looked through both master
4 deeds, not every word, but I've looked through
5 them and in everything you've read today. It's
6 always referred to as the ship store. I've never
7 seen anything different.

8 Q. And in fact, inviting you back over to
9 tab E, where we started here in this conversation
10 at page 26 -- tell me when you're there.

11 A. Okay. I'm there.

12 Q. Okay. And page 26 down there again at
13 the bottom -- we already went through this, but
14 the same grantee from that, at least as you just
15 saw, Mariner's Cay Racquet and Yacht Club,
16 provides residential purposes that buildings and
17 all units contemplated in development shall be in
18 the same or hereby restricted exclusively to
19 residential use with the exception of the ship
20 store. Did I read that correctly?

21 A. Yes.

22 MR. BARR: May I have a moment,
23 Your Honor?

24 THE COURT: Sure.

25 BY MR. BARR:

1 Q. Now, we're going to look back at tab A,
2 which is the 2006 master deed.

3 THE COURT: Okay. We're still in
4 the large format?

5 MR. BARR: Sir?

6 THE COURT: We're still in the
7 large book?

8 MR. BARR: Yes, sir, still on the
9 large book, tab A.

10 THE COURT: Okay.

11 MR. BARR: More specifically, the
12 recorder's page V583, page 626. Okay. And for
13 the record, Your Honor, this is an Exhibit A to
14 the master deed of Mariner's Cay Marina for 2006,
15 master's deed of Mariner's Cay Marina.

16 THE COURT: Okay.

17 MR. BARR: As I say as an aside, if
18 you look at the very first page, you will notice
19 prominently there a submerged land notice. You
20 remember you were reading from section 100?

21 THE COURT: Right.

22 MR. BARR: You were absolutely
23 right. This is right there prominently
24 displayed. But anyhow, for the purpose of
25 this -- so this is the legal description of

1 what -- of the property that was being conveyed,
2 as it were, dedicated under the master deed to
3 the horizontal property regime.

4 So the legal description, then at the
5 very bottom of that page, provides that the said
6 easement and perpetuity, to which this document
7 refers to, was established by the master deed for
8 Mariner's Cay Racquet and Yacht Club, et cetera,
9 et cetera.

10 And then the last -- going down to the
11 end of that paragraph at the page of -- bottom of
12 recorder's page 626, the easement was set up by
13 article Roman 10, section 4E and was amended by
14 instrument granted by Mariner's Cay Racquet and
15 Yacht Club Owner's Association by increment dated
16 April 22nd, 1983, which is the long document that
17 I already went through that was from the
18 Mariner's Cay on the hill property.

19 So what I've tried to do -- I hope
20 relatively clearly -- is create a pathway to the
21 creation of this. But more importantly, to tie
22 in the reservations created by the marina -- the
23 Yacht and Racquet Club on the hill, the
24 restrictions created -- imposed on the ship
25 store's use.

1 Everything else was residential except
2 the ship store. Well, except could only mean --
3 I will get to this later, but commercial. That's
4 where I'm going here.

5 THE COURT: An alienable perpetual
6 easement for a ship store is the language, right?

7 MR. BARR: Correct. That is the
8 nature of the interest --

9 THE COURT: Yeah.

10 MR. BARR: -- on which this
11 horizontal property regime exists.

12 THE COURT: Okay.

13 MR. BARR: I don't know how often
14 things are -- horizontal property regimes are
15 created on easements, but we're looking at one
16 here. I mean, it's an interesting land; so I
17 guess you can do it. I hope so. We've been here
18 long enough. I mean, the regime has.

19 May I have a moment, Your Honor?

20 THE COURT: Sure.

21 MR. BARR: Your Honor, I don't know
22 that the witness is necessary for this, but we've
23 marked -- or we've set out an exhibit here that
24 should be our Exhibit No. 3. One being the first
25 notebook; the second being the second notebook,

1 which is a list of owners who originally
2 purchased. Yes. This is a list of owners --
3 this is a list of the 88 owners --

4 THE COURT: Okay.

5 MR. BARR: -- who originally
6 purchased at this marina. And so that includes
7 the 39 who bought under the '06 deed.

8 THE COURT: Okay.

9 MR. BARR: That includes 41 units
10 that were conveyed by First National Bank of the
11 South to FBSA 1, LLC, on February the 16th of
12 2012, which I think is derived from the 2009
13 foreclosure of the slips. This is not the store.
14 Of the slips.

15 THE COURT: All right.

16 MR. BARR: And then it also
17 includes --

18 THE COURT: That's when the
19 dockominium phase ended.

20 MR. BARR: Sir?

21 THE COURT: That's when the
22 dockominium phase came to a crash and defaulted?

23 MR. BARR: Well, it is, and it's
24 not.

25 THE COURT: Part of our 2008

1 debacle.

2 MR. BARR: It is. Yes, Your Honor,
3 but this is -- this is tracking all of the
4 conveyances of those 88 slips.

5 THE COURT: Okay. I'm with you.

6 MR. BARR: It would be the 90 minus
7 the two fuel docks.

8 THE COURT: Right. Okay.

9 MR. BARR: And what this shows
10 is -- and I think we've already put the other one
11 in -- the 39 conveyances out prior to the amended
12 master deed.

13 THE COURT: Right.

14 MR. BARR: 41 that were conveyed
15 out by --

16 THE COURT: The bank.

17 MR. BARR: FSB.

18 THE COURT: Okay.

19 MR. BARR: And then there are eight
20 others that were -- I guess I would call it -- I
21 think they probably would be characterized as
22 incidental conveyances; in other words, from
23 different grantors.

24 But the significance of it is that the
25 39 deeds conveyed out before the master deed --

1 amended master deed all make reference to the
2 2006 master deed, obviously. But very
3 interestingly, the 41 that were conveyed by First
4 National Bank to FBSA 1, LLC, also make the
5 conveyance, although it's in 2012 -- not with
6 reference to the 2007 amended master deed, but
7 with reference to the 2006 original master deed.

8 Again, I don't mean to argue, Your
9 Honor, but again, illustrating lawyers' oversight
10 or lack thereof.

11 THE COURT: Well, under your
12 theory, they would be using the right deed, would
13 they not? Under your theory?

14 MR. BARR: Right. Well, with
15 respect to their efforts to the common units,
16 that's true.

17 Madam Reporter, I'm just going to put 3
18 at the top of this so we will remember it.

19 THE COURT: 2006 master deed.

20 MR. O'KELLEY: Your Honor, can we
21 have a personal comfort break?

22 THE COURT: Sure. Do you want to
23 do that?

24 MR. O'KELLEY: Yes, sir.

25 THE COURT: All right. Let's do

1 that. Let's take five minutes.

2 And then just for my inquiry, the eight
3 incidentals are all referenced to 2007, or are
4 they a hodgepodge, or what do they do?

5 MR. BARR: I don't know that I can
6 answer that. Now, it may be in here, but I'm
7 not --

8 MR. O'KELLEY: Based on what it
9 says, the ones in purple are referring to the
10 amended master deed is what the key to this --

11 THE COURT: If it's in purple,
12 okay.

13 MR. BARR: I'm sorry, it is.
14 You're right. Thank you.

15 MR. O'KELLEY: Yes, sir.

16 MR. BARR: That's correct. The
17 purple ones -- that's correct. The purple ones
18 refer to the amended master deed. So if the 88
19 individual slips, putting the fuel docks aside,
20 all but eight were conveyed out, referring to the
21 '06 deed.

22 THE COURT: Gotcha. All right.
23 That's the point you wanted to make. Okay.
24 Let's take a break then before you finish with
25 Mr. Bessent, and then we will go from there.

1 Mr. Bessent, you can take a break if you'd like.

2 MR. BARR: I'm sure Mr. O'Kelley
3 has some --

4 THE COURT: Oh, I'm sure. I'm
5 sure. I don't know if you're finished with him,
6 but anyway -- let's take five minutes, and we'll
7 come right back.

8 (A recess transpired.)

9 MR. BARR: Your Honor, I missed one
10 connection here. I'm going to propose just to
11 publish some words from the documents rather than
12 running back and forth with questions.

13 THE COURT: Okay.

14 MR. BARR: Unless counsel has an
15 objection.

16 MR. O'KELLEY: They're all in as
17 evidence anyway, so whatever.

18 THE COURT: Okay.

19 MR. BARR: I don't want to be
20 arguing, but I just want to publish these because
21 we're about to rest.

22 THE COURT: Okay.

23 MR. BARR: The 2006 master deed
24 describes in its Exhibit A, which is recorded as
25 page V583, 626, Exhibit A, describes the legal

1 description of the property that the marina and
2 the ship store are constructed on.

3 And the derivation of the master deed
4 description of the property reads that the
5 easement in perpetuity was established by the
6 master deed of Mariner's Cay Racquet and Yacht
7 Club. The easement was set up by article 10,
8 section 4E of the Yacht and Racquet Club. So
9 that's the referenced in the 2006 master deed,
10 and then the last reference that I made there in
11 recorded book V583, 627.

12 THE COURT: Right.

13 MR. BARR: So then referring to
14 that derivation, that is to say to that master
15 deed of the marina on the hill, which is below
16 tab E of the thick book at recorder's page -- I'm
17 sorry, there's no recorder's page. It's page 29.
18 I neglected the first time around to publish
19 really the relevant phrases from that, so at the
20 bottom of page 29.

21 THE COURT: In section 4?

22 MR. BARR: Of section -- of tab E.
23 Yeah, it's under section 4, exactly, remembering
24 that the derivation from the '06 master deed was
25 to section 4E. I didn't publish E.

1 THE COURT: Okay.

2 MR. BARR: So E is on the next
3 page, which reads an additional language I
4 previously published, an alienable easement in
5 perpetuity to construct and operate a ship store,
6 which shall be located, et cetera, et cetera, et
7 cetera.

8 So this regime on the hill under section
9 4 -- at the bottom of page 29, under section B,
10 bravo, conveyed an easement under B, an alienable
11 easement and perpetuity along, across, over,
12 through and adjacent to the horizontal property
13 regime as shown in Exhibit F.

14 In order to allow Mariner's Cay
15 Development Corp, its successors and assigns, the
16 right and privilege to attach, affix and maintain
17 the docking and structure constituting the
18 marina. So section 4B conveys the right or
19 creates the right -- reserves the right to create
20 the marina; that is the docks, et cetera.

21 And section E on the next page reserves
22 the right to construct and operate the ship
23 store. And then I earlier went through the grant
24 of easement that is attached as an exhibit behind
25 that, which then conveyed that easement over to

1 the declarant at Mariner's Cay.

2 So the point is that the genesis of the
3 marina is this Racquet and Yacht Club master
4 deed, which says, as we reviewed earlier on page
5 26, that the buildings and the regime on the hill
6 are residential except for the ship store located
7 within the confines of the regime on the site
8 plan as Exhibit E.

9 And then, it further describes under the
10 article 10 of easements, section 4, reservation
11 of right to create the docks and the walkways,
12 the boat slips, as it were, under 4B. And under
13 4E, the right to construct and operate the ship
14 store.

15 And I hope I didn't make that more
16 confusing, but I know we're going to do some
17 posttrial briefing. So I will cover that at that
18 time.

19 THE COURT: You did, but you've got
20 a surveyor over here that says that the easement
21 and perpetuity to construct the ship store is
22 located 35 feet, north 7 degrees, 35 feet, 6 west
23 of so-and-so, so-and-so. You can probably ask
24 him where that's supposed to be.

25 MR. BARR: Well, I think

1 actually -- I don't know that I want to put him
2 on that spot. But I think actually what happened
3 is there's a tab F here.

4 THE COURT: And they changed it,
5 right?

6 MR. BARR: Tab F changed the
7 location, but did not change the conditions.

8 THE COURT: I've been looking for
9 the diagram because every horizontal property
10 regime I've ever seen shows a diagram of where
11 everything is supposed to be, but I can't -- I
12 hadn't found that thing yet. Maybe it exists
13 somewhere, but I haven't found it.

14 MR. BARR: Well, let's see.

15 THE COURT: But I've only looked
16 back in -- I think I was looking in 1982 so far,
17 and I know it didn't come into existence until
18 later. But y'all might find it for me and I'll
19 take a look at it. Plus it's up on stilts,
20 right?

21 MR. BARR: I will remember that
22 question and address it.

23 THE COURT: Okay.

24 MR. BARR: But I won't hold up the
25 Court process. I will find that for you, though,

1 and turn the witness over to Mr. O'Kelley.

2 THE COURT: That will be fine. He
3 didn't want to answer that question anyway, I can
4 tell.

5 MR. O'KELLEY: Your Honor, for
6 housekeeping purposes, I have some 59 plus
7 exhibits to walk through with --

8 THE COURT: With Mr. Bessent?

9 MR. O'KELLEY: Yes, sir. And lots
10 of cross; so I don't know if we want to start or
11 do it first thing in the morning?

12 THE COURT: Well, yeah, we want to
13 start. But we will see how far we can go with
14 what we've got.

15 MR. O'KELLEY: Thank you, Your
16 Honor.

17 THE COURT: In the meanwhile,
18 what's that document y'all use to get all of the
19 north, south, east and west and stuff with you?
20 What's that called? It's not a sextant. What is
21 that thing called y'all use?

22 THE WITNESS: A compass?

23 THE COURT: Is it a compass?

24 THE WITNESS: No, we're a little
25 beyond that.

1 MR. O'KELLEY: GPS mappings?

2 THE COURT: I'm sure some -- you
3 might want to bring that with you tomorrow to
4 finish up the cross-examination.

5 THE WITNESS: Oh, okay. Have a
6 calculator?

7 THE COURT: Exactly. I've been
8 wondering about that my whole life.

9 CROSS-EXAMINATION

10 BY MR. O'KELLEY:

11 Q. Good afternoon, Mr. Bessent. How are
12 you?

13 A. I'm fine, thank you.

14 Q. Mr. Bessent, you got elected to the
15 board at Mariner's Cay, I think, literally the
16 day after my client's entities closed on their
17 units, correct?

18 A. It was at that annual meeting in May of
19 2016, yes.

20 Q. And at that annual meeting, y'all found
21 out that Mr. Farmer's entities had actually
22 closed, correct?

23 A. Yes.

24 Q. Because he was invited -- because he had
25 had some contact with someone on the board,

1 correct?

2 A. Yes. Now, actually, I didn't attend
3 that meeting, but I was nominated and elected at
4 that meeting.

5 Q. In absentia?

6 A. Yes, I was.

7 THE COURT: That sounds about
8 right.

9 MR. O'KELLEY: That's about right
10 for a homeowner's association.

11 THE WITNESS: That's exactly what
12 happened.

13 THE COURT: That's how you got
14 elected.

15 BY MR. O'KELLEY:

16 Q. And it's sort of the situation, all
17 volunteers step forward, and everyone steps back,
18 that kind of thing?

19 A. Uh-huh.

20 Q. And you served from 2016 until when,
21 sir?

22 A. Until the annual meeting last year of
23 2021.

24 Q. And did that have to do with your moving
25 to -- I guess that's Daufuskie, isn't it?

1 A. Yes.

2 Q. Okay. You own two boat slips out there,
3 correct?

4 A. Yes.

5 Q. And the first one you purchased was in
6 2006, correct?

7 A. The first one was in 2006, yes.

8 Q. And that one -- we've seen your deed --
9 of \$78,750, correct?

10 A. Yes.

11 Q. And the second one was E-4 that you
12 bought in 2015, right?

13 A. Correct.

14 Q. And the value you paid for that was
15 \$28,000, correct?

16 A. Correct.

17 Q. And that was before my client's entities
18 had anything to do with Mariner's Cay, right?

19 A. Right.

20 Q. Were you aware that you-all -- and when
21 I say you-all, I'm talking about the council of
22 co-owners in this case, not you individually --
23 made offers to purchase these units from my
24 client?

25 A. Yes.

1 Q. All right. And I want to show you
2 that -- there's another big notebook in front of
3 you. Oh, no, it's not. It's about to be in
4 front of you.

5 MR. BARR: Are you referring to
6 yours?

7 MR. O'KELLEY: Yes, sir. And much
8 like Mr. Barr, I've got tabs on all my stuff.

9 THE COURT: Okay.

10 BY MR. O'KELLEY:

11 Q. And we're going to walk through a whole
12 lot.

13 A. Okay.

14 Q. Turn with me, if you would, please, to
15 Exhibit No. 8 -- excuse me, 7.

16 MR. BARR: 7?

17 MR. O'KELLEY: 7, yes, sir.

18 THE WITNESS: So I find that by tab
19 5 --

20 MR. O'KELLEY: May I approach, Your
21 Honor?

22 THE WITNESS: -- tab 5 and then
23 from 21 to 16?

24 MR. O'KELLEY: Go on number 7, so
25 we'll just go right here first.

1 MR. BARR: You're on tab 7?

2 MR. O'KELLEY: Yes, sir. And it
3 will just be like that ad nauseam as we can roll
4 through these exhibits.

5 BY MR. O'KELLEY:

6 Q. These appear to me to be the minutes of
7 your board meeting -- the board meeting on May
8 21st where you were elected. If you look in the
9 middle of the page, it states, there were five
10 candidates running for election: David Nauheim,
11 Jeff Heatley, Laurie Hull, Ron Maguire and Tom
12 Bessent?

13 A. Right.

14 Q. Okay. Just to make sure. And under --
15 you weren't at that meeting, correct?

16 A. That's correct.

17 Q. All right. On the second page, there's
18 a note from the minutes that my -- Mr. Farmer
19 made a motion to table the vote on the amendment
20 changes until all parties, Mariner's Cay Council
21 of Co-Owners, Mariner's Cay Homeowners and the
22 ship store owner have a chance to talk about how
23 to move forward in the best interest of all.
24 Marty Rosenberg seconded. A show of hands from
25 the membership approved.

1 You weren't there, but do you recall
2 back in that time what the discussions were being
3 had about the amendments or dealing with the
4 changes to the master deed? Tell the Court about
5 that.

6 A. Very vaguely. I -- was this the one
7 that I think Rick Stringer was proposing some
8 changes?

9 Q. Well, according to the minutes, there
10 are new business. It's defined and talks about
11 Michael Sutton proceeded with the vote to change
12 the master deed, and my client's represented.
13 Mr. Farmer agreed with ingress and egress to the
14 bathrooms. They've had concern with the
15 language, ingress and egress to the bathrooms,
16 and the ship store. And then Roger Camp. Tell
17 the Court who Roger Camp is.

18 A. Roger Camp is the president of the condo
19 HOA.

20 Q. The hill?

21 A. On the hill.

22 Q. And you've served on that board, too,
23 correct?

24 A. Years ago.

25 Q. Years ago. But, I mean, that's how you

1 know who Roger Camp is from owning -- being on
2 that board?

3 A. Yes.

4 Q. And Mr. Camp, was he also a dock -- a
5 slip owner? Do you know?

6 A. Yes.

7 Q. All right. So there were some
8 discussions about changing the master deed at
9 that time, correct?

10 A. Yes.

11 Q. And in fact, at that time you-all said
12 that the ship -- described the ship store owner,
13 and that would have been the two LLCs my clients
14 own, correct?

15 A. Yes.

16 Q. And in fact, on the next -- and so
17 Mr. Bessent, also, these have exhibit numbers
18 from prior depositions. Do you see those down in
19 the corner?

20 A. Yes.

21 Q. Okay. But we're just going to use the
22 tabs for ease.

23 A. All right.

24 MR. BARR: Would you repeat what
25 you just said?

1 MR. O'KELLEY: I just said, these
2 have exhibit numbers from old depositions.

3 MR. BARR: But you're just using
4 the tabs?

5 MR. O'KELLEY: But we're going to
6 use the tab numbers for ease for the court
7 reporter.

8 MR. BARR: Okay. I got it.

9 BY MR. O'KELLEY:

10 Q. Turn to Exhibit 8, please.

11 A. Okay.

12 Q. These were produced to us, and we made
13 them an exhibit to Mr. Maguire's deposition. Are
14 these your notes, or do you know whose notes
15 these are? And up at the top, it says, PC with
16 Marty Rosenberg.

17 A. I don't think that -- no, I don't
18 recognize it. I don't recognize these notes.

19 Q. It's got in the middle of the first
20 part, member of the Mariner's Cay board, lived
21 there for 20 years and has Tom Bessent, without a
22 T, knowledgeable, good guy, Mariner's Cay
23 resident. Do you see that?

24 A. Yes.

25 MR. BARR: Your Honor, I object to

1 examination of this witness about a document he
2 can't identify and hasn't seen.

3 THE COURT: I'm likely to sustain
4 that unless you can have him identify it.

5 MR. O'KELLEY: I will move on, Your
6 Honor.

7 THE COURT: Yeah.

8 BY MR. O'KELLEY:

9 Q. At the time you were elected, wasn't
10 Laurie Hull the president of y'all's board?

11 A. Yes.

12 Q. All right. Turn to exhibit --

13 A. Well, excuse me. I think that at that
14 same meeting that I was elected is when Mike
15 Sutton stepped down and Laurie took over.

16 Q. All right, sir.

17 A. I think that's right.

18 Q. And during that time period -- turn to
19 Exhibit No. 9, please. Have you seen this
20 document before?

21 A. Is that the appraisal that we had done?

22 Q. I will represent to you that in the --
23 if you look in sort of the middle third.

24 A. Yes, I see it right here.

25 Q. Yes, sir.

1 A. Yes, I've seen this before.

2 Q. And why did y'all have an appraisal
3 done?

4 A. We were involved in negotiations to try
5 to figure out some way to get our rights back to
6 the ship store.

7 Q. And one of those negotiations was to
8 figure out the value of the units and purchase
9 them from my clients?

10 A. Yes. We were trying to think of every
11 possible solution.

12 Q. And if you will turn to the third page,
13 it has a value conclusion, does it not?

14 A. Yes.

15 Q. And what was the value conclusion at the
16 time?

17 A. 140,000.

18 Q. And was that for just the one unit or
19 for both units?

20 A. I believe that was both units of the
21 ship store.

22 Q. All right, sir. And then --

23 A. Well, I'm sorry. I mean, the cover
24 letter says, it is the first habitable floor of a
25 two-story building.

1 Q. Correct.

2 A. So perhaps this appraisal was just for
3 the main floor.

4 Q. Well, that's what I was going to point
5 out to you. So it's my understanding it was just
6 for the first floor where the ship store area had
7 been operating for some time.

8 A. Okay.

9 Q. But that hadn't been operating since
10 2011, correct, an actual ship store?

11 A. I'm not sure of that date, but that
12 sounds about right as far as being an active
13 retail shop.

14 Q. All right. Exhibit No. 10 is an e-mail
15 from Ms. Hull to my client with an offer that was
16 attached to it. Did the board authorize Ms. Hull
17 to make that offer?

18 A. Yes.

19 Q. And the amount is -- was \$80,000,
20 correct?

21 A. Yes.

22 Q. And you were going to close on October
23 30th of 2016?

24 A. Yes.

25 Q. And it's signed. And if you will go to

1 page, down at the bottom, it says 659 at the
2 bottom.

3 A. Yes.

4 Q. Do you know if that is Ms. Hull's
5 signature?

6 A. It looks like it says Laurie Hull. I
7 mean, I don't know her handwriting, but that
8 looks like what it says.

9 Q. It looks to me -- and I mean, I'm
10 reading somebody else's cursive -- Laurie Hull,
11 as chairman of Mariner's Cay Council of
12 Co-Owners. Does that look like it says that?

13 A. Yes.

14 MR. BARR: Excuse me, what page are
15 you on?

16 MR. O'KELLEY: I'm sorry, the last
17 page of tab number 10.

18 THE COURT: 10.

19 BY MR. O'KELLEY:

20 Q. And then moving right along, Exhibit 11.

21 THE COURT: She's actually -- going
22 back to that description, aren't they trying to
23 buy the entire kit and caboodle or not?

24 MR. O'KELLEY: They were trying to
25 buy fuel docks, commercial unit 2, and boat slip

1 units C21 and C2.

2 THE COURT: Okay. And also the
3 ship store?

4 MR. O'KELLEY: Correct, Your Honor.

5 THE COURT: Which is commercial
6 unit 1-A.

7 MR. O'KELLEY: Correct. Everything
8 that he purchased is what they were trying to buy
9 by this offer.

10 THE COURT: Okay. All right.

11 MR. O'KELLEY: You're correct. It
12 wasn't -- the appraisal was just on the first
13 floor, but the offer was for all four units.

14 THE COURT: Well, further down, it
15 says, seller to retain unit 1-B.

16 MR. O'KELLEY: Correct, which is
17 the upstairs.

18 THE COURT: Upstairs?

19 MR. O'KELLEY: Yes, sir.

20 THE COURT: Okay. All right.

21 BY MR. O'KELLEY:

22 Q. Exhibit 11 you were copied on. It's an
23 e-mail, and it seems to be an e-mail from
24 Ms. Hull to Mr. Farmer, responding to his reply.
25 Do you know what -- if he did -- made a

1 counter-offer to you-all at any time?

2 A. I don't remember the exact sequence of
3 events, but we did go back and forth, and he did
4 come back with a counter at some point.

5 Q. And you were copied on all of the
6 e-mails with Ms. Hull and Mr. Farmer, were you
7 not at some point? She would forward those to
8 you, correct?

9 A. Yes.

10 Q. And this was all taking place in the
11 summer of 2016, right?

12 A. Yes.

13 MR. O'KELLEY: All right. Your
14 Honor, I don't know how Your Honor wants to do
15 it. If you want us to walk through each one, or
16 do you want to read them at your leisure? I'm
17 happy to do it however the Court wishes us to do.

18 THE COURT: Are you talking about
19 all of these e-mails?

20 MR. O'KELLEY: Yes, sir.

21 THE COURT: What are you trying to
22 establish?

23 MR. O'KELLEY: What I'm trying to
24 establish is, there was a concerted pattern after
25 the folks realized that my clients, the two LLCs,

1 had bought these units.

2 THE COURT: Okay.

3 MR. O'KELLEY: They dealt with them
4 from May of 2016 until the magic revelation that
5 Mr. Bessent said, that Tommy McIntosh told him
6 about for almost an entire year.

7 THE COURT: Okay.

8 MR. O'KELLEY: We've got to prove
9 acquiescence. We've got to prove that they
10 thought there was ownership by my client's
11 entities.

12 They were acting that way from the time
13 he showed up for the annual meeting until the
14 revelation that Mr. Bessent described. And I
15 think that's very important here because it ties
16 into the statute that we're relying on, Your
17 Honor.

18 THE COURT: Okay. All right. So
19 the purpose of going through all of this is -- my
20 concern was these were negotiations, settlement
21 negotiations. That's my concern. But there was
22 no objection to that. Your argument is that
23 these exist for the purposes of establishing
24 that --

25 MR. O'KELLEY: The course in

1 dealing of the parties for almost an entire year
2 that owe -- Dolph Farmer's entities own this.
3 We're dealing with Dolph Farmer. We're charging
4 him -- we may have to slap a lien for
5 non-payment. We're going to have a violation
6 of --

7 THE COURT: Aren't these all going
8 to the marina's, the council of co-owners?

9 MR. O'KELLEY: They're going to the
10 board, Your Honor. It's from the board, the
11 board members.

12 THE COURT: Of the council of
13 co-owners?

14 MR. O'KELLEY: Yes, sir.

15 THE COURT: There are no individual
16 owners doing this, is there?

17 MR. O'KELLEY: There are
18 individuals talking about it, but the only one --

19 THE COURT: As board members,
20 though, correct?

21 MR. O'KELLEY: As board members,
22 correct, and some individually, Your Honor.

23 THE COURT: All right. Okay.

24 MR. O'KELLEY: Because it's not
25 just board members who were chiming in. It's

1 other people who lived in the neighborhood or
2 lived at -- or owned slips at the marina.

3 THE COURT: All right. Mr. Barr?

4 MR. BARR: Well, I agree with Your
5 Honor's -- I don't know whether you would -- the
6 observation that these may be settlement
7 negotiations. Frankly, I don't have that much of
8 a problem with it except --

9 THE COURT: They never came to
10 terms, we know that.

11 MR. BARR: Right. Well, obviously,
12 or we wouldn't be here. Except for the fact that
13 what it's being offered for is not to show that
14 there was a failure of negotiations.

15 MR. O'KELLEY: Correct.

16 MR. BARR: But it's being offered,
17 as I follow it, arguably to show either
18 acquiescence --

19 MR. O'KELLEY: That's exactly what
20 it's being offered to show for, Your Honor.

21 THE COURT: Okay.

22 MR. BARR: As opposed to what I
23 think Mr. Bessent has already described it, as a
24 practical way to resolve a potential dispute,
25 which turns it around to settlement discussions.

1 THE COURT: Right.

2 MR. BARR: So Mr. Bessent already
3 characterized it earlier in his direct
4 examination as such and without detail.

5 And so now counsel is trying to
6 introduce those practical settlement discussions
7 for the very reason that settlement discussions
8 are confidential. And that is to show, well, you
9 must -- you must have known you didn't have a
10 very good position or you didn't have any
11 position at all.

12 So I really do think it steps right on
13 the very basis for excluding settlement
14 discussions. It's obviously, although no
15 litigation had been filed -- I don't know whether
16 Mr. Farmer had legal counsel at the time. He
17 hadn't testified yet. And I don't believe that
18 the board was -- that Mr. Bessent and the board
19 were acting with counsel, although maybe they
20 were. It's just a mixed bag.

21 And I just think it's fraught with the
22 potential for -- for the lack of a better term,
23 unfairness. I mean, if Mr. Bessent says, it's a
24 practical matter. Here's the guy with a deed.
25 We don't agree with it. We're not exactly sure

1 why. We thought we had the rights to use all of
2 this thing, and he's about to pull them out from
3 under us. Maybe we can resolve it without having
4 to get involved in protracted litigation, which
5 guess what?

6 MR. O'KELLEY: Too late.

7 MR. BARR: We're now in.

8 THE COURT: Right.

9 MR. BARR: And so it just seem to
10 me that fundamentally, as Mr. Bessent has
11 described it, this was a practical way to get to
12 the bottom of it.

13 THE COURT: Right. To get it
14 resolved.

15 MR. BARR: And for that reason,
16 even though there's no litigation pending, it's
17 certainly out there. I just think it should be
18 excluded as --

19 THE COURT: Okay. Well, let me
20 ask -- let me ask this question. So from shortly
21 after the time Mr. Farmer acquired the property
22 in his -- whatever entities he acquired the
23 property in, there were negotiations back and
24 forth about acquiring some, if not all, of the
25 ship store.

1 MR. O'KELLEY: Absolutely.

2 THE COURT: Right?

3 MR. O'KELLEY: Yes, sir.

4 THE COURT: And this went on for
5 how long?

6 MR. O'KELLEY: It went on until the
7 lawsuit was filed in 2017, May or June of 2017.

8 THE COURT: Okay. So it went on
9 for approximately a year.

10 MR. O'KELLEY: Yes, sir.

11 THE COURT: It went on for a year.

12 And then your purpose in presenting this is to
13 establish that there was acquiescence as --

14 MR. O'KELLEY: Actual negotiations
15 and discussions. We need to take care of this
16 problem. How do we do it? Buy him out.

17 THE COURT: Okay. All right.

18 That's your purpose. They're not going to agree
19 to acquiescence.

20 MR. O'KELLEY: Never.

21 THE COURT: So can we establish
22 that that's the purpose -- the plan -- at this
23 point now, the defense is, they show -- this
24 shows acquiescence.

25 MR. O'KELLEY: Absolutely.

1 THE COURT: That's what you're
2 trying to establish. I'm not making a finding of
3 fact, but rather than go through 60 e-mails.

4 MR. O'KELLEY: Rather than go
5 through all of that, that's my point, Your Honor.
6 If we could short-circuit, otherwise we will be
7 here quite some time.

8 THE COURT: Well, I can read.

9 MR. O'KELLEY: Yeah, right, right.

10 THE COURT: But I think the
11 objection has now been made that these are
12 settlement negotiations, and I don't know that I
13 need to -- they were unsuccessful. So here we
14 are.

15 MR. O'KELLEY: Correct. Correct.
16 And it's not -- it's not -- they were produced by
17 the council of co-owners in discovery to say, you
18 know, what discussions do you-all have with my
19 client? And this is what we got in response to
20 that.

21 MR. BARR: That doesn't make them
22 admissible, Judge.

23 MR. O'KELLEY: No, it doesn't, but
24 I'm just telling you where we got them from.

25 THE COURT: Right. Okay.

1 MR. BARR: I think we're going to
2 visit an exact same example when Mr. Farmer
3 testifies. We will get there when we get there,
4 but my point is that the fact that these
5 conversations occurred doesn't -- and were
6 disclosed to counsel, as they should have been,
7 because there's no privilege associated.

8 But on the other hand, they're being
9 used for the exact purpose that settlement
10 discussions are not admissible. And that is to
11 show that your position -- to get to the
12 underlying merits of the position. That's what
13 it is. It's to show guilt. It's to show you
14 don't have a case.

15 THE COURT: Yeah.

16 MR. BARR: And that's the only
17 purpose they're being offered for, which is why
18 they're not admissible.

19 MR. O'KELLEY: Well, and I, of
20 course, disagree. That's not what we're offering
21 them for, but you've heard my arguments about
22 that.

23 THE COURT: Yeah. You know, the
24 fact that it didn't happen means we are here.
25 That I've got. And I understand what your

1 argument is.

2 You know, I used to be in the event of
3 the unenviable position of advising my client,
4 well, you may not agree, but you can buy the
5 problem for cheaper than you can litigate the
6 issue for the next 10 years. And sometimes that
7 works, and you will end up with a quitclaim deed,
8 which I always described as, I don't think I own
9 this, but here, you can have what I got. Okay?

10 And for money, I'll give you a deed to
11 that effect. You don't get a general warranty
12 deed necessarily, but you get a quitclaim deed.
13 And that takes care of all -- a host of problems.
14 But we never got there here.

15 MR. O'KELLEY: Correct.

16 THE COURT: Which is why it's --
17 what it sounds like is negotiations. And so from
18 that standpoint, I'm not sure it's -- it may be
19 relevant. I'm just not sure it's admissible, but
20 I understand exactly what you are saying.

21 So for a period of at least -- for a
22 period of approximately one year, these folks
23 danced around the May pole, and during that time
24 period they were dancing, you're using that to
25 establish your claim for acquiescence.

1 MR. O'KELLEY: That they were
2 acknowledged.

3 THE COURT: They acknowledged that
4 they owned the property.

5 MR. O'KELLEY: Yes, sir.

6 THE COURT: Okay. All right.

7 MR. O'KELLEY: Well, let's skip --
8 then we will just skip to Exhibit 33 then.

9 THE COURT: Okay. All right.

10 MR. BARR: Where do we end up,
11 though, with this dialogue?

12 THE COURT: We don't have to go
13 into the exhibits. I'm ruling them not
14 admissible as substantive evidence because of the
15 negotiation aspect of it.

16 Mr. O'Kelley says that it goes to
17 establish the fact that y'all were having these
18 discussions, not the substance of the
19 discussions, which is why I want to keep that
20 stuff out for now. But the fact that you were
21 having the discussions for approximately a year
22 goes towards his claim of acquiescence. Okay?

23 I'm not making that finding. I'm saying
24 that that's why he's going -- he wanted to go
25 into that.

1 MR. O'KELLEY: All right. And,
2 Your Honor, just for record keeping purposes for
3 the record --

4 THE COURT: Sure.

5 MR. O'KELLEY: -- this is in our
6 Trial Exhibit binder tabs 10 through 32 and then
7 35 through 46.

8 THE COURT: Okay.

9 MR. O'KELLEY: And then skipping
10 again, 50 to 61. Anything that showed e-mail,
11 any of the e-mails.

12 THE COURT: Those are all e-mail
13 correspondence?

14 MR. O'KELLEY: Yes, sir.

15 THE COURT: Between essentially the
16 co-owners and the --

17 MR. O'KELLEY: And then between
18 actually Capers IV and Jim Duggan and other
19 lawyers, too.

20 THE COURT: All right. It gets
21 into lawyer communications?

22 MR. O'KELLEY: Yes, sir.

23 THE COURT: Okay. All right.

24 MR. BARR: So those designated tab
25 numbers then are in the category that we're

1 talking about here?

2 MR. O'KELLEY: Yes, sir.

3 MR. BARR: And so they're --

4 MR. O'KELLEY: For the purposes of
5 showing the acknowledgment of ownership.

6 MR. BARR: And they're tendered
7 and, Your Honor, then -- your ruling is?

8 MR. O'KELLEY: He knows how to read
9 them.

10 THE COURT: What I'm going to do is
11 I'm going to exclude them as settlement
12 negotiations. But, again, the purpose behind the
13 period of time is to establish acquiescence.
14 Acquiescence can be for -- generally, it has to
15 be for statute of limitations time period.

16 So we certainly don't have that. But
17 there's case law out there that says it can be
18 for much less than that. Okay? His argument is,
19 your people wouldn't be discussing with his
20 client unless they thought that they owned the
21 property.

22 MR. BARR: Unless they thought?

23 MR. O'KELLEY: Mr. Farmer's
24 entities owned the property.

25 THE COURT: Unless they thought

1 they owned the property, which there is
2 absolutely no way I'm going to get you to agree
3 to that. So I'm telling you, I'm not making that
4 finding of fact. I'm trying to move forward with
5 what I think will become more relevant testimony.

6 MR. BARR: Are they really not
7 though -- either admissible or not admissible? I
8 don't see how they're -- if they're settlement
9 negotiations --

10 THE COURT: Yeah.

11 MR. BARR: -- regardless of why
12 they're being offered, they're not admissible.
13 He says they're being offered to prove my case,
14 and that is that we agreed that Mr. Farmer's
15 title is predominant, that we acquiescence to
16 the -- that we acquiescence to the -- the
17 acquiescence here.

18 The acquiescence here is the
19 acquiescence to the amended master deed, taking
20 away these common elements. That's the
21 acquiescence that's at issue here, I believe.

22 THE COURT: All right.

23 MR. BARR: And so it's like a wreck
24 case. I didn't read -- I didn't run the red
25 light, but I will pay you \$100 to dismiss your

1 complaint. No, I don't want 100. I won't take a
2 100. I'll take 350. I'm not going to pay any
3 more than 150. They don't settle it. We get to
4 Court. Am I able to introduce that? No. And
5 regardless of my reason for it, their discussions
6 intended to resolve the dispute.

7 So counsel is sort of coming through the
8 side, if not the back door to say, I'm using it
9 to prove acquiescence. Well, acquiescence is his
10 defense to our case. Acquiescence is saying, the
11 light was green. So, Your Honor, I think they're
12 either --

13 MR. O'KELLEY: Your Honor, we'll do
14 it this way then. I will proffer them as for the
15 purposes I've stated, to show that they were
16 acknowledging the ownership to my client -- of my
17 client.

18 THE COURT: All right. Hold on.

19 MR. O'KELLEY: Clients, since there
20 are two LLCs.

21 THE COURT: All right. So the
22 relevant rule is Rule 408 of our South Carolina
23 Rules of Evidence. Rule 408 talks about
24 compromise and offers to compromise. I'm going
25 to read the rule, and then I'll try and give you

1 my ruling.

2 Evidence of one, furnishing or offering
3 or promising to furnish, or two, accepting or
4 offering or promising to accept a valuable
5 consideration and compromising or attempting to
6 compromise a claim, which was disputed as to
7 either validity or amount is not admissible to
8 prove liability for or invalidity of the claim or
9 the amount.

10 Evidence of conduct or statements made
11 in compromised negotiations is likewise not
12 admissible. This rule does require the exclusion
13 of any evidence otherwise discoverable merely
14 because it is presented in the course of
15 compromised negotiations.

16 Rule does not require exclusion when the
17 evidence is offered for another purpose, such as
18 proving bias or prejudice or negating a
19 contention of undue delay or proving an effort to
20 obstruct the criminal investigation.

21 That's the South Carolina Rules of
22 Evidence, and then the notes say it's identical
23 to the Federal rules. So I fall back on my
24 Federal Rule Book, which again, which again
25 states exactly how that works. The requirement

1 of a dispute, that doesn't necessarily require
2 that it be in litigation at the time, of the
3 negotiation.

4 So we're well aware of that. So it
5 must -- what it's regarding, it must be an offer
6 to compromise. What is protected? Offers to
7 settlement -- offers to settle as well as
8 settlements. Well, no settlement was reached,
9 but clearly offers have been made, it looks like,
10 back and forth is what we're going to think.

11 Conduct of statements made in the course
12 of settlement negotiation. The actual admissions
13 made during settlement negotiations are protected
14 by Rule 408, even if they were neither
15 inseparable from the offer nor made
16 hypothetically or without prejudice. It -- it
17 could be admissible for other purposes. And then
18 it goes on to state some particular ones, bias,
19 prejudice, or interest of a witness, but a claim
20 of undue delay, motive or intent of a party.

21 But it would seem to this Court that the
22 purpose of the offer to settle cannot be made
23 against the party as evidence of the validity of
24 the opponent's claim. So I don't think that it's
25 going to be admissible on that basis alone. So I

1 would move to exclude those e-mails as offers of
2 settlement and compromise under Rule 408. Okay?

3 MR. O'KELLEY: Understood, Your
4 Honor. May we offer a proffer of the so the
5 Court can at least look at them on -- at your
6 leisure?

7 THE COURT: Sure. Sure. So we
8 will proffer them in the record.

9 MR. O'KELLEY: Yes, sir.

10 THE COURT: Okay. But those are --
11 just for the record, those are tabs 10 through
12 32, 35 through 46, and 50 through 61.

13 MR. O'KELLEY: Let me check on 61
14 because that was -- that's a statement within the
15 board itself. It's not an offer to compromise.
16 So it's 60 and not 61.

17 THE COURT: 60? 50 through 60?

18 MR. O'KELLEY: Through 60, yes,
19 sir.

20 THE COURT: Okay. All right.
21 Thank you.

22 MR. O'KELLEY: Yes, sir.

23 BY MR. O'KELLEY:

24 Q. Mr. Bessent, if you would please turn to
25 tab number 33 and behind it, tab number 34.

1 MR. BARR: 33?

2 MR. O'KELLEY: 33 and 34, yes, sir.

3 THE WITNESS: Okay.

4 BY MR. O'KELLEY:

5 Q. Have you seen those documents before?
6 Because I think we asked you about them during
7 your deposition.

8 A. I am aware of them. I don't know if
9 I've actually seen the document, but I'm aware.

10 Q. But you are aware that the council of
11 co-owners filed two liens with the Register of
12 Deeds Office against Mariner's Cay Fuel Dock,
13 LLC, correct?

14 A. Yes.

15 Q. And what were the amount of those liens,
16 if you recall? And I will tell you, it's in the
17 first paragraph.

18 A. Okay. The first one on tab 33 is
19 \$1,112.41.

20 Q. All right. And how about on tab number
21 2?

22 MR. BARR: Your Honor, may I tender
23 an objection?

24 THE COURT: Sure. Sure.

25 MR. BARR: In this case, as has

1 been observed, there are four individual
2 plaintiffs.

3 The action of the council of the
4 co-owners as a corporate entity cannot bind
5 Mr. Monk. The actions of the co-owners cannot
6 bind Mr. McCann or Ms. Heatley or even
7 Mr. Bessent, individually. In this case, the
8 real parties and interests are the four
9 individual plaintiffs.

10 The council of co-owners is a nominal
11 party simply because they're the administrative
12 vehicle for the administration of the council of
13 co-owners and have an interest, not necessarily a
14 legal interest in Mr. Heatley, Ms. Heatley,
15 Mr. McCann, Mr. Monk or Mr. Bessent's property.
16 But they have an interest as the manager, as the
17 coordinator with them.

18 These communications, therefore, that
19 are being offered that were made by the council
20 of co-owners are being offered to -- against the
21 individual interest of Ms. Heatley, Mr. McCann,
22 Mr. Monk and Mr. Bessent. And so they're not --
23 they're not really relevant. They're not
24 relevant to the title interests of -- take
25 Mr. Monk, for example, who didn't know anything

1 until he was told to get off of the pump out
2 station, you see?

3 So the -- it cannot be said, Mr. Monk
4 being the plaintiff, saying I want this -- these
5 common properties restored to my title. It
6 cannot be said that what -- anything that council
7 of co-owners did, which is the filing of this
8 lien, has any relevance to his title interest.

9 THE COURT: Back door as the
10 individual owners?

11 MR. BARR: Absolutely.

12 THE COURT: All right. Let me hear
13 from you on that.

14 MR. O'KELLEY: It absolutely does
15 not, Your Honor. The marina council of co-owners
16 is more than a nominal plaintiff. They're the
17 ones that will receive the benefit, if Your Honor
18 rules in Mr. Barr's favor.

19 Otherwise, you've got four people in a
20 nonderivative, nonrepresentative, nonclass action
21 capacity, who are asserting four individual
22 percentage ownership interests in my client's
23 property. What he's trying to do is a rear-end
24 derivative suit. We have no 23(b) demands. We
25 have no 23(b) action here. The class action

1 failed. They couldn't do it this way.

2 So they have four individuals and a
3 council of co-owners. If he wants to dismiss the
4 council of co-owners as a -- he's going to have a
5 real big problem if Your Honor rules in his favor
6 because only four individuals are going to have
7 an interest in these common elements. And these
8 are public records. These liens and the
9 satisfaction of those liens are matters of public
10 record anyway; so they come in that way as well,
11 Your Honor.

12 THE COURT: All right. Mr. Barr, I
13 acknowledge what you have said, and there's a
14 lack of case law defining who is the proper
15 entity upon which to bring this type of action.
16 Okay?

17 And so I think out of an abundance of
18 caution, you've got both individual owners and
19 the council of co-owners. The research that I've
20 been doing in my little hot book here on the
21 condominium law in South Carolina says that it's
22 an open question as to who has the right to bring
23 the action. Maybe we'll clear that up in this
24 case, but I don't know.

25 For whatever reason, Mariner's Cay is a

1 hot bed of condominium lawsuits out there. It
2 just has been for years. It has been since it
3 was created, and it certainly was when it went
4 into receivership in the 1990s.

5 I had to rule on a case not too long ago
6 based on what Judge Fields had done on a
7 Mariner's Cay case years and years ago on
8 attorney's fees, a hot button issue for lawyers,
9 of course, but nobody else seem to care, except
10 the people paying the bills.

11 So I don't know the answer to that
12 question. I'm going to -- I believe it is not
13 relevant as it relates to the individual owners
14 is what I believe, but I do believe it's relevant
15 as to the council of co-owners. And so I would
16 allow it on that basis, so long as you've still
17 got all five of those entities as clients. Okay?
18 I will let you-all --

19 MR. BARR: You mean as parties?

20 THE COURT: As parties, yeah, as
21 parties. If y'all decide tonight you don't -- if
22 you decide tonight you don't want to represent
23 the council of co-owners, y'all let me know.

24 MR. BARR: I will point out to Your
25 Honor, if you look at the prayer for relief here,

1 there's no relief sought in the name of the
2 council of co-owners.

3 THE COURT: Okay.

4 MR. BARR: The relief sought here
5 is to -- is on behalf of the individuals.

6 THE COURT: It's a DJ action.

7 MR. BARR: It's a DJ action. And
8 so if you're -- I agree with what counsel says
9 that all such a ruling would do would be to
10 declare that the four of them, in fact, have
11 interest in these common elements.

12 The next step then is to file a second
13 suit asserting judicial estoppel, which is
14 exactly what it -- which is, I think, a
15 legitimate approach, rather than bringing 88 or
16 90 people in this Courtroom who wouldn't fit in
17 here and having every one of them parade up and
18 testify to what you just heard from these four.

19 THE COURT: Right. I'm with you.

20 MR. O'KELLEY: And Your Honor,
21 that's exactly what should have happened at the
22 moment Judge Gibbons said, this isn't appropriate
23 for a class action.

24 They amended -- they amended the
25 complaint four times. They knew who the owners

1 were. They knew all their names. They should
2 have had each one of them a party because if Your
3 Honor makes the ruling, you've got four people
4 with interest in a common element.

5 And it doesn't extrapolate to those
6 other people. Res judicata and collateral
7 estoppel would definitely apply at that point.

8 THE COURT: Okay. All right.
9 Well, we will cross that bridge when we get
10 there. We're not there yet. Okay?

11 MR. BARR: So the ruling on this
12 is?

13 THE COURT: He can go into this.

14 MR. BARR: All right.

15 THE COURT: Matters of public
16 record.

17 BY MR. O'KELLEY:

18 Q. Mr. Bessent, going back to the notices
19 of lien, you were on the board when these were
20 filed, correct? And if you need to see when they
21 were filed, you can go to the very back page,
22 which is December 1, 2016 at 9:35 a.m.

23 MR. BARR: What is the tab, please?

24 MR. O'KELLEY: This is the tab we
25 were going over, 33 and 34.

1 MR. BARR: Thank you.

2 MR. O'KELLEY: Yes, sir.

3 BY MR. O'KELLEY:

4 Q. Recorded in book 0600 and page 740 and
5 34. Recorded in 0600, page 739. You were on the
6 board when these liens were filed, correct?

7 A. Yes.

8 Q. And Sentry Management, was that your
9 management company at that time?

10 A. Yes.

11 Q. And how did the lien process work, if
12 you know, during that time?

13 A. The council of co-owners had a
14 standardized policy, a written policy for dealing
15 with collections and I can't cite it verbatim,
16 but after 30 days, he would get a letter.

17 If it still wasn't paid within 60 days,
18 you would get the next -- like a notice of a lien
19 or something. And then 30 more days, a lien
20 would be filed. That may be not be exactly
21 right, but it was some orderly system like that.
22 And we were working with Amanda at the time, who
23 is here.

24 Q. And you're pointing to Amanda Barnes?

25 A. Amanda Barnes. And she knew what to do,

1 and she handled it. And we would only get
2 involved if something needed our attention, but
3 most of these things went through kind of
4 routinely and the board did not necessarily get
5 involved.

6 Q. But it was a standard board policy that
7 you had in place, correct?

8 A. Correct.

9 Q. Okay. If you would please, turn to tabs
10 47 and 48. And these are satisfactions of the
11 liens we just discussed filed April 3rd, 2017, in
12 book 627, page 542 and in book 0627, page 546,
13 correct?

14 A. Correct.

15 Q. And Derek Dean signed these as the
16 lawyer for Mariner's Cay Council of Co-Owners,
17 correct?

18 A. Correct.

19 Q. And did you-all have direct discussions
20 with the attorney or did Sentry generally do
21 that, or do you know?

22 A. It was almost all through Sentry.

23 Q. All right. And Mr. Dean has represented
24 the council of co-owners in the past, correct?

25 A. Correct.

1 Q. And turn to tab -- go back to tab number
2 two, please. And you've been here all day,
3 correct, Mr. Bessent?

4 A. Yeah.

5 Q. And in the Courtroom all -- since we
6 started?

7 A. Yeah.

8 Q. And you've heard us discuss the
9 foreclosure case, correct?

10 A. Yes.

11 Q. And I will represent to you that this is
12 an answer that was filed on behalf of the
13 Mariner's Cay Marina Council of Co-Owners in that
14 case, and turn to page 5 and tell me who signed
15 that and filed it on behalf of the council of
16 co-owners?

17 A. Well, Derek Dean.

18 Q. And that's the same Derek Dean who filed
19 the satisfaction lien against the entities that
20 we just discussed, correct?

21 A. Yes.

22 Q. Turn with me to Exhibit 61, please, sir.

23 MR. BARR: I'm sorry, which one?

24 MR. O'KELLEY: 61.

25 MR. BARR: Thank you.

1 BY MR. O'KELLEY:

2 Q. Do you recall reading these e-mails from
3 Mr. Sutton to the board about the foreclosure
4 back in April of 2015? Because you weren't on
5 the board at the time, do you recall ever reading
6 this? And if you don't, we will move on.

7 A. No, I do not.

8 Q. All right. Thank you, sir. I was
9 taking notes during your earlier testimony, and
10 you described the bathrooms as being nice,
11 correct?

12 A. Well, nicer than on a boat, but, yes,
13 they're fine.

14 Q. Correct. Better than using the head on
15 a boat, correct?

16 A. Right.

17 Q. And do you know if the board, during
18 your time on the board, offered to pay for the
19 water, electricity, sewage or insurance for the
20 bathrooms?

21 A. Yes. Again, in the spirit of trying
22 everything we could think of to just bring a
23 resolution and get our uses back.

24 Q. All right. But since since my clients,
25 the two entities bought these units, are you

1 aware that they've been paying for the water and
2 sewer and electricity, taxes and insurance?

3 A. We also have an insurance policy on the
4 building that we have kept continuously. But,
5 yes, I assume all of those other utilities are
6 being paid.

7 Q. All right. And one of your statements
8 earlier is that, if -- based on the conduct of
9 our clients, you now just have a dock. Is that
10 how you feel?

11 A. That may be a slight exaggeration, but,
12 yes, that's what it's become.

13 Q. But you bought a dock slash boat slip
14 and an interest in common interests originally,
15 correct?

16 A. Yes.

17 Q. That's your testimony, correct?

18 A. Yes.

19 Q. All right. You've heard me ask your
20 fellow plaintiffs about the rules and regulations
21 related to your master deed, correct?

22 A. Yes.

23 Q. And are you aware that the hours are
24 supposed to be 9 to 5 in those regulations? And
25 I'm happy to show them to you.

1 A. Yes, I am aware that's what it says.

2 Q. Okay. And that's -- if you want to look
3 at it to make sure I'm not fibbing, I'm happy to
4 go to --

5 A. No, I've seen it.

6 Q. All right. And when the post-shut down,
7 lockdown, when the bathrooms reopened, are you
8 aware that we had a hearing with Judge McCoy in
9 which he allowed them to be open from 8:30 to
10 8:30?

11 A. Yes, I recall that.

12 Q. Okay. And you said you were aware of
13 the changes to the second master deed in 2010 or
14 2011; is that right?

15 A. Yes.

16 Q. Did you go see an attorney at that time?

17 A. No. And if I can explain.

18 Q. Go ahead, sir.

19 A. Yes, I'm aware of the second master
20 deed. I'm aware of hearing about foreclosures.
21 There have been, you know, two or three different
22 owners. People are coming and going. We know
23 there are problems and complicated dealings going
24 on, but so -- you know, when I say I'm aware of
25 it, it means just kind of talk on the dock. I

1 was not aware of any details.

2 Q. So you didn't find out the details until
3 when? Was that the 2017 you were describing
4 earlier?

5 A. At somewhere -- I really wish I could
6 give a more precise answer, but somewhere in 2011
7 or 2012 or so, I guess I realized that the common
8 elements were attempted to be -- it was an
9 attempt to change the common elements.

10 Q. So for those five years, you didn't take
11 any action, even though you knew that they had
12 been --

13 A. Well, I think we took --

14 Q. Well, let me finish -- either changed or
15 attempted to be changed?

16 A. Okay. I think we took constant action
17 because we always contended -- we knew they had
18 to be ours. There was no way to read the master
19 deed without knowing, in my mind, that this is
20 supposed to be a complete commercial marina
21 complex.

22 And we knew that there was all of these
23 conflicting things going on that threatened to
24 take some of those uses away from us. So I would
25 say we took action. It took us a while to get to

1 this particular action that we are doing now, but
2 we tried hard to recover our loss.

3 Q. Did you or the marina council of
4 co-owners take any action in this Court in the
5 2013 foreclosure case, stopping the order of
6 foreclosure and sale of the master's deed?

7 A. Say that again.

8 Q. Yes, sir. You were testifying that you
9 were taking constant action, but in 2013, the
10 foreclosure in which the council of co-owners
11 filed an answer and appeared, was any action
12 taken to try and stop that sale, that you know
13 of?

14 A. I don't know. Not that I know of.

15 Q. Okay. And do you know, sir, if
16 Mr. Geiger actually leased the office from an
17 entity that claimed to own the ship store? Do
18 you have any information about that?

19 A. No, I really don't. I know that
20 Mr. Geiger worked as an employee, sometimes when
21 he and his wife actually ran the ship store. I'm
22 not sure of the business relationship.

23 Q. If I told you that he had formed two
24 LLCs that actually paid rent to the owner, would
25 that surprise you?

1 A. I didn't know that.

2 Q. Okay. And Mr. Geiger, I understand
3 is -- from Mr. Barr is quite ill and won't be
4 able to be here. Have you had any discussions
5 with him about the lawsuit since his deposition?

6 A. No. I haven't talked to Ed at all in a
7 long time.

8 Q. All right. And you're aware that OCRM
9 has not threatened to pull your permit, correct?

10 A. Well, they contacted me when I was
11 president. The guy's name was Ben --

12 Q. Would it be Ben Joyner?

13 A. It could be.

14 Q. Does that sound familiar?

15 A. It could be Ben Joyner -- contacted me
16 about the pump out and the situation and what was
17 going on. And I basically begged, I guess is a
18 good word, I said, please, we're trying to get
19 this under control. I told him about the
20 lawsuit. I said, if OCRM can just hang in there
21 with us for a little while, we're trying to fix
22 all of this mess.

23 Q. And since that time, you've not heard
24 anything else from DHEC or --

25 A. He has not contacted me again. There

1 were several phone calls and e-mails that went
2 back and forth over a period of time, but at the
3 end, he agreed to just sit back and let us try to
4 finish this up.

5 Q. Sure. In terms of -- and how long have
6 you been out there? Tell me again.

7 A. How long have I been?

8 Q. Either on the hill or had a slip.

9 A. My earliest boat was there in 2000.

10 Q. Okay. And during the now 22 years
11 you've had dealings at Mariner's Cay, do you
12 remember a time when Mr. Geiger was allowing
13 people to stay upstairs in the ship store?

14 A. No. Maybe I --

15 Q. If I told you he's testified as to that,
16 that there was times that people were allowed
17 to -- say, for example, they had a boat in the
18 marina, he would let them rent out that room?
19 Does that --

20 A. I would not be surprised to know that,
21 no.

22 Q. Do you recall during your time out there
23 if there were problems with the actual fuel tanks
24 on the fuel docks with DHEC fining the owner? Do
25 you have any information about that?

1 A. Not direct. But, again, a lot of
2 information out there is just guys on the dock
3 talking.

4 Q. Word of mouth?

5 A. I think some -- there was some
6 inspections going on with the fuel tanks. I
7 don't know the results or any details.

8 Q. When you were on the board, did you have
9 any information about the board having to pay any
10 fines to DHEC because of the state of the fuel
11 tanks?

12 A. No.

13 MR. O'KELLEY: All right. Just one
14 second, Your Honor.

15 THE COURT: Uh-huh.

16 MR. O'KELLEY: Okay. Thank you,
17 Mr. Bessent.

18 REDIRECT EXAMINATION

19 BY MR. BARR:

20 Q. Mr. Bessent?

21 A. Yes.

22 Q. At any time did you agree or
23 acquiescence to the removal of these common
24 elements from your title interest in the --

25 MR. O'KELLEY: Your Honor, I'm

1 going to object. He asked and answered that on
2 direct.

3 MR. BARR: Say what?

4 MR. O'KELLEY: He asked and
5 answered that on direct saying he didn't agree to
6 it or consent to it.

7 THE COURT: He says he already said
8 no to that.

9 MR. BARR: Well, maybe he wants to
10 do that now.

11 BY MR. BARR:

12 Q. Let me ask it differently then. You've
13 been asked questions about the e-mails, some
14 of -- the e-mails were left out, some of the
15 documents came in, the satisfactions, the role of
16 Derek Dean, your role as a member and then
17 president of the board.

18 Do you have any knowledge that Neil Monk
19 ever agreed to anything relating to the removal
20 of these common elements from the regime?

21 MR. O'KELLEY: Your Honor, again,
22 asked and answered by Mr. Monk earlier today.

23 MR. BARR: I'm asking him.

24 MR. O'KELLEY: I don't know why --
25 what he knows about Mr. Monk isn't relevant.

1 MR. BARR: The reason is, Your
2 Honor, that the defendants are trying to hold the
3 individual plaintiffs to account for the conduct
4 of the board, and there's -- the board simply has
5 no authority. Proof of -- I'm not conceding that
6 they did, but even if the board acquiesced,
7 frankly, even the board affirmatively agreed,
8 that cannot bind the title interests of Neil Monk
9 or Neal McCann or Beth Heatley, or frankly, even
10 Tom Bessent, unless he was acting himself for
11 doing that. That's the whole point.

12 There was no legal authority for the
13 principal that the conduct of the board, with
14 respect to title, can bind, commit or be imputed
15 to the individuals. It's not been cited. We are
16 left only with a single sentence in section 60,
17 which has the word acquiescence in it. And even
18 that says, acquiescence of all owners, not one,
19 not two, not 5 percent, not 10 percent, but a
20 hundred percent.

21 So we're dealing here with this smoke
22 screen relating to acquiescence. And so that's
23 why I'm asking Mr. Bessent, to the best of my
24 ability, even though I'm wading into the same
25 marsh that has been created here, whether he has

1 any knowledge whether the others have acquiesced.
2 I know the answer to it. That doesn't make the
3 answer -- that doesn't make the question
4 incompetent. So I won't insist on an answer, but
5 that's the whole point of it.

6 The whole point of it here is the notion
7 that anybody other than Neil Monk or Neal McCann
8 or Beth Heatley or Tom Bessent can commit
9 themselves to their title interest is simply not
10 a viable proposition.

11 THE COURT: You're really
12 distinguishing him between his individual
13 ownership and any role he may have played on the
14 council of co-owners, correct?

15 MR. BARR: Absolutely.

16 THE COURT: Right.

17 MR. BARR: Absolutely. And even
18 beyond that, as bearing on the interest of the
19 other individual plaintiffs.

20 THE COURT: Well, he certainly
21 can't speak for them.

22 MR. BARR: Absolutely.

23 THE COURT: Right? Do you
24 acknowledge that?

25 MR. O'KELLEY: Absolutely, Your

1 Honor. So that's why I don't know what this
2 testimony is doing because he can't speak for
3 anybody else, especially the 86 other owners who
4 aren't a part of this lawsuit.

5 THE COURT: I'm with you. All
6 right.

7 MR. BARR: Having said that,
8 counsel puts in the fact that the association
9 levied a lien --

10 THE COURT: Right.

11 MR. BARR: -- against -- against
12 this unit. Now, how in the world is that going
13 to bind Mr. Monk. How is that going to affect
14 Mr. Monk's title interest in it. How can that be
15 arguably Mr. Monk's acquiescence to this illegal
16 and unlawful 2007 master deed, in violation of
17 statute, in violation of the '06 deed itself.

18 So that's -- I don't mean to sound too
19 agitated, but it's like today, I'm usually
20 calmer. I'm usually more sedate this time -- at
21 this hour of the day. But that's my point, sir.
22 Thank you.

23 THE COURT: All right. I
24 acknowledge the point. Anything further for
25 Mr. Bessent?

1 MR. BARR: Not from me, Your Honor.

2 THE COURT: Very good. Thank you.
3 You may step down.

4 All right, Mr. Barr. Any further
5 testimony?

6 MR. BARR: I think we're going to
7 rest. If you'd just give us the overnight, I
8 think that's what we'll do in the morning unless
9 you insist on it now.

10 THE COURT: No. Why don't we do
11 that. Why don't we do that.

12 MR. BARR: That's probably what we
13 will do. I just want to double check all my
14 lists.

15 THE COURT: Yeah. If you decide
16 you need something to get rolling forward in the
17 morning, you let us know. I'm not sure --

18 MR. O'KELLEY: Your Honor,
19 housekeeping-wise, I've got -- so Mr. Furtado is
20 coming from Hilton Head tomorrow, and I told him
21 noon. We've got some other people that are
22 coming around noon, and I know Your Honor is very
23 flexible with taking and putting people on -- you
24 know, subbing in and out. So we may have some of
25 that tomorrow.

1 THE COURT: Okay. All right.

2 That's not a problem.

3 MR. O'KELLEY: I didn't think it
4 would be, but I just wanted to let the Court know
5 in advance.

6 THE COURT: I will let y'all gather
7 your thoughts overnight, and if you wish to rest
8 in the morning, you can. I'll entertain motions.
9 And then we will start in on the defense case
10 tomorrow.

11 (The hearing was concluded at
12 5:14 P.M.)

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF DORCHESTER

4 I, Jennifer M. Adams, Certified
5 Shorthand Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness whose attached in the
8 foregoing hearing was by me duly sworn to testify
9 to the truth, the whole truth, and nothing but
10 the truth in the within-entitled cause; that said
11 hearing was taken at the time and location
12 therein stated; that the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed by computer-aided
transcription; that the foregoing is a full,
complete and true record of the testimony of the
witness and of all objections made at the time of
the examination; and that the witness was given
an opportunity to read and correct said hearing
and to subscribe the same.

Should the signature of the witness
not be affixed to the hearing, the witness shall
not have availed himself/herself of the
opportunity to sign or the signature has been
waived.

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 on February 2, 2023 at
Charleston, Charleston County, South Carolina

20 _____
21 Jennifer M. Adams
22 Court Reporter And Notary Public
23 My commission expires: 03/15/2032
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 II**
)
7 Plaintiffs,)
)
8 -versus-)
)
9 MARINER'S CAY MARINA CONDO,)
LLC, AND MARINER'S CAY FUEL)
10 DOCK, LLC, GEORGE A.)
FARMER, JR., AND SOUTH)
11 ATLANTIC BANK,)
)
12 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 23, 2022 at 100 Broad Street, Courtroom
2A, Charleston, South Carolina.

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1 THE COURT: All right. So back on
2 the record.

3 MR. BARR: Yes, sir.

4 THE COURT: Very good. Day two in
5 Heatley vs. Mariner's Cay Marina Condo, LLC. We
6 are still on the plaintiff's case.

7 Mr. Barr, anything further from the
8 plaintiffs?

9 MR. BARR: Yes, Your Honor. And
10 I've consulted with Mr. O'Kelley about this. I
11 realized as my head cleared this morning, that I
12 did not address Exhibit 2N.

13 THE COURT: Okay. N, as in Nancy?

14 MR. BARR: Yes, sir. So I would
15 like to re-call Tom Bessent, just to go through
16 that.

17 THE COURT: Okay. Sure.

18 MR. BARR: I believe the witness is
19 still under oath.

20 THE COURT: He is. Mr. Bessent,
21 you've been in that chair a few times before.

22 THE WITNESS: I have.

23 THE COURT: He's not an expert
24 witness today, but a fact witness. He's been an
25 expert in the past in the Courtroom. That's why

1 I asked him to bring those devices with him, but
2 I'm sure he did not.

3 THE WITNESS: No. I forgot.

4 THE COURT: Okay. Mr. Barr?

5 MR. BARR: Thank you, Your
6 Honor.

7 REDIRECT EXAMINATION

8 BY MR. BARR:

9 Q. Mr. Bessent, would you refer to the
10 small exhibit notebook, please? There ought to
11 be a copy of it there.

12 A. Yes.

13 Q. And let me invite your attention to tab
14 N.

15 A. Okay.

16 Q. All right. Tab N, which is Exhibit 2N,
17 as in November, should be a sketch. Do you
18 recognize that?

19 A. Yes, I do.

20 Q. And did you prepare it?

21 A. Yes, I did.

22 Q. And what is the -- what does that sketch
23 depict?

24 A. This is the -- basically the southern
25 portion or the water side portion of the ship

1 store building showing the interior layout.

2 Q. On both floors or only one?

3 A. The first floor, the main floor.

4 Q. Okay.

5 A. And we prepared this when we were -- at
6 some point in the negotiations, just about
7 restrooms, and we needed something to show, where
8 are they, how big are they, et cetera.

9 Q. Okay. And you being a surveyor, I'm
10 assuming you measured some dimensions here?

11 A. I measured and drew this to scale.

12 Q. All right. Good. So why don't we walk
13 through what it shows? Let's talk about the
14 rooms you've designated men and women. That's
15 probably self-explanatory, but what are they?

16 A. Okay. Those are the two existing
17 restrooms, and of course, we had heard testimony
18 yesterday about exactly what is in there. But
19 that is where they are, and this shows the access
20 of how you get to them and so forth.

21 Q. Okay. So you go from the restrooms to a
22 small hall to exit then? It's through a small
23 hall, and then you walk out on that space right
24 below a 72-inch door. Is that a deck of some
25 type?

1 A. Yeah, that's the deck. I mean, I guess
2 if you want to start from the ground, if you say
3 you're at -- you're on your boat and you want to
4 go use the restroom, Your Honor, the marina
5 itself is down at the bottom -- off the page at
6 the bottom.

7 You walk up and you use those little set
8 of stairs, and you get on what I would label the
9 lower deck, you know, maybe, I don't know, three
10 foot off the ground or something.

11 THE COURT: Okay.

12 THE WITNESS: It's a wooden deck.

13 BY MR. BARR:

14 Q. Okay. I think if you flip over to the
15 last photograph of 2M, which is right before tab
16 N.

17 A. Yes.

18 Q. Is that a photograph, and it shows what
19 you just described --

20 A. Yes.

21 Q. -- how you get up there?

22 A. Yes, it is.

23 Q. So when you talk about the first floor,
24 it's really an elevated floor?

25 A. Yes. It is the first enclosed floor,

1 which is an elevated floor, yes.

2 Q. Okay.

3 THE COURT: I'm assuming the bottom
4 is all open; is that right?

5 THE WITNESS: It's dirt.

6 THE COURT: It's dirt?

7 THE WITNESS: Well, it's enclosed
8 by lattice, and it has gates, and those gates are
9 locked now.

10 THE COURT: Gotcha. All right.

11 THE WITNESS: But anyway, you make
12 your way up the lower deck, you go from the lower
13 deck up to the area that I've labeled covered
14 porch, which is up at the same level as the
15 floor -- as the main floor.

16 BY MR. BARR:

17 Q. And, again, we see that in the
18 photograph, right?

19 A. And that's in the photograph, too.

20 Q. Okay.

21 A. So now you're up on kind of the main
22 porch area of the building. Then you go in
23 beside those stairs, the second stairs on the
24 right side of the drawing. Those are the stairs
25 that go up to the upper apartment that's on the

1 upper floor right here.

2 THE COURT: Okay.

3 THE WITNESS: So you don't have to
4 go through the ship store to get to the upper
5 apartment.

6 BY MR. BARR:

7 Q. And we see those on the photograph as
8 well?

9 A. Right.

10 Q. The photograph right before tab N there.

11 A. And then you would go through the 36
12 inch door, the 36 inch swing door, and that's
13 where there's a keypad lock that is coded the
14 same as the main gate going out to the marina, so
15 that the slip owners have access to the
16 restrooms, using the same access code that they
17 would use to go out to their slips.

18 Now, also, there's a padlock on those --
19 on that door since this COVID thing came up and
20 since the Farmers have been controlling the hours
21 of the restrooms. So our keypad only works, of
22 course, if the padlock has been unlocked -- or a
23 dead bolt, whatever it is. Anyway, there's a
24 secondary lock on there.

25 THE COURT: All right. Let me make

1 sure I'm clear on that. The keypad lock is for
2 the 6 foot door --

3 THE WITNESS: No.

4 THE COURT: -- or for the 3 foot
5 door?

6 THE WITNESS: No, no. The 36 inch
7 swing door.

8 THE COURT: Okay. To the
9 bathrooms?

10 THE WITNESS: That lets you get
11 into both bathrooms.

12 THE COURT: Okay. All right. The
13 6 foot door is for what?

14 THE WITNESS: Well, okay. So that
15 is a sliding door that would put you into the
16 main floor of what we've always called the ship
17 store. That's the main working area.

18 And I didn't draw it on this sketch, but
19 if it were drawn to scale, it would stick up
20 another 3 or 4 inches above the top of this page.
21 It's a pretty big area. And that's the main body
22 of the remainder of the ship store.

23 THE COURT: That's where the ship
24 store was located?

25 THE WITNESS: Yes. The actual

1 store and the dock master office was in this area
2 up in here.

3 THE COURT: Okay. Gotcha. And
4 that's why this is the southerly portion of the
5 first floor?

6 THE WITNESS: Right.

7 BY MR. BARR:

8 Q. So the dock master's office space was
9 actually in the part that's off of this page?

10 A. It was off of this page, above this
11 page.

12 Q. Okay. What occupied behind that 72 inch
13 door? What occupied that immediate area at the
14 door?

15 A. All right. As soon as you walk in the
16 door, to the left is a utility closet. So you
17 walk right in the 72 inch door and look to your
18 left. There's a closet there that's not shown on
19 the sketch.

20 But in there, it's an electrical closet,
21 I would call it. That's the main breaker box for
22 the building. Now, that controls our -- the
23 bathrooms and the apartment and the whole
24 building. The issue that we've had with that is
25 that the breaker switch or our pump out pump is

1 also on that panel.

2 So if we ever needed to do electrical
3 work on our pump, we have to get permission, of
4 course, and arrange to go inside of the Farmers'
5 residence to use our breaker. Also in there,
6 there was a telephone landline. There's some
7 wiring in there. That's also where the
8 electrical control was for the security system.

9 THE COURT: Okay.

10 THE WITNESS: And Beth testified to
11 that yesterday, but also part of that was an
12 intercom, too. Like, you could walk up to the
13 main dock gate, the one that she was describing,
14 and if you forgot your fob, you could press the
15 buzzer, and you could talk to Ed or the dock
16 master up in the ship store.

17 And he could buzz and let you in and ask
18 who you are or whatever. There's a little
19 intercom that was part of that. Anyway, that
20 wiring system was inside of that closet.

21 There's a water heater that's shared
22 that also gives us hot water for the showers as
23 well as the rest of the ship store. I'm not sure
24 if that's in that closet or not, but it's in the
25 building somewhere.

1 THE COURT: Okay.

2 BY MR. BARR:

3 Q. All right. We've seen a picture that
4 shows the radio antenna, VHF.

5 A. Yes.

6 Q. Where was the radio located inside?

7 A. Okay. Yeah, that's a good point. And,
8 yes, in this same picture, Your Honor, you can
9 see over to the far right, that white pole that's
10 sticking up, it's about a half inch from the edge
11 of the photograph. That is the VHF -- marine VHF
12 radio antenna. It's probably -- I don't know --
13 15 or 20 feet tall. That's still there.

14 And then going back to my sketch, where
15 that was located would be right above where I
16 stopped sketching, but probably about where my
17 finger is up in the main part of the building on
18 this side.

19 THE COURT: Okay. All right.

20 THE WITNESS: And that was where it
21 was a three-sided counter -- a pretty big
22 three-sided counter about chest high, and behind
23 that was the main dock master office. That's
24 where the VHF radio was.

25 We had a Wi-Fi system, an antenna, and

1 also a booster that broadcast the Wi-Fi signal
2 out to the whole marina; a landline, as I've
3 already mentioned. Anyway, all of that stuff was
4 inside of that building, and of course, we don't
5 have use of that anymore.

6 BY MR. BARR:

7 Q. And for the record -- and I didn't want
8 to interrupt you at the time -- in your testimony
9 just then, you said that some location where I
10 had my finger. For the record, you had your
11 finger up at the top edge, the very top edge of
12 the page --

13 A. Yes.

14 Q. -- of Exhibit 2N; is that correct?

15 A. Right. If you go in the 72 inch door
16 and walk straight up toward the top of the page.

17 Q. Okay. Now, let's then look at the --
18 what you've designated as old laundry room and
19 closet. How was that being used as of the date
20 of ouster?

21 MR. O'KELLEY: I'm going to object
22 to that, Your Honor. That's -- ouster has not
23 been established in this case. That's a legal
24 term of art.

25 MR. BARR: Well, let me --

1 MR. O'KELLEY: Let me just finish,
2 Mr. Barr. These plaintiffs have used
3 consistently, but that is a legal term of art.
4 Ouster is a legal theory, and that's for you to
5 decide.

6 MR. BARR: I can rephrase it.

7 THE COURT: All right.

8 MR. O'KELLEY: That's fine.

9 BY MR. BARR:

10 Q. Until Mr. Farmer requested the dock
11 master to leave, regardless of in what form or
12 manner or with what intensity -- now, I've
13 forgotten what my question was, but --

14 A. About the laundry room.

15 THE COURT: What was in the laundry
16 room.

17 BY MR. BARR:

18 Q. Yeah. What was in the laundry room?
19 Thank you.

20 A. Okay. Of course, originally, it was a
21 laundry room. And then that was the area for a
22 very short time used as a tuna grill, which came
23 and went pretty quickly. But in the later years,
24 to answer your direct question, I think Ed used
25 that just for storage and marina supplies,

1 general storage.

2 Q. All right. Where were the booms and the
3 absorbant pads that are -- we talked about under
4 the OCRM?

5 A. I'm pretty sure they were in that area.

6 Q. Okay. Now, Judge Scarborough had
7 already alluded to this, but I also wanted to ask
8 you, with respect to both the photographs we've
9 been looking at and the diagram, describe -- as I
10 follow it, the waste water pump that sucks waste
11 water from the boats --

12 A. Yeah.

13 Q. -- is somewhere in or under this
14 building; is that correct?

15 A. Yes.

16 Q. So where is it, if you can orient that
17 either with respect to the photograph or your
18 sketch?

19 A. The photograph may be easier for this
20 one. Going back to this same photograph, the
21 last one -- I don't know how to describe this for
22 the record, but I can point. This -- all of this
23 is wooden lattice.

24 THE COURT: Okay. On the bottom?

25 THE WITNESS: On the bottom, ground

1 level, and right here where my finger is, which
2 is sort of near the VHF marina antenna but closer
3 to the water, right in there is a gate that you
4 can get in. And the pump is located pretty close
5 right in behind that gate.

6 BY MR. BARR:

7 Q. Okay. Now, is that area under the
8 building, is it concrete, or is it dirt?

9 A. It's dirt.

10 MR. BARR: All right. Thank you,
11 Your Honor. And I thank Mr. O'Kelley, too, for
12 indulging me in that. So I have no further
13 questions.

14 MR. O'KELLEY: Just a few, Your
15 Honor.

16 THE COURT: All right.

17 RECROSS-EXAMINATION

18 BY MR. O'KELLEY:

19 Q. Mr. Bessent, tell me again the genesis
20 of this sketch because there's no date on it. Do
21 you recall when you did it?

22 A. Yes. I can't tell you exactly, but when
23 we were just trying to discuss and describe among
24 ourselves and describe between the Farmers and us
25 and just talking about the uses of all of this

1 space, to me, having a surveyor brain, I can't
2 think without a picture.

3 And, you know, pretty much, I just said,
4 can we just please go get a drawing of this so
5 that everybody will have something to look at
6 when we're describing these areas.

7 Q. And was it during the time you were on
8 the board that you drew this?

9 A. Probably. I would say 2016.

10 Q. Okay. And, again, you were here all day
11 yesterday, correct?

12 A. Yes.

13 Q. And you heard testimony that there's
14 always been access to these restrooms except
15 during the COVID shut down, correct?

16 A. Yes.

17 Q. And you would agree with that, correct?

18 A. Yes.

19 Q. Okay. And in terms of where the
20 electrical closet is for the disconnect for the
21 pump, isn't there also a disconnect on the dock?

22 A. Well, not an electrical disconnect.

23 It's -- the pumping mechanism is under the
24 building, and then there's several hundred feet
25 of plumbing, piping, PVC, flexible pipe,

1 whatever, that runs all the way out to the very
2 end of C dock, which is the fuel pump out dock.

3 Q. The fuel docks we've been discussing the
4 last day?

5 A. All along. Okay. So way out there at
6 the dock, there's another switch so that the boat
7 owner, the operator out on that end can activate
8 the pump. When you are ready, you put the hose
9 into your deck fitting. You tighten the fitting.
10 You flip on the switch, and the pump activates.

11 Q. And you're aware, aren't you, that there
12 are court orders governing the way that system is
13 supposed to work, correct?

14 A. Yes.

15 Q. And has anyone, to your knowledge,
16 violated those court orders? Either you or the
17 council of co-owners or the LLCs Mr. Farmer has?

18 A. I don't think so.

19 Q. All right, sir. And you mentioned the
20 marine radio. Do you know if you have to have an
21 FCC license, Federal Communications Commission
22 license, to operate that radio?

23 A. In some cases, you do, and in some
24 cases, you don't, but I believe Ed had one. I'm
25 not sure.

1 Q. And that would be Ed Geiger who had the
2 license, not you or the marina council of
3 co-owners? It would be Mr. Geiger, correct?

4 A. I'm not sure.

5 Q. But you believe possibly it was
6 Mr. Geiger?

7 A. At the time he was dock master, I think
8 we had a license, but, no, I cannot testify one
9 way or the other whose name it was in or even for
10 sure if we had one.

11 Q. It wasn't in your name, personally,
12 correct?

13 A. It was not.

14 Q. All right. And the tuna grill you
15 mentioned, that closed ages ago, did it not? You
16 said it was short lived, I think.

17 A. It only lasted for a year or less, and I
18 don't even remember which year that was.

19 Q. But that was way before the 2013
20 foreclosure and way before this lawsuit was
21 brought, correct?

22 A. It was before the lawsuit, I'm sure.

23 THE COURT: When you say tuna
24 grill, was this a restaurant type thing or is it
25 just a --

1 MR. O'KELLEY: It was a snack --
2 well, I will ask it.

3 BY MR. O'KELLEY:

4 Q. It was basically a snack bar, wasn't it?
5 Hotdogs, hamburgers and things of that nature?

6 A. A guy for a short period attempted to
7 run, you know, a little profitable business in
8 this area, and he would sell sandwiches and beer
9 and soft drinks.

10 THE COURT: Okay. The great
11 recession put him out of business, right?

12 THE WITNESS: Probably so.

13 THE COURT: Yeah. All right.

14 MR. O'KELLEY: Or even before, Your
15 Honor.

16 THE COURT: Or maybe before.

17 BY MR. O'KELLEY:

18 Q. And you were here for Ms. Heatley's
19 testimony yesterday, correct?

20 A. Yeah.

21 Q. Did you hear her say that the booms were
22 actually on the dirt ground floor underneath this
23 building? She had some concerns yesterday that,
24 oh, we're going to get -- our permit is going to
25 be pulled by OCRM because we don't have access to

1 booms. You still have access to the booms today,
2 do you not?

3 A. We have made do.

4 Q. That wasn't the question. You still, if
5 you need to use those booms --

6 A. Yes.

7 Q. -- they can be used, correct?

8 A. That's correct.

9 Q. That's what I thought.

10 A. And one thing, if I can clarify. You
11 said about access to the restrooms. The only
12 time that they have been limited was during
13 COVID, but actually, COVID is pretty much over,
14 but still to this day, we don't have full access.

15 Q. You have full access, according to the
16 court order, from 8:30 to 8:30 per an order from
17 Judge Jennifer McCoy, do you not?

18 A. Right. But I assume --

19 Q. And you have access --

20 A. I assumed that was a temporary order to
21 get us through this particular crisis.

22 Q. And you also have access between 9 and
23 5, as required by your governing documents, do
24 you not?

25 A. We do.

1 Q. Thank you.

2 A. And we consider those to be minimum
3 hours.

4 Q. But those are the hours that are set
5 forth in both master deeds that govern the
6 marina, correct?

7 A. Yes.

8 Q. Thank you.

9 MR. BARR: Just to clear up the
10 record --

11 THE COURT: Sure.

12 MR. BARR: -- on one point about
13 this little --

14 REDIRECT EXAMINATION

15 BY MR. BARR:

16 Q. You referred to the tuna grill in this
17 area. You're referring to area of the old
18 laundry room, right?

19 A. Correct.

20 Q. And that's 18 feet by 9 and a half feet,
21 right?

22 A. Correct.

23 MR. BARR: That's all I have, Your
24 Honor. Unless the Court has any questions, he
25 can step down from the witness stand.

1 THE COURT: That's fine. Thank
2 you.

3 MR. O'KELLEY: And, Your Honor, as
4 a matter of housekeeping, we sent Mr. Bessent a
5 subpoena, but if he's fully testified, we're not
6 going to call him in our case-in-chief. So he's
7 released from our subpoena.

8 THE COURT: All right. Very good.

9 MR. O'KELLEY: Not that it matters,
10 but --

11 THE COURT: I'm sure he's enjoying
12 being back in the courtroom.

13 MR. BARR: He is also a party.

14 MR. O'KELLEY: Yeah, he is a party,
15 but I just meant in terms of making sure we make
16 sure that he's not required to sit in the
17 courtroom the rest of his life.

18 THE COURT: Very good.

19 MR. BARR: So apropos housekeeping,
20 Your Honor, just to make sure of our Exhibit 1,
21 our notebook Exhibit 1, which includes tabs --
22 however many there are in there. A through F is
23 offered, and I believe is admitted.

24 THE COURT: Yes.

25 MR. O'KELLEY: Those are all

1 matters of public record, and we have no problem
2 with them being admitted.

3 THE COURT: All right. Very good.

4 (PLF. EXH. NO. 1 was marked for
5 identification and received in evidence.)

6 MR. BARR: Our Exhibit 2 with tabs
7 A through M is offered, and I assume is admitted?

8 MR. O'KELLEY: No objection to
9 those.

10 (PLF. EXH. NO. 2 was marked for
11 identification and received in evidence.)

12 THE COURT: A through N, and I was
13 missing one, but I think it was with a G. And we
14 will have that. I'll get that. But it was in
15 one and not the other.

16 MR. O'KELLEY: And no objection to
17 the third exhibit either.

18 THE COURT: It's all in evidence,
19 and Exhibit No -- was that 3?

20 (PLF. EXH. NO. 3 was marked for
21 identification and received in evidence.)

22 MR. BARR: And then there's Exhibit
23 3, which is the list of owners reflecting the
24 dates and recording data of their deeds of the
25 88.

1 THE COURT: Okay.

2 MR. BARR: And there's another
3 version of that in the notebook 1, which is only
4 the first 39 who bought, including actual copies
5 of their deeds.

6 THE COURT: Okay.

7 MR. BARR: And then this document,
8 Exhibit 3, picks up where the notebook exhibit
9 left off. It picks up, but it also includes the
10 first 39 as well.

11 THE COURT: Okay.

12 MR. BARR: There's a color code in
13 there to reflect --

14 THE COURT: I got it.

15 MR. O'KELLEY: And also, Your
16 Honor, I just want to point something out about
17 Exhibit 3.

18 THE COURT: Sure.

19 MR. O'KELLEY: There's also a title
20 to real estate attached thereto, where the First
21 National Bank of the South for \$10 gave to FBSA
22 1, LLC. All of those documents, which was the
23 result of a master deed from this Court and as a
24 result of a foreclosure action. It references
25 Your Honor's master's deed and derivation clause.

1 And also, Your Honor, there's one other
2 deed -- it's part of the exhibit. I just want to
3 make sure we have it, that it's from Marina at
4 Mariner's Cay to Scott Burnette.

5 THE COURT: I'm sorry. Say that
6 again.

7 MR. O'KELLEY: I just want to make
8 sure that, for the court reporter, that we put
9 down that Exhibit 3 is not just the spreadsheet.
10 It's the spreadsheet and two additional deeds.
11 It's just of a manner of keeping the record
12 straight.

13 THE COURT: Okay. And just for my
14 recollection, the purple outlined docks were the
15 only ones which referenced the amended master
16 deed for 2007. All the rest of them talk about
17 the 2006 master deed, and is that consistent with
18 this deed as well?

19 MR. O'KELLEY: Yes, sir.

20 THE COURT: Okay. And this was the
21 foreclosure deed on the dockominiums owned by the
22 developer?

23 MR. O'KELLEY: Correct.

24 MR. BARR: On the slips, right?

25 MR. O'KELLEY: The slips. And

1 those are all the -- the FBSA, that's the reason
2 they're listed so many times in the spreadsheet.

3 THE COURT: Okay. Yeah, yeah.

4 MR. BARR: It's all one deed.

5 MR. O'KELLEY: Correct.

6 MR. BARR: The green references in
7 the document, Exhibit 3, Your Honor.

8 THE COURT: Yes.

9 MR. BARR: The actual deeds behind
10 those conveyances are in notebook 1.

11 THE COURT: Okay. Are those the
12 39?

13 MR. BARR: Those are the 39.

14 THE COURT: Okay. So the green is
15 the 39 that got their title prior to the 2007
16 amended deed?

17 MR. BARR: Correct.

18 THE COURT: The yellow is all the
19 ones that were in the foreclosure deed but you
20 also referenced the 2006?

21 MR. BARR: 41 of them.

22 THE COURT: And then the purple; so
23 we've got three color codes.

24 THE BARR: And the purple were
25 eight that were odd ducks.

1 THE COURT: Okay. I gotcha.

2 MR. BARR: So with that, Your
3 Honor, the plaintiff rests. Thank you very much.

4 THE COURT: Okay. Very good.

5 MR. O'KELLEY: Your Honor, at this
6 time -- I know Your Honor's general take on these
7 matters, but for preservation of record purposes,
8 I think we will move for a directed verdict as to
9 the plaintiff's cause of action one and three,
10 which Your Honor will remember we consented to
11 sort of bifurcate this case because the whole
12 thing depends on whether or not the two sections
13 of the condominium act, how they interplay and
14 how they're together.

15 Your Honor, you heard yesterday from
16 Mr. Barr that he's asking the Court to declare
17 the rights of four plaintiffs. You heard
18 yesterday that the council of co-owners is only a
19 nominal plaintiff. Well, that was sort of news
20 to get -- news to us.

21 You also heard -- and they admitted in
22 their request to admit, that there was a
23 foreclosure and a sale by this Court and that no
24 one from the nominal plaintiff or anyone else
25 checked into that matter.

1 They admitted to judgment, and Your
2 Honor, it's our position that that stand as a
3 valid unappealed order. It's the law of the
4 case. It's a collateral estoppel issues. It's
5 not res judicata because the parties were
6 different, but it's definitely -- we think
7 they're collateral estopped from bringing these
8 two causes of action. Your Honor ruled
9 already that --

10 THE COURT: That would be as
11 applies to the council of co-owners, right?

12 MR. O'KELLEY: Absolutely, Your
13 Honor. Yes, because the four individuals were
14 not parties to that case and had no bearing on
15 it.

16 THE COURT: Right.

17 MR. O'KELLEY: But, yes, correct.

18 THE COURT: The four individuals
19 cannot be bound by that, I agree.

20 MR. O'KELLEY: Correct. But Your
21 Honor already ruled in the ship store and fuel
22 docks were, by that case, mortgageable itself.
23 You've heard Mr. Barr talk about --

24 THE COURT: I don't know that that
25 issue was before me at that time, but that's what

1 we did.

2 MR. O'KELLEY: That's what you did,
3 and it's been unappealed since -- for quite some
4 time.

5 THE COURT: As it relates to the
6 council of co-owners?

7 MR. O'KELLEY: Yep. And what you
8 didn't hear yesterday was that the original class
9 action plaintiffs, two class reps, Heatley and
10 Nekola, are no longer in the case. The current
11 plaintiffs got involved in the third and fourth
12 amended complaints in 2019 and 2020.

13 THE COURT: All right.

14 MR. O'KELLEY: So what you're being
15 asked to decide is, basically, we think the
16 council of co-owners causes of action are gone
17 because of the prior case. But you're being --
18 deciding four persons' interest in common
19 elements and being asked to somehow extrapolate
20 that to all the owners.

21 Your Honor, this case was brought as a
22 class action originally. It was denied. They
23 are now seeking to back door in a derivative
24 action. You haven't heard of any demands made
25 upon the board. You haven't seen any claims that

1 they can somehow extrapolate four unit owners'
2 rights to every unit owner at the marina.

3 And that's a problem, Your Honor. If
4 you look at their complaint, specifically, I
5 think it's paragraph 30, they say that, you're
6 owned by the plaintiffs and all unit owners.
7 They can't make that claim, Your Honor, because
8 as you heard yesterday, you're trying to decide
9 the rights of four people only.

10 I brought up earlier today the fact
11 that -- and, again, it was testified to most by
12 Mr. Bessent, by Mr. Monk yesterday, that they've
13 never not had access to the bathrooms. They've
14 never not had the ability to use the pump
15 station. We think those are red herrings.

16 No one, you've heard, has contacted
17 Mr. Farmer since Judge Nicholson entered his
18 injunction and consent order that we agreed to,
19 as the early stage of this case, to try and use
20 that pump station.

21 What you heard is, I tried. I take my
22 boat all the way to another marina up the Stono.
23 Sunset Cay is closer, but he takes it all the way
24 up to St. John's. They've never contacted my
25 client by their own testimony.

1 Your Honor, they keep talking about
2 ouster. Well, that's a term of art. Ouster
3 being the turning out or keeping of a party
4 entitled to possession of any real property. And
5 that's not my definition. That's the definition
6 in the case of Freeman vs. Freeman found at 323
7 SC 95, 473 SC second Court of Appeals case from
8 1996.

9 THE COURT: Right. Well, ouster is
10 usually found in partition actions between family
11 owners, is it not?

12 MR. O'KELLEY: It is, Your Honor.

13 THE COURT: These people are not
14 related that we know of, are they?

15 MR. O'KELLEY: I mean, not that we
16 know of.

17 THE COURT: Other than that they're
18 condominium co-owners, which makes them members
19 of a regime.

20 MR. O'KELLEY: And as Your Honor
21 well knows, ouster is always used with the term
22 co-tenant --

23 THE COURT: Right.

24 O'KELLEY: -- or tenant in common
25 was ousted from the party. This is not that

1 situation. These folks never had possession of
2 the buildings and the ship store. Mr. Geiger --

3 THE COURT: Well, they did up until
4 the property was foreclosed, did they not?

5 MR. O'KELLEY: No, sir. They --
6 that property was always considered to be a
7 separate property, and Mr. Geiger, the dock
8 master, was the person possessing it. And then
9 the tuna grill possessed it for a little while.
10 They had meetings there, but in terms of constant
11 possession or occupying it, that wasn't then,
12 Your Honor.

13 THE COURT: Well, if it -- let me
14 barter with you for a second. So if it was
15 common elements, wasn't it owned by everybody in
16 common? Aren't they all co-owners?

17 MR. O'KELLEY: Well, that's the
18 real question then under --

19 THE COURT: That's the issue?

20 MR. O'KELLEY: -- the condo law
21 because --

22 THE COURT: But you found the same
23 book, didn't you?

24 MR. O'KELLEY: Well, I've had this
25 book for some time, Your Honor.

1 THE COURT: So have I. I just
2 don't have to use it that often.

3 MR. O'KELLEY: And, unfortunately,
4 the section that would apply to us here, I think
5 it's 204, doesn't really tell us much except it
6 cites that statute section 2A. And I'm talking
7 about, of course, statute 27-31-60 as to the
8 amended master deeds.

9 But to answer your question, Your Honor,
10 who owns the common elements? Is it owned by the
11 council of co-owners sort of in trust for all the
12 owners, or do the owners actually have title to
13 that common element? I don't know the answer to
14 that question because five people in black robes
15 haven't told us yet.

16 But, Your Honor, none of these four
17 plaintiffs testified that they were in possession
18 of the property. What they said was they went
19 there from time to time. They had annual
20 meetings. They had parties there. So the ouster
21 argument that has been made, we think, is out the
22 window.

23 They always had access to their boat
24 slips, and they always had access to the issues
25 to the areas in question that they were entitled

1 to access, which would have been the bathrooms
2 and the pump out station.

3 And I want to address something that is
4 a bit of a red herring, Your Honor. Yesterday,
5 one of the plaintiffs testified that their
6 percentage had been greatly reduced from 11
7 percent down to 1 percent. Well, I want you to
8 look, when Your Honor has time, at V-58 -- V-583
9 at 637 and -- which says that that percentage was
10 out of 1,000 units, not out of 100 units. The
11 amended master deed was out of 100 units.

12 So they did reduce it, but in terms of
13 doing the math, it didn't get reduced by 10
14 percent. It got reduced by a very small amount.
15 Again, Your Honor, we heard from Mr. McCann and
16 Ms. Heatley that they never contacted my clients,
17 and the pumps were available the whole time.

18 Ms. Heatley even testified that she --
19 her husband was on the board forever, and she was
20 aware of the foreclosure, but she didn't do
21 anything to protect her alleged rights in this
22 matter. In fact, nobody did.

23 You heard from Mr. Bessent that he knew
24 about the changes to the master deed fairly early
25 on back in 2010, and then he figured out that

1 these common elements had been de-condoed, if you
2 will -- or, actually, made into separate unit
3 condos, not common elements, sometime in 2012.
4 And they didn't do anything until 2017, Your
5 Honor.

6 You also heard that everyone was dealing
7 with my client on a regular basis. And when I
8 say my client, Your Honor, I'm talking about the
9 two LLCs, just so we keep the record clear.

10 THE COURT: Sure.

11 MR. O'KELLEY: They were dealing
12 with Mr. Farmer as the member and manager of
13 those two LLCs.

14 You also heard discussion yesterday that
15 somehow my client's actions have devalued these
16 slips. That is a complete red herring, Your
17 Honor. Mr. Bessent testified on the stand
18 yesterday that he bought one unit in 2006 for
19 \$78,750; bought his other unit in 2015 for
20 \$28,000. That was well before the two LLCs that
21 took title were ever on the scene.

22 And Your Honor made a comment yesterday,
23 that that was sort of the end of the dockominium.
24 Well, Your Honor is right. There was -- you
25 know, dockominium craze, it was going to be the

1 new thing. Everybody was going to sell them and
2 make all of this money. And then, Your Honor
3 knows better than I, the recession hit, and we
4 saw what happened with that.

5 You also heard that they had an
6 appraisal done. That's one of the exhibits that
7 has been brought before the Court. Why would you
8 buy something you already own? Why would you
9 appraise something you already own? No one,
10 again, thought that they owned it. They all
11 thought it was a separate unit, Your Honor.
12 There's just no doubt about that.

13 You also heard testimony from
14 Mr. Bessent that these nice bathrooms, the water
15 and the electricity has been paid for by my
16 clients since they took possession. They haven't
17 offered a dime to pay it. So that's a problem
18 for them, too.

19 He also admitted that my clients had
20 been charged dues. Your Honor saw the notices of
21 liens and the satisfactions. Again, more
22 evidence of acquiescence that these folks knew
23 that they did not own this property. So in July
24 of 2020, again, some of these folks were added to
25 the complaint.

1 But I think there's a problem here, Your
2 Honor. Again, I go back to rule 23. So Your
3 Honor is being asked to decide two causes of
4 action for four people. That's it. And so, Your
5 Honor, if you rule in their favor, what do they
6 get? Do they get a percentage interest in the
7 common elements, all four people? Because, Your
8 Honor, there are 80 plus other people who haven't
9 been named in this case, and they don't represent
10 them.

11 Again, this is not a class action. It's
12 not an derivative matter. And what you heard
13 Mr. Barr say yesterday, if you rule in their
14 favor, they're going to file another lawsuit the
15 next day to assert judicial estoppel. I think
16 they're going to have a problem with that, Your
17 Honor.

18 We would ask that Your Honor grant the
19 directed verdict in favor of my clients, allow
20 them to -- the two LLCs to use the property as
21 they used them for almost an entire year before
22 this lawsuit was filed. The property that they
23 paid \$250,000 for.

24 Again, we think they've got some real
25 problems with their case, and we think we're

1 entitled to a directed verdict. I know Your
2 Honor's general position on directed verdicts,
3 but I just have to make this for the record.

4 THE COURT: Help me out with your
5 client's chain of title. After the -- who
6 obtained the property at the foreclosure sale?
7 Did it go back to the lender?

8 MR. O'KELLEY: It went to the
9 lender, and the lender is like real estate,
10 REO -- what we call REO Company, and then they
11 transit to Emerald Road Holdings, which at one
12 point was a third party in this case. And then
13 they transferred it to my client.

14 THE COURT: Okay. All right. So
15 from the REO to Emerald Investments to Marina --
16 to the Mariner's Cay Marina Condo, LLC; is that
17 right?

18 MR. O'KELLEY: Emerald McDonough
19 Road Holdings, LLC, which is the LLC that the
20 bank created just for these two properties.

21 THE COURT: Emerald McDonough was
22 the banks --

23 MR. O'KELLEY: Holding company.

24 THE COURT: -- entity?

25 MR. O'KELLEY: Yes, sir.

1 THE COURT: And they conveyed it
2 to?

3 MR. O'KELLEY: They conveyed it
4 to --

5 THE COURT: Mr. Farmer's LLC?

6 MR. O'KELLEY: -- Mariner's Cay
7 Fuel Dock, LLC, and Mariner's Cay Marina Condo.

8 THE COURT: Yeah, Mr. Farmer's
9 entities?

10 MR. O'KELLEY: Yes.

11 THE COURT: Okay. Okay.

12 MR. O'KELLEY: And before that, it
13 was owned by Emerald Portfolio, LLC, which is how
14 we get to where we are now.

15 THE COURT: Gotcha. Okay. All
16 right. Mr. Barr?

17 MR. BARR: Your Honor, for a motion
18 for summary judgment that is supposedly, quote,
19 for the record, that's the most exhaustive one
20 I've ever been a party to.

21 MR. O'KELLEY: Well, it was a
22 motion for a directed verdict.

23 MR. BARR: I'm sorry, for a
24 directed verdict.

25 THE COURT: Which is actually a

1 non-suit motion.

2 MR. O'KELLEY: But I have to make
3 all my -- put it all the record.

4 THE COURT: I gotcha.

5 MR. BARR: So I do feel compelled
6 to respond even though --

7 THE COURT: Sure.

8 MR. BARR: -- counsel is inviting
9 the Court to rule against him, I think, by the
10 way he expressed it.

11 THE COURT: I normally do.

12 MR. O'KELLEY: I don't think I've
13 ever gotten a directed verdict for non-suit in
14 all the years I've been before you, Your Honor.

15 THE COURT: I've done it.

16 MR. O'KELLEY: Five times?

17 THE COURT: No, less than that.
18 Less than that.

19 MR. O'KELLEY: Yes, sir. It's a
20 tough standard.

21 THE COURT: Probably about three
22 times.

23 MR. BARR: So not unless either the
24 Court or the record suggested that we
25 acquiesced --

1 THE COURT: Right.

2 MR. BARR: -- to use a favorite
3 term in this case, to any of these arguments.
4 Let me see if I can at least address some of
5 them.

6 I heard one proposition or perhaps it
7 was even a question, well, who does own the
8 common elements, suggesting that that's some
9 mysterious question generally under condominium
10 law in South Carolina.

11 Well, I think there are two bright line
12 answers to that. One of them is on the board
13 right here, and it says, an apartment owner,
14 i.e., a slip owner, shall have the exclusive
15 ownership of his apartment, boat slip, and shall
16 have a common right to a share with the other
17 co-owners in the common elements of the property,
18 equivalent of the percentage.

19 So right there, the statute says that
20 the slip owner has the exclusive ownership of his
21 apartment -- of his slip and a share in common in
22 the common elements. So 60, which is one of the
23 linchpins of the defendant's case itself
24 establishes who owns -- who owns the units -- the
25 common elements, I mean.

1 And if you take a look, Your Honor, to
2 the Exhibit 2E, on the second page of 2E --

3 THE COURT: Okay.

4 MR. BARR: -- under the paragraph
5 E, which designates the common elements shown as
6 Exhibit B.

7 THE COURT: Right.

8 MR. BARR: And it lists the
9 commercial units, which are here in dispute.
10 Look at that paragraph below, which never
11 happened. The paragraph below says, these common
12 elements shall be assigned or conveyed to the
13 council of co-owners. That was never done.

14 THE COURT: Okay.

15 MR. BARR: Now, if that was never
16 done, therefore, who owns them? Obviously, the
17 slip owners own them. Moreover, the master deed
18 itself on the big notebook on recorder's page
19 V583-602, which is entitled, article number 10,
20 unit owners' rights and obligations, co-owners
21 own use and rights.

22 Subject to this master deed in the
23 bylaws, the co-owners shall have an undivided
24 ownership interest to the unit according to the
25 unit's percentage interest in the common

1 elements. Again, using ownership interest,
2 roughly paraphrasing section 60.

3 THE COURT: Which section were you
4 just in? I'm sorry.

5 MR. BARR: Sir?

6 THE COURT: Which section were you
7 just reading from? Section 10.1?

8 MR. BARR: Of the master deed, it's
9 on the recorder's page V583-602, and it's article
10 Roman 10.

11 THE COURT: Right.

12 MR. BARR: Unit owners' rights and
13 obligations on page 19 of 41 of the document
14 itself at the bottom of the page.

15 THE COURT: Right. Okay.

16 MR. BARR: So I think,
17 unequivocally, I think as a matter of general
18 law, I think it's clear under the general --
19 under the common law of condominiums, which now
20 exists as a body of cases dealing with it, as
21 well as in the statutory law, I think it's clear
22 that in a horizontal property regime, the
23 individual unit owners have a title interest in
24 the common elements, an undivided interest in
25 proportion to the other owners.

1 THE COURT: Correct.

2 MR. BARR: I think that's the law.
3 And moreover, the council of co-owners cannot
4 deal with that. An individual unit owner must
5 deal with that. It cannot -- the council cannot
6 speak for an owner as to that owner's title
7 rights. This is the (inaudible) for real estate
8 title.

9 THE COURT: Right, right. I
10 believe that's been decided in a number of cases,
11 but the Court wrestles with it for a number of
12 years, it appears to me. The Detyens case as
13 well as the -- oh, what was the one that they
14 finally resolved it in? I was looking at those
15 this morning.

16 MR. BARR: Then council -- I'm not
17 exactly sure where the argument is focused.

18 THE COURT: Queens Grant. That's
19 the one that finally decided that issue. Queens
20 Grant.

21 MR. BARR: Yes, yes, up in -- I
22 think in Dorchester County, I think that was, off
23 the Ashley River.

24 THE COURT: Wherever it was.

25 MR. BARR: Right. The other issue

1 I would like to speak to is this -- it's unclear
2 what the theory is here, that somehow these four
3 individual plaintiffs have no right to bring this
4 lawsuit.

5 First of all, it sounds like it's some
6 form of an affirmative defense. It sounds like
7 sort of a defense that -- the parties defense
8 that necessary -- all necessary parties aren't
9 joined, and of course, we tried to get it in as a
10 class action, which would have been far more
11 efficient. Why it was objected to, I don't know,
12 other than just to hold up the plaintiff. That's
13 the main game.

14 And so I think I alluded to this the
15 first day. Rather than bringing 90 people to fit
16 in a courtroom where they won't fit, or 80, how
17 ever many there are. We decided to file the case
18 in the right of -- we could have brought one.
19 Because -- and Mr. Monk is my favorite because he
20 was the first witness.

21 But, also, Mr. Monk, truly, is the most
22 removed from every -- he didn't know what was
23 going on until Ms. Farmer told him to get off of
24 the fuel dock and quit using the pump out. Maybe
25 he -- I think he didn't say it that way.

1 Mr. Farmer, I don't mean to take it that
2 far. That's lawyer's dramatic stuff. I will
3 concede. But nevertheless, he was confronted,
4 and he said, after that, he did not want to get
5 involved because he found out that Mr. Geiger had
6 been asked to leave. And he knew this dispute
7 was arising, and he said, you know, I just want
8 to do my engineering and do my fishing.

9 So counsel has suggested no legal
10 authority for that, and frankly, I thought it was
11 a pretty good legal approach to this. Let's just
12 file -- it's a declaratory judgment action. And
13 so if the Court declares that these are common
14 elements, then I think that is going to be
15 judicially binding on Mr. Farmer's entities in a
16 subsequent action naming all of the others.

17 But if you don't, then likewise, there
18 are two sides to that coin or two sides to that
19 double-edged knife, depending on which metaphor
20 you choose.

21 THE COURT: Okay.

22 MR. BARR: So that's again --
23 counsel is conceding, this is only for the
24 record, but nevertheless, I need -- I felt
25 compelled to respond to that.

1 And as to the payment of utilities and
2 charging them dues, that all gets the ultimate
3 question here, which I guess we ought to hear
4 more testimony about --

5 THE COURT: About that ultimately.

6 MR. BARR: -- on this so-called
7 acquiescence.

8 THE COURT: And I think that's
9 ultimately the issue for the defense to put
10 forward, is it not, on the issue of acquiescence?

11 MR. O'KELLEY: Unless you rule in
12 favor of my motion.

13 THE COURT: Which I'm not going to
14 do. All right. And by being a DJ action, it
15 takes whatever form it is, whether it's the
16 validity of the deed.

17 MR. BARR: Correct.

18 THE COURT: Which is a question of
19 law.

20 MR. BARR: Correct.

21 THE COURT: Or is it some sort of
22 equitable relief, which is what acquiescence
23 becomes, an equitable remedy. So based upon
24 that, I'm going to deny the motion at this point
25 in time and go from there.

1 MR. O'KELLEY: I understand, Your
2 Honor.

3 THE COURT: The plaintiff has
4 rested. Let's take a little break.

5 MR. O'KELLEY: And, Your Honor, one
6 thing we can do to move the ball forward.

7 THE COURT: Sure.

8 MR. O'KELLEY: So Mr. Barr --
9 Mr. Ed Geiger, the long time dock master is very
10 sick. I have his original deposition here.
11 Mr. Barr and I have stipulated that we would like
12 for you to read this at your leisure.

13 THE COURT: Okay. Sure.

14 MR. O'KELLEY: There are certain
15 parts that I would, you know, direct you to, but
16 it's all here.

17 MR. BARR: Your Honor, I wouldn't
18 object if you did -- after the conclusion of the
19 evidence, if Mr. O'Kelley, if he wants to, would
20 submit to the Court the page and line numbers.

21 THE COURT: I would much prefer
22 that.

23 MR. BARR: And I will do the same.

24 MR. O'KELLEY: And we've done that,
25 Your Honor. We've done -- we've submitted this.

1 THE COURT: Okay.

2 MR. O'KELLEY: We've already filed
3 our designations, but also there's -- you know, I
4 thought Mr. Geiger was coming; so we did the
5 designations.

6 MR. BARR: And I did, too.

7 MR. O'KELLEY: Yeah, we all did.
8 But so there are some additional designations,
9 some additional -- and I'm happy to tell the
10 Court now or tell your law clerk which pages to
11 look at.

12 THE COURT: Sure. If y'all already
13 submitted the designations, I'll take it.

14 MR. O'KELLEY: We submitted the
15 designations, but we didn't submit these pages
16 because we thought Mr. Geiger was coming.

17 THE COURT: All right. Okay.

18 MR. BARR: I would suggest that we
19 do it post --

20 THE COURT: Right.

21 MR. BARR: -- so that he can send
22 it to me, and then I can see what response to
23 that, pages and lines that I would want to put
24 up.

25 THE COURT: Okay. All right. I do

1 have this question: How many lawsuits do y'all
2 got pending, or have all of these motions been in
3 this particular case? Is this the only one, or
4 is there something else?

5 MR. O'KELLEY: No. Remember, Your
6 Honor, there's a suit by the folks on the hill
7 that we have stayed pending the outcome of this
8 case.

9 THE COURT: Okay. All right. And
10 that Mariner's Cay --

11 MR. O'KELLEY: Racquet and Yacht
12 Club.

13 THE COURT: -- Racquet and Yacht
14 Club case. That's a separate case.

15 MR. BARR: Isn't that joined in a
16 residential use issue? Isn't that what that's
17 about?

18 MR. O'KELLEY: That one is about
19 the fact that they say they still have an
20 easement over the ship store, which Mr. Barr
21 showed their master deed.

22 THE COURT: Yeah.

23 MR. O'KELLEY: And the easement to
24 build the marina, and that's related to that.
25 But based on outcome of this case, that one is on

1 hold because of the determination in this case.

2 THE COURT: Okay. That's the one
3 with the alienable --

4 MR. O'KELLEY: Easement.

5 THE COURT: Perpetual easement, the
6 alienable perpetual easement. All right. Well,
7 these are wonderful terms we use.

8 All right. Let's take a little break,
9 and then what I'd like to do before we start back
10 at 11, let me meet with the lawyers for a second
11 before we get started.

12 MR. O'KELLEY: And I have two
13 witnesses coming at noon.

14 THE COURT: You do. Yeah, you told
15 me.

16 MR. O'KELLEY: And then our
17 appraiser is coming around 2. So we talked about
18 doing like Your Honor did and putting --

19 THE COURT: We will work them in.
20 We will work them in. Whatever we need to do.

21 MR. O'KELLEY: And Ms. Barnes has
22 been here for a day or two; so I'm sure she'd
23 rather do something else as well.

24 THE COURT: All right. Well, we
25 can get her in and get her out. All right.

1 Let's take a break, and y'all come back. And I
2 want to chat with y'all for a second.

3 (A recess transpired.)

4 MR. O'KELLEY: And, Your Honor,
5 again, one more housekeeping matter. So
6 Mr. Maguire and Mr. Heatley are under subpoena,
7 but Mr. Barr and I have agreed. There are two
8 more original deposition transcripts there. And
9 we're going to do the same as with Mr. Geiger,
10 use our designations, and then Mr. Barr will tell
11 you whether he objects. And he'll send that to
12 you at -- post-trial.

13 THE COURT: That will be fine.

14 MR. O'KELLEY: Yes, sir.

15 THE COURT: That will be fine.

16 MR. O'KELLEY: Your Honor, at this
17 time --

18 THE COURT: And that was Maguire
19 and --

20 MR. O'KELLEY: Mr. Heatley, Jeff
21 Heatley.

22 THE COURT: Jeff Heatley. Okay.
23 Sure. Who is here and present?

24 MR. O'KELLEY: Correct. He's
25 sitting in the back of the courtroom.

1 THE COURT: Got it. Thank you.

2 MR. O'KELLEY: Thank you, Your
3 Honor.

4 THE COURT: All right. You may
5 proceed, Mr. O'Kelley.

6 MR. O'KELLEY: Thank you, Your
7 Honor. We call Amanda Barnes at this time. She
8 has been patiently waiting.

9 THE COURT: Ms. Barnes, come on up.

10 (AMANDA BARNES, having first been
11 duly sworn, testified as follows:)

12 THE COURT: And give us your full
13 name and address for the record, please.

14 THE WITNESS: Amanda Barnes, 112
15 Waning Way, Charleston, South Carolina.

16 DIRECT EXAMINATION

17 BY MR. O'KELLEY:

18 Q. Good morning, Ms. Barnes, how are you
19 today?

20 A. Good, thank you.

21 Q. You recall, we deposed you in this case,
22 correct?

23 A. Yes.

24 Q. And do you recall that testimony?

25 A. Somewhat, yes.

1 Q. All right. Since you've testified in
2 this Court before, please tell Judge Scarborough
3 how you are employed and what you do and your
4 connection in this case. That's three questions
5 in one.

6 A. Okay. So I work for Sentry Management.
7 I currently do training and development for the
8 company, but previously, I was a community
9 association manager for Sentry. And I was at one
10 time the community association manager for
11 Mariner's Cay Marina.

12 Q. And what is your training in community
13 association management? How did you come to your
14 current job?

15 A. I fell into it. I initially started
16 working for the Daniel Island Property Owners
17 Association. And then, while working there, I
18 obtained some designations with CAI, and then
19 from there, moved on to Sentry Management.

20 Q. And do you hold any licenses from the
21 South Carolina Department of Labor Licensing and
22 Regulations?

23 A. No.

24 Q. And you're not required to, correct?

25 A. No, I am not.

1 Q. Tell me, when did you first learn about
2 my clients, which are Mariner's Cay Marina Condo,
3 LLC, and Mariner's Cay Fuel Docks, LLC, first
4 gaining title to these properties?

5 A. I think it was sometime around 2016. I
6 believe he reached out before he purchased the
7 properties, asking some questions about the
8 association and then afterwards getting advice.

9 Q. And what specifically were you being
10 asked about?

11 A. I don't recall specifically. I just
12 remember having some correspondence with
13 Mr. Farmer at the time. I think it was just some
14 general questions about the association.

15 Q. Understood. You were in the courtroom
16 yesterday, correct?

17 A. Yes.

18 Q. And you heard testimony about liens
19 being filed on the fuel docks, correct?

20 A. Yes.

21 Q. And were you the person at Sentry that
22 was in charge of that process?

23 A. While I was managing them, yes, I did.

24 Q. And you heard Mr. Bessent talk about the
25 process being sort of automatic or --

1 A. Uh-huh.

2 Q. Tell the Judge about that process, if
3 you would, please.

4 A. Yep. So most associations have a
5 collection policy in place. I don't specifically
6 recall what Mariner's Cay is. I haven't been
7 involved since about 2019 with the association.

8 I know Mr. Bessent talked about like
9 what we call a 30, 60, 90 day. 30 days it's
10 late. They get a notice. 60 days, we'd send an
11 intent to lien notice. And then at 90 days, we
12 have an attorney file a lien against the
13 property.

14 Q. And look in that notebook that's in
15 front of you, Exhibits 33 and 34. Were those the
16 liens that were filed then?

17 A. They appear to be so, yes.

18 MR. BARR: 33?

19 MR. O'KELLEY: 33 and 34.

20 MR. BARR: Thank you.

21 BY MR. O'KELLEY:

22 Q. And then if you will turn to 47 and 48.
23 Are you there, ma'am?

24 A. Yes.

25 Q. All right. Do you see that those are

1 satisfactions of liens signed by Derek Dean?

2 A. Yes.

3 Q. And do you know who Mr. Dean is?

4 A. Yes.

5 Q. Who is he?

6 A. He is an attorney.

7 Q. Does he do work for -- did he do work
8 for Mariner's Cay at the time?

9 A. Yes.

10 Q. All right. And are you aware of any
11 discussions between you and the board members
12 about ownership of these units?

13 A. I know after Mr. Farmer took title, that
14 there was some questions regarding if it was
15 really a common are or if it could be sold to an
16 individual, but nothing much more than that.

17 Q. And after this lawsuit was filed and up
18 to the time of your deposition, do you recall any
19 conversations with the board?

20 A. Not specifically, no.

21 MR. O'KELLEY: All right. Thank
22 you, Ms. Barnes. Mr. Barr may have questions for
23 you.

24

25

1 CROSS-EXAMINATION

2 BY MR. BARR:

3 Q. I suppose I just have one. The liens
4 that you filed were not even signed by a member
5 of the council of co-owners or even their lawyer.
6 It was signed by someone in your office; is that
7 right?

8 A. So I did notice that. It was before the
9 court case that prevented us from doing that. We
10 did used to file liens inhouse.

11 Q. All right. So you're just describing an
12 administrative process?

13 A. Yes.

14 MR. BARR: Thanks. That's all I
15 have.

16 REDIRECT EXAMINATION

17 BY MR. O'KELLEY:

18 Q. And just as a follow-up, there was a
19 seminal case, was there not, that said, lawyers
20 have to file liens, homeowners association,
21 management companies, you can't do that anymore,
22 correct?

23 A. Correct. Yes.

24 Q. Do you recall what the name of the law
25 firm was that was involved?

1 A. I do not.

2 Q. No worries.

3 A. I can tell you the management company
4 that was involved.

5 Q. Well, we know the management company
6 involved.

7 A. That side I know.

8 MR. O'KELLEY: All right. Thank
9 you, Ms. Barnes. And you're free from your
10 subpoena at this point.

11 THE COURT: All right. Ms. Barnes,
12 thank you very much. You may be excused. Thank
13 you for your experience in the last day and a
14 half.

15 MR. O'KELLEY: And, Your Honor,
16 because we've agreed to do those three witnesses,
17 my next witness will be here any minute. Do you
18 want us to start with Mr. Farmer or just wait?
19 Whatever Your Honor wants to do.

20 THE COURT: Remind me who you've
21 got. You've got like two or three people coming,
22 right?

23 MR. O'KELLEY: I have Mr. Furtado,
24 who was the lawyer who did the amended master
25 deed and Ms. Hull, who was the other -- who was

1 the board president and was dealing with the
2 property. She was the one that got the appraisal
3 done and all of that.

4 THE COURT: Right. They're not
5 going to take long, are they?

6 MR. O'KELLEY: No, sir.

7 THE COURT: Do you expect them both
8 at noon or so?

9 MR. O'KELLEY: I told both of them
10 to come at noon.

11 THE COURT: All right. Let's
12 just -- I'm assuming Mr. Farmer is going to take
13 a while?

14 MR. O'KELLEY: He's going to be a
15 bit, yes, sir.

16 THE COURT: So why don't -- let's
17 just have a little break, and then let's wait and
18 see. The first one that shows up, we will just
19 put them up and go from there.

20 MR. O'KELLEY: All right, sir.

21 THE COURT: I've still got some
22 reading I need to do.

23 MR. O'KELLEY: Yeah, understood.

24 THE COURT: Apparently I've got a
25 lot more reading to do. But on each of these,

1 y'all are going to send me the --

2 MR. O'KELLEY: We have very
3 specific designations. It's not the entirety,
4 and then for Mr. Geiger, I'm going to send you
5 supplemental designations as to some pages.

6 THE COURT: All right. Very good.
7 Let's do that. That's going to be -- coming
8 again is -- we've got Mr. Farmer testifying, but
9 Ms. Hull is coming.

10 MR. O'KELLEY: And Mr. Furtado.

11 THE COURT: And Mr. Furtado. Got
12 it.

13 MR. O'KELLEY: And then Trey
14 Mathisen, the appraiser, is the last one. And
15 he's coming this afternoon because he's got a
16 conflict, Your Honor.

17 THE COURT: At 2 p.m., I think you
18 said?

19 MR. O'KELLEY: Yes, sir.

20 THE COURT: Okay. All right.
21 Well, then let's take a break. And then let's
22 see if we can't -- do you think we can get the
23 two in before lunch?

24 MR. O'KELLEY: Absolutely.

25 THE COURT: Okay. Let's do that.

1 Let's take a little break right now. And then,
2 like I said, as soon as one of them shows up,
3 y'all let Bob know, and Bob will come get me, and
4 I will be right back.

5 (A recess transpired.)

6 MR. O'KELLEY: All right. At this
7 time, we call Laurie Hull to the stand.

8 THE COURT: All right. Ms. Hull,
9 come on up.

10 (LAURIE HULL, having first been
11 duly sworn, testified as follows:)

12 THE COURT: Thank you, ma'am. And
13 give me your full name and address for the
14 record, please.

15 THE WITNESS: Maureen A. Hull,
16 H-U-L-L, 918 East Cooper, Folly Beach.

17 THE COURT: Folly Beach, SC. Very
18 good. Thank you, ma'am.

19 MR. O'KELLEY: Thank you, Your
20 Honor.

21 DIRECT EXAMINATION

22 BY MR. O'KELLEY:

23 Q. Ms. Hull, how are you today?

24 A. Fine, thank you.

25 Q. Ms. Hull, I'm here to ask you some

1 questions about Mariner's Cay. You owned a slip
2 out there, did you not?

3 A. And still do.

4 Q. Still do. Which number slip?

5 A. B-10.

6 Q. And when did you buy that?

7 A. Preconstruction.

8 Q. Preconstruction. First master deed,
9 correct?

10 A. Correct.

11 Q. And have you reviewed both of the master
12 deeds at issue in this case --

13 A. No.

14 Q. -- at some point? You were the
15 president of the board of the council of
16 co-owners, were you not?

17 A. I was.

18 Q. All right. And when did that service
19 start?

20 A. It was -- you probably know some of
21 these dates better than I do, but as soon as the
22 slips fell back to the bank into foreclosure, we
23 formed our own HOA, which I think was -- I think
24 we bought our slip in '04. So that happened
25 maybe in '06.

1 And Michael Sutton formed -- you know,
2 help form it through an attorney, and he sat as
3 president for the initial year or maybe two.

4 Q. And how long did you serve on the board?

5 A. I think seven years.

6 Q. And were you on the board in 2016?

7 A. Yes.

8 Q. All right. And this gentleman that's
9 sitting at the table here, you know this man, do
10 you not?

11 A. I have met him, yes.

12 Q. And who is that?

13 A. Dolph.

14 Q. And last name Farmer?

15 A. Yes.

16 Q. Okay. And describe to the Court what
17 your initial meeting was. How did that come
18 about, if you recall?

19 Well, I will ask it this way: When did
20 you learn that Mr. Farmer and some entities he
21 owned had bought these units? And when I say
22 these units, I'm talking about the ship store and
23 fuel docks.

24 A. Okay. I did not know him at the time I
25 learned, and I want to say it was 2017.

1 Q. I will show you -- and this might
2 refresh your memory. There's a large notebook in
3 front of you.

4 A. Okay.

5 Q. And there are a bunch of tabs in that
6 notebook. And if you will turn to number four
7 and five, you will see some deeds dated May of
8 2016. Does that refresh your memory?

9 A. Number four?

10 Q. Yes, ma'am. It says, title to real
11 estate at Mariner's Cay Fuel Dock, LLC. And then
12 number five is title to real estate, Mariner's
13 Cay Marina Condo, LLC.

14 A. It doesn't refresh any memory for me. I
15 see -- I know what I'm looking at, but I don't
16 know if I've ever seen the documents before.

17 Q. Well, let me ask it this way. Turn to
18 tab 61, please, Ms. Hull.

19 MR. BARR: That's 61?

20 MR. O'KELLEY: 61, yes, sir.

21 BY MR. O'KELLEY:

22 Q. 661, sorry. And this is an e-mail
23 chain. It's from Michael Sutton, and then it's
24 got Mr. Heatley, you, Nelson Maier, Ronald
25 Maguire and then cc'd Collin Bruner. You were on

1 the board at that time in April of 2015, correct?

2 A. Yes.

3 Q. And this relates to a sale, an auction
4 on May 5th of the ship store because it states
5 that the foreclosure proceeding has been
6 completed, correct?

7 A. Correct.

8 Q. And then, were you involved in
9 discussions about what the board wanted to do
10 vis-a-vis trying to buy the ship store or deal
11 with it. Tell the Judge about that.

12 A. Yes. We did have conversations about
13 that. Our understanding was that -- it wasn't
14 our understanding. In the master deed that I
15 have, that I bought -- that I got in my hand the
16 day that I closed on my slip called the ship
17 store, the gas docks, common elements.

18 Q. And yet they had been foreclosed upon,
19 correct?

20 A. I did -- I don't -- yes. It was like,
21 I'm not really sure exactly when. It was -- I
22 realized that they were privately held and had
23 been -- I didn't -- I knew that the slips had
24 been foreclosed on, but I understood that the
25 ship store and the gas docks were separate from

1 the slips.

2 And then suddenly, we learned that, from
3 what I recall, is that Sabal in California had
4 picked them up, and they were in the portfolio.
5 And that's when we started a conversation. I'm
6 like, how can this be happening? How can they be
7 selling this?

8 Q. Sabal being a mortgage company, to the
9 best of your knowledge? S-A-B-A-L is how it's
10 spelled, correct?

11 A. Correct.

12 Q. And there are certain options that
13 you-all had that Mr. Sutton discussed about
14 buying the property, arranging financing, all of
15 those things. Do you remember those discussions?

16 A. I do.

17 Q. And tell the Judge what you remember
18 about this.

19 A. Well, essentially, we felt like -- we
20 weren't sure -- I wasn't sure, none of us were
21 really --

22 MR. BARR: Excuse me, Your Honor.

23 I think this intrudes on the same issue that the
24 Court ruled on yesterday, which Your Honor --

25 THE COURT: Discussions.

1 MR. BARR: -- ruled that these
2 settlement discussions --

3 MR. O'KELLEY: But this --

4 MR. BARR: -- to resolve this as a
5 practical matter or not.

6 MR. O'KELLEY: This doesn't relate
7 to settlement discussions. They aren't dealing
8 with them. They're talking about this in the
9 board itself. They aren't talking to anyone else
10 about ownership and what they can do. I disagree
11 that this is an offer to compromise.

12 THE COURT: Okay. All right.

13 MR. O'KELLEY: This is an internal
14 conversation.

15 THE COURT: I'm going to give you
16 some latitude. Go ahead. Overruled.

17 BY MR. O'KELLEY:

18 Q. Okay. So just, again, tell the Judge
19 what you remember about those conversations about
20 options that the board was considering at the
21 time.

22 A. What I recall is that we realized that
23 they had -- that these elements at the marina had
24 been pulled away from us somehow. We didn't
25 realize how, but we felt -- we had a conversation

1 about purchasing them because they now were owned
2 by this entity in California, as a way to secure
3 them.

4 Because we understood they were ours,
5 and we -- they should have been secured with us
6 in the first place. But since at that moment
7 they weren't, we had conversations about, well,
8 you know, we could try and purchase them.

9 Q. And to that end, if you will look at
10 Exhibit No. 9, please, Ms. Hull. Do you recall
11 seeing this document before you?

12 And if you look on the front page, the
13 appraisal says who it's for. It says, Mariner's
14 Cay Marina Condo, LLC, council of co-owners, care
15 of Ms. Laurie Hull. Were you working at Dunes
16 Properties at the time?

17 A. I was.

18 Q. So do you recall this appraisal?

19 A. I do.

20 Q. And do you recall the genesis of it?
21 Whose idea was it to go out and get Mr. Donato to
22 run an appraisal? Let me ask you this: It was a
23 board decision, was it not?

24 A. I don't know.

25 Q. Did you do it on your own since

1 there's -- it's addressed to the council of
2 co-owners care of you.

3 A. Right.

4 Q. That's why I'm asking.

5 A. Right. Well, because I was the chair of
6 it at the time.

7 Q. Yes, ma'am.

8 A. I mean, I have a faint memory of an
9 appraisal, but I don't remember why. I don't
10 know. I don't know where it came from or why.

11 Q. Fair enough. But you do recall seeing
12 this appraisal, correct? And take your time to
13 review it.

14 A. Not really.

15 Q. All right. Do you know if any action
16 was taken on your part after receiving this
17 appraisal besides some discussions with
18 Mr. Farmer?

19 A. No.

20 MR. O'KELLEY: That's all I have,
21 Your Honor.

22 MR. BARR: No questions, Your
23 Honor.

24 MR. O'KELLEY: You're excused.
25 Thank you for coming. Your Honor, I think our

1 star witness, Mr. Furtado, is here.

2 THE COURT: Okay. Before you
3 leave, Ms. Hull, I've just got one question. I
4 notice that this is for the Mariner's Cay Marina
5 Condo, LLC, council of co-owners. Was that the
6 name of the --

7 THE WITNESS: That's the name of
8 the homeowners association.

9 THE COURT: The homeowners
10 association?

11 THE WITNESS: Yeah.

12 THE COURT: Okay. All right.

13 Thank you. Do you want to call Mr. Furtado?

14 MR. O'KELLEY: Yes, please, Your
15 Honor.

16 THE COURT: All right.

17 Mr. Furtado, your time has come, sir. Come on
18 up.

19 (DONALD FURTADO, having first been
20 duly sworn, testified as follows:)

21 THE COURT: Please have a seat, and
22 when you get comfortable, if you would give us
23 your full name and address for the record, sir.

24 THE WITNESS: Donald A. Furtado,
25 F-U-R-T-A-D-O, 20 Oyster Landing Road, Hilton

1 Head Island, South Carolina 29928.

2 THE COURT: Thank you, sir.

3 DIRECT EXAMINATION

4 BY MR. O'KELLEY:

5 Q. Good afternoon, Mr. Furtado. Thank you
6 for coming here today. Please tell Judge
7 Scarborough about your legal career.

8 A. You want my legal career?

9 Q. Yes, sir.

10 A. Undergraduate at the University of North
11 Carolina; Law School, Yale Law School; University
12 of Sydney Law School for graduate work;
13 Georgetown, some graduate work. Practiced law
14 initially with what was Alston & Bird at the time
15 in Atlanta.

16 Then I went to Washington, to the
17 government for a few years and practiced with
18 another law firm there. The next 15 years or so,
19 I was general counsel to various development
20 firms, in which I was also a principal, and was
21 of counsel to Washington Law Firm for a while.

22 And in 1992, I moved to Charleston. I
23 was with what was then the McNair Law Firm. I
24 was with them until 2014 when I left the firm and
25 potentially retired, more or less, to Hilton

1 Head.

2 Q. Yes, sir. And part of your work has
3 been, I just heard, in real estate development,
4 correct?

5 A. Yes.

6 Q. And I want you to look, we've got two
7 trial notebooks in front of you, and I'm going to
8 slide this one in front of you. This is
9 Plaintiff's Exhibit 1B, and it is an amended and
10 restated master deed for the Mariner's Cay Marina
11 Horizontal Property Regime. Do you recall
12 working on this document?

13 A. I can't say I recall working on this
14 document.

15 THE WITNESS: Your Honor, I should
16 explain that, since I left the law firm about
17 seven years ago, I have no access to any of their
18 records, and I've had no involvement, to my
19 knowledge, of anything regarding Mariner's Cay
20 for about 14, 15 years.

21 So I haven't seen these documents. My
22 first knowledge of being required to come was in
23 a subpoena I received this weekend, and that's
24 why I'm here.

25 THE COURT: Congratulations.

1 BY MR. O'KELLEY:

2 Q. Mr. Furtado, will you turn to the last
3 page right before tab C?

4 A. The last page?

5 Q. Yes, sir. It's right before the tab C.
6 It's the recorder's page from the Register of
7 Deed's Office.

8 THE COURT: Do you have a number,
9 page number?

10 MR. O'KELLEY: Yes, sir. X618 at
11 page 796.

12 THE COURT: Thank you.

13 MR. O'KELLEY: It's the recorder's
14 page for the master deed.

15 THE COURT: Okay. Got it.

16 THE WITNESS: I'm looking at the
17 last page before Exhibit D, which is --

18 MR. O'KELLEY: No, sir. It's
19 Exhibit C as in Charles.

20 THE COURT: Oh, yeah.

21 THE WITNESS: Oh, Exhibit C, I
22 apologize.

23 THE COURT: Yeah.

24 BY MR. O'KELLEY:

25 Q. Yes, sir. I'm sorry.

1 A. I'm looking at recorder's page dated
2 March 19, 2007.

3 Q. And there is some handwriting on there,
4 is there not?

5 A. Yes.

6 Q. And it's got D. Furtado and then, filed
7 by McNair Law Firm. Do you see that?

8 A. Yes, I do see that.

9 Q. But you, as we sit here today, can't
10 recall the work that was actually done on this?

11 A. No. I have a general familiarity with
12 Mariner's Cay. My client was the original
13 developer of the property, and we formed the
14 developer of the property; that is, getting all
15 of the permits and actually building the docks
16 and then selling the docks to -- those
17 condominium slips to various people. So I was
18 involved in that stage of it.

19 Q. The dockominium stage? Would that be a
20 fair statement?

21 A. Yeah. We called it that.

22 Q. But as we sit here today, you don't
23 recall what changes were made to the master deed?

24 A. I do not.

25 MR. O'KELLEY: All right, sir.

1 Thank you. That's all I have.

2 MR. BARR: Thank you, Your Honor.

3 I have no questions, Mr. Furtado. Thank you for
4 coming.

5 MR. O'KELLEY: And, Your Honor,
6 this fellow Tar Heel is excused.

7 THE COURT: Let me just ask: This
8 was the amended -- the 2007 amendment?

9 MR. O'KELLEY: Yes, sir.

10 THE COURT: Do you recall if you
11 prepared the 2006, the original?

12 THE WITNESS: I probably would have
13 prepared the 2006 original because I did the
14 original documents, and -- so that was something
15 I should have been involved in.

16 THE COURT: Okay. Do you recall
17 who -- I'm not trying to open up a can of worms,
18 but --

19 MR. O'KELLEY: Well, John
20 Bleecker's name is on the original, and it was
21 returned to him. And so I think, from what we
22 can tell is -- and Mr. Bleecker did the original
23 closings.

24 THE COURT: Gotcha.

25 MR. O'KELLEY: So we think it was

1 Mr. Bleecker who did the original master deed and
2 some of the earlier closings, and then
3 Mr. Furtado's firm took over during the amended
4 stage.

5 THE WITNESS: Well, when you
6 mentioned that, that could be the case. Again,
7 with all of these years, Your Honor, my
8 recollection is that -- from at least my legal
9 point of view. There may have been some issues
10 that needed to be addressed and were amended. I
11 can't tell you what they were.

12 THE COURT: Sure, sure. The point
13 of my question was, is it the same developer, or
14 did we have a different developer between '06 and
15 '07?

16 MR. BARR: If it's through McNair,
17 it's the same man.

18 THE COURT: It's the same
19 developer?

20 MR. BARR: They used Bleecker the
21 first time and used Mr. Furtado the second time.

22 THE COURT: Okay.

23 THE WITNESS: Yeah. It was the --
24 my client was a company called Suncoast
25 Properties of South Carolina, and it formed --

1 acquired the property from Mariner's Cay in
2 proceeding with the development. And the
3 facilities that were in existence at the time,
4 the ship store, as I recall, was already there
5 but not the other -- the docks.

6 THE COURT: Not the docks? That's
7 kind of what was being created and the
8 dockominiums to be sold?

9 THE WITNESS: Yes, sir.

10 THE COURT: I got it. Okay. That
11 helps. Thank you very much, Mr. Furtado.

12 All right. Let's go ahead and break
13 now. And we'll come back at 2 and proceed with
14 Mr. Mathisen. Very good. Thank y'all. See you
15 at 2 o'clock.

16 (A recess transpired.)

17 THE COURT: Okay. Mr. O'Kelley,
18 are you prepared to proceed?

19 MR. O'KELLEY: Absolutely, Your
20 Honor. I thought I -- just, again, in
21 housekeeping, I thought I had included in the tab
22 63 and 64, Mr. Mathisen's CV and his license.

23 THE COURT: Okay.

24 MR. O'KELLEY: So I would like to
25 make those 71 and 72.

1 THE COURT: Okay. 71 and 72. That
2 would be Defendant's 71 and 72?

3 MR. O'KELLEY: Yes, sir.

4 (DFT. EXH. 71 and 72 were marked
5 for identification.)

6 THE COURT: And I assuming you're
7 offering him as an expert?

8 MR. O'KELLEY: Yes, sir.

9 THE COURT: He's testified in here
10 before. Any objection to him?

11 MR. BARR: Well, I don't object to
12 the witness.

13 THE COURT: Right.

14 MR. BARR: I want to hear the --

15 THE COURT: Background?

16 MR. BARR: No. I want to hear what
17 this is being offered for and how it relates to
18 this case.

19 THE COURT: Sure.

20 MR. BARR: There may be an
21 objection to relevance. But I don't object to
22 the qualifications of the witness.

23 THE COURT: Okay. Very good. Do
24 you want Mr. Mathisen to come on up?

25 MR. O'KELLEY: Yes, sir.

1 THE COURT: Come on up,
2 Mr. Mathisen.

3 MR. O'KELLEY: And so he's admitted
4 without objection as an expert, correct?

5 THE COURT: In real estate
6 appraisals, I assume.

7 MR. O'KELLEY: Appraisals.

8 MR. BARR: Yes.

9 THE COURT: And I assume that
10 includes condominiums.

11 All right. Mr. Mathisen, go ahead and
12 get yourself settled in there, and I will swear
13 you in and get you rolling here in a second.

14 (HAROLD MATHISEN, having first been
15 duly sworn, testified as follows:)

16 THE COURT: Thank you, sir. Please
17 have a seat. And give us your full name and
18 address for the record, please, sir.

19 THE WITNESS: Harold Oliver
20 Mathisen, III. Business address?

21 THE COURT: That will be fine.

22 THE WITNESS: 246 Mathis Ferry
23 Road, Suite 200.

24 THE COURT: That's Mt. Pleasant
25 29464?

1 THE WITNESS: 29464, yes, sir.

2 THE COURT: Very good. Thank you,
3 sir.

4 All right. Mr. O'Kelley?

5 MR. O'KELLEY: Thank you, Your
6 Honor.

7 DIRECT EXAMINATION

8 BY MR. O'KELLEY:

9 Q. Mr. Mathisen, since you've been
10 qualified as an expert in this case, just tell the
11 Judge how you came to be involved in this matter.

12 A. I was contacted by Mr. O'Kelley back in
13 2019, towards the end of 2019, and had kind of a
14 unique property, trying to figure out what to do
15 with it and if I could -- what I thought.

16 We needed a value somehow of what we
17 thought -- think this building is worth. And I
18 kind of looked at it, and I talked to my
19 partners. I talked to a couple of other
20 appraisals, and then I called back and said,
21 yeah, I think we can come up with something.

22 We would have to have some assumptions,
23 extraordinary assumptions hypothetical in this
24 unique building. You could call it a duplex.
25 It's two units. And well, it could -- you know,

1 the top being it's already a condo. It has a
2 legal tax map number and legal description.

3 The unique thing, the odd thing is that
4 there's only one meter on the building, and I
5 believe it's one water meter also. It's been
6 owned throughout the years by I guess one entity.
7 I don't know back past when it was purchased. I
8 had been in that ship store a long time ago by
9 boat or something or maybe a condo I was
10 appraising out there years ago.

11 So I was familiar with the building, and
12 I said, yeah, I will give it a shot. And he gave
13 me some parameters to go by of specifically what
14 to appraise and how to appraise it. And that's
15 what I did.

16 Q. And you said there was some specifics
17 and some parameters and some unique qualities.
18 Explain those to us.

19 A. I was instructed to appraise it as two
20 residential condo units because I thought that
21 was the -- and we decided that it was the highest
22 and best use for the property. In that, it
23 was -- already had two tax map numbers, two legal
24 descriptions. There was no interior staircase.

25 So I thought it was reasonable, and we

1 assumed it was legal within the regime, and we
2 assumed it was physically possible that you could
3 renovate the ground floor. The top floor was
4 already a three bedroom existing condo or
5 apartment, whatever you want to call it.

6 The ground floor was sort of an -- I
7 called it an office rec space. It was liveable,
8 but it wasn't a three bedroom condo. But I
9 assumed in my report that it would be renovated
10 similar to the unit upstairs. It basically would
11 be identical because that's what's on both sides
12 of it. The buildings -- all the buildings are
13 similar, three bedroom or two bedroom condos.

14 And we looked at it, and I assumed, from
15 my report, that it was -- had been renovated in
16 average conditions similar to the unit above. So
17 basically we have two almost identical units in
18 theory that I was appraising them hypothetically.
19 That's what I did.

20 MR. BARR: Excuse me, Your Honor.
21 I would like to interpose an objection as to
22 relevance here, as to the title issues that are
23 in front of you.

24 THE COURT: Okay.

25 MR. O'KELLEY: Well, Your Honor, I

1 think it goes to the equitable nature of this
2 case. If Your Honor rules that my clients don't
3 have title, they're going to be out a lot of
4 money and -- including the value of the unit.

5 And so this goes to the issue of the
6 equity in the case, Your Honor. You've already
7 said this is -- there are equitable issues in
8 this case, and I want you to see what Your Honor
9 would be dealing with in terms of value.

10 THE COURT: Mr. Barr?

11 MR. BARR: I don't know how -- this
12 is purely a question of law, I think, at the end
13 of the day, Judge. I think we've all come around
14 full circle. And the evidence is already in of
15 what the LLCs paid for the property.

16 And so I just don't see the relevance in
17 a title case to what a fair -- I'm assuming we're
18 headed towards some sort of fair market
19 conclusion. I don't see what relevance that has.
20 Mr. Farmer's LLCs paid X dollars for it. That's
21 what's at risk here. It's not any contest. He
22 paid X dollars for it. That's what he invested.

23 If Your Honor finds that the -- as we've
24 argued, that the '07 master deed is void, and
25 therefore, he purchased nothing, then he -- what

1 he paid for that nothing is what the deed says.
2 It's not whatever its fair market value was. So
3 that's -- that's why I don't think it's relevant.

4 Now, not before Your Honor is an issue
5 of betterments. It's in the pleadings. And so
6 I'm not going outside of this case, but
7 Mr. Farmer in his LLC has a counter-claim for
8 betterments in the event that he doesn't prevail
9 in the question before Your Honor. It may be
10 that -- I'm not conceding this because I'm not --
11 and there's another lawyer probably handling that
12 piece of this case on the counter-claim, I mean.
13 So I wouldn't suppose -- that's David Cleveland
14 and his colleague, who's here today.

15 So I wouldn't presume to commit to this,
16 but it may be that things like appraised
17 valuations have some -- would have some relevance
18 in the betterments claim. But on a sheer title
19 basis --

20 THE COURT: And that issue is not
21 before me; is that right?

22 MR. O'KELLEY: No, sir, it's not.

23 THE COURT: Okay. All right.

24 MR. BARR: So on a sheer title
25 basis, it's whatever he paid -- the party paid

1 for it. I agree, that's an equitable thing to
2 balance, but it's not whatever the market may
3 cost. Suppose the market went down, for example.

4 But that's probably for an example
5 because I'm falling into the pit of the substance
6 of the valuation. Do you see? It's what he paid
7 for it. And I think what he paid for it -- just
8 like the plaintiffs. They didn't testify to what
9 the valuation was today. Maybe it's gone down.
10 But they put real money in, \$350,000 total into
11 their four slips.

12 That's -- on one side of the scale. On
13 the other side is whatever Mr. Farmer's LLCs put
14 in for those assets. And I really don't think --
15 I think those only have relative bearing to the
16 ultimate question.

17 I think the ultimate question turns on
18 Your Honor's construction of that statute on the
19 board, which is 60, and the other statute, which
20 is 70, and the case law. So I just object on
21 relevance.

22 THE COURT: All right. I'm with
23 you.

24 MR. O'KELLEY: Your Honor what's
25 good for the goose is good for the gander.

1 Yesterday I objected to Ms. Heatley talking about
2 valuation. I objected to Mr. Bessent talking
3 about valuation. You let those in. It was
4 brought up -- valuation was brought up by the
5 plaintiffs in this case on direct.

6 So this is to show what the value is.
7 It's determinative. It goes to the equity in the
8 case. You can't let them testify about it, and
9 then say, no, you can't testify about it because
10 I will just ask Mr. Farmer what he thinks of it.

11 THE COURT: Sure.

12 MR. O'KELLEY: So in a sense, we
13 got an expert, third-party independent person,
14 which is more likely to tell you what the value
15 is and in a more independent nature because we
16 all probably think our homes are worth more.

17 THE COURT: Well, let me -- let me
18 ask this. And I acknowledge the point that it's
19 sort of all or nothing aspect of it, but
20 Mr. Mathisen, you indicated that you appraised
21 both upstairs and the downstairs as if they were
22 both residential units?

23 THE WITNESS: Correct.

24 THE COURT: But the downstairs unit
25 is not a residential unit, is it not?

1 THE WITNESS: He was using -- well,
2 when I was there, it was being used as a rec
3 room, office, bunk room. I mean, you could stay
4 in there. But I assumed for my purposes -- and
5 it was clearly stated in the report that it would
6 be renovated in a fashion that would be similar
7 to the upstairs.

8 THE COURT: That's what you were
9 assigned?

10 THE WITNESS: Yes.

11 THE COURT: All right. But that is
12 not the case. Is that the case today?

13 MR. O'KELLEY: Mr. Farmer will be
14 able to answer that.

15 THE COURT: All right. Well, I'm
16 not going to let him opine on the lower unit. I
17 might let him opine on what he saw in the upper
18 unit. But I don't think he -- I don't think he's
19 qualified to give an opinion as to value of
20 something that does not -- did not then exist and
21 does not exist today.

22 MR. O'KELLEY: Well, I will have to
23 say that it does exist in the form to be done
24 because as Your Honor knows, under USPAP
25 during --

1 THE COURT: I'm not going to let
2 him do it.

3 MR. O'KELLEY: -- there are only
4 certain -- well, let me just make my record.
5 Under USPAP, there are only certain ways to value
6 something. And comps is the only way or income,
7 replacement costs, and he used -- he used comps,
8 as you can see here.

9 THE COURT: I'm going to let him
10 testify, but he's going to be subject to cross of
11 what the value of the unit is as a ship store and
12 when it -- I will let you open up that little can
13 of worms.

14 MR. O'KELLEY: Sure.

15 THE COURT: But go ahead. I will
16 let you do it.

17 MR. O'KELLEY: Thank you, Your
18 Honor.

19 BY MR. O'KELLEY:

20 Q. So, Mr. Mathisen, there is a -- you've
21 got your report, but there's also a notebook in
22 front of you.

23 A. Yes.

24 Q. Page 63 and 64. It's this one.

25 A. Okay.

1 (DFT. EXH. 63 and 64 were marked
2 for identification.)

3 Q. Exhibit 63 and 64, and if you will
4 identify those and tell His Honor what those are.
5 And they're by the tabs on the side, 63 and 64.

6 A. Okay.

7 Q. And just walk the Court through 63 and
8 64, please.

9 A. 63 is what appears to be -- it looks
10 like a copy of my report for unit 1A, which the
11 addresses are a bit confusing, but unit 1A,
12 Mariner's Cay (inaudible) is the first floor,
13 quote, old ship store unit at the time. I
14 labeled it so it wouldn't be misleading.

15 And I kind of went through the normal
16 steps of what's going on in the regime, the
17 neighborhood, the zoning. I talked about the
18 history and when it sold. The unique thing about
19 the ground floor unit was the tax records in the
20 regime are -- they're not correct because at some
21 point, someone, a prior owner, expanded the ship
22 store.

23 We had a vaulted area, and they closed
24 that in and added it to the second floor. It's
25 very confusing because if you read the

1 description of it in the horizontal property
2 regimes, it is not what exists.

3 So when I was there -- and I've noted
4 that the -- and the tax records are incorrect. I
5 just said, basically at some point, it was
6 expanded from the second floor. It was expanded
7 from 634 square feet and the current size is 13.
8 And the first floor unit in the ship store, you
9 know, I just said it couldn't be closed more than
10 five years, and it's currently as a rec room
11 office, and there's no interior staircase.

12 So it's a little -- and it's still on a
13 one meter. So you have to -- it's just a unique
14 little building. And I -- I was directed that --
15 the simplest way to appraise it, well, let's just
16 assume it's like a three bedroom unit in the
17 complex. Because it's construction is of similar
18 design, quality.

19 But if it were a three bedroom, what
20 would it sell for? Like the upstairs, like the
21 comps next door. So that's basically what I did
22 on the first floor, and just, you know, my report
23 was subject to it being in that three bedroom
24 unit similar to the one upstairs.

25 THE COURT: You were asked to

1 appraise it as if it was a three bedroom unit; is
2 that correct?

3 THE WITNESS: Correct. That's
4 specifically what I did, yes.

5 THE COURT: All right. That was
6 not what you found when you went on-site?

7 THE WITNESS: That was all
8 proposed.

9 THE COURT: All right.

10 THE WITNESS: Or hypothetical.

11 BY MR. O'KELLEY:

12 Q. Let me ask you a question: What
13 assumptions are you allowed to make as an
14 appraiser under USPAP?

15 A. As long as you state the assumptions and
16 they're fairly reasonable and you discuss them
17 and talk about them, you can -- it's common.

18 Because I've appraised -- that's how you
19 appraise proposed construction every day or a
20 proposed, hey, I'm going to have a pool and a
21 screen porch. It's not there when I appraise it,
22 but I'm given some plans and specs or just some
23 general guidelines to do it. And --

24 Q. And everyone in the courtroom is pretty
25 clever and knows what USPAP means, but just for

1 the record, what is USPAP?

2 A. It's just Uniform Standards of
3 Professional Practice that appraisers -- it's our
4 guidelines. We have to take it every two years,
5 update it.

6 MR. BARR: Forgive me for
7 interrupting. I didn't know what it meant, so
8 thank you for indicating that.

9 MR. O'KELLEY: Yes, sir.

10 MR. BARR: I think this moves the
11 objection closer to the bench, Your Honor. And
12 that is to say that now we're talking about a
13 valuation of a proposed use.

14 Well, that's -- what bearing could that
15 possibly have on the equities of this case? We
16 could -- we could envision all kind of proposed
17 uses and say, well, I could have built a
18 skyscraper on the property and a multi-million
19 dollar hotel and make gazillions of dollars, and
20 I lost that opportunity. I'm being facetious,
21 and forgive me for that.

22 But I think by dealing with this in the
23 context of a proposed use, it puts it even more
24 in the objectionable category.

25 MR. O'KELLEY: Well, Your Honor, I

1 think that's a question for cross-examination
2 because Your Honor has already said that he can
3 testify to this. If the testimony isn't, you
4 know, up to snuff, I think it still relates.

5 THE COURT: Well, I think we're far
6 off field, to be frank about it. So I'm going to
7 exclude -- I'm going to exclude the testimony.
8 You can proffer it. But I'm going to exclude the
9 testimony as to unit -- unit 1A is the downstairs
10 unit, right?

11 THE WITNESS: Correct. The quote,
12 ship store unit.

13 THE COURT: All right. So what I'm
14 going to do --

15 MR. O'KELLEY: So I'll go on to
16 Exhibit 64.

17 THE COURT: I'm going to rule that
18 to be inadmissible, but you can put whatever
19 value it is you put on there as a caveat.

20 BY MR. O'KELLEY:

21 Q. Well, just tell the Court, as a proffer,
22 what your value was of the downstairs unit.

23 A. The -- both units were the same. I
24 valued both of them the same, but the 385,000
25 based on four, five -- five comparable sales

1 within Mariner's Cay on the marsh or marina view.
2 They were all very similar three bedroom units.

3 Q. And you used that for both appraisals?

4 A. Correct, yes.

5 Q. And is Exhibit 64 is the appraisal of
6 the upstairs unit, correct?

7 A. Correct, yes.

8 MR. O'KELLEY: Your Honor, I would
9 like to move Exhibit 64 in. I'm sure that
10 Mr. Barr is --

11 THE WITNESS: Yeah. It also still
12 had some assumptions even -- it just had a little
13 less because it was already a three bedroom
14 liveable up and running apartment or condo,
15 whatever you want to call it -- well, it is a
16 condo -- upstairs and used the same methodology,
17 the same comps, the same everything.

18 THE COURT: Legal description was
19 unit 1-B, was it not?

20 THE WITNESS: Correct. 1-B. I
21 call it the second floor, three bedroom, two bath
22 unit, 1-B.

23 THE COURT: All right.

24 THE WITNESS: And it was being
25 lived in at the time. It was in average

1 condition. But, you know, there is also
2 assumption on this one that -- again, you have
3 separate electrical meters.

4 You can -- it could legally be sold off
5 within the regime and within -- you know, the
6 property could be -- well, it already is
7 separated. They still have some work to finish
8 separating because it has one electrical meter.

9 And so it still had some assumptions,
10 and I assumed it was legally permissible within
11 the condo regime, that it could be sold off to
12 come up with a value of the unit.

13 THE COURT: Okay.

14 THE WITNESS: It is similar to the
15 other condo units nearby.

16 THE COURT: Okay. All right.

17 THE WITNESS: So that's kind of --
18 it seemed logical to look at it that way, but I
19 don't know about the -- if it could legally be
20 done. I don't know the expense of the electrical
21 meter, but it was feasible.

22 It wasn't like I would say, well, you
23 know, let's put a high rise there or something
24 unusual. It was already a condo. You know, it
25 seemed reasonable and typical for the market

1 there.

2 THE COURT: Okay.

3 BY MR. O'KELLEY:

4 Q. And you stand by your report today,
5 correct?

6 A. Yes.

7 MR. O'KELLEY: That's all I have
8 for you. Your Honor, we did move to put this in.
9 I don't know if it was officially put in.

10 THE COURT: 64. Objection to
11 the --

12 MR. BARR: I think everything is
13 in, Judge, and the record will reflect this
14 dialogue and what was competent and not
15 competent. And Your Honor, has ruled 63 out.

16 THE COURT: 63 is out. 64 is in.
17 (DFT. EXH. 64 was received in
18 evidence.)

19 MR. BARR: So we can pick that up
20 in the transcript as needed.

21 THE COURT: Okay.

22 MR. O'KELLEY: Just making sure
23 we're --

24 THE COURT: Yep. All right.

25 Mr. Mathisen, you get to answer some questions

1 for Mr. Barr, and I may have some questions for
2 you, too.

3 MR. BARR: All right. Subject to
4 my objections, if I may?

5 THE COURT: Sure.

6 CROSS-EXAMINATION

7 BY MR. BARR:

8 Q. Mr. Mathisen, good afternoon.

9 A. Good afternoon.

10 Q. So you made the assumption that both of
11 these units were going to be used as residential,
12 correct?

13 A. That was the -- those were the
14 instructions I was given for this assignment,
15 yes.

16 Q. So therefore, did you also make the
17 assumption that they could be used residentially,
18 aside from their intentions?

19 A. Oh, yeah. I verified with Aaron Pope,
20 Town of Folly Beach. I read the master deed,
21 some of it, and the fact that the upper unit was
22 existing. It had always been some sort of
23 apartment or Airbnb. And under the current
24 zoning, I believe it's -- it's a funny name.
25 It's marine commercial. It also allows

1 residential use.

2 So I didn't think it was unreasonable to
3 assume the ground floor unit could be turned into
4 a condo because it didn't seem like anybody
5 really wanted to -- it didn't seem like there was
6 much demand ever for the ship store down there.
7 And it looked like a reasonable use, and that's
8 what I was asked to do also.

9 Q. I think I heard you say something -- you
10 seeing something had always been used as an
11 Airbnb. Did you just say that?

12 A. I read in --

13 Q. What are you -- excuse me for
14 interrupting. What are you referring to?

15 A. The upstairs unit. I believe it's
16 always been --

17 Q. Where are you reading that, though?
18 Where are you getting that information?

19 A. I read it on -- I recall seeing it, I
20 want to say, in some of the maybe regime docs or
21 something that referred to the apartment
22 ownership --

23 Q. If you are going to say you saw it --
24 because they're right in front of you. I'll
25 submit to you that you're not going to find it,

1 but --

2 A. Okay. I recall that it had -- I guess
3 it was -- I can't verify where I saw it. It
4 seems like I read -- I'm trying to remember if
5 there was an old listing or maybe an old rental,
6 flyer.

7 Q. Okay. Somewhere like online or
8 something?

9 A. Maybe or maybe it --

10 Q. But did you read the master deeds?

11 A. I did not read all of the master deeds.

12 Q. Which master deeds did you read?

13 A. There's been several amendments. I --
14 the ones that I looked at, where I found the
15 discrepancy of the square footages and things
16 like that, that's where I kind of found some
17 errors. Then I compared it to the Charleston
18 County tax records.

19 But, again, I just -- I was still given
20 the assignment to assume they were -- because
21 that's what the upstairs was when I first came in
22 to look at it, two residential units.

23 Q. Well, would you agree with me as a
24 practical matter, notwithstanding the assumptions
25 your client asked you to make, if in fact those

1 assumptions are at least questionable, that that
2 would affect your opinion of value?

3 A. I would -- I would -- I would appraise
4 the property as requested with my normal
5 assumptions.

6 Q. Okay.

7 A. If something were to come up, that's --
8 I don't -- it's still not going to change my
9 value. If I say it's a three bedroom condo and
10 I'm looking at a three bedroom condo comps,
11 that's what my focus is.

12 It's sort of like -- I guess this is why
13 we're here. I don't -- I was given directions to
14 look at it like it was a three bedroom condo.
15 And that's what I did.

16 Q. So I think it's number 64 is the
17 upstairs, and the number hasn't been produced.
18 It's in there. What is the number you came up
19 with?

20 A. Of the upstairs unit? It was the same
21 as the downstairs unit, 385,000.

22 Q. So 385,000 for the upstairs, and that
23 was as of what date?

24 A. 10/29 of '19.

25 Q. And the assumption you were making is

1 that it could be used to sell as a single family
2 residential condominium unit; is that correct?

3 A. Correct.

4 Q. All right. That's it, right? Single
5 family residential separate condominium unit?

6 A. Yeah. Because it did -- it was already
7 a condo unit. It had a tax map number. It had a
8 legal description. So I believe it is part of
9 the horizontal property regime because it had --
10 there are two units there.

11 Q. Do you know what they're referred to in
12 that master deed? Do you know how they are
13 called? I'm going to ask -- well, let me -- I
14 will remove the suspense. Are you aware that in
15 the master deed they're referred to as commercial
16 units? Are you aware of that?

17 A. I do not know that. I was looking at
18 the legal description in the tax records, which I
19 don't think was --

20 Q. Well, the tax records -- with all due
21 respect, the tax people don't govern real estate
22 title issues.

23 A. Yeah. It just refers to it as a unit.
24 Yeah. Unit 1-B, Mariner's Cay.

25 Q. And what are you looking at?

1 A. Just the Charleston County tax records.

2 Q. The tax records?

3 A. I just read the legal descriptions.

4 It's common in my job to get the legal
5 description. Typically, it's like lot 1, lot 2
6 burns down or whatever. And in this case, they
7 matched up. Lot unit 1-B, Mariner's Cay Marina.
8 That's what I called it, just for the legal
9 description.

10 Q. All right. Forgive me for turning my
11 back on you, but you never looked at any deed
12 then?

13 A. I did not read the entire horizontal
14 property regime deed.

15 Q. So you read some of it?

16 A. I didn't really have -- I wasn't
17 instructed necessarily to because I was looking
18 at, hey, what are these condos nearby selling
19 for, a three bedroom unit, and are they similar
20 to ours.

21 And they were similar in square footage,
22 style, year built, location, and that's what I
23 did with the assumptions that I put in there,
24 which was to assume that it was -- you could
25 legally sell it because it was similar to

1 neighboring properties in the neighborhood.

2 There's other -- I didn't really have
3 any other methodology that I felt comfortable
4 with and I thought was reasonable. And
5 Mr. O'Kelley and I discussed it, and that's where
6 I -- how I came up with it.

7 Q. And you're aware that the Mariner's Cay
8 Marina Horizontal Property Regime is separate
9 from those other condominiums, which is Mariner's
10 Cay, I think, Yacht and Racquet or something like
11 that?

12 A. Yeah.

13 Q. You're aware that they're separate
14 condominium regimes?

15 A. Correct. I believe there's three out
16 there, maybe four.

17 Q. Right. Okay. But this is one. You
18 understand that it's separate?

19 A. I think I noted that it was separate.

20 Q. Okay.

21 A. It was part of the marina condo regime.

22 Q. Okay. I would like to hand you this,
23 which is the -- and go back to the last tab of
24 that, if you would, please. Well, the next to
25 the last tab, which has a -- that's tab E. Tell

1 me when you're there.

2 A. I'm on E, yes, sir.

3 Q. Okay. Go on the recorder's page at the
4 top, page 300. It would be book J128, page 300.

5 A. Yes.

6 Q. Are you there?

7 A. Yes.

8 Q. Okay. All right. Then is -- does it
9 say article Roman 9, unit restriction where you
10 are?

11 THE COURT: That's one of those
12 ones where everything has the same page number.

13 MR. O'KELLEY: Same number, 300.

14 THE WITNESS: Oh, yeah. They're
15 all 300s. Okay. I'll find it. I'm looking for
16 article 9.

17 MR. BARR: Oh, I beg your pardon.
18 Thank you, Judge. At the bottom of the page,
19 it's 26.

20 THE COURT: Article 9 --

21 MR. BARR: Yeah.

22 THE COURT: -- of that document,
23 page 26.

24 THE WITNESS: I'm there.

25 BY MR. BARR:

1 Q. And there's a paragraph, article Roman
2 9, unit restriction. Do you see that?

3 A. I do.

4 Q. All right. Well, let me segue away from
5 that, and I'm going to represent to you, this is
6 the -- a part of the master deed of the Mariner's
7 Cay Racquet and Yacht Club, which is the
8 condominium I've been calling it on the hill.

9 That horizontal property or the
10 declarant under that horizontal property regime
11 reserved an easement over the land that is now
12 the marina property, which includes the property
13 you're talking about.

14 And have you heard a reference to the
15 building that you're talking about -- have you
16 heard a reference to it being called the ship
17 store?

18 A. It is referenced as the ship store, and
19 I believe in the tax records also. I just heard
20 that term.

21 Q. Okay. That's all I needed. Yeah. So
22 let's take a look together at section one. It's
23 called unit restriction. And remember now, this
24 is for the marina -- I mean, for the regime on
25 the hill, which owns the fee to the property

1 where the ship store building is. Okay?

2 You're appraising the ship store
3 building. We're looking at the master deed for
4 the owner of the fee on the hill. And it says,
5 buildings and all units contemplated in the
6 development shall be and the same hereby are
7 restricted exclusively to residential use. Do
8 you see that?

9 A. Okay. I see that, yes.

10 Q. Okay. So they're talking about
11 everything on the hill. Then it says, with the
12 exceptions of the ship store. Do you see that?

13 A. Okay.

14 Q. Which shall be located within the
15 confines of the regime as reflected on the sight
16 plan in Exhibit E for the benefit of all
17 co-owners, as well as to service the grantors
18 adjacent marina. Are you with me there?

19 A. I read it, yes, sir.

20 Q. Okay. So the operative language of that
21 paragraph I just read is in the third line that I
22 want to invite for you, is that the buildings, et
23 cetera, and the development are restricted
24 exclusively to residential use with the exception
25 of the ship store.

1 So would you agree with me that the
2 phrase, with the exception, means that the ship
3 store is not restricted to residential use?

4 A. I don't know.

5 Q. Well, read it. You're a Citadel
6 graduate.

7 A. Well, it doesn't -- I mean, I guess I
8 agree, but the ship store, is that referring to
9 the whole building? Or I mean, I don't -- this
10 is kind of getting a little --

11 Q. Well, let's assume it is. The Judge has
12 heard a lot of testimony in this case. So let's
13 assume that it is. I can represent to you that
14 it is. The only building on the whole planet
15 probably called -- not really -- at least at
16 Folly, they call it the ship store.

17 A. Yeah. I found it where I saw ship store
18 in regime -- in one of the regime docs.

19 Q. Correct. Correct. Yeah. So let's
20 assume that we're talking about the same building
21 you're talking about. So do you see there that
22 the condominium on the hill, which created this
23 whole marina, has said, everything is restricted
24 to residential use with the exception of the ship
25 store.

1 And I would ask you: Don't you agree
2 that must mean the ship store was intended to be
3 used for something else?

4 A. Well, there's an apartment upstairs,
5 that's all I know.

6 Q. I know you're talking about the actual
7 use. I'm asking you about these words.

8 A. You know, I think that's why y'all are
9 in here. I don't -- I don't know. I mean, I
10 could probably agree with both sides. I don't --
11 I'm just trying to appraise two condo units.

12 Q. All right. Well, so far you're doing
13 well. If you can agree with both sides, that's
14 good. So the point I'm making is that, isn't it
15 correct that if in fact the properties that you
16 appraised cannot be for residential purposes,
17 that changes the game all together in terms of
18 their fair market value?

19 Let me continue. And to the extent
20 you've compared -- you've arrived at a number,
21 based on the comps of the condominiums on the
22 hill. If in fact this property cannot be used
23 residentially, then a whole different equation
24 needs to be applied to appraise it for whatever
25 that use is; isn't that correct?

1 A. You know, I suppose so. You can look at
2 possibly the income of a ship store, but the ship
3 store failed, and I don't think there's a demand
4 for it. So I --

5 Q. Well, then, wouldn't that mean that it's
6 not worth very much as a ship store, which would
7 sell retail items? But that's -- you're talking
8 about the practical aspects of the property. I'm
9 asking you about the permitted use and its affect
10 on the value.

11 So if you're just conceding that the
12 ship store didn't do very well; therefore, it
13 didn't work very much, then that seems to suggest
14 that, as a commercial entity, it might -- it
15 would be worth less than the residential use you
16 used, wouldn't it?

17 A. What if somebody puts a fancy restaurant
18 in there? It possibly -- there used to be a
19 little restaurant in there, I believe, called
20 Sail Fish or something.

21 So, you know, I came up with the most
22 logical look of what I thought the easiest -- the
23 cleanest way to value it. So I don't -- you
24 know, if it's not legal, that's for -- you know,
25 I called the -- it was legal under the zoning. I

1 read this. There's obviously gray areas in the
2 regime.

3 Q. Why do you say, obviously, there are
4 gray areas in there? Where do you come up with
5 that, a gray area in the regime?

6 A. I believe there's been several. Well,
7 it's -- there's been several amendments, I
8 believe, and it's -- the ship store property has
9 always kind of -- I recall appraising units out
10 there years before.

11 It's just always been sort of an odd
12 entity that somebody had changed the shape of it
13 at some point. I don't know if anybody got
14 permits for that. You know, the regime, you
15 know, said that -- the documents I read said that
16 the top floor was 600-and-some square feet, and
17 now it's 13. And -- because the ship store was
18 vaulted when I was in there once a long time ago.

19 And then -- so it's just an odd
20 property. So I don't -- I valued it based on my
21 directions, and I thought it was a reasonable
22 approach.

23 Q. I'm more than curious, though,
24 Mr. Mathisen, at the statement you just made,
25 which sounds like some form of conclusion that

1 there's some gray area associated with the use of
2 this property as a ship store, meaning
3 commercial. Have you ever seen this master deed
4 before?

5 A. I have not.

6 Q. Have you studied the relationship
7 between this master deed and the master deed to
8 the marina?

9 A. That wasn't in the -- I have not. It
10 wasn't in the scope of my work.

11 Q. Well, where does gray area come from in
12 your testimony?

13 MR. O'KELLEY: Your Honor, he just
14 answered that by saying the shape had changed,
15 the regime had changed, different uses.

16 THE WITNESS: Yeah.

17 MR. BARR: Thank you, Mr. O'Kelley,
18 but I'm asking the witness the question.

19 MR. O'KELLEY: And my objection is,
20 it's been asked and answered.

21 THE COURT: All right. Go ahead.
22 Go ahead.

23 BY MR. BARR:

24 Q. Well, I suggest to you, sir, your answer
25 is not responsive to the question; your answer,

1 having to do with them closing in the cathedral
2 ceiling and all of this other stuff.

3 I'm asking you where you come up with,
4 testifying to this Judge, to Judge Scarborough,
5 suggesting as an expert witness appraiser, that
6 there's some gray area question as to whether
7 this property can or cannot be used A,
8 commercially or residential?

9 A. Well, I came to that -- I mean, I can
10 take it back, but we're going over the -- we're
11 going over this term, ship store, and what can be
12 used in there or not. I don't know. I don't
13 know that answer.

14 Q. I realize you're saying you don't know.
15 I'm exploring your use of the phrase, gray area.
16 You concluded --

17 A. I just came up with that just now. It's
18 kind of -- because it seems so -- it's not very
19 specific. That's why I guess I said gray.

20 I just was using it as an adjective
21 to -- you know, because it doesn't say, upstairs
22 can be an apartment; downstairs is only a ship
23 store. It just refers to this building, refers
24 on this document here just as a ship store
25 building. So I don't -- it's not something I

1 really got into in my analysis.

2 Q. So are you saying -- are you suggesting
3 that maybe you misspoke when you characterized it
4 as a gray area?

5 A. Yes.

6 MR. BARR: Thank you. That's all I
7 have.

8 REDIRECT EXAMINATION

9 BY MR. O'KELLEY:

10 Q. Just quickly, Mr. Mathisen. You checked
11 the zoning with the -- you said with the Town of
12 Folly Beach?

13 A. Yeah, Aaron Pope, yes.

14 Q. And the zoning -- the zoning that it's
15 zoned for now allows for residential use?

16 A. Yes.

17 MR. O'KELLEY: I just wanted to
18 make sure that I heard that correctly. Thank
19 you, Mr. Mathisen.

20 THE COURT: Mr. Mathisen, on that
21 Exhibit E, you were instructed to look at page 26
22 on the unit instructions -- on the unit
23 restrictions. We talked about the commercial or
24 the nonresidential use of that building.

25 I've been looking for this, this whole

1 trial, and I finally found something. If you'll
2 turn to the last page of E and then turn back.
3 It's actually 11 or 12 pages. If you could just
4 count them back.

5 MR. BARR: What would the page
6 number be at the bottom, Judge?

7 THE COURT: It has no page number.
8 They're all page -- they're all book U128, page
9 300.

10 MR. BARR: All right.

11 THE COURT: You will just have to
12 count them. Bear with me. It's Exhibit E, which
13 I believe was referenced in the description of
14 section one.

15 MR. BARR: Okay.

16 THE COURT: I'm reading from the
17 section one, ship store, which shall be located
18 within the confines of the regime as reflected on
19 the site plan in Exhibit E for the benefit of all
20 co-owners, as well as to service the grantor's
21 adjacent marina.

22 I'm trying to get him to E. It's hard
23 to find E. But on that 11th page, on the front
24 you will find that Exhibit F, which talks about
25 easements, and that will get us to E.

1 THE WITNESS: Past the building
2 plans?

3 THE COURT: It's passed the --
4 well, I'm going to get you to the building plans
5 is what I'm going to get you to.

6 MR. BARR: We're looking for E,
7 Judge?

8 THE COURT: Yes, sir.

9 MR. BARR: Okay.

10 THE COURT: It's actually the very
11 last drawing of a building plan, and it's easy to
12 find G, but it's one page back.

13 THE WITNESS: I think I have
14 Exhibit E.

15 THE COURT: Okay.

16 THE WITNESS: It's a map -- it's a
17 plat of the --

18 THE COURT: Right.

19 THE WITNESS: Yep.

20 THE COURT: Well, you will know
21 you're in the right place when you find Exhibit F
22 on the right page.

23 THE WITNESS: Yes.

24 THE COURT: It says easements.

25 Now, go to the page just before it at the top.

1 And you will find in the margin, it says, Exhibit
2 E, ship's store. Can you see that written over
3 in the margin?

4 THE WITNESS: I see it, yes. It
5 says, guard house.

6 THE COURT: Yeah. The plan for the
7 guard house at the top, and just below that, you
8 see plan for the ship's house. Do you see that?

9 THE WITNESS: I do.

10 THE COURT: And do you see where
11 it's 12 foot by 12 foot?

12 THE WITNESS: Correct.

13 THE COURT: And that's how it's
14 described in the original master deed. It's 12
15 by 12, which gets you to all of 144 square feet.
16 That is not what you saw when you went out there,
17 is it?

18 THE WITNESS: It is not.

19 THE COURT: Okay. It doesn't
20 resemble this in any way, shape, or form, does
21 it?

22 THE WITNESS: Nothing.

23 THE COURT: Okay. All right. Did
24 you locate that, Mr. O'Kelley?

25 MR. O'KELLEY: Oh, yes, sir. I've

1 seen it once or twice.

2 THE COURT: Okay. I've just been
3 looking for that. All I saw up until he
4 testified was the description of the 12 by 12.
5 But apparently it was drawn as a result of the
6 original creation of the master's deed. And
7 that's what we get to.

8 To follow-up, my question would be, do
9 you -- and I think that was asked -- if it's not
10 provided in the master's deed -- you're familiar
11 with master's deeds and condominiums and they set
12 forth the criteria?

13 THE WITNESS: Yes.

14 THE COURT: It's not a permitted
15 use, that it be a residential unit in the
16 master's deed, would that impact your valuation
17 opinion?

18 THE WITNESS: You would have to
19 note that this appraisal probably would do
20 something like -- this appraisal notes that the
21 master deed prohibits this use; however, I still
22 think if it -- if something happened and it did
23 permit it because it does look like a residential
24 unit up there.

25 THE COURT: And in fact, it is

1 being used as a residential unit, isn't it?

2 THE WITNESS: In fact, yeah, it is.

3 And so kind of is the downstairs, frankly. So
4 if -- yeah, I would just note that and say -- you
5 know, in bold letters say, yeah, the regime
6 documents permit it; however, this is what's here
7 now. This would still be my value, but it may --
8 it would have to be -- you know, it becomes a
9 legal issue.

10 THE COURT: Right.

11 THE WITNESS: Yeah.

12 THE COURT: And what if I was to
13 describe to you, that in that original master
14 deed, it provided for -- are you ready for this
15 one -- an alienable easement and perpetuity for
16 people to wander through your property? Would
17 that impact the value in your opinion?

18 THE WITNESS: One would think so,
19 yeah.

20 THE COURT: So people walking
21 around inside your house all the time?

22 THE WITNESS: I mean, because
23 there's some outer decks on the front.

24 THE COURT: Yeah. Right.

25 THE WITNESS: But, yeah, I assumed

1 it was all split.

2 THE COURT: Well, that's kind of
3 the way it looks. Then the last question I
4 really have, you said that it was -- you noted
5 that it was like 600-and-something square feet,
6 but in fact -- in reality, it was 1300.

7 THE WITNESS: Correct.

8 THE COURT: Did you find out when
9 or where or how that came to be?

10 THE WITNESS: It was some -- I
11 didn't. And it -- it was -- it was some time
12 before it was purchased, it was done that way.
13 I'm trying to think if I -- I could find nothing
14 about when it was expanded.

15 But if I had to guess, it was probably
16 10 years prior. I'm just guessing, just looking
17 at the construction, the quality, and things of
18 that nature. I do recall -- I've been doing this
19 for 30 years, so I do remember appraising --
20 going to get a soda from there one time in the
21 ship store and seeing the T-shirts or something.
22 And I remember it was vaulted.

23 And then the next time I went back, it
24 was, you know, 10 or 15 years later to do this
25 work. And, you know, I was like this unit is a

1 lot bigger up here than it's supposed to be. And
2 then I figured it out, well, they enclosed it,
3 the vault.

4 THE COURT: Okay. Okay.

5 THE WITNESS: So I don't know when
6 it happened.

7 THE COURT: And they would have
8 added that to the upstairs unit?

9 THE WITNESS: That's what they did,
10 yes.

11 THE COURT: All right. Okay.

12 THE WITNESS: It was never picked
13 up, I guess, by the tax assessor or regime docs.

14 THE COURT: Maybe no permit was
15 pulled?

16 THE WITNESS: I have no idea.

17 THE COURT: It's been known to
18 happen.

19 THE WITNESS: It looked like nice
20 quality to me. I mean, it looked very --

21 THE COURT: That's a different
22 answer. All right. I don't have anything
23 further.

24 MR. BARR: Can I follow-up on that,
25 Your Honor?

1 THE COURT: Yes, sir. Yes, sir.

2 RECROSS-EXAMINATION

3 BY MR. BARR:

4 Q. Mr. Mathisen, now, you did this
5 appraisal in 2019?

6 A. Yes.

7 Q. So are you aware that Mr. Farmer had
8 taken occupancy of this building in 2016?

9 A. I noted that it was transferred in '16.
10 So I don't know how long he had been living there
11 or occupying. So I don't know that.

12 Q. And you understand that this case is all
13 about the ownership of that building?

14 A. You know, I don't. I've not -- I was
15 doing specifically what Mr. O'Kelley asked me to
16 do. So I -- all of this I'm hearing today is
17 sort of new about the -- he gave me specific
18 directions.

19 So I do not -- all of what you're
20 talking about, about the regime documents and
21 things of that nature, I -- the master deed, it's
22 all new to me today.

23 Q. All right. Well, I'll represent to you,
24 seeing that they -- the conveyance, Mr. Farmer
25 moved in, and this case was filed the next year

1 in 2017.

2 And in this case, the plaintiffs, my
3 clients, are seeking to obtain an adjudication
4 that that building was a common element of the
5 regime; meaning, all of the slip owners have
6 undivided title interest in it. Mr. Farmer
7 claims that he owns the complete title. So
8 that's question before Judge Scarborough.

9 But in that context, what I'm suggesting
10 to you is that Mr. Farmer took possession, and he
11 took occupancy. And so I'm suggesting to you
12 that the conditions you observed three years
13 later might be different from the conditions that
14 existed prior.

15 When you were in there the years before,
16 for example, when it was a vaulted ceiling, did
17 you ever go up to the top floor?

18 A. No.

19 Q. So you don't know whether there was an
20 apartment then or not?

21 A. Not a hundred percent, but I kind of
22 have always -- it seemed like there was -- there
23 were some people like living up there. I just
24 recall like some plants or something, maybe a
25 chair up there. I knew some people that roamed

1 around that area.

2 Q. Okay. And then how about the rest of
3 that ship store? Was it a ship store when you
4 went in it with the vaulted ceiling?

5 A. At the time 15, 20 years ago, yes.

6 Q. Yeah. And so there was nobody living in
7 that, was there?

8 A. I don't know.

9 Q. Well, you could see all the way to the
10 end, couldn't you?

11 A. It was a long time ago. I was getting a
12 soda, not doing an appraisal. I bought a
13 T-shirt, I remember.

14 MR. BARR: All right. Thank you,
15 Mr. Mathisen.

16 THE WITNESS: You're welcome.

17 THE COURT: Anything?

18 MR. O'KELLEY: No, sir.

19 THE COURT: All right. Thank you,
20 sir.

21 May Mr. Mathisen be excused?

22 MR. O'KELLEY: He is excused.

23 THE COURT: Thank you so much.

24 Very good to see you again.

25 MR. O'KELLEY: Your Honor, we will

1 call Dolph Farmer to the stand.

2 THE COURT: All right, Mr. Farmer.

3 (DOLPH FARMER, having first been
4 duly sworn, testified as follows:)

5 THE COURT: Thank you, sir. Please
6 have a seat and when you get comfortable, give us
7 your full name and address, please, sir.

8 THE WITNESS: It's George Adolph
9 Farmer, Jr. I live 3-A West Mariner's Cay Drive,
10 Folly Beach, South Carolina 29439-0369.

11 THE COURT: Thank you, sir.

12 DIRECT EXAMINATION

13 BY MR. O'KELLEY:

14 Q. Mr. Farmer, are you the member and
15 manager of Mariner's Cay Marina Condo, LLC?

16 A. I am.

17 Q. And how about Mariner's Cay Fuel Dock,
18 LLC?

19 A. I am.

20 Q. Any other members of this LLC, or is it
21 just you?

22 A. Just me.

23 Q. Okay. Please tell Judge Scarborough
24 where you're from.

25 A. Charleston. I've lived in Isle of

1 Palms, Mt. Pleasant, West Ashley, James Island,
2 Folly Beach.

3 Q. Where did you grow up?

4 A. Mt. Pleasant, Isle of Palms.

5 Q. And where did you go to school?

6 A. I went to high school local, Wando. I
7 went to the College of Charleston for a short
8 while and went to tech. I ended up going in the
9 Coast Guard in '83 and spent six years in the
10 Coast Guard.

11 Q. And what have you done after leaving the
12 Coast Guard?

13 A. I got out of the guard with a captain's
14 license; so I worked for a local contractor, push
15 tugs and barges, you know, from down the
16 intercoastal for a little while. I went to
17 Florida, worked on yachts, and I still do a
18 little bit of that yacht work with a local car
19 dealer.

20 Q. Which local car dealer?

21 A. Tommy Baker.

22 Q. Captaining his boat?

23 A. It's kind of changed. He's moved in as
24 he's grown. The boats got larger, but he's got
25 some small ones.

1 Q. Gotcha. And how much of your living or
2 your job involves captaining those boats?

3 A. Percentage-wise per week?

4 Q. Sure.

5 A. 70 percent.

6 Q. And do you hold -- still hold a
7 captain's -- I would imagine a captain's license?

8 A. No. I'm not required to have a license
9 for the work I do for him. So the way that the
10 mariner's ticket works, you have to work so many
11 hours, so many days per year. And I finally
12 didn't work enough to retain the license.

13 Q. And the other 30 percent of the work,
14 what do you do for a living?

15 A. We have rental property.

16 Q. And when you say we, are you talking
17 about the two LLCs we're talking about here or
18 are you and your family --

19 A. No. Just personally, me and my wife,
20 Laura.

21 Q. And are those residential properties or
22 commercial or both?

23 A. They're both.

24 Q. And how many are y'all managing these
25 days, if you know?

1 A. One house, one duplex, and then there's
2 probably 35 mobile home lots, not units
3 themselves, but just the land that we rent.

4 Q. Places where someone can pay a lease and
5 put up a manufactured home there?

6 A. Right.

7 Q. And your wife, is she here in the
8 courtroom today?

9 A. She is.

10 Q. And is it this lady, who I'm going to
11 ask her to raise her hand?

12 A. That's her.

13 Q. All right. How many children do you
14 have, Mr. Farmer?

15 A. Four children.

16 Q. And are they all local?

17 A. They are.

18 Q. Okay. Mr. Farmer, you've been here for
19 the entirety of this trial, correct?

20 A. Yes, sir.

21 Q. And you've paid attention to the
22 testimony, correct?

23 A. I've tried to.

24 Q. Do you recall the exact date you moved
25 into the units that you closed on in May of 2016?

1 A. The exact day?

2 Q. When you moved in after -- post-closing,
3 how long was it after you moved?

4 A. Maybe a couple months.

5 Q. So June or July of 2016?

6 A. Yeah.

7 Q. And where did you live prior to that?

8 A. We were temporarily living on Johns
9 Island.

10 Q. Do you still own that property, rent it,
11 or did you sell it?

12 A. I do. I still own it.

13 Q. And you rent it?

14 A. Yeah.

15 Q. And the two LLCs that I'm representing
16 today, why were they formed?

17 A. Well, those are the names or the
18 entities I took possession of the units in.

19 Q. And tell His Honor how you came to know
20 about Mariner's Cay Marina -- not the LLCs, not
21 the units that bring us here today, but about
22 your involvement with that marina.

23 A. 2015, I think, we purchased a 29-foot
24 Chris-Craft. So we were looking for a dock slip,
25 and we ended up renting a dock slip there at the

1 Mariner's Cay Marina.

2 Q. Do you recall who your landlord was?

3 A. I'm sorry, I don't.

4 Q. That's quite all right.

5 A. I can get that for you.

6 Q. That's okay. How long did you rent that
7 slip?

8 A. I'm going to guess and say probably the
9 summer of '15 until I moved the boat to my slip
10 after I purchased it.

11 Q. And if you say your slip, you're talking
12 about the fuel docks we've heard so much about,
13 correct?

14 A. That's right.

15 Q. And when you had your boat there, your
16 29-foot Chris-Craft in 2015, who were you dealing
17 with at the marina? Were you dealing with the
18 dock master, other owners? Explain that to the
19 Judge.

20 A. I think my first point of contact was
21 Mr. Nekola. He showed us around the marina,
22 showed us the marina building, commonly known as
23 the ship store. I think I'm the first person to
24 use that phrase, commonly known as. That's how
25 it's stated in there. But -- and I can't

1 remember, I had a little interaction with Randy,
2 the dock master.

3 Q. Is that someone that worked with
4 Mr. Geiger?

5 A. Yes.

6 Q. Do you recall his last name?

7 A. Randy Smith. And, you know, I don't
8 think Randy was the -- Randy was not the dock
9 master then. So it would have been Ed Geiger as
10 dock master, and then Randy was around a lot.

11 Q. Did you have any other discussions with
12 other boat owners as you saw them from time to
13 time or slip owners?

14 A. Yeah. You know, your neighbors, that
15 sort of thing.

16 Q. All right. And do you recall having any
17 discussions with anyone who represented they were
18 on the board and let me welcome you or show you
19 around back in that time period?

20 A. I don't know if anybody introduced
21 themselves as a board member. Mr. Nekola, I
22 think, was a board member. But I didn't think he
23 was -- or I didn't know.

24 You know, that wasn't even something I
25 was concerned about or thinking about. So he was

1 my first contact. I guess he just happened to be
2 down there, but he showed me around the building
3 and the docks.

4 Q. In your own words, just explain to His
5 Honor how these two LLCs came to own the
6 properties that bring us here today. Explain
7 that process and what happened.

8 A. I guess that starts with -- kind of with
9 Mr. Nekola himself because it's -- as he was
10 showing us around the building there, commonly
11 known as the ship store, it was kind of wrapped
12 in yellow caution tape.

13 There was a lot of spaces that you
14 didn't want to walk on because the wood was
15 rotten. And so all of that led us to ask the
16 question, well, what's going on? You know, what
17 happened here? You know, what -- and that sort
18 of thing. And he said --

19 MR. BARR: Objection. That's
20 hearsay.

21 MR. O'KELLEY: Mr. Nekola was a
22 named party in this matter at one point, Your
23 Honor, and he's also a member of the marina
24 council of co-owners. I don't think it is
25 hearsay. I think it's a party-opponent admitting

1 certain things.

2 THE COURT: This is the first time
3 I've heard this name, Nekola. I don't know who
4 it is.

5 MR. O'KELLEY: Mr. Nekola is a
6 member of the marina. He was actually one of the
7 named class reps at one point as well. He is not
8 here with us today. Is he the one that's in
9 Iowa?

10 MR. BARR: I don't know, but
11 Mr. Nekola -- I can see that in an earlier
12 iteration of this case, he was a plaintiff. He's
13 not a plaintiff now. If he were a plaintiff, I
14 agree, he would be a party, whom this witness
15 could quote conversations with.

16 THE COURT: Sure.

17 MR. BARR: But he's not a party.

18 MR. O'KELLEY: I will ask it
19 another way.

20 THE COURT: Sustained then. Go
21 ahead. Rephrase it, and we'll go from there.

22 BY MR. O'KELLEY:

23 Q. So at some point, you learned that these
24 buildings were being sold, correct?

25 MR. BARR: Objection, misleading.

1 Q. When did you learn these buildings were
2 going to be sold?

3 A. With my conversation with Mr. Nekola.

4 Q. All right. And you stated a minute ago,
5 there was caution tape, and there was certain
6 places you didn't want -- or tell the Judge what
7 you saw at the building we were calling the ship
8 store at the time. What was the condition?

9 A. It looked abandoned, number one. You
10 know, it's woods. I think it was typical oak
11 deck planking. And we've got a bunch of
12 pictures, and I think they are part of the
13 record.

14 But just the condition of all the wood
15 was falling it. It was rotted. You couldn't
16 walk up the stairs, and when you -- in the
17 stairway to the right because of the condition of
18 the wood was such, you know, that sort of thing.

19 Q. And when did you learn these buildings
20 were for sale, the building and the -- excuse me,
21 the ship store building and the fuel docks? When
22 did you learn that?

23 A. From Mr. Nekola.

24 Q. And was there a real estate listing? Do
25 you recall?

1 A. No. No. He referred me to the condo
2 president.

3 Q. And would that be -- we've heard that
4 that's a gentleman named Roger Camp?

5 A. Roger Camp, correct.

6 Q. And so you had discussions with Mr. Camp
7 that led to what?

8 A. Well, it was just -- he gave me a
9 contact with Sabal Financing, name and number.
10 And so from there, I just talked to that bank in
11 regards to purchasing.

12 Q. And did you have -- you had direct
13 negotiations with Sabal?

14 A. I did.

15 Q. And in front of you is the trial exhibit
16 binder, and we're going to go actually in reverse
17 order. It's in my notebook, actually. Go all
18 the way back to number 70, and it's at the very
19 end of the notebook, Mr. Farmer. Okay. What is
20 that document, Mr. Farmer?

21 A. First amendment to purchase and sale
22 agreement.

23 Q. Between whom and whom?

24 A. Deeded April 28th, 2016, between Emerald
25 McDonough Road Holdings, seller, and Mariner's

1 Cay Fuel Dock, LLC, buyer.

2 Q. And is this the purchase agreement or
3 just an addendum thereto? Because the reason I'm
4 asking you is, page 69 -- item number 69 above is
5 a purchase and sale agreement. So I was going to
6 get you to read -- get you to explain them both
7 to the Judge in order, but start going backwards
8 to forwards.

9 A. Without looking at the other one, but
10 I'm assuming this is an addendum to the purchase
11 of the building.

12 Q. Well, turn to 69, and tell me if that's
13 the purchase and sale agreement that brings us
14 here today.

15 A. Yes, sir.

16 Q. And that was entered into in March of
17 2016, correct?

18 A. Correct.

19 Q. And do you recall -- I will just do it
20 this way. Now, we get to go back to the front of
21 the notebook, Exhibits 4, 5, and 6. Do you see
22 those?

23 A. Okay.

24 Q. Exhibit 4 shows a title to real estate,
25 a limited warranty deed from Emerald McDonough

1 Road Holdings to Mariner's Cay Fuel Dock for
2 \$40,000, and then the next Exhibit No. 5 is a
3 deed into Mariner's Cay Marina Condo for
4 \$210,000. Do you see that?

5 A. I do.

6 Q. And so you paid a total of \$250,000 for
7 the units that bring us here today?

8 A. Yes, sir.

9 Q. And did you have to take out the
10 financing?

11 A. I did.

12 Q. And do you recall what the amount of
13 your mortgage is today? Or let me ask: How much
14 did you finance?

15 A. I think 130,000.

16 Q. And did you -- how many times did you
17 visit the property before you closed on it?

18 A. Well, my boat was at the marina, so if
19 that's what you're asking, weekly, I would think.
20 Sometimes not.

21 Q. And so how familiar were you with the
22 state of the building at the time?

23 A. It was evident the condition of it.

24 Q. And tell the Judge about that.

25 A. Deferred maintenance throughout.

1 There's two central A/C units, one of them was
2 not working.

3 MR. BARR: What kind of unit?

4 THE WITNESS: A/C.

5 MR. O'KELLEY: Air conditioning.

6 THE WITNESS: We talked about the
7 rotten wood. There was essentially no paint on
8 the building. And what paint there was on it was
9 flaking. The interior was -- hadn't seen any
10 maintenance. Those are the majors.

11 BY MR. O'KELLEY:

12 Q. And the two units, the downstairs one
13 and the upstairs one, what was being done with
14 both of those units prior to your purchase, based
15 on your inspection?

16 A. Upstairs was used. When you walked in,
17 there was bedding, mattresses, food stuff in the
18 kitchen, you know, condiments, you know,
19 different things like that. There was trash,
20 clothes. It kind of looked like the tenant moved
21 out and left all of the stuff.

22 Q. How about downstairs? What was that
23 being used for?

24 A. It looked like it was storage. You had
25 the bathrooms.

1 Q. And you've heard testimony in this case
2 over the last day and a half, have you not?

3 A. I have.

4 Q. And you've heard the plaintiffs say that
5 you kicked Mr. Geiger out of the bottom unit; is
6 that correct?

7 A. I've heard that.

8 Q. Tell the Judge what really happened with
9 you and Mr. Geiger after you closed on this
10 space?

11 A. Well, I closed on a Friday. Saturday
12 morning was the HOA meeting; so I showed up as an
13 owner. Ed greeted me. It was a nice warm
14 greeting, and one of the first things he said to
15 me was, do you want me to get my stuff out of the
16 building? And I said, no. I said, let's -- you
17 don't need to rush to do that. I will be glad to
18 work with you in whatever time you need. And we
19 kind of left it at that.

20 Q. And this was that meeting that Saturday
21 after you closed, the meeting -- the first
22 meeting where Mr. Bessent was elected in
23 absentia, that meeting we've heard testimony
24 about?

25 A. That's right. That's the same meeting

1 that Laurie Hull was elected as president.

2 Q. The same Laurie Hull that was here
3 today?

4 A. Yeah.

5 Q. And at that meeting, what did you tell
6 the owners about your intended use or dealing
7 with the building? Explain that to His Honor.

8 A. Well, at the end of the meeting, I think
9 the consensus in the room was -- because several
10 people had asked, but they were concerned about
11 the bathrooms and the bathrooms' use and that I
12 might close the bathrooms.

13 And I assured them that I had no plan on
14 closing the bathrooms, and I would be glad to
15 work with them. And I said, I would -- why don't
16 you -- I would like to offer y'all the downstairs
17 unit, and I gestured like that. That's the why I
18 did it.

19 And -- because we're still in the HOA
20 meeting. Everybody is still in there, and I was
21 talking to Laurie. And I said, you know, I will
22 be glad to offer it for sale. And she said,
23 okay, what do you want for it?

24 Q. Well His Honor has ruled about our
25 discussions about that; so we will move on to

1 another area. But were you aware that dues were
2 going to have to be paid on those units to the
3 council of co-owners?

4 A. Yes.

5 Q. And you had to pay them, correct?

6 A. Yes.

7 Q. And you paid them for how long, sir?

8 A. Could be a year.

9 Q. And have any of those dues come back to
10 you?

11 A. No.

12 Q. And you just -- you were in the
13 courtroom when Mr. Mathisen testified, right?

14 A. I was.

15 Q. And he mentioned zoning. Have you done
16 any research about the zoning for these
17 properties, these units?

18 A. I have.

19 Q. What did you discover?

20 A. The zoning for the top unit is
21 residential; the zoning for the bottom unit is
22 commercial. And the commercial use allowed by
23 Folly, Folly Beach is residential. Obviously
24 commercial, retail, restaurant, grocery store.

25 It was kind of comical because it's a

1 huge list, a long list that they allow there.
2 You can't have a church, and you can't have a
3 gentleman's club. Everything else seemed to be
4 allowed.

5 Q. And when did you learn, or if you knew
6 from your time there, that the last time there
7 had actually been a ship store in operation in
8 the premises?

9 A. When did I know the last time it
10 operated?

11 Q. Yes, sir, if you know.

12 A. I don't know.

13 Q. If I told you that Mr. Geiger testified
14 it was in 2010 --

15 MR. BARR: Objection.

16 THE COURT: I will be able to read
17 that from Mr. Geiger.

18 MR. O'KELLEY: Thank you.

19 THE COURT: All right. He doesn't
20 know. He doesn't know.

21 BY MR. O'KELLEY:

22 Q. So for the bathrooms, you mentioned
23 earlier that there were -- one of the A/C
24 units -- there were some issues with the A/C
25 units at your property. Explain to the Judge

1 about the condition of the A/C units and what was
2 going on when you moved in.

3 A. Well, the A/C unit that didn't work was
4 the A/C unit on that floor that runs the
5 bathrooms. So what they had done was, they cut a
6 hole in the door. There's another space when you
7 walk in there --

8 Q. Here, let's do it this way.

9 A. Okay.

10 Q. This sketch that Mr. Bessent did, let's
11 walk through that.

12 MR. BARR: That's Exhibit 2N.

13 THE COURT: 2N for Nancy, yeah.

14 MR. O'KELLEY: Yes, sir.

15 THE WITNESS: Right here on this
16 where it says old laundry room, that door right
17 there that they show, they cut a hole. They
18 split the door in half so that they could leave
19 the --

20 BY MR. O'KELLEY:

21 Q. If I use the -- like a dutch door kind
22 of situation?

23 A. Yeah. So they did that because they cut
24 a hole in the top portion of it and stuck a
25 window A/C in it, and then they had these like

1 wire looking things. And they wired the doors
2 open in the bathrooms so that the A/C unit would
3 blow down the hallway.

4 And then I think they had another fan
5 trying to -- so they could force the air into the
6 bathrooms themselves. And then at that -- it was
7 a strange rig. And then the drain line --
8 because it's an outside A/C unit type that you
9 would put in the window so the water would drip
10 outside. So it had some sort of deal where a
11 hose was rigged up.

12 And they drilled a hole through the wall
13 and then piped it on the outside of this door
14 right here where you walk up, and before you get
15 to that door, that's where that hose went down.
16 And they drilled another hole into the deck where
17 it could drip down to the ground.

18 Q. Have you since made modifications to
19 that rig, as you call it?

20 A. Yeah. I mean, there's really only one
21 way to do that, and that's -- we replaced the A/C
22 unit.

23 Q. And the bills and costs for that, has
24 anyone at the marina offered to pay you for that?

25 A. No.

1 Q. And you heard Mr. Bessent yesterday when
2 I asked him about who is paying the water and the
3 electricity, and he said, they weren't paying it.
4 Are you paying that?

5 A. We are.

6 Q. And how about the taxes on the overall
7 building? Have you paid that since you bought
8 it?

9 A. We have.

10 Q. How about insurance? Who's been paying
11 that?

12 A. We have.

13 Q. And you said that you and Mr. Geiger --
14 well, I'll let Mr. Geiger's testimony stand on
15 its own. When did Mr. Geiger and you agree that
16 he be out of the building?

17 A. The day of the HOA meeting.

18 Q. Excuse me, I asked that unartfully.
19 When did he finally move his stuff from the unit?

20 A. September -- August, September.

21 Q. Of 2017? I mean, '16?

22 A. Yeah.

23 Q. And during that time, was Mr. Geiger
24 paying you any rent?

25 A. No.

1 Q. You mentioned Roger Camp a few minutes
2 ago. Have you had any dealings with Mr. Camp
3 vis-à-vis what we've called Mr. Barr's Exhibit 1,
4 the document recorded at E?

5 MR. BARR: Which one? 1 what?

6 MR. O'KELLEY: E, the master deed
7 for the racquet club. I don't know if I can find
8 it.

9 BY MR. O'KELLEY:

10 Q. Have you had any discussions with
11 anyone, Mr. Camp or anyone else, about the master
12 deed contained in Exhibit E that was recorded in
13 book J128, page 300.

14 A. No, I have not.

15 Q. All right. We've already been through,
16 and you've heard the testimony about the liens
17 that were filed and the satisfactions on these
18 units, correct? And, specifically, on the fuel
19 docks, right?

20 A. Right.

21 Q. Please tell His Honor about -- I think
22 there was an incident involving some fines being
23 levied or a trailer or something of that nature.
24 Please tell the Judge about that.

25 A. My son had a sailboat, and the sailboat

1 had like a little dolly kind of thing. And my
2 deed describes the building, and it describes all
3 the deck area and the building itself.

4 And so we put the boat in the small
5 little trailer on the -- it's a large -- it's a
6 large deck. So we had put the trailer and the
7 boat there. And you know what? I don't know if
8 we got -- they complained about that. Let me
9 think about that because there was two boat
10 incidents.

11 MR. BARR: Your Honor, I have an
12 objection on two bases.

13 THE COURT: Okay.

14 MR. BARR: The first is relevance,
15 but secondly, who is they?

16 THE WITNESS: Okay. I apologize.

17 MR. BARR: Wait a minute. I'm
18 objecting to relevance.

19 THE COURT: Yeah.

20 MR. BARR: But if it's relevant, we
21 need to know who they is.

22 THE COURT: Absolutely.

23 MR. BARR: I don't think it's
24 relevant here. We're talking about a title
25 question.

1 THE COURT: What's the purpose?

2 MR. O'KELLEY: Yeah. Another
3 indicia, where everybody thought they owned it,
4 Your Honor. They are now fining him for
5 violating rules and regulations.

6 THE COURT: The council --

7 MR. O'KELLEY: Yes, sir.

8 THE COURT: -- of co-owners? Okay.

9 MR. BARR: Well, then, may I?

10 THE COURT: Sure.

11 MR. BARR: Who is the they then?

12 THE WITNESS: The HOA board.

13 MR. BARR: Mariner's Cay Marina?

14 MR. O'KELLEY: The Mariner's Cay --
15 let me ask it this way.

16 THE COURT: Yeah.

17 BY MR. O'KELLEY:

18 Q. Were you fined or how were you fined by
19 the Mariner's Cay Marina Council of Co-Owners?

20 A. Tom Bessent was the -- was the
21 president, and he was my point of contact in
22 regards to that fine.

23 Q. And do you recall what the amount was?

24 A. \$250.

25 Q. And did you pay it?

1 A. I did.

2 Q. No other fines that you are aware of,
3 correct?

4 A. No.

5 Q. All right. And you've heard people
6 discuss value. What do you think this property
7 is worth?

8 A. Well, I think that, you know --

9 Q. And let me ask -- let me do this.
10 You're also -- are you licensed as a real estate
11 agent?

12 A. I am.

13 Q. Okay. I just --

14 A. Well, I mean its highest and best use,
15 and I think its -- in this market right here, I
16 would probably value the entire building and the
17 docks together.

18 I wouldn't separate them because just
19 with that package, and I think it's probably 1.5
20 million. It's 2600 square feet, and it's 65 feet
21 of deep water docks and just phenomenal views
22 from my unit.

23 Q. And what do you base that on, sir?

24 A. Current market rates. I mean, it's just
25 the comparables. You can probably buy a mobile

1 home -- I mean, this kind of -- this is on the
2 left side of the spectrum of cost here. The
3 right side is high; the left side --

4 MR. BARR: Excuse me, Your Honor.
5 I should have objected about the value of things,
6 but I think we're getting beyond extreme.

7 THE COURT: Okay.

8 MR. O'KELLEY: He's already asked
9 and answered that.

10 MR. BARR: The owner can testify as
11 to his opinion of value, but we're getting
12 outside of --

13 MR. O'KELLEY: He's asked and
14 answered. I will move on.

15 THE COURT: Okay. Yeah. He's
16 entitled to do that, sure.

17 BY MR. O'KELLEY:

18 Q. Mr. Farmer, in doing research on this
19 matter, are you aware of anyone complaining at
20 any time prior to this lawsuit about the second
21 amendment of the master deed?

22 A. No.

23 Q. There was some discussion yesterday
24 about the pilings under the building. Do you
25 recall that testimony?

1 A. Yeah.

2 Q. Have you replaced the pilings yet?

3 A. I have not.

4 Q. Do you plan on doing so, if this goes
5 your way?

6 A. No. The pilings don't need to be
7 replaced. They do need to be repaired. You
8 know, that's -- I didn't mention that, but that's
9 the deferred -- that's such a gradual
10 deterioration kind of thing. That's part of the
11 deferred maintenance on that building.

12 Q. And how have the bathrooms remained open
13 during your ownership of these units?

14 A. In what way?

15 Q. Well, sir, you've heard testimony
16 yesterday about the bathrooms potentially not
17 being open, problems about OCRM and the permits
18 and the sewage pump and the booms.

19 Tell His Honor -- please explain to him
20 what's going on out there in relationship to the
21 bathrooms, the pump station, the booms, the items
22 that the plaintiffs brought up to His Honor that
23 could have allegedly put the marina in jeopardy
24 of losing its permit.

25 A. Okay. Bathrooms, both in -- you know,

1 just in conversation, I mean, just that first --
2 that first conversation I had with Ed, and then
3 the board members -- and most of the
4 conversations are very good. And I assured them,
5 bathrooms -- you know, I would be glad to work
6 with them on everything and didn't close the
7 bathrooms. I didn't lock them up; didn't do any
8 of that stuff.

9 In regards to safety equipment, booms, I
10 was a little surprised to hear somebody say that
11 they couldn't get to them because I always saw
12 those things on the dock. There's dock boxes
13 that the marina owns -- I assume they own them.
14 They are on a dock, and they're on my dock. I
15 see them in there. And so I'm sure they're in
16 other places. So I don't know where that sort of
17 thing comes from.

18 Q. And how about the pump out station?
19 Explain to the Judge what's going on with the
20 pump out station.

21 A. Well, we owned it for quite a while, and
22 the pump out station, it was there. There's two
23 parts to it, and there's piping in between.
24 There's the dockside part to it, and then there's
25 a motor -- a pump that's underneath -- it's the

1 dirt level, but underneath the bottom floor, and
2 it never operated.

3 And at some point in there, they did
4 this -- they did do some work in it. Anytime
5 they needed to get into any of the places --
6 because I secured those -- the space has two
7 doors to it up underneath there, and I secured
8 those with locks. And my stuff is up underneath
9 there. So anytime they needed to get to it, they
10 could get to it.

11 Q. And you agreed to that by court order,
12 didn't you, Mr. Farmer?

13 A. I think the court order was later.

14 Q. Well, there were two. One with Judge
15 Nicholson and one with Judge --

16 A. Yeah. They didn't need it. They could
17 always ask me, and I would let them in. I would
18 never turn them down to get up underneath there.
19 But yes, later, they acted like I didn't. I
20 never did that.

21 Q. And since those orders were in, how many
22 people have contacted you to use that pump
23 station?

24 A. Zero.

25 MR. O'KELLEY: Just one second,

1 Mr. Farmer.

2 BY MR. O'KELLEY:

3 Q. Mr. Farmer, did you have a home
4 inspection prior to closing?

5 A. I did.

6 Q. And did it reveal anything major of
7 concern?

8 A. You would have to look on it, but, yeah,
9 I mean, everything I stated plus.

10 Q. And so whatever that report said needed
11 to be repaired, you made those repairs, correct?

12 A. No.

13 Q. Except for replacement the pilings
14 because you said they don't need to be replaced,
15 they just need to be repaired?

16 A. I think so.

17 MR. O'KELLEY: Thank you,
18 Mr. Farmer. Please answer any of Mr. Barr's
19 questions.

20 THE WITNESS: Okay. Thank you.

21 THE COURT: Let's take a little
22 break and come right back. Let take about five
23 minutes.

24 (A recess was taken.)

25 THE COURT: Okay. Back on the

1 record.

2 Mr. Farmer, Mr. Barr is going to ask you
3 a few questions.

4 THE WITNESS: Okay.

5 MR. BARR: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. BARR:

8 Q. Good afternoon again. Had you ever,
9 Mr. Farmer, owned a condominium before?

10 A. I have not.

11 Q. So this is your first experience with
12 condominiums?

13 A. Yes, sir.

14 Q. All right. And what has been -- I think
15 you testified in your direct to some extent of
16 real estate experience; is that correct?

17 A. Yes, sir.

18 Q. What is your background in that?

19 A. Residential sales, listings.

20 Q. Okay. So are you a licensed realtor?

21 A. I'm a licensed realtor.

22 Q. Okay. And as a licensed realtor, have
23 you sold condominium properties? And what I mean
24 is, have you represented -- as an agent, have you
25 been involved in condominium transactions?

1 A. I am sure I have, but I don't remember.
2 I've been doing it for 20 years. I haven't sold
3 any in a long time. So is there one or two back
4 in the day? Maybe.

5 Q. You're aware, though, are you not, of
6 the principle and the proposition that
7 condominium ownership consists of ownership of a
8 unit and a percentage interest in common
9 elements, correct?

10 A. I do.

11 Q. And you knew that before engaging in
12 this transaction, correct?

13 A. Correct.

14 Q. All right. And you first -- you
15 first -- with respect to Mariner's Cay, you
16 leased a dock -- I mean, a slip, correct?

17 A. Correct.

18 Q. And which slip was it?

19 A. If I had a diagram, I could tell you.
20 It's the far right slip as you face the marina
21 from the land.

22 Q. As you face the land?

23 A. Yeah. It would be A, B, C, D.

24 Q. So you're in the D finger?

25 A. D dock closest to the marsh.

1 Q. Okay. Back towards the marsh. Okay.
2 And how long were you -- how long did you use
3 that slip before the transaction that's here at
4 issue in, I think, May of '16? How long were you
5 there?

6 A. It might have been a year.

7 Q. A year. And what size is your boat?

8 A. It was a little over a year. 29 feet.

9 Q. And does it have a bathroom, a head and
10 shower?

11 A. It had no working head. It had a wand
12 kind of thing.

13 Q. Okay. A space where you could use a
14 wand?

15 A. Yeah.

16 Q. And wash yourself off, right?

17 A. Right.

18 Q. All right. And it had internal engines
19 as opposed to outboards?

20 A. It had an inboard and one single.

21 Q. Okay. And obviously at the time you
22 started using it, were the fuel docks still
23 providing fuel?

24 A. No, sir.

25 Q. That had been discontinued?

1 A. Right.

2 Q. All right. And did you ever spend
3 overnight at the marina on the boat?

4 A. I don't believe I did.

5 Q. At that time when you had the boat there
6 in that lease capacity, where were you living?

7 A. Johns Island.

8 Q. So you were driving back and forth from
9 Johns Island over to Mariner's Cay at Folly,
10 right?

11 A. Yes, sir.

12 Q. When you were leasing this boat space --
13 I don't know if you were asked -- who were you
14 leasing it from? Do you remember?

15 A. I do not know.

16 Q. Okay. When you were leasing this boat
17 space, you came to be familiar with the property,
18 right?

19 A. Somewhat.

20 Q. And you knew that there was a dock
21 master probably, Ed Geiger, correct?

22 A. Correct.

23 Q. And you knew where his space was, right,
24 in the building?

25 A. No, not really.

1 Q. Well, where was his space then if it
2 wasn't in the building?

3 A. He didn't really have a space that I
4 could tell. I would see him on the dock. I
5 would say see him inside sometimes. I've seen
6 him on the grounds or, you know, not at all.

7 Q. You were in the building before you --
8 during your lease stage, before you bought,
9 correct?

10 A. I had been in there, yeah.

11 Q. And you knew there was a VHF radio?

12 A. Correct.

13 Q. And you knew there was file storage in
14 there, correct?

15 A. No, I didn't -- I didn't see any file
16 storage anywhere. There was -- there was an
17 accordion about the size of this thing right here
18 sitting on the counter. But, no, no file storage
19 that I could see. It was mainly a -- it was
20 storage. I mean, it was stacked up with
21 everything you could imagine in a large open
22 space.

23 Q. Okay. And your testimony is that you
24 were not aware that that space you're describing
25 was where Ed Geiger, as the dock master, was

1 where his office was? Your testimony is, you did
2 not know that; is that right?

3 A. My testimony is that I don't believe Ed
4 ever -- I never got the sense that that was a
5 dock master's office, and it was -- because it
6 was used by -- it was a young guy in there
7 selling real estate.

8 And so it was -- it really looked like
9 it defunct space is what it really looked like.
10 So, you know, you want to describe a dock
11 master's office. That place never looked like
12 any dock that -- and I've run up and down the
13 East Coast and a lot of marinas. And so, no, sir
14 it did not look like it was a dock master's
15 space.

16 Q. So when you ran into Ed Geiger, it was
17 usually on the docks? Is that what you're
18 saying?

19 A. Mostly.

20 Q. Okay. Which is sort of appropriate for
21 a dock master, right, who is supposed to be
22 looking out for things?

23 A. Yes, sir.

24 Q. All right. You were aware that there
25 were restrooms on the first floor, correct?

1 A. Correct.

2 Q. And you were aware that those restrooms
3 were used by the slip owners, weren't you?

4 A. Correct.

5 Q. And you had a code to get through a
6 keypad to get into them, right?

7 A. Right.

8 Q. And you've had that code by virtue of
9 the fact that you were leasing a slip, right?

10 A. That's right.

11 Q. So therefore you understood that access
12 to the restrooms was available to slip owners who
13 knew the code, right?

14 A. I knew we could use them.

15 Q. Say it again.

16 A. I knew that we could use the bathrooms.

17 Q. But you were aware that the other slip
18 owners were also using it in that capacity,
19 right?

20 A. Sure.

21 Q. I mean, that's why it was there, right?

22 A. Sure.

23 Q. All right. And you were aware there was
24 a fuel dock, although it was not selling fuel at
25 the time?

1 A. Correct.

2 Q. And you knew at the fuel dock, there was
3 a waste water pump out location, correct?

4 A. Probably not then, no.

5 Q. What do you mean not then?

6 A. Well, you started off by asking when I
7 leased my dock; so, I mean, I didn't use the pump
8 out so I didn't really I don't think I paid
9 attention to whether that pump out was there or
10 not.

11 Q. And it's your testimony that, before you
12 purchased the property that we're here to talk
13 about, you did not know that the pump out
14 location was on the fuel dock? Is that your
15 testimony?

16 A. It is not, no.

17 Q. Well, that was my question.

18 A. Okay. Well, I apologize. You seemed to
19 be separating the two, the I leased it and now
20 it's to the time --

21 Q. Well, and I'm not suggesting that.
22 During the time that you were leasing it --

23 A. Yes, sir.

24 Q. -- did you learn -- and before you
25 bought it, did you learn that the pump out

1 station was on the fuel dock?

2 A. I do not know if the pump out was an
3 issue or known to me prior to my purchase. I
4 never used it. I didn't really -- I don't even
5 remember considering it.

6 Q. Well, did you know that there was a pump
7 that activated the waste water pump out? Did you
8 know that there was a pump on the ground below
9 the ship store building?

10 A. I remember seeing the pump. I didn't
11 know what it was for. I didn't ask about it.
12 You know, my main focus on this thing, when I
13 looked at the building, was the condition of the
14 building.

15 And so that was -- that's my
16 recollection of what I saw, what I was concerned
17 about, and that sort of thing. I mean, that's my
18 inspection report that I got through Ace. It
19 gives a detailed listing of what they looked at.

20 Q. In a statement just a few questions
21 back, you made reference to being in other
22 marinas up the East Coast or something to that
23 effect. Did I recall that correctly?

24 A. Yes, sir.

25 Q. Have you been -- at other marinas along

1 the South Carolina coast?

2 A. I have.

3 Q. And were they similarly sized marinas as
4 this one?

5 A. Some of them.

6 Q. All right. And so are you aware that
7 those marinas have sewage pump out? I mean, I
8 don't mean sewage -- waste water pump out
9 facilities?

10 A. Some of them did; some of them didn't.

11 Q. I see. Are you aware that, in South
12 Carolina, marinas are permitted by the Office of
13 Coastal Resource Management, OCRM?

14 A. Yes.

15 Q. Were you aware of that before you leased
16 here at Mariner's Cay?

17 A. No.

18 Q. You did not know that?

19 A. I did not know that OCRM -- I don't
20 think I ever thought about the governing office
21 that gave the permit to the marina. If you had
22 asked me when I leased the dock, who is the
23 governing agency that gave the permit, I probably
24 would have said OCRM. But, no, I didn't
25 really -- I didn't think about it.

1 Q. Well, now, I understand that at some
2 time -- at one time, if not presently, that you
3 were a skipper of Tommy Baker's boat?

4 A. That's correct.

5 Q. And how long is that boat?

6 A. It's a variety of different ones. 52 to
7 75 feet.

8 Q. All right. Do they have self-contained
9 waste water disposals, or do they use pump outs?

10 A. Well, they're all self-contained, but,
11 yeah, they -- eventually, you have to pump out
12 unless you're offshore and then you can pump
13 offshore.

14 Q. And so when you pump out, that would be
15 at the marina where, regardless of the size of
16 your boat, you fix a fixture to the -- whatever
17 it is on your deck?

18 A. That's right.

19 Q. Activate it, and it would pump it --

20 A. That's right.

21 Q. -- along the line back either into a
22 pumping sewage or a tank, right?

23 A. Correct.

24 Q. All right. So you knew even before
25 you -- and when were you a skipper? When were

1 you the captain of Tommy's boat? What years, or
2 are you still, if not now?

3 A. '95 to present, something like that.

4 Q. Okay. So when you bought here --

5 A. Right.

6 Q. -- you were very experienced in the
7 operations of a marina, weren't you?

8 A. Yeah.

9 Q. You had a lot of knowledge about the --

10 A. I --

11 Q. Let me finish the question.

12 A. Okay.

13 Q. You had a great deal of knowledge about
14 the amenities that are necessary for the
15 operation of a marina, weren't you?

16 A. I was aware -- I'm aware in the sense
17 that any boater would be, pulling to a marina and
18 the facilities that may or may not be there.
19 They vary.

20 Q. Okay. And so it's your testimony, in
21 light of that experience, that were you -- were
22 you even aware that there was a pump out system
23 at Mariner's Cay when you leased?

24 A. I don't recall that I knew that there
25 was a pump out system at the marina prior to my

1 purchase.

2 Q. Prior to your what?

3 A. My purchase.

4 Q. Okay. Prior to your purchase. Well,
5 did you use the restrooms --

6 A. Yes, sir.

7 Q. -- at the building?

8 A. Yes, sir.

9 Q. I know we talked about the keypad and
10 how you would get there.

11 A. Yes, sir.

12 Q. You knew there was a dock master, Ed
13 Geiger, correct?

14 A. Yes, sir.

15 Q. Now, it's also correct, is it not, that
16 you knew before you bought this property, that
17 this property had formerly been common elements,
18 didn't you?

19 A. The operating -- the operating master
20 deed was the amended master deed that was the
21 governing document for the marina in terms of
22 common elements and all that.

23 Q. Let me ask the question again.

24 A. Okay.

25 Q. Before you purchased these units, did

1 you not know that units 1-A, 1-B, which are the
2 ship store, and C-21 and C-22, which were the
3 fuel docks, were originally defined as common
4 element in the master's deed -- in the master
5 deed for Mariner's Cay Marina Horizontal Property
6 Regime? Isn't it correct that you knew that
7 before you purchased?

8 A. I had read that, yeah.

9 Q. So you knew that?

10 A. I had read that, the master deed.

11 Q. Okay. Before you purchased?

12 A. Before I closed.

13 Q. Well, that's when you purchased, isn't
14 it?

15 A. That's right.

16 Q. You don't buy something until you close
17 it, right?

18 A. That's right.

19 Q. All right. And you knew that those
20 common elements had been converted to private
21 units, didn't you, under the amended master deed?

22 A. That's correct.

23 Q. And that's what you were buying? You
24 knew that, right?

25 A. That's correct. I was buying property

1 units 1-A and 1-B.

2 Q. That's the ship store?

3 A. And C-21 and C-22.

4 Q. Which was the old fuel dock, correct?

5 A. Right.

6 Q. And you also knew, did you not, that the
7 origin of the Mariner's Cay Marina -- this may
8 sound redundant -- began with the Racquet and
9 Yacht Club, which I've been calling the
10 condominium on the hill? You knew that, right?

11 A. Say that again.

12 Q. You knew and understood before you
13 closed your purchase, that the marina property
14 existed as a result of a relationship with the
15 Yacht and Racquet Club, which I've been calling
16 the marina -- I mean, the condominium on the
17 hill. You knew that?

18 A. Well, I knew what was obvious, which
19 was -- it was -- you had to drive through that
20 condominium complex to get to the marina. So if
21 that's what you are referring to, yeah, I did.

22 Q. Isn't it correct that you knew that the
23 master deed from the Racquet and the Yacht Club
24 created the Mariner's Cay Marina?

25 A. No, I don't know that.

1 Q. Isn't it correct that you knew the
2 master deed for the Racquet and Yacht Club
3 specifically referred to the marina property and
4 the improvements to be placed thereon, provided
5 that it would be used as a ship store?

6 A. Well, that's a master -- you're talking
7 about all the documents for the condominium
8 complex, and I did not -- I did not look at any
9 of those condominium complexes --

10 Q. That's not my question.

11 A. -- documents. Well, you're referring to
12 it, and you're asking if I know --

13 Q. Well, I am, but I'm asking you whether
14 you saw the actual master deed for the Yacht and
15 Racquet Club. I'm asking you, did you not know
16 that that master deed, whether you saw it or not,
17 provided that this property, the marina property,
18 was to -- was to construct a ship store?

19 A. I don't know if I knew that specifically
20 or how that was laid out and what entity gave
21 what -- in the marina permission to do what. I
22 don't know.

23 Q. Did you not know that there was no
24 authority stated in that master deed for the
25 Racquet and Yacht Club for the use of the ship

1 store building for residential purposes? Did you
2 not know that?

3 A. There was some --

4 Q. Were you not informed of that?

5 A. No. There was some -- I talked with
6 Roger Camp, specifically on residential use, and
7 he invited residential use. He wanted
8 residential use. He didn't want commercial. All
9 the other commercial use that in the past was --
10 that they were doing. So that's -- I did have
11 conversations with Roger Camp in that regard.

12 Q. Mr. Farmer, that was not my question.

13 A. Okay.

14 Q. My question was whether it is not
15 correct, that you knew that the master deed for
16 the Racquet and Yacht Club --

17 A. I did not know that.

18 Q. I'm not through with my question.

19 A. I apologize.

20 Q. Did you not know that the master deed
21 for the Racquet and Yacht Club, along with its
22 subsequent supplements and amendments, does not
23 specifically provide any voting rights, ownership
24 interest in the common elements, obligation to
25 pay assessments or restrictions on usage other

1 than it is commercial property to be used as a
2 ship store? Were you not told that?

3 A. No.

4 Q. You were not told that?

5 A. No.

6 Q. Were you not told that outside of the
7 prior use for zoning and permits from the town or
8 county, there is no authority for allowing any
9 part of the ship store to be used for residential
10 purposes? Were you not told that?

11 A. Yes.

12 Q. And you knew that before you obtained
13 title?

14 A. Yes.

15 Q. So you understood then that, when you
16 took title to this property, it was a question of
17 whether it could be used for residential
18 purposes; is that not correct?

19 A. It is not correct.

20 Q. It's not correct?

21 A. It's not correct.

22 Q. Well, have you not just acknowledged, by
23 a yes to my question, whether you were informed
24 that outside of prior use for zoning permits from
25 the town, there was no authority under the master

1 deed for the Racquet and Yacht Club, for use of
2 this property for residential purposes?

3 A. Well, you qualified your question now
4 with those three things.

5 Q. Which three things?

6 A. Use, zoning, and -- what was the third
7 thing? And those three things, specifically by
8 Roger Camp and by the marina, the use was stated
9 that they didn't have any problem with it. And
10 that was the marina by their actions because they
11 rented it, and I saw it, and by the HOA
12 president, his statements to me. And we talked
13 about it because it was -- so I think that's --

14 Q. But I'm not talking about what Roger
15 Camp -- I'm not asking you what anyone, Roger
16 Camp said about it. I'm asking you whether you
17 were not told that there was no authority for
18 allowing the use of the ship store to be used for
19 residential purposes?

20 A. Well, authority was authority, and the
21 condo on the hill was -- that authority was Roger
22 Camp, who was the president.

23 Q. What about -- wait a minute. Let me
24 interrupt you now. What about its master deed?

25 A. Well, like I said, I didn't read the

1 condo on the hill's master deed.

2 Q. Were you not told that the master deed
3 does not address the question of whether it could
4 be used for residential?

5 A. Well, I've already stated yes on that,
6 and then you qualified it by those three things,
7 and that's why there's a difference there.

8 Q. And so what you're saying is, well,
9 zoning says it can be used residentially, right?
10 Is that one of your points?

11 A. That's one of them.

12 Q. Folly Beach zoning. And secondly, you
13 believed that someone had lived in the ship store
14 before. That's the second one, right?

15 A. That's the second one.

16 Q. The second one. But even though you
17 believed zoning permits, and even though you
18 believed it had been used for residential, you
19 were also told there was no authority from that
20 master deed from the Yacht and Racquet Club that
21 came to that same conclusion? Weren't you told
22 that?

23 A. I was told -- well, I wasn't told in
24 that sense. You're formulating a question and
25 you're saying, did you do -- and so my answer is

1 a very simple one. The authority of the condo on
2 the hill was Roger Camp. We talked specifically
3 about the residential use of that building, and
4 that the president said, I don't have a problem
5 with it. In fact, we want it.

6 Q. So it's your testimony that there --
7 there was not an issue whether the property could
8 be used for residential purposes, correct?

9 A. Correct.

10 Q. All right. Well, let me invite your
11 attention to the big notebook in front of you.
12 And I will ask you to go to tab E.

13 A. White or black?

14 Q. The black one.

15 A. Okay.

16 Q. Are you on tab E? You want to look to
17 page -- on the bottom, the pages numbers at the
18 bottom, page 26.

19 A. Okay.

20 Q. And is your -- where you're looking, is
21 that article Roman nine, IX?

22 A. Yes, sir.

23 Q. Unit restriction?

24 A. Yes, sir.

25 Q. I'm going to read it and ask you if I'm

1 reading it correctly.

2 A. Okay.

3 Q. Section 1, residential purposes.

4 Buildings and all units contemplated in the
5 development. And let me say to you, this is for
6 the entire development of the Mariner's Cay
7 Racquet and Yacht Club.

8 Buildings and all units contemplated in
9 the development shall be and the same hereby are
10 restricted exclusively to residential use with
11 the exception of the ship store. Did I read that
12 correctly?

13 A. Correct.

14 Q. All right. So you were not aware of
15 that; is that correct?

16 A. That's correct.

17 Q. And so you're saying that Roger Camp
18 said that that doesn't mean what it says?

19 A. I will repeat it. I had discussions
20 with Roger Camp. We talked specifically about
21 residential use, and he did not have a problem
22 with it. In fact, he invited it. He wanted it
23 because the property was in such disrepair that
24 they wanted somebody to come in and take care of
25 it.

1 Q. Now, the owner of the ship store is
2 Mariner's Cay Marina Condo, LLC; isn't that
3 correct?

4 A. Yes, sir.

5 Q. Isn't it correct that a lawsuit was
6 filed by Mariner's Cay Racquet and Yacht Club
7 Homeowners Association, Inc., as the plaintiffs,
8 against Mariner's Cay Marina Condo, LLC, on
9 August 29th of 2018, case number 2018-CP-10-4282.
10 Do you remember that lawsuit?

11 A. I do.

12 Q. And isn't it correct that in that
13 lawsuit, this Mariner's Cay Racquet and Yacht
14 Club alleged, among other things, that the
15 defendant, that's you, has ceased operating a
16 ship store and has renovated the second floor of
17 the subject property and turned it into a
18 personal residence for its managing member.

19 Additionally, the defendant has directly
20 informed the plaintiff that intends to renovate
21 the first floor, previously housing the ship
22 store, and turn it into a residential unit for
23 short and long term rental.

24 And it alleges, the defendant's use and
25 anticipated use of the subject property is in

1 violation of the master deed and amended master
2 deed, and the plaintiff is entitled to an order
3 granting a permanent injunction against the
4 defendant, prohibiting the use of the subject
5 property not provided for in the master deed or
6 amended master deed, including but not limited
7 to, using the subject property for a personal
8 residence or a short- or long-term rental.

9 Isn't, in fact, that lawsuit was filed
10 against your LLC?

11 A. Yes, sir.

12 Q. And that's stayed right now, isn't it,
13 pending what happens here?

14 A. Yes, sir.

15 Q. So let me go back to what I'm asking you
16 about. Let's put aside what this Roger Camp guy
17 told you. They're suing you to prevent the use
18 for residential purposes, correct?

19 A. No, sir. That is what that document
20 right there states, but in fact, the reason why
21 they're doing it -- they're using it as a
22 tolling -- if I understand the correct term, a
23 tolling agreement, for lack of a better term,
24 because they do want residential use right there.
25 They invited me to have residential use right

1 there.

2 MR. BARR: Your Honor, I --

3 THE WITNESS: And because of -- may
4 I finish the answer?

5 MR. BARR: I object to the answer
6 and move to strike it. This is -- this is --

7 MR. O'KELLEY: Your Honor, he
8 opened the door, and he asked him, is it stayed
9 and what's going on.

10 THE COURT: I want to let him
11 answer. Then I'll let you make your motion. Go
12 ahead, Mr. Farmer.

13 THE WITNESS: And so I asked Roger
14 Camp that question, just what you're bringing up.
15 And I said, the very thing that you want me to
16 do -- don't do, is the thing that you're suing me
17 for.

18 And the answer was, it is -- it is a --
19 it's a way that we can toll this because we don't
20 have this -- your case has to be heard first, and
21 there's a time frame here that they wanted to
22 toll -- they wanted to toll this so that they
23 would know who owns it before they move forward.
24 I apologize if I'm not saying it clearly enough.

25 In fact, I guess the best evidence of

1 that is that, when they filed it, they didn't do
2 anything else. It went a whole year, and then
3 they had -- so it's -- I can only tell you what
4 my conversations were, and this is exactly the
5 truth in regards to what that thing says right
6 there.

7 THE COURT: All right.

8 MR. BARR: My motion about -- I'm
9 moving to strike the answer as being
10 non-responsive, gratuitous, and not relevant to
11 the -- because on the face of it, in this
12 complaint -- and I will make it an exhibit
13 here -- seeks a prayer, signed by Robert Jordan
14 of Parker Poe, seeking a permanent injunction
15 here, and for this witness's gratuitous answer
16 that it's not intended for the purpose filed I
17 think is close to slander.

18 THE COURT: All right.

19 MR. O'KELLEY: Your Honor, first of
20 all, we're in a courtroom. He's allowed to say
21 what he wants with immunity. Second of all, Your
22 Honor, he didn't write this document.

23 Mr. Barr asked him about it, and he
24 explained his thoughts on it. We all admit that
25 it's a court document. It's been filed. It's

1 been a record since 2018. Mr. Barr opened that
2 door, and Mr. Farmer just walked through it.

3 THE COURT: All right. So this
4 action was brought in '17. There was a separate
5 action brought in '18. My understanding is that
6 that action is basically stayed until action is
7 decided.

8 MR. BARR: Correct.

9 THE COURT: And to further get my
10 facts straight, the conversations you're having
11 with Mr. Camp were in his role as president of
12 the council of co-owners; is that correct?

13 THE WITNESS: No. That's the term
14 used for the marina. It's the condo on the hill
15 board.

16 THE COURT: Okay. All right. The
17 total master board. Okay. That's where he comes
18 in?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. All right. So
21 it would be the Racquet Club's council of
22 co-owners?

23 MR. BARR: Right. Is he the
24 president of the camp?

25 THE WITNESS: Yes, sir, he is.

1 MR. BARR: So that's the context,
2 sir.

3 THE COURT: That helps me. I'm
4 going to allow it. I'm going to allow it.

5 MR. BARR: All right.

6 THE COURT: I understand your
7 objection, but I'm going to allow it. Okay?
8 You're on cross. You get leeway. He's answering
9 questions. I'm going to let him answer the
10 question. We can probably move off of that
11 subject.

12 BY MR. BARR:

13 Q. So you're saying on the one hand that
14 Camp assured you that they really weren't
15 residential. You're agreeing on the other hand,
16 they're suing you because you're making it
17 residential, but Camp is telling you, they don't
18 really mean what they say in the lawsuit? Is
19 that in substance?

20 A. Yes, sir.

21 Q. In front of you, Mr. Farmer, is a
22 thinner notebook.

23 A. Okay.

24 MR. BARR: And if Your Honor and
25 counsel could get there.

1 BY MR. BARR:

2 Q. Let's take a look at tabs K and L. If
3 you -- tell me when you're there.

4 A. I am.

5 Q. Okay. Have you read the master deed
6 under which you bought the units, the property
7 that's here at issue?

8 A. The amended master deed.

9 Q. Yes.

10 A. Yes, sir.

11 Q. You've read it?

12 A. Yes, sir.

13 Q. And are you aware that appendix two to
14 the amended master deed consists of the OCRM
15 marina regulations?

16 A. I don't recall that specific OCRM reg,
17 appendix two.

18 Q. You said you read the master deed. Did
19 you read everything?

20 A. Well, you know, I bought this thing in
21 2016. Did I -- do I remember all of this? No,
22 sir, I apologize, I don't.

23 Q. Well, let's see if we can refresh your
24 recollection then.

25 A. Sure.

1 Q. There's a complete copy of this master
2 deed in the thick notebook, the thick black
3 notebook, if you want to refer to it.

4 A. Okay. Well, whatever.

5 Q. Whatever suits you.

6 A. Okay.

7 Q. But what I'm asking you is, in the
8 course of your ownership, have you read the OCRM
9 marina regulations?

10 A. No.

11 Q. You haven't. You've never even looked
12 at them?

13 A. No, I probably have. I probably looked
14 through all of this.

15 Q. Okay. So are you aware that the OCRM
16 marina regulations -- first of all, are you aware
17 that the marina is permitted by OCRM?

18 A. I am.

19 Q. That the marina can be closed down by
20 OCRM. Are you aware of that?

21 A. I didn't -- I don't know that -- who
22 governs the marina in regards to that, but it
23 makes sense.

24 Q. All right. And so are you aware then
25 that these regulations that are attached to the

1 master deed are there to express the conditions
2 under which the marina may exist? That's why
3 it's an exhibit to the master deed.

4 A. It makes sense.

5 Q. That makes sense, doesn't it?

6 A. Yes, sir.

7 Q. And are you aware that the OCRM
8 requires, for example, that there be a dock
9 master on the site to watch over things? You
10 know that, didn't you?

11 A. I didn't know specifically that they
12 required a dock master and what -- all of that.
13 I knew they had one, but that was the extent of
14 it.

15 Q. Okay. Are you aware that a condition of
16 the permit is that bathroom facilities be
17 available on shore for the slip owners? Are you
18 aware of that?

19 A. I am aware of it now.

20 Q. Okay. And that it requires two toilets
21 and one lavatory for women and one toilet and one
22 urinal and one lavatory for men. You now know
23 that?

24 A. Yes, sir.

25 Q. And you're aware that the bathrooms in

1 the ship store building on the first floor --
2 you, in fact, have those components, correct?

3 A. We do on those components, right.

4 Q. And in addition, each of them has a
5 shower?

6 A. Correct.

7 Q. And you're aware, are you not, until you
8 bought, that those bathrooms were open to slip
9 owners 24 hours a day, seven days a week?

10 A. I don't -- I don't know that
11 specifically.

12 Q. What you do you mean specifically? Do
13 you know it generally?

14 A. Well, you asked a specific question, did
15 I know that the bathrooms were available prior to
16 my being there at the marina?

17 Q. No, no. After you got to the marina and
18 before you purchased, are you aware that those
19 bathrooms were open 24/7?

20 A. No, I was not.

21 Q. You're not aware?

22 A. I was not.

23 Q. Nobody ever told you that?

24 A. No.

25 Q. The first time you ever heard it was

1 from the witness stand today?

2 A. No. I mean, there's been testimony.
3 There's been depositions taken. But I don't -- I
4 don't recall asking or even knowing that, all
5 right, how long these bathrooms -- are they open
6 24/7? And that's your question, so that -- my
7 answer is, no, I did not know that.

8 Q. Okay. Well, you're not challenging it
9 then, are you?

10 A. Well, I answered your question, so.

11 Q. No. I'm asking you, since you answered
12 my question, my next question is, you're not
13 challenging what those witnesses said when they
14 said it was open 24/7, are you?

15 A. Define challenging.

16 Q. Are you questioning? Are you saying
17 they are wrong? Are you saying they're mistaken?
18 Are you saying they're lying? That's that I mean
19 by challenging.

20 A. Okay. Well, thank you for clarifying
21 that.

22 Q. You're welcome.

23 A. Yeah, I do challenge that.

24 Q. So when Tom Bessent testified they're
25 open 24/7, you're saying that's not right?

1 A. No, I'm not testifying that -- to the
2 validity of any of the -- of what he's saying.
3 I'm just saying that, do I agree with that? And
4 I was like, you cited this, and then you went to
5 the 24/7. It's not written down anywhere. And
6 you said, do I agree with it? And I said, no, I
7 don't. So I would challenge that.

8 So I'm not challenging anything he said,
9 but I am challenging that the 24/7, I don't --
10 24/7, from what I heard, is not anywhere. So
11 I -- if I didn't follow that, I apologize. But
12 it seemed like that kind of mixed those things up
13 for me. And so the challenging part was --
14 seemed to be my opinion on it, though.

15 Q. The testimony has been you, I suggest to
16 you --

17 A. Okay.

18 Q. -- that even though the marina -- what
19 do they call it? The marina regulations --
20 operations manual.

21 Even though the marina operations manual
22 has said from day one back in 2006, that the
23 bathroom -- restroom hours are whatever they are,
24 8 to 5, even though it says that, the testimony
25 has been, they were open 24/7 until Mr. Farmer

1 purchased. That's been the testimony?

2 A. That has been the testimony.

3 Q. Have you heard that?

4 A. I have.

5 Q. And so question is, do you question
6 these witnesses when they say that, when they
7 say, it was always that way? So do you question
8 that?

9 A. Yeah.

10 Q. Do you question that?

11 A. Yeah.

12 Q. You question it?

13 A. Yes, sir.

14 Q. So you're saying they're not correct?

15 A. I question it because it's -- it's not
16 written down. So did they always follow it? Did
17 they -- you know, since this being from its
18 inception of, what, 2006 to 2016, when I bought
19 it, I don't -- I don't have knowledge of that.

20 Q. I understand that, but their testimony
21 has been that the practice was -- until you came
22 along, the practice was always that they were
23 open 24/7.

24 A. Right.

25 Q. And so I'm puzzled why we're having such

1 a hard time with this conversation. I'm asking
2 you: Do you challenge what they say? Do you
3 have any reason to question what Tom Bessent says
4 when he said they were open 24/7?

5 MR. O'KELLEY: Your Honor, I'm
6 going to object. He's answered this several
7 different ways. I don't know what else Mr. Barr
8 wants from my witness -- from my client.

9 THE COURT: I think he says, yes,
10 he does challenge that.

11 MR. O'KELLEY: Exactly.

12 THE COURT: Is that correct?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right.

15 MR. BARR: I'm trying to find out
16 why.

17 THE COURT: All right. Well,
18 that's the next question.

19 MR. BARR: Right.

20 THE COURT: Go ahead.

21 BY MR. BARR:

22 Q. So why do you question it?

23 A. Well, I apologize, but I thought I just
24 answered it. And I think it's because, number
25 one, I don't know if that's true. I mean, that's

1 their -- forever it's always been like that,
2 okay, well, that's what they say, but I don't
3 know that.

4 Q. Has anybody told you that that's --

5 A. Hang on. I apologize. Sorry, I don't
6 mean to be rude. And, also, it does state the
7 hours in there.

8 Q. Correct.

9 A. So on these hours, the moment this thing
10 was recorded and it's part of this OCRM document
11 that's an appendix to the amended master deed --

12 Q. Right.

13 A. -- that that time is no longer relevant
14 when they -- they took the time to write it down
15 and state it like that, but now, that's no
16 longer -- that's no longer valid. Now, it's
17 24/7. So, I mean, so my answer is -- I challenge
18 it just on that simple part right there, yes,
19 sir.

20 Q. You challenge it because it's not in
21 writing?

22 A. Yeah. And you were referring to this
23 document.

24 Q. All right. I think we've beat that up
25 enough.

1 A. Okay.

2 Q. Let me invite your attention then to the
3 preceding tabs, which are the operations and
4 maintenance manuals. The tab I is the 2006 one,
5 and the tab J is the 2007 one. Now, whereas the
6 one we were looking at before, Mr. Farmer --

7 A. Yes, sir.

8 Q. -- that derives straight from the state
9 regulation, the OCRM.

10 A. Okay.

11 Q. Operations and maintenance manual was
12 prepared by and for Mariner's Cay Marina. Do you
13 understand that?

14 A. Say it again. I apologize.

15 Q. All right. I see you shuffling papers.
16 I should have waited until you --

17 A. That's okay.

18 Q. The OCRM regulations that we just looked
19 at were taken straight out of a state body of
20 regulations.

21 A. Okay.

22 Q. Those are standard across the state.
23 We're now looking at the operations and
24 maintenance manual, which is an exhibit to your
25 master deed, and it was prepared by and for

1 Mariner's Cay Marina. Are you with me?

2 A. I am.

3 Q. Okay. So I want to ask you about some
4 provisions of this document, which is from the
5 '07 master deed.

6 A. That's I?

7 Q. Beg your pardon?

8 A. The letter I.

9 Q. Well, I is the '06 deed.

10 A. Okay.

11 Q. And J is '07 deed, but I will tell you
12 they're -- I'll represent to you that they are
13 identical.

14 A. Okay.

15 Q. But we'll use J because that's the
16 master deed you're working on.

17 A. Okay.

18 Q. All right. And so are you there?

19 A. Yes, sir.

20 Q. So if you go to the -- I will refer to
21 the numbers at the top of the page, which is on a
22 stamp. And if you go to page X618, page 707.

23 A. Okay.

24 Q. Tell me when you're there.

25 A. All right.

1 Q. The bottom paragraph reads, as noted
2 above, the MCM -- and I will represent to you,
3 that's Mariner's Cay Marina -- facility is a
4 commercial marina. The MCM facility will have
5 electrical hookups, portable water, restrooms,
6 and a sewage --

7 A. I apologize. Are we on 1.0 at the top
8 of the page of 707?

9 Q. No, no. We are at 1.1 at the bottom,
10 the last paragraph.

11 A. Okay.

12 Q. I'm sorry. I'm going too fast for you.

13 A. As noted. Okay. Got it.

14 Q. As noted above, the MCM facility is a
15 commercial marina. The MCM facility will have
16 electrical hook-ups, portable water, restrooms
17 and a sewage waste water pump out facility. Are
18 you with me so far?

19 A. Yes, sir.

20 Q. Now, do you see a correlation there
21 between the operations and maintenance manual, at
22 least in part, and the OCRM and regulations we
23 talked about?

24 A. Yes, sir.

25 Q. Insofar as the compliance with the

1 restrooms and the pump out. Do you see that?

2 A. Yes, sir.

3 Q. And there at the last sentence of
4 that -- or the third line up from the bottom, it
5 says, restrooms will be available between the
6 hours of 9 a.m. and 5 p.m., and will be located
7 as shown on figure 2. Do you see that?

8 A. Yes, sir.

9 Q. So that's where the 9 to 5 comes from.
10 There's no question that that's what was in
11 writing.

12 Then go over to the next page, which is
13 708, and at the -- the last sentence then ties
14 this document in to the OCRM regulations when it
15 says that, MCM operates its marina in accordance
16 with applicable sections (inaudible) and then the
17 marina regulations we just went through. A copy
18 of the regulation is included in appendix two.
19 Do you see that?

20 A. I do.

21 Q. All right. And then flip on over to the
22 next page, remembering now that this is a
23 document that's specific to the Mariner's Cay
24 Marina.

25 The first sentence reads -- and I will

1 continue as an aside, these -- this operations
2 and maintenance manual is also required under
3 OCRM regulations. The marina has to have this
4 document, operations and maintenance manual, and
5 it needs to be updated from time to time.

6 And the first sentence reads, the MCM
7 will contain a copy of the operations and
8 maintenance manual, which contains all of marina
9 permits and amendments in the facility office.
10 Do you see where it says that?

11 A. Yes, sir.

12 Q. Now, that's the master deed by which you
13 bought your units. Do you understand that?

14 A. Yes, sir.

15 Q. Do you agree with that?

16 A. I agree with -- I agree with whatever
17 language is the same.

18 Q. Do you agree that you bought under the
19 2007 master deed?

20 A. With the amended master deed attached.
21 Is that the one you're referring to?

22 Q. This is the amended -- this is the
23 2007 --

24 A. Huh?

25 Q. This is the 2007 master deed.

1 A. Okay. Yes, sir.

2 Q. And so, when you purchased, the rules
3 say that the manual, this manual here, and all
4 permits have to be maintained in the facility
5 office.

6 A. Okay.

7 Q. All right. So my next question is, do
8 you know where the facility office is?

9 A. No, I do not.

10 Q. Okay. Do you have any idea where it is?

11 A. No, I do not.

12 Q. Not even the foggiest idea?

13 A. Well, I've heard it stated that Ed
14 worked out of his house. I do not know if they
15 worked out of the dock currently right now. So I
16 can't tell you where they keep these documents
17 right here.

18 Q. I'm not asking you now.

19 A. Okay.

20 Q. I'm asking you that, as of May of
21 2016 --

22 A. Right.

23 Q. -- before Mr. Geiger left, regardless of
24 whether he did it voluntarily or he was ousted,
25 regardless of that, I'm talking about when you

1 purchased in '16, under this master deed, I'm
2 asking you: Do you have any idea of where the
3 facility office was?

4 A. No. You would have to ask Ed that.

5 Q. Okay. So you had no idea that the
6 facility office was in that ship store first
7 floor?

8 A. I will tell you, I do not know if we had
9 pictures of that ship store, but that place
10 looked like a storage unit. That's what that
11 place looked like. So did he have this book
12 sitting there on the counter? I have no idea.

13 Q. Okay. Well, would you agree with me
14 that if there is a facility office on the
15 property of this marina, it could only be in the
16 ship store building?

17 MR. O'KELLEY: Object to the form
18 of the question, and object to the relevance of
19 the question. He's already answered it. He
20 thought it was -- Ed Geiger had a -- said has
21 been on the dock. I mean, there's no definition
22 of facility office here, Your Honor.

23 THE COURT: Overruled.

24 MR. BARR: All right. I'm going to
25 ask that one again.

1 THE COURT: Yeah.

2 BY MR. BARR:

3 Q. When you bought in May of 2016, you
4 closed your deal, wouldn't you agree with me,
5 that the only place where a facility office could
6 be located on this property where the marina is,
7 would be in that ship store building?

8 A. No.

9 Q. Where else would it be?

10 A. Well --

11 Q. Think of how it looked when you got
12 there. Where would it be?

13 A. Say again?

14 Q. Think of how it looked when you bought
15 the property. Where would it be? Where would
16 the facility office be as it's referred to in
17 this? Where could it possibly be?

18 A. I don't know. You would have to ask Ed.

19 Q. No, I'm not asking Ed. I'm asking you.

20 A. I have no idea.

21 Q. Well, where else --

22 A. I didn't see anything like that. You --
23 I don't know. You're asking -- hang on. I
24 apologize if I'm -- I just want to -- when you
25 walk into this space, you're asking me whether

1 this -- this main floor there, 1-B or 1-A,
2 whatever it is, was the facility office.

3 Q. No, I'm not.

4 A. Okay. Well, then my answer is, I don't
5 know.

6 Q. No, no, I'm not -- forgive me if I
7 didn't state it clearly.

8 A. Okay.

9 Q. All right. Let me state it again. I
10 apologize if I was vague.

11 A. All right.

12 Q. Is it not correct, there's only one
13 building on the property, the ship store
14 building?

15 A. That's correct.

16 Q. That's it. There's no other building?

17 A. That's correct.

18 Q. All right. Isn't it correct that the
19 only place where a facility office could be
20 located would be in that building, the ship store
21 building? Where it could be located would be in
22 that building; isn't that correct?

23 A. No. I've seen floating offices. In
24 fact, this marina has a strict rule, no
25 houseboats, except for one exclusion, and that is

1 for the dock master. They will allow a dock
2 master to come in where -- if they have a slip,
3 and so my assumption was that the dock master
4 could be in a different space.

5 It could be a houseboat, and they would
6 allow the dock master to live there. That's
7 stated somewhere. I don't know where that is,
8 but I did read that. So in looking and trying to
9 answer your question the best I can --

10 Q. So that's the best you can answer it,
11 huh? The best you can answer it is to stay,
12 well, there could be a houseboat, right? Is that
13 your answer?

14 A. Well, I think it was a little bit more
15 than that.

16 Q. When you purchased in May of 2016, was
17 there a houseboat?

18 A. No.

19 Q. Okay. When you purchased in 2016, was
20 there a houseboat occupied by the dock master?

21 A. No.

22 Q. So let me ask the question again. When
23 you purchased in May of 2016, is it not correct
24 that the only place where a facility office could
25 be located would be in the ship store building?

1 A. And I'll answer it again the same way.
2 There was -- there was nothing that led me to
3 believe that, by me looking at it. Whether they
4 had stuff just sitting on the counter, I have no
5 idea.

6 Q. I'm sorry. I'm not -- I'm really not
7 making my question yet clear apparently.

8 THE COURT: No, I think he's
9 answered it. I got it.

10 MR. BARR: Okay. You got it. All
11 right.

12 THE COURT: He didn't see it.

13 MR. BARR: And the question wasn't
14 whether he saw it.

15 THE COURT: I know. I know.

16 MR. BARR: The question is there's
17 a facility office --

18 THE COURT: The question was, is
19 there any other place on the face of the earth
20 that it could be. I'm with you. All right.

21 BY MR. BARR:

22 Q. Look at the bottom paragraph,
23 Mr. Geiger, in the last sentence of this same
24 page. There are absorbent pads and containment
25 booms available at the ship store in case of

1 incidental fuel spills.

2 A. Are we on 709?

3 Q. Yes. Bottom paragraph, last sentence.

4 THE COURT: Yeah, last sentence.

5 Yeah. Okay.

6 BY MR. BARR:

7 Q. Are you with me?

8 A. Yeah.

9 Q. There are absorbent pads and containment
10 booms available at the ship store in case of
11 incidental fuel spills, leaking boats or a sunken
12 boat. Did I read that correctly?

13 A. That's what it says.

14 Q. All right. Did you see such things in
15 the ship store?

16 A. No, sir.

17 Q. Sir?

18 A. No, sir.

19 Q. Did you see them down below on the
20 ground?

21 A. The only thing that I think -- the
22 absorbent pads were on the dock, I have seen
23 that. I don't think I've seen any booms.

24 Q. Okay. Let's go over to the next page,
25 recorder's page 710.

1 A. Okay.

2 Q. Under 2.1.3, the second sentence from
3 the end of that sentence reads, emergency spill
4 kits containing absorbent booms are available in
5 the ship's store at the fixed pier. Did I read
6 that correctly?

7 A. That's what it says.

8 Q. All right. That refers, does it not, to
9 the building that you claim you own, correct?

10 A. That's right.

11 Q. All right. So do you have emergency
12 spill kits in that building?

13 A. I do not.

14 Q. Well, does that mean that you are not
15 complying with this manual by not having them
16 there?

17 MR. O'KELLEY: Your Honor, I'm
18 going to object to that. There's been no
19 testimony that Mr. Farmer has to comply with this
20 manual. This is the permit for the marina.

21 MR. BARR: Well, that's a good
22 point. I will rephrase the question.

23 THE COURT: Okay.

24 BY MR. BARR:

25 Q. Well, is it not correct that this

1 suggests that the marina is out of compliance
2 with OCRM regulations by not complying with its
3 own manual and having these emergency spill kits
4 in the building that you claim you own?

5 A. Well, I think that the -- you're asking
6 my opinion on that?

7 Q. No. I'm asking you: Isn't it correct
8 that, by your version, that by not having them in
9 there, the marina is in violation of this manual,
10 and therefore, in violation of the permit?

11 A. I don't think that at all. I think that
12 Ed knew his job and was doing it. Randy Smith --
13 Ed Geiger, he's no longer the dock master. Randy
14 Smith. I think that if they need it, they've got
15 it. I don't have no reason to believe they don't
16 have it.

17 Q. But they're not in the building that
18 you're claiming, right?

19 A. That's correct.

20 Q. Are they down below, on the ground below
21 it?

22 A. I do not know.

23 Q. Who controls access down below?

24 A. I do.

25 Q. Now, let's go to recorder's page X618,

1 page 713, and I'm not going to beat this up
2 anymore, Mr. Farmer. Do you see under 4.01 --
3 are you there?

4 A. Yes, sir.

5 Q. That the marina rules and regulations
6 are available at the facility office?

7 A. Yes, sir.

8 Q. In addition, the harbor master shall
9 maintain a diaster preparedness plan, and then
10 down at the bottom, it says, disaster
11 preparedness equipment, et cetera, et cetera.
12 And the last phrase, shall be stowed in or near
13 the harbor master's office. Do you see that
14 reference?

15 A. Yes, sir.

16 Q. So these were all -- do you agree then
17 that if you bought into the 2007 master deed, and
18 this was a -- this was taken from the 2007 master
19 deed, that the right you claim hereunder is
20 subject to what we just reviewed?

21 A. If it was found that I was responsible
22 for any of this stuff, I would take care of it.

23 BY MR. BARR:

24 Q. But however it happened, the dock master
25 is no longer welcome on that first floor,

1 correct?

2 A. The dock master -- it's private
3 property, that first floor is. So, no, the dock
4 master does not have access to that floor.

5 Q. All right. Now, so who does have access
6 to that first floor?

7 A. Me, my family, and my guests.

8 Q. All right. And isn't it correct that
9 you rent it out?

10 A. That is not correct.

11 Q. That's not correct. Well, how do you
12 use it?

13 A. Personal use.

14 Q. What do you mean by personal use?

15 A. Personal use.

16 Q. Who?

17 A. Family, friends, acquaintances.

18 Q. What is contained on the first floor
19 then?

20 A. Inside?

21 Q. Yes, inside.

22 A. Two beds, a couple couches,
23 refrigerator, TV, coffee table.

24 Q. Is there cooking equipment, stove or
25 anything like that?

1 A. No stove.

2 Q. And within the walls -- is it all one or
3 is it partitioned off?

4 A. It's all one open room.

5 Q. So one open room. So within that -- the
6 walls of that room, is there -- are there
7 bathrooms?

8 A. No.

9 Q. All right. What bathrooms do the
10 occupants or users of that property use?

11 A. Bathrooms in the hallway.

12 Q. All right. So turn now to tab -- the
13 last tab on the small notebook, and that's the
14 sketch that Mr. Bessent discussed. So do you
15 recognize this?

16 A. Yes, sir.

17 Q. All right. So behind that feature
18 that's called 72 inch door, that's the area we've
19 been talking about, right? That's the first
20 floor?

21 A. That's --

22 Q. That's the apartment?

23 A. All of that is on the first floor, but,
24 yeah.

25 Q. Correct. I understand that, but behind

1 the 72 inch door shown here and all of the way
2 back -- and Mr. Bessent says, it goes beyond this
3 page, that's this first floor apartment you're
4 describing?

5 A. That's right. If you looked at the
6 building from the front, you would see a front
7 door. It looks like a front door, and that would
8 be on the opposite side of this sketch.

9 Q. Right. And then to get to the
10 restrooms, the users of that apartment then come
11 through the doorway we see in this diagram at the
12 top end of the hall. Do you see that?

13 A. Yes, sir.

14 Q. And they come in to one or two of these
15 restrooms where it says men or women, right?

16 A. Yes, sir.

17 Q. And those are the same restrooms that
18 are used by the slip owners, right?

19 A. Yes, sir.

20 Q. One for men and one for women?

21 A. Yes, sir.

22 Q. So you perhaps uniquely have an
23 apartment that has a urinal in the men's room.
24 Is that fair to say? Don't run into that a whole
25 lot, do you?

1 A. You don't.

2 Q. All right. But yours does?

3 A. Yes, sir, it does.

4 Q. And so that's how you're using it,
5 right?

6 A. Yes, sir.

7 Q. And is it your testimony that you have
8 never rented out that space for payment?

9 A. That's correct.

10 Q. Never?

11 A. Never.

12 Q. All right. And then how about the
13 second floor? How is that used?

14 A. We live there.

15 Q. That's where you live. Now, if you go
16 to the page right before tab N, it ought to be a
17 photograph.

18 A. This right here?

19 Q. No. The page right before tab N. It
20 will be the last photograph.

21 A. Okay.

22 Q. There you go. It's an elevation shot.
23 Do you recognize that as an elevation shot of the
24 ship store building?

25 A. Yes, sir.

1 Q. All right. And so to get to your --
2 where you're living, is it correct, you have to
3 go up these outside stairs we see?

4 A. That's correct.

5 Q. All right. There are no stairs from the
6 interior going up to the second floor?

7 A. No, sir.

8 Q. All right. And, obviously, you're using
9 that as your residence, you and your wife, I
10 suppose?

11 A. Yes, sir.

12 Q. Now, then you have two fuel docks. Now,
13 let's go to tab M, which are the earlier
14 photographs, and go to the third photograph N.
15 There ought to be a flat one and horizontal -- I
16 mean, vertical look down on the marina. Do you
17 see that?

18 A. Okay. Yes, sir.

19 Q. You might want to turn it edge-wise.
20 And so the fuel docks are on the finger pier C;
21 isn't that correct?

22 A. Yes, sir.

23 Q. Which would be the third from the left?

24 A. Yes, sir.

25 Q. And so finger pier C is where the fuel

1 docks were previously, correct?

2 A. Yes, sir.

3 Q. And so how many spaces are out there on
4 the end of that now?

5 A. Two.

6 Q. Two. And is it correct that you --

7 A. Two docks.

8 Q. Two docks. Is it correct that you lease
9 those out?

10 A. I do.

11 Q. And for payment?

12 A. Yes, sir.

13 Q. And what do you get? How much are you
14 paid for it?

15 A. 225 for one and 295 for the other.

16 Q. All right. And where do the owners of
17 those boats live?

18 A. They both -- if I understand correctly,
19 they both come and go. They don't live in
20 Charleston. Both of them have sons that come
21 and, you know, one of them is there weekly, and
22 the other one I see from time to time.

23 Q. And do you have access to your boats so
24 that you can operate them?

25 A. I can.

1 Q. Are they key operated?

2 A. No, they are -- yeah, they're key
3 operated. So the houseboat has got a single
4 outboard, and the sailboat has no engine.

5 Q. And so to operate either of them, do you
6 need a key?

7 A. Yeah.

8 Q. All right. Do you have keys to them?

9 A. I do not.

10 Q. You do not?

11 A. No.

12 Q. And you don't know whether -- who would
13 you contact in order to communicate with --

14 A. Well, the ones that --

15 Q. -- if you wanted a key?

16 A. Yeah. If somebody wanted to use the
17 pump out -- I assume that's where you're going
18 with it.

19 Q. That's where I'm going.

20 A. So our plan is to contact the owner's
21 son. The owner's son lives in Marshwinds Condo,
22 which is 100 yards behind me.

23 Q. So that's a -- the marsh, whatever it
24 is, that's a part of the -- it's sort of the
25 complex of the yacht and racquet club?

1 A. Yes, sir.

2 Q. Or adjacent to it?

3 A. It's adjacent to it.

4 Q. All right. And so the plan is what?

5 A. It's to contact them and get the boat
6 out and do what we need to do. May I elaborate
7 on that just a little bit?

8 Q. Go ahead.

9 A. The marina has a slip. They own a slip.

10 Q. Correct.

11 A. They bought it. They might own two.
12 They can tell you that. They've got one. I
13 suggested to them, I said, listen, we will leave
14 the slip empty. Let me move one of these boats
15 over to your slip. There's no problem. They --
16 glad to do it.

17 The footage is not an issue, and then it
18 won't be an issue. You can come and go as you
19 please. They would not do that. And I was --
20 anyway, I can't tell you why they wouldn't do it,
21 but anyway, that's our plan. And I would still
22 do that plan, but I just suggested, if they
23 wanted to do that, I would try to arrange it and
24 get it done.

25 Q. Well, I appreciate your offer, but this

1 is not exactly a negotiating table.

2 A. No, it's not. But the point is that,
3 it's been said a lot here, this and that and the
4 other. And me and my family has been nothing but
5 amiable and giving to the HOA a lot, a lot, and
6 this is just a small, little example of one thing
7 that we've offered, and they didn't want to do
8 it.

9 Q. Well, Mr. Farmer, didn't there come a
10 time when you removed the gate controls equipment
11 that was on the first floor of the ship store
12 building?

13 A. That's right.

14 Q. And you cut the wires, and then you
15 didn't call anybody. You simply took the
16 equipment and put it outside and told Ed Geiger
17 or somebody to come get it?

18 A. That's not correct, but that's
19 interesting you say it like that.

20 Q. Say it again.

21 A. That's not correct.

22 Q. You can say it like that. I'm not
23 offended, but go ahead.

24 A. That's not correct.

25 Q. All right. Well, tell me how it

1 happened.

2 A. Well, I told him to come and get it. I
3 said, if you want that equipment, be glad -- you
4 can come and get it. I'll be glad to give it to
5 you.

6 And they didn't want it, and I said
7 okay. So the cutting of the wires is blown out
8 of proportion. This thing is a solid state type
9 of piece of equipment that has two phone lines
10 going into it, which is the little -- the old
11 school phone line that you plugged in like that.

12 And so it actually -- the cutting of the
13 wires, I did cut the wire, but the only reason I
14 cut the wire was so that they would know because
15 it had a bunch of whatever. I didn't know how
16 the thing worked, but places for you to plug in.

17 And I left those in there so they would
18 know, it went into that port and then that port.
19 And then this thing is installed much like a
20 light switch where it's -- you push up and you
21 turn it and then you tighten two screws. That's
22 exactly how this thing was mounted on the wall.

23 And so I took it off the wall. I
24 carried it to the front of my building. I took
25 pictures of all of it and sent it to them. And I

1 said, listen -- because I don't want any problems
2 with people saying I damaged this or did that or
3 ripped -- I've heard it described, I ripped it
4 off the wall and all. It's just not correct.

5 And so then I went to the front of my
6 building because that's where the condominiums
7 are, and that's where Ed lives. I put it on the
8 front step, and I said, Ed, please come and get
9 it. And he came over and got it.

10 Q. All right. That's your -- that's your
11 version of that incident, right?

12 A. That's exactly what happened.

13 Q. Well, so isn't it fair to say that
14 before you purchased this property, there was
15 some question about whether you could use it for
16 residential purposes?

17 A. No, sir. I would not -- I would not
18 have bought if I felt like I could not use it.
19 Number one, I could not use it as a residence,
20 and number two, if the marina hadn't already used
21 it as a residence, and the HOA president, Roger
22 Camp, did not give his blessing and his -- his
23 approval and wanted me to do it. So I would not
24 have. No, sir, I would not have.

25 Q. Are you aware that even today, under the

1 2007 master deed, the board of directors of the
2 council of co-owners can determine what proper
3 usage can be made of this property, even now,
4 regardless of what happens in this case?

5 A. No.

6 Q. You're not aware of that?

7 A. No.

8 Q. Now, there came a time when the council
9 took you to Court seeking injunctive relief on
10 two occasions, right?

11 A. Yes, sir.

12 Q. And one of them had to do with this pump
13 out thing, right?

14 A. Yes, sir.

15 Q. And I'm hearing you say you offered up
16 one of the spaces in exchange for one of the --
17 one that was owned by the council. We will
18 address that later. I may put up some testimony
19 about that.

20 But assuming that didn't happen, doesn't
21 happen, what would it take -- with those two
22 boats at the fuel dock, what would it take for an
23 owner like you heard Mr. Mock testify, correct,
24 about what it would take to get his boat in
25 there?

1 I think he just has big outboard, but
2 what would it take to get one of the boats there
3 relocated, to allow someone to pump out their
4 waste water and to complete it? What would the
5 steps be?

6 A. Well, that's a great question because
7 that's exactly what the question was at the
8 injunction. And that's when I made the offer for
9 the boat switch, so it would be open. When they
10 turned that down, I said, okay, well, then
11 let's -- give me 24 hours.

12 And so then it went down as a 24 hour
13 notice, and whenever that was. And there was a
14 little bit of leeway in there on different
15 things. I can't remember what they were, but
16 that was essentially how everybody agreed to act.
17 If they needed it, they could use it. And so
18 that's kind of how we've been proceeding ever
19 since.

20 Q. And the order -- this was Judge
21 Nicholson. The order that Judge Nicholson signed
22 said nothing about switching docks. The order
23 said, does it not --

24 A. It does not.

25 Q. I'm not through with my question. The

1 order says, does it not, that the arrangement is
2 that they would notify you. You would remove a
3 boat. Whoever needed a pump out would then pump
4 it out, and then you would see that the boat was
5 returned. Isn't that fundamentally what the
6 order provided?

7 A. Yes, sir.

8 Q. Right. And in order to do that, you've
9 got to find the owner because you don't have a
10 key to the boat, right?

11 A. No, I currently do not.

12 Q. And so you'd have to find the owner, and
13 if he's not there, you would have to wait on him,
14 right? Find him somewhere. And then where would
15 you put the boat that was being removed so that
16 someone could pump out?

17 A. Well, I think the best answer to that
18 question is the answer that -- I think it was
19 Mr. Barr gave the answer, which was, you can put
20 the boat anywhere you need to because there's
21 plenty of spaces. And there's a lot of empty
22 spaces in the marina. It didn't seem like it was
23 going to be an issue for anybody. So we agreed
24 to the 24 hour deal.

25 And so, again, you know, if the issue

1 with the condo -- I mean, the marina folks is
2 that they need that space. It's a very simple
3 matter, and we can switch docks. The sides is
4 roughly the same, and so I would be willing to do
5 it.

6 Q. And what would happen if you couldn't
7 find the owner of the -- to move the boat?

8 A. Then I would get it done.

9 Q. Say what?

10 A. I would get it -- I would move the boat
11 however I could. I would tow it off, move it
12 off, anchor, you know, whatever I need to do.
13 You know, it is something that I need to do, and
14 so it's --

15 Q. So you recognize that the OCRM permit
16 requires the pump out, right?

17 A. I do.

18 Q. So your suggestion is that if this unit
19 is confirmed to be owned by you, the arrangement
20 you just described would just sort of go on
21 forever?

22 A. Well, I think that it would be like any
23 other thing like this, and you would try to sit
24 down and work together to find out a good,
25 long-term, even a permanent solution to it.

1 Q. But at the end of the day, Dolph Farmer
2 would control that because he owns it, right?

3 A. I do.

4 Q. I meant, your LLC, of course.

5 A. Yes, sir. I do own it. And I've made a
6 bunch of provisions, offers to give -- to sell to
7 the HOA the docks and different things like that,
8 and, you know, as of today, they hadn't taken me
9 up on any of it. But the boat slip --

10 Q. Mr. Farmer, forgive me.

11 MR. BARR: Your Honor, I'm, again,
12 going to have to object to that. We, of course,
13 would like to --

14 THE COURT: As far as --

15 MR. BARR: -- resolve it, but we're
16 talking about proposals being made here from the
17 witness stand.

18 THE COURT: Right.

19 MR. BARR: You know, I just don't
20 think that -- I think they ought to be stricken.

21 THE COURT: All right. I will --

22 MR. BARR: Or at least not
23 considered.

24 THE COURT: I'll acknowledge that.

25 MR. BARR: If you'll give me one

1 minute to confer with my colleague.

2 THE COURT: Sure.

3 MR. BARR: Do you want to take
4 five?

5 THE COURT: Yeah. Let's take five.
6 That will be fine.

7 (A recess transpired.)

8 THE COURT: Back on the record.
9 Mr. Barr, you are finished?

10 MR. BARR: Yes, sir. I have no
11 further questions.

12 THE COURT: All right. Your lawyer
13 gets to ask some more questions.

14 MR. O'KELLEY: Some follow-up.

15 THE COURT: All right.
16 Mr. O'Kelley?

17 REDIRECT EXAMINATION

18 BY MR. O'KELLEY:

19 Q. Mr. Farmer, there's never been a problem
20 with access to the bathrooms, has there, except
21 for during COVID?

22 A. No, sir.

23 Q. You never read the master deed for the
24 Racquet and Yacht Club prior to closing, did you?

25 A. No, sir.

1 Q. All right. You were asked about zoning,
2 and you testified earlier you did some research
3 about zoning. You've told us about that earlier
4 today, correct?

5 A. Yes, sir.

6 Q. And, again, what did you find out about
7 the residential use and zoning?

8 A. It was allowed.

9 Q. The OCRM regulations that Mr. Barr asked
10 you about, section 2.2.1, that requires bathrooms
11 to be opened from when?

12 A. I believe 9 to 5.

13 Q. Thank you, sir. And the operations
14 manual also states there has to be a fuel
15 operation out at Mariner's Cay. Is there any
16 fuel for purchase or for sale out at Mariner's
17 Cay?

18 A. No, sir.

19 Q. Are the terms facility office defined
20 anywhere in the regulations that you've ever
21 seen? It doesn't say it has to be at this
22 location or something like that, does it?

23 A. No, sir.

24 Q. And about the harbor master office, does
25 it mention a place for that to be?

1 A. No, sir.

2 Q. And you were here yesterday when you
3 heard several of the plaintiffs testify that the
4 booms are available, correct?

5 A. Yes, sir.

6 Q. And to the best of your available -- the
7 best of your knowledge, those booms have always
8 been available, correct?

9 A. Yes, sir.

10 Q. And you are operating -- and when I say
11 you, I mean, your two LLCs -- are operating under
12 two consent orders: One with Judge Nicholson and
13 one with Judge McCoy, correct?

14 A. Correct.

15 Q. Are there -- have y'all suffered any
16 fines for the -- about the fuel docks or paid any
17 fines for those? And when I say y'all, I mean
18 the LLCs, not you, individually.

19 A. Yeah. There was -- there were fines
20 that -- that DHEC had on previous owners that we
21 weren't aware of that we had --

22 Q. Okay. You had to pay. And do you
23 recall what that amount was?

24 A. I actually had to get -- we had to sign
25 a loan agreement on that. I think it's part --

1 it's part of my original documents, 6 or 7,000,
2 something like that.

3 MR. O'KELLEY: Thank you,
4 Mr. Farmer. That's all I have.

5 MR. BARR: May I have one moment?

6 THE COURT: Sure.

7 MR. BARR: I don't have any
8 questions, Your Honor.

9 THE COURT: All right.

10 MR. O'KELLEY: Your Honor, that's
11 our case. And I'll renew the motions I made
12 earlier today --

13 THE COURT: Just one second. Just
14 one second.

15 MR. O'KELLEY: Oh, yes, sir.

16 THE COURT: In response to
17 Mr. O'Kelley's question, having read the original
18 master deed, I think that was specifically
19 referencing the Racquet and Yacht Club master
20 deed from 1982, correct?

21 THE WITNESS: That's how I
22 understood it.

23 THE COURT: You did read the master
24 deed from 2006 and 2007; is that correct?

25 THE WITNESS: For the marina?

1 THE COURT: For the marina itself.

2 THE WITNESS: Yes.

3 THE COURT: You were aware of that,
4 at the time of the purchase?

5 THE WITNESS: I was aware of both
6 of those documents. The controlling document
7 that we referenced was the amended master deed
8 because our understanding was that was the --
9 that was -- whatever the original master stated,
10 the amended master deed was the controlling
11 document in that. So I'm not saying I didn't
12 read the master, but my focus mainly was on the
13 amended.

14 THE COURT: Right. And was the
15 conveyance pursuant to the '07 master deed or to
16 the '06?

17 MR. O'KELLEY: The '07 one is what
18 is listed in his deeds to those LLCs, Your Honor.

19 THE COURT: Okay. Got it. Thank
20 you, Mr. Farmer.

21 RECROSS-EXAMINATION

22 BY MR. BARR:

23 Q. To make sure I heard it correctly,
24 Mr. Farmer, did I hear you say you did or did not
25 read the '06 deed and the '07?

1 A. I don't know the year on that.

2 Q. Well, did you read the first master deed
3 and the amended one?

4 A. I did.

5 MR. BARR: All right.

6 THE COURT: Got it. All right.
7 Renew your motion?

8 MR. O'KELLEY: I jumped ahead of
9 myself. I renew my motion for all the same
10 reason that we've reiterated and iterated and
11 discussed for about an hour this morning.

12 THE COURT: All right. And I'll
13 deny it on the same reason without having to make
14 Mr. Barr respond.

15 Mr. Barr, do you have any proposed reply
16 that you want to put forward?

17 MR. BARR: No.

18 THE COURT: All right. Very good.

19 MR. O'KELLEY: A day early.

20 THE COURT: The matter is
21 concluded.

22 MR. O'KELLEY: Your Honor, Mr. Barr
23 and I have talked. We were going to update that
24 deposition designation list. I'll be able to
25 send him the additional stuff first thing

1 tomorrow.

2 THE COURT: That would be fine.

3 MR. O'KELLEY: And we'll send it to
4 you pretty quickly for your reading pleasure.

5 THE COURT: Sure. Let me -- here's
6 what I like to do when things are fresh in my
7 mind, which some of these things are. For the
8 benefit of all of y'all here, I've pulled the
9 lawyers in earlier this morning that -- I shared
10 with them some of my thoughts about the case.

11 But let me -- let me share with y'all
12 now some of my thoughts relative to the law that
13 I think applies because I'm going to ask y'all --
14 what I typically do is to ask lawyers to prepare
15 proposed orders for me. I request those in
16 within 30 days usually of the trial, but
17 sometimes -- I've got my court reporter working
18 overtime because for whatever reason, I seem to
19 try a lot of cases.

20 Anyway, so let me share some of this
21 with you because each condominium case that I've
22 had has been uniquely different, but they are all
23 subject to the South Carolina Horizontal Property
24 Regime Act. So that's really the place to start
25 when it comes to condominiums. And that's code

1 sections 27-31-10 through 300 is the act.

2 Y'all have done -- frankly, the lawyers
3 have done an excellent job in presenting this
4 case in two days. There's a lot going on here,
5 and I appreciate y'all's preparation. That
6 always makes my life a lot easier. And the
7 battle we have heard is between the
8 interpretations of what statute applies, and then
9 I'm going to talk about some of the cases, and
10 I'm going to refer you to those cases.

11 The plaintiff's position is 27-31-70
12 applies to the common elements. Once created
13 cannot be divided from the condominium regime.
14 Any covenant to the contrary shall be void.
15 That's 27-31-70.

16 27-31-60 is how Mr O'Kelley responded on
17 behalf of the Farmers, and he talks in terms of
18 the apartment owners exclusive ownership of the
19 apartments and their percentage interest. It
20 cannot be altered without the acquiescence of the
21 co-owners representing all the apartments of the
22 property.

23 So those are the statutory criteria.
24 There's one more statute that I found that I
25 thought may apply. I wanted to bring that to

1 y'all's attention, and that's section 100, which
2 defines the master deed or the lease and its
3 contents.

4 And in particular, subsection C
5 describes the general common elements. They're
6 both general common elements and limited common
7 elements. I'm not aware of any limited common
8 elements in this particular case. It's all just
9 general common elements.

10 Subsection F is a description of the
11 rights and obligations of an apartment owner and
12 the co-owners. And then exhibit -- and excuse
13 me, subsection G, which talks in terms of what
14 you have to have in the event that you're
15 creating a condominium regime in two or more
16 stages and what the master deed has to contain in
17 that instance.

18 And that's G1 through 4. Okay? And so
19 that may well get us into the 1982 lease because
20 clearly the marina was contemplated at the time
21 this condominium regime was formulated in 1982.

22 All right. So yesterday I spoke in
23 terms of the Heritage Federal Savings and Loan
24 vs. Eagle Lake condominiums case. It's 318 South
25 Carolina 535, 1995 Court of Appeals case by Judge

1 Cureton. We talked about that.

2 There was a prior case in that same
3 action, Resolution Trust Corporation vs. Eagle
4 Lake, which is 310 Second of 473. This is an
5 Horry County case. The property went through RTC
6 just as the Mariner's Cay did.

7 The sole issue before the Court is
8 whether a mortgage given by a condo developer on
9 the entire project after the master deed has been
10 filed is void under the statute. The Court held
11 that it was and affirmed the Trial Court.

12 The other case, I think, that is really
13 closely on point is another Court of Appeals
14 case. Each of those cases were heard by or
15 decided by -- or written by Judge Cureton, Jasper
16 Cureton, who is the former Master-in-Equity in
17 Richland County. And this is Reyhani,
18 R-E-Y-H-A-N-I, vs. Stone Creek Cove Condominium
19 Regime. This is from 1997, 329 South Carolina
20 206.

21 And this one factually is very similar
22 to what we've got going on here. Okay? The
23 Reyhani case is very similar. It was a phased in
24 development. Certain property was omitted. And
25 the question was whether or not it could be used

1 for -- in this instance, they were trying to
2 create a fee simple title to a lot as opposed to
3 what we've got here.

4 So from that standpoint, it's
5 distinguishable, but you had a deadline upon
6 which they could use the property or not. So
7 those are the cases that I have found most
8 similar.

9 One more case, I think, for your benefit
10 is Walters vs. Summey Building Systems. This is
11 311 South Carolina 507. Again, Judge Cureton
12 from 1993. And it just goes on to say that
13 construction of an unambiguous deed is a question
14 of law is what it really stands for, from my
15 perspective.

16 Extrinsic evidence is admissible to
17 resolve ambiguities but not to create them where
18 none exists. And that was a two to one decision
19 on which Justice Littlejohn did not agree. All
20 right? So those are sort of the cases that I
21 have found that I think are factually made to be
22 most on point.

23 Let me tell you this. I went looking --
24 because I told the lawyers in chambers, I found
25 this great quote; so I'm going to give it to you.

1 And this is one of the issues. We talked about
2 that just briefly. And that is, as I indicated
3 at the beginning of this trial yesterday morning,
4 that these condominiums are like little -- sort
5 of they're law into their own.

6 So this is from a case in the state of
7 Florida, which is where most of this condominium
8 law has come from. And they describe the
9 condominiums as a quote, little democratic
10 sub-society. That's from a case called Hidden
11 Harbour Estates vs. Norman, and that's from a
12 Florida Fourth District Court of Appeals in 1975.
13 309 Southern Statute 180.

14 But the quote from the Court was,
15 inherent in the condominium concept is the
16 principle that to promote the health, happiness,
17 and peace of mind of the majority of the unit
18 owners since they're living in such close
19 proximity and using facilities in common, each
20 unit owner must give up a certain degree of
21 freedom of choice, which he might otherwise enjoy
22 on a separate, privately owned property.

23 Condominium unit owners comprise a
24 little democratic sub-society of necessity.
25 Okay? So that's a better description of what I

1 call them. I call them little communistic
2 societies, but that's not what they are. Okay?
3 Little democratic society. You do elect a board
4 in these things, and so why anybody wants to be
5 on that board is beyond me.

6 But -- and the other thing I think I
7 talked about at the beginning of the case, the
8 Court has been -- the Courts of the state have
9 been fairly clear, although it's not always
10 clear -- but fairly clear on what authority the
11 council of co-owners is what they're called in
12 this case -- what authority they have and what
13 they don't have.

14 And so you have to think about that
15 distinction as you go through this process. And
16 the council of co-owners, this Court does not
17 believe combined individual unit owners. It
18 requires some level of authority to be approved,
19 and whether that's unilateral or -- which is what
20 seems to have been done in this case, or whether
21 or not that's a simple majority or a super
22 majority.

23 I've seen a couple of different numbers
24 in here. I think I saw two-thirds ultimately is
25 what I saw, get two-thirds approval. But I saw

1 it with -- I discussed with the lawyers some
2 potential for resolution of this case, be it
3 would have to take some sort of approval process,
4 which we couldn't possibly get to in the two days
5 that we've been here. Okay?

6 It would take a lot of work and effort
7 to get this thing resolved. I know y'all have
8 tried that. But I always hold out some hope that
9 you can resolve it because otherwise, it might be
10 another ten years y'all get to be in our
11 courtroom. And I know that Mr. Caper Barr, IV,
12 is not going to put up with that. He's helped
13 about as much as he's willing to help. He used
14 to come in this courtroom a lot.

15 Gentlemen, anything I can do to help
16 y'all get to a resolution, I'm happy to do it.
17 Other than that, I will just look to see proposed
18 orders. I will give y'all that case law because
19 I just need y'all to know what I've been seeing
20 and what I'm looking at from a standard of proof.

21 Okay. All right. I want to thank the
22 parties for being civil to one another. That
23 makes life a lot easier for all of us. I'm
24 hoping we can get to a resolution that works for
25 everybody, but if we can't, that's why they pay

1 me the big bucks. I'm up here making decisions
2 in other people's lives.

3 All right. Nobody to reward; nobody to
4 punish. I've just got to make a decision. I try
5 to do that based on the facts and the law, but I
6 realize I'm not the last arbiter. That was those
7 guys up in Columbia that get to make those
8 decisions. So that's why I can read to y'all
9 what little bit I did read to y'all today.

10 All right. Thank you very much for
11 coming.

12 MR. O'KELLEY: Thank you, Your
13 Honor.

14 MR. BARR: Thank you, Your Honor.

15 (The hearing was concluded at 5:21
16 p.m.)

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF DORCHESTER

4 I, Jennifer M. Adams, Certified
5 Shorthand Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness whose attached in the
8 foregoing hearing was by me duly sworn to testify
9 to the truth, the whole truth, and nothing but
10 the truth in the within-entitled cause; that said
11 hearing was taken at the time and location
12 therein stated; that the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed by computer-aided
transcription; that the foregoing is a full,
complete and true record of the testimony of the
witness and of all objections made at the time of
the examination; and that the witness was given
an opportunity to read and correct said hearing
and to subscribe the same.

Should the signature of the witness
not be affixed to the hearing, the witness shall
not have availed himself/herself of the
opportunity to sign or the signature has been
waived.

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 on February 12, 2023 at
Charleston, Charleston County, South Carolina

20 _____
21 Jennifer M. Adams
22 Court Reporter And Notary Public
23 My commission expires: 03/15/2032
24
25

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NO. 2017-CP-10-3099
4

5 Elizabeth Heatley, Neal B. McCann,)
6 Jr., David Neil Monk, Thomas V.)
7 Bessent, and Mariners Cay Marina)
8 Council of Co-Owners, Inc.,)
9 Plaintiffs,)

10) Hearing
11 vs.) September 7,
12 Mariners Cay Marina Condo, LLC, and) 2022
13 Mariners Cay Fuel Dock, LLC, George)
14 A. Farmer, Jr., and South Atlantic)
15 Bank,)
16 Defendants.)

17
18
19
20 Hearing before the Honorable Mikell R.
21 Scarborough, reported by Josie Allen Boehm, Registered
22 Professional Reporter and Notary Public, at 100 Broad
23 Street, Courtroom 2A, Charleston, South Carolina,
24 September 7th, 2022 commencing at 2:08 p.m.
25

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1 THE COURT: All right. This is my second
2 motion to reconsider today. Today is reconsideration
3 day in the Master in Equity Court.

4 This case is captioned Elizabeth Heatley and
5 others as Plaintiffs versus Mariners Cay Marina Condo
6 and a few other ones to include Mr. George Farmer and
7 the South Atlantic Bank. Case number is 2017-CP-
8 10-3099.

9 We are here on the Defendants' motion to
10 reconsider the order granting declaratory relief,
11 which this Court issued on May 16th of this year.

12 The motion to reconsider was timely filed;
13 however, I think an objection was made to its
14 sufficiency by Mr. Barr in his response to Defendants'
15 motion to reconsider the order granting relief filed
16 May 26.

17 So let's bring that up first. That was also
18 brought up. These lawyers out here are getting really
19 good. They're working hard, which is what we expect
20 them to do.

21 So brought up Rule 7(b)1 in the case of *Camp*
22 *vs Camp*. I don't think I have ever heard those argued
23 yet.

24 MR. BARR: I must agree that *Camp* does
25 suggest that the technical compliance with the Rule

1 can be relaxed unless there's a finding of prejudice.

2 And the --

3 THE COURT: When you don't win, aren't you
4 prejudiced?

5 MR. BARR: Well, a finding of prejudice -- a
6 finding in this case that the Plaintiffs were
7 prejudiced, but the Defendants -- obviously the
8 Defendant is prejudiced because they lost the case.

9 But the Defendants have filed a motion.
10 We're saying, well, it's really not a complete motion
11 under 7(b). *Camp* says, well -- Court of Appeals said
12 we understand what it says, but the responding party
13 has to show prejudice.

14 And so I think in that context, Judge, that
15 of the 21 ways, some pass and some fail. And so maybe
16 the -- if I can suggest this, maybe the more efficient
17 way -- I'm not trying to dodge Your Honor's question.
18 But maybe the more efficient way would be to let's
19 hear how many of those are going to be argued, those
20 21 points.

21 THE COURT: Sure. Let me do this. I'm going
22 to do what I did this morning. You cited to Rule
23 7(b)1 in the *Camp vs Camp* case.

24 I would ask you what I asked Mr. Buckley this
25 morning. What about the last sentence of Rule 7(b)1

1 when it says the requirement of writing is fulfilled
2 if the motion is stated in a written notice of the
3 hearing of the motion.

4 So clearly written notice of the motion was
5 coming. In that particular case, this morning's case,
6 59(e) motion was filed within ten days. I didn't get
7 the memorandum until yesterday, and it was 24 pages
8 long.

9 Needless to say, I was reading last night.
10 Mr. Buckley, being the good lawyer he is, he read it
11 last night as well. And when I pushed him on the
12 subject, we went ahead and heard the motion, which was
13 denied anyway.

14 MR. BARR: I'm not really riding that horse,
15 Judge. I think of the 21, let's hear how many are
16 going to be developed.

17 And I think -- the prejudice means, I think
18 regardless of the written notice, I think the
19 underlying rationale is let us know what your grounds
20 are.

21 THE COURT: How you're going to respond,
22 right?

23 MR. BARR: So I can respond.

24 THE COURT: I'm going to agree with you on
25 that. This will mess with Mr. O'Kelley. Not

1 intentionally, but I'm going to.

2 So you had responded specifically to four
3 items in his motion, and I tend to agree with you on
4 each and every one of those four. Those are the four
5 you addressed.

6 That was paragraph 2 talking about the OCRM
7 criteria. Paragraph 9, making rulings that other
8 judges have been involved with. Paragraph 10, some
9 hearsay testimony of Tom Bessent, which I recall him
10 having made. And then finally paragraph 21, which
11 voids the South Atlantic Bank's mortgage.

12 And, clearly, the relief sought was declare
13 the rights of the parties and further declare the
14 Defendants have no right, title interest in the
15 property itself.

16 So as to those four, we don't need to hear on
17 those. I'm going to deny the motion. They've been
18 specifically addressed.

19 And, now, Mr. O'Kelley, I'm going to turn to
20 you and tell you that in my reading of your motion, I
21 was going through it seriatim. But ultimately, I'm
22 going to let you talk about it, number one. We can
23 start there if you'd like.

24 Most of what your argument appears to address
25 to me is the issue of acquiescence. So I think we

1 should talk about the acquiescence. That takes up at
2 least half of your matters.

3 And then finally, we get to waiver and
4 estoppel. And waiver is the knowing and intentional
5 relinquishment of a known right.

6 And I think this case, what sets this case
7 somewhat apart is that these folks are suing in their
8 individual capacity and not as the council of
9 co-owners. And so they get to act on their own.

10 So that's why an estoppel, of course,
11 requires some conduct, which is --

12 MR. O'KELLEY: Except for the fact, Your
13 Honor, the Mariners Cay Marina Council of Co-Owners is
14 still a party represented by Mr. Barr.

15 It's not just the four, but it's part of --
16 one of the things we'll address.

17 Your Honor, just briefly, I don't know that
18 we need to address the 7(b) argument because we went
19 through 21 points addressing every single item in here
20 and what we were considering.

21 That's not a hill that he wants to die on, so
22 I get it. And just for the record, Your Honor, you
23 have already ruled on the four items before we started
24 our arguments today in Mr. Barr's response.

25 I just would like to say that our arguments

1 were in our motion as to paragraph 2, paragraph 9, 10,
2 and 21. And, of course, we are going to preserve any
3 and all objections for appellate purposes, Your Honor.

4 Because Your Honor read everything, of
5 course, and made a decision prior to coming in. I
6 just want to preserve those objections and preserve it
7 for appellate purposes.

8 So we need an actual order is my point for
9 appellate purposes, Your Honor. I just want to make
10 sure that we're not coming back again with a 59(e)
11 motion, which people have done.

12 We had a case involving a road in L&J Estates
13 where that seemed to happen a lot. But I just wanted
14 to, for record purposes, just to make sure we do that
15 in case some people in Columbia need to look at this.

16 I do remember Your Honor pointed out
17 correctly there's no case law in this matter, and
18 that's really the key here.

19 As to the two statutes in question, Your
20 Honor, you're correct in that 27.31.60 and 27.31.70, I
21 think the order doesn't put them in full conjunction.
22 And I know who drafted this order, and it's a very
23 well-written order. But I'm happy to walk through the
24 points seriatim --

25 THE COURT: You start on that one. That's

1 one I think we need to address.

2 MR. O'KELLEY: Sure. And the problem here,
3 Your Honor, about acquiescence is there's several --
4 and I'm going to point to several. And, of course,
5 we're limited to what was before the record.

6 But the record indicates and is clear and in
7 the order that some of the history that the council of
8 co-owners actually acknowledged ownership of what we
9 call the ship store and the fuel docks by the deed
10 that was ultimately foreclosed upon by Your Honor in
11 the 2013 case.

12 They actually filed liens on this property
13 and they actually appeared at the property -- excuse
14 me, appeared in the foreclosure case filing an answer
15 setting forth protect our interest in this property,
16 Your Honor.

17 And what was their interest? They said they
18 had liens as part of the co-owners. You'll also
19 recall that during the trial on March 22nd/23rd, the
20 homeowners who were here, Ms. Heatley, Mr. McCann, and
21 Mr. Bessent, all took title under the old master deed,
22 the 2006.

23 So that's four people representing
24 themselves. After that -- and there are 90 slips,
25 Your Honor. So doing some simple math, that means 86

1 other people took pursuant to the new deed.

2 And what Your Honor's order says is that it's
3 restoring title interest. Well, I don't know how you
4 can restore title interest for 86 people who took
5 pursuant to a master deed saying these were not common
6 elements.

7 And more importantly, Your Honor, I want you
8 to go back if you would, please, sir, and look at
9 Plaintiffs' Exhibit 1 "D" as in dog and "B" as in
10 Barney, pages 10 through 17, and Plaintiffs' Exhibits
11 1 "D" as in dog and "C" as in Charlie, pages 17 to 23.

12 Those are two of the titles to real estate
13 entered by the Plaintiffs, specifically Neal McCann
14 and Jeff Heatley and Elizabeth Heatley.

15 And in the property description,
16 interestingly enough, I said that the master may be
17 amended from time to time hereinafter described as
18 master deed together with an undivided interest in the
19 common elements all described more fully in the master
20 deed.

21 Meaning that in the sale of these units,
22 these folks knew that the master deed could possibly
23 be amended.

24 Was it done 100 percent correctly?
25 Absolutely not. But I think the reason the word

1 "acquiescence" is in the statute is because you can
2 de-condo things. It happens all the time.

3 And the way we prove acquiescence, of course,
4 the best practice is to have the bank sign off that
5 it's no longer a common element, it's no longer a
6 condo, and have the owner sign off.

7 THE COURT: I think that's significant. So
8 anybody with an interest -- let me restate that.
9 Everybody with an interest would be required to sign
10 off, would they not?

11 MR. O'KELLEY: Under the strictest reading of
12 acquiescence. But, again, we don't have any guidance
13 from our friends in Columbia.

14 THE COURT: We're going to help them along
15 the way.

16 MR. O'KELLY: I think we are, Your Honor.

17 THE COURT: So if I look at number 8, that
18 was one of the ones I was going to ask you about.

19 That's talking about acquiescence. And cites
20 to the statute 27.31.60 saying: The percentages in
21 the common elements shall be permanent and not altered
22 without the acquiescence of the co-owners representing
23 all apartments of the property.

24 So we're not talking about the council of
25 co-owners. We're talking about all owners of the

1 property. Co-owners would be husband and wife, LLC,
2 entities, whatever.

3 That may be -- we might have a disagreement
4 as to what that means.

5 MR. O'KELLEY: I think we do, Your Honor.

6 THE COURT: Go ahead and make your record. I
7 know what Mr. Barr is going to say, and I'm saying the
8 same thing.

9 MR. O'KELLEY: I know what Mr. Barr is going
10 to say, and I know what it says in your order.

11 But for purposes of someone reviewing this on
12 a chain, acquiescence is not defined in the statute.
13 It's just not.

14 So you look at what Blacks Law Dictionary
15 says. And Your Honor, in your original grant of
16 summary judgement to my client, realized that. And I
17 went back, and I put in that order what the plain
18 definition of acquiescence is.

19 And, of course, you will remember Mr. Barr
20 said 70 controls, and we said 60 controls. So we
21 don't know which controls fully, 70 or 60.

22 I think you read them together. And what
23 does acquiescence means? It means an acknowledgment.
24 We agree. We have not tried to enforce our rights as
25 to something.

1 And for ten years, no one at Mariners Cay
2 tried to enforce any rights as to this. So for ten
3 years, from the time the master deed was amended until
4 this lawsuit was brought, there was acquiescence by
5 the owners out there.

6 They acknowledged Mr. Farmer's entities
7 bought the unit. They invited him to homeowners
8 association meetings. He was able to vote.

9 It was only when people went back and looked
10 at what had happened that they said, ah-ha, 70
11 controls here, not 60.

12 But I think you read them together, Your
13 Honor. And when you read them together and look at
14 the facts, you go, well, there was acquiescence here.

15 One thing I'm concerned with also I want to
16 bring up --

17 THE COURT: Has Mr. Farmer been out there for
18 ten years?

19 MR. O'KELLEY: No, sir. For ten years, these
20 units -- he's been out there since 2016.

21 My point is from 2007 until the time this
22 case was brought, everyone was rocking along thinking
23 that the ship store was a separate condo unit and the
24 field docks -- in other words, they weren't common
25 elements.

1 THE COURT: Nothing changed during that time
2 period, correct?

3 MR. O'KELLEY: Correct.

4 THE COURT: Wasn't until Mr. Farmer moved
5 there and changed process and things started to
6 happen?

7 MR. O'KELLEY: Things changed in the sense
8 that you will remember there was testimony there had
9 been a ship store until 2010, but it was only when he
10 moved in, correct, that things changed.

11 But one thing I am concerned about, Your
12 Honor, is there is a case in here which was cited,
13 which was Your Honor's case, the *River's Point Road*
14 case.

15 That is listed in this order, and that's a
16 problem because it has no precedential value under
17 appellate court rule.

18 THE COURT: Under appellate court rules, I
19 agree. Under Judge Scarborough rules, I try to be
20 like a good parent: consistent. Okay?

21 Now, I will admit that I have been
22 inconsistent in this case. I screwed it up to start
23 with.

24 I granted summary judgement in your favor,
25 and I did that, for the record, I'm going to tell you.

1 I did that thinking we had essentially common law
2 acquiescence here was part of the argument.

3 When Mr. Barr filed his motion to reconsider,
4 his summary judgement ruling, I remember reading the
5 thing and starting to look at the law. And I think
6 y'all have heard this before. I think I said it at
7 that hearing.

8 There's got to be some statutory authority to
9 change my mind. Voila, statutory authority. I think
10 it's not defined in a definitional section, but I do
11 think it's defined in that code section when they
12 refer to "all owners."

13 And the reason for that is the condominium
14 association is, for lack of a better term, a
15 communistic society in which everyone has to pull
16 together. They all have to pull together because they
17 can't pull apart.

18 And that's why it requires a whole lot of
19 owners. The statute doesn't require 75 percent,
20 doesn't require 85 percent. It says "all owners."
21 And I think all owners is all owners.

22 And I don't think that the -- once the
23 developer has created the master deed and conveyed
24 units pursuant to that master deed, I do not believe
25 that the developer has the authority to change the

1 common elements in a master's deed.

2 Because at the time the horizontal property
3 regime was created, which was created through the
4 master's deed, that's when the property left being
5 vertical property and became horizontal property,
6 which is just the opposite of what it is, of course.

7 But it's no longer real estate. It's now
8 condominiums. And now you've got multiple ownership
9 of multiple units with common elements available to
10 all.

11 So that's my philosophy and theory about
12 these. I haven't done what I got --

13 MR. O'KELLEY: I understand, Your Honor. I
14 just want to note my objection under 268(d)2 that that
15 case should not be cited except for the matters
16 related to that certain case.

17 Also, Your Honor, you just said about the --
18 you said communistic society. But the Florida law
19 said "little democratic subsociety of necessity."

20 THE COURT: Choose how you wish.

21 MR. O'KELLEY: Yes, sir. But ultimately, we
22 take exception and want the Court --

23 THE COURT: When one group tells you how much
24 you're going to pay, you're going to pay.

25 MR. O'KELLEY: Just note our objection to the

1 citing of Florida law because, again, no precedential
2 value in South Carolina.

3 And the case that I think is distinguished,
4 the Rohani case, which is a published case, that's
5 different because Mr. Rohani attempted to develop this
6 property over here that was improperly foreclosed
7 upon.

8 So I don't think anyone said -- I think Your
9 Honor would have to find that your 2013 foreclosure
10 case was improper, and there's been no finding of that
11 yet.

12 So that's a bit of a conflict I think in the
13 order and one of the reasons for our motion to
14 reconsider as well.

15 One other thing Your Honor said is there are
16 four individuals here in the council of co-owners. So
17 this was brought as a class action, which was denied.
18 No one has asserted it's a 23(b) derivative case.

19 So I think we need some clarification. Do we
20 have four people who now have an undivided interest?
21 Because the rest of the association is not a party to
22 this case.

23 And as Your Honor stated earlier, the
24 Mariners Cay Marina Council of Co-Owners itself
25 doesn't own an interest. The council only owns an

1 interest in certain common elements. But does it own
2 interest in individual units? The answer is no.

3 What do they own? They own what has been
4 horizontally subdivided or horizontally created. So
5 that's another reason for our motion is who are we
6 dealing with here?

7 Because Mr. Farmer's family, if they are
8 rendered homeless by this decision, who gets the
9 interest? Right now, my argument would be it would be
10 Elizabeth Heatley, Neal McCann, David Monk, and Thomas
11 Bessent, only because that's how this case is
12 structured.

13 THE COURT: I understand that. Let me have
14 Mr. Barr respond to that. I've got a feeling he tried
15 to get this as a class action --

16 MR. O'KELLEY: He did --

17 THE COURT: -- and was denied that. But I'm
18 assuming these four people are on behalf of all
19 similarly-situated --

20 MR. O'KELLEY: Absolutely not --

21 THE COURT: Not pled that way?

22 MR. O'KELLEY: Not plead that way, and
23 there's a --

24 THE COURT: Well, we probably get to try this
25 case again.

1 MR. O'KELLEY: Well, there's a problem with
2 that under 23(b) because the only way they can do it
3 similarly-situated is through a class action, which
4 was denied, or a derivative action, which we have had
5 no pleadings about demands upon boards, letters
6 written, the whole thing. So it's a real problem.

7 THE COURT: It's a conundrum.

8 MR. O'KELLEY: Well, I'm worried that it's a
9 problem that our friends in Columbia may see. I just
10 want to bring that up to the Court so that we can get
11 a ruling on that, too, for finality purposes as well.

12 But, again, Your Honor, we set up 21 points.
13 We went through systematically creating our records.
14 So I understand Your Honor has already decided on 4,
15 but there are 18 others we'd like Your Honor to look
16 at.

17 THE COURT: Let's address the one about the
18 parties and just talk about that one right now. I
19 think I put this under three categories.

20 MR. BARR: Talking about the four-plaintiff
21 argument?

22 THE COURT: Yes.

23 MR. BARR: Well, first, Your Honor, this is
24 obviously an issue that the Defendants knew existed
25 when this case -- when the amended complaint was filed

1 and had every ample opportunity to develop, brief, and
2 argue it pretrial and during the trial.

3 And it's only now after reading the order
4 that they say, hey, wait a minute. What's this going
5 to mean?

6 And I will say that I agree. I agree that
7 the order most directly affects four plaintiffs. And
8 I submit that it's certainly not reversible because
9 four plaintiffs sought this relief. It's in many
10 respects, this is a bell-ringer case, the four
11 plaintiffs.

12 It's our intention to next file another
13 action seeking relief as to all members at Mariners
14 Cay Marina. And under the principles of judicious
15 estoppel, then Mr. Farmer, he's the same defendant, is
16 going to be bound by this Court's ruling.

17 I don't really see that to be an issue that's
18 joint here. Because that issue is not even briefed.
19 I don't think that was one of the 21 points. I could
20 be wrong.

21 If it is, why don't we pause and look for it?
22 I don't think it's there.

23 THE COURT: I think you might be right about
24 that one. Hold on.

25 MR. O'KELLEY: Your Honor, I'll tell you it's

1 not in the 21 points. But it was Your Honor's
2 statement a few minutes ago that made me bring it up.

3 Mr. Barr is exactly right. It's not in the
4 order to reconsider. But Your Honor asked the
5 question, so that's why I addressed it.

6 THE COURT: In my mind, I addressed this
7 issue somewhat on your item number 5. Plaintiffs knew
8 of the foreclosure case, and so the council of
9 co-owners appeared in the case and didn't object.

10 But my notes to respond to that is that does
11 not -- the council of co-owners does not bind the
12 individual property owners. So, yeah.

13 The categories I wanted to address are
14 acquiescence. Get those out on the table. Which
15 specifically included 3 and 4, 8, 11, 12, 13. And 13
16 looks like -- I note your objection, Mr. Barr, to that
17 and sounds like you might be pursuing an offensive
18 collateral estoppel action going forward.

19 15 and 16 has to do with the statutory
20 interpretation of 16 and 17. I want to make sure we
21 have that on the record.

22 MR. BARR: Unless you want to hear more about
23 the individual party, the acquiescence seemed to be
24 the subject matter of Your Honor's interest.

25 And respectfully, this argument about

1 acquiescence is nothing short of a red herring in this
2 case.

3 Acquiescence can be defined by a dictionary
4 definition. If acquiescence means what the Defendants
5 say that it means and if acquiescence can strip a
6 title interest under 60 -- if under 60, that
7 acquiescence of all co-owners representing all
8 apartments, if that can strip a title interest -- now,
9 I'll make a distinction in just a minute.

10 THE COURT: That's not a property line. This
11 is the absolute ownership interest.

12 MR. BARR: That conflicts squarely with 70.
13 Because 70 says common elements shall not be divided.
14 In other words, you cannot take away my interest in
15 the ship store period, whether it's 1 percent or 60
16 percent. You may be able to reduce this percentage
17 value under 60.

18 But under 70, you simply cannot take it away.
19 If under 60 it can be taken away, how do you then
20 reconcile 60 and 70 where you're saying 60 says you
21 can take it away, but 70 says any covenant to the
22 contrary shall be void.

23 So that's -- the Defendants are creating this
24 smoke screen, this red herring, which suggests that
25 title interest can be stripped by acquiescence.

1 60 doesn't say that at all. 60 deals purely
2 with the property rights of an apartment owner as a
3 percentage. It simply deals with the percentage
4 interest.

5 Your Honor found that in the order. That's
6 articulated in the order. That is a clear
7 distinction. So we don't have to go down this wild
8 goose chase of trying to figure out what acquiescence
9 means. It's defined in the dictionary.

10 But clearly not every owner acquiesced in
11 this case. There's no -- even if it did mean
12 anything, there was no evidence that everyone
13 acquiesced under 60.

14 So the 60 and 70 are easily reconciled but
15 for the defense argument. When the defendant says,
16 well, wait a minute, if we had acquiescence, that
17 means my clients would have lost 100 percent of their
18 undivided title interest in the ship store when 70
19 says that can't happen, any covenant to the contrary
20 shall be void. That harmonizes. It's our duty under
21 the case law to harmonize the two, and it's thereby
22 harmonized.

23 7 deals with title interest. 60 deals with
24 fractional interests in the common elements, but those
25 fractional interests cannot be reduced to zero.

1 MR. O'KELLEY: Absolutely, they can.

2 THE COURT: Well, let me read this. Let me
3 state for the record what my ruling is, and I do agree
4 with Mr. Barr on this one.

5 Top of page 15. This is under subsection 2
6 under the acquiescence that we're looking at, this
7 definition. Co-sections may be reconciled by the
8 construction previously stated.

9 Section 60's reference to acquiescence
10 applies narrowly and only to the calculation of a unit
11 owner's percentage interest in relation to the value
12 of the whole.

13 It does not apply to the quality of the
14 underlying title and the property itself. The title
15 interest remains sacrosanct. However, its relative
16 value as a percentage of the regime as a whole may be
17 subject to change while unit owners acquiesce.

18 If they come up with a new phase in the
19 apartment complex and you have another 50 co-owners,
20 then your percentage interest is going to be reduced
21 by whatever that denominator is.

22 MR. BARR: That is precisely my judgement why
23 60 was enacted for phase development, which of course
24 couldn't occur here. But that's exactly why 60 was
25 enacted to begin with.

1 THE COURT: I think that's my ultimate
2 conclusion.

3 MR. BARR: Your Honor, I do feel the
4 necessity to correct some of the arguments that are
5 made by the Defendants on the record.

6 Counsel argued that 86 other slips took title
7 to their slips under the new deed. That's not
8 correct. The evidence at trial was that between '06,
9 the recording of the first master deed and '07, 39
10 slips had been sold. Obviously it was not 100
11 percent, but it was not 86.

12 There were 39 vested title interests under
13 the '06 deed. And I think the evidence in this case
14 is that even after '07, as the lawyers would close
15 these transactions, they kept referring to the '06
16 deed anyhow.

17 Your Honor already caught the ten-year
18 acquiescence. I don't think Counsel was suggesting
19 Mr. Farmer was out there for ten years. I think we
20 filed this case eight months after he passed the dock
21 master the ships were in.

22 I don't think that Rivers Point was a pivotal
23 conclusion in this case, but simply reflects that the
24 trial (inaudible) has visited this issue before.

25 As to the propriety or impropriety of citing

1 the Florida case, I think Your Honor was doing that
2 rhetorically.

3 It was, if I remember correctly, in closing
4 comments from the bench, Your Honor cited it. And I
5 think Your Honor then -- in the order, it's in
6 italics. I think it's a rhetorical citation. I think
7 that was purely rhetorical.

8 THE COURT: I got books on condominiums back
9 in my office, and if you want to find condominium law,
10 you go to the state of Florida. Okay? That's where
11 they work.

12 MR. BARR: Absolutely. Counsel also made the
13 argument that the council also owns an interest in the
14 common elements. That is fundamentally false. That
15 is not true.

16 THE COURT: Right. I don't think --

17 MR. BARR: Okay. Good. We don't have to --
18 we don't have to find that.

19 Your Honor, I think all of -- acquiescence
20 seems to be the horse that the Defendant rides in on
21 at this hearing.

22 And I think acquiescence clearly is under 60
23 addressing only the fractional interest in the
24 condominium units relative to each other and equally
25 significantly therefore translatable over to their

1 fractional interest in the common elements. And
2 that's how acquiescence applies.

3 But in this case, as I have said, there's no
4 evidence that all owners acquiesce. I don't think
5 there's any evidence that the four acquiesced.

6 So, Your Honor, respectfully, the motion
7 should be denied. And if Your Honor would like us to
8 prepare any proposed orders following this hearing,
9 maybe we ought to have a dialogue as to what Your
10 Honor is interested in.

11 THE COURT: Is that what you seek ultimately?

12 MR. O'KELLEY: Well --

13 THE COURT: You want me to change my mind
14 again.

15 MR. O'KELLEY: I understand. But, Your
16 Honor, I didn't intend that 86 people took under the
17 new deed. It was 51.

18 My point is there's 86 other slip owners who
19 are not part of this case. I didn't mean to --
20 Mr. Barr -- just want to make sure that it's 51 that
21 took after the deed was amended. That's the number,
22 Your Honor.

23 THE COURT: Well, I did take some hot shot at
24 the declarants actions in here. I just highlighted a
25 moment ago.

1 MR. O'KELLEY: And just briefly, Your
2 Honor --

3 THE COURT: On March 19 under 2007, the
4 declarants unilaterally signed and recorded the
5 amended master deed.

6 I'm not so sure that amended master deed has
7 any validity whatsoever to it. That's the gist of
8 that finding.

9 MR. BARR: Another point that hasn't come out
10 yet, and that is -- and Your Honor found this, is that
11 the master deed in article -- the 2006 master deed in
12 article 7 section 16.1 says that although it provides
13 for unilateral amendment by a developer, as long as he
14 controls the board, it specifically says that it may
15 not be amended to adversely affect the title to any
16 unit unless the owner shall consent in writing.

17 So there are two bright lines that control
18 this case. One is 70 and the other is the provision
19 of the master deed itself which is on public record.

20 Any lawyer checking the title who bothers to
21 read the master deed could see, wait a minute, this
22 '07 master deed is invalid. It's void as it affects
23 this conversion of these properties to common
24 elements.

25 MR. O'KELLEY: And, Your Honor, as I was

1 saying before, the acquiescence of the co-owners
2 representing all apartments of the property isn't a
3 Hamlin O'Kelley statement. That's a general assembly
4 statement.

5 But I just want to make sure the record -- no
6 one thinks I, like Athena from the head of Zeus, just
7 pulled this fully-formed somewhere. That's by
8 statute.

9 And nowhere did the general assembly say this
10 is for phased developments. Mr. Barr said this is
11 clearly for phased developments. No, it isn't. It
12 states right here.

13 And one thing I'm concerned about, Your
14 Honor, for example the old townhouses on Windermere
15 Boulevard used to be condos, those were de-condoed by
16 acquiescence. So are those still condos? Taking Your
17 Honor's ruling to the extreme, you can never change
18 the master deed for --

19 THE COURT: I don't know. Those lawsuits
20 haven't worked their way into here.

21 MR. O'KELLEY: Exactly, because people do it
22 all the time.

23 THE COURT: I'm not saying they can't
24 de-condo something, but I believe it takes a unanimous
25 consent to do that.

1 MR. O'KELLEY: Unless of course we have
2 acquiescence.

3 THE COURT: Which I would define under the
4 statute as being everyone's agreements. Okay? Not a
5 unilateral or a partial, but everyone's agreements.
6 Okay? And that's why when you --

7 MR. O'KELLEY: But we don't know, Your Honor.
8 That's the problem.

9 THE COURT: Well, when you see in restricted
10 covenants, they'll say it's going to require a super
11 majority and that's going to be two-thirds of the
12 owners. Because everybody knows it's almost
13 impossible to get 100 percent.

14 Well, in a void in a vacuum underneath the
15 statutory authority, you got to go with 100 percent.

16 MR. BARR: Your Honor, I think citing the
17 de-condoing of units on South Windermere, that's at
18 least a second cousin to citing an unreported
19 decision.

20 MR. O'KELLEY: And, again, it was argument of
21 counsel that had no presidential value or weight. I
22 don't think Your Honor has relied on that.

23 THE COURT: And to your credit, Mr. O'Kelley,
24 you did point out that the gist of this would
25 basically be to put Mr. Farmer's family out on the

1 street. I do that all the time. Not proudly, it's
2 just what I do.

3 And you raised the issue of betterments, and
4 I'm sure that's something y'all are going to have to
5 talk about some time in the near future.

6 MR. BARR: And I might say that I forgot to
7 introduce Amanda Gadsden, who is at the table with me,
8 who is with Clawson and Staubes. And they're involved
9 in the collateral damages case in circuit court.

10 THE COURT: Okay. Nice to meet you and good
11 to see you again, and also welcome to the fray.
12 Mariners Cay is just a great source of litigation.

13 MR. O'KELLEY: There are at least three.

14 THE COURT: Three pending now. I have heard
15 at least three of them so far. Sitting up here, it
16 was just a wonderful, wonderful development.

17 All right. Anything else? Do you need an
18 order to clarify?

19 MR. O'KELLEY: Absolutely.

20 THE COURT: Mr. Barr, can you make first stab
21 at that?

22 MR. BARR: And what do we want to put in our
23 finding?

24 THE COURT: We want to clarify the Court's
25 ruling on acquiescence and how we got there, and

1 that's going to entail a short discussion about the
2 statutory scheme, and I think because the condominiums
3 are creatures of statute, we got to be looking at any
4 statutory criteria, not common law criteria. Which I
5 can tell you was part of my initial ruling when I
6 ruled against you and granted summary judgement so we
7 wouldn't have to go to trial, but here we are maybe
8 two years later.

9 Anyway, that would be the number one thing I
10 think to really address. The other thing,
11 Mr. O'Kelley, was what?

12 MR. O'KELLEY: Who are we dealing with?

13 THE COURT: Yeah. In this particular case,
14 it's going to be the four people. Because the council
15 of co-owners, again, they're not an owner of the
16 property. They have no interest. They have no legal
17 interest in the common elements other than that
18 they're managing the property for everyone.

19 MR. O'KELLEY: And they might hold title in
20 other words, but they don't have any interest.

21 THE COURT: Yeah. I'm scratching my head of
22 how this got to be developed.

23 MR. BARR: So you want the proposed order to
24 say that this relief is granted as to these four
25 plaintiffs only?

1 THE COURT: Yeah.

2 MR. BARR: That's what we want to do?

3 THE COURT: That's fine. And then you've
4 already brought your other action, or do you plan on
5 doing that shortly?

6 MR. BARR: Well, we're waiting on this.

7 THE COURT: Okay. All right. Mr. O'Kelley
8 will stay busy.

9 MR. O'KELLEY: Absolutely, Your Honor. Okay.

10 THE COURT: Folks, thank y'all for coming in
11 here. I know you're interested in the outcome, and
12 you may be regretting the day you purchased that
13 there, but anyway.

14 You've got excellent lawyers involved in this
15 case. And it is a novel question to a large degree,
16 so it won't be answered here ultimately. It will be
17 answered up the road.

18 And I will tell you what my friends on the
19 Supreme Court will say. They always say, Mikell,
20 we're not correct all the time because we're right but
21 we're correct because we're last.

22 And so they get to decide things last when
23 they make those decisions. Sometimes I get affirmed,
24 and sometimes I get reversed. What I hate to do is
25 get remanded. So that means they have to come back

1 and I have to hear it again, and nobody likes that.

2 So I try to give you at least my opinion.

3 So thank y'all for being civil with one
4 another. I will probably look to see y'all again.

5 All right? Thank you. Very good.

6 Thank you, Mr. Barr, Mr. O'Kelley.

7 (Off the record at 2:48 p.m. on September
8 7th, 2022.)

1 COURT REPORTER'S CERTIFICATE

2
3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 17th DAY OF NOVEMBER 2022.

16 

17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
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