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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

William A. McKinnon, Circuit Court Judge

Case No. 2024-CP-4601354

Latif Taheri-Azar.....Appellant,

v.

Tim Haake and Justin Marlow.....Respondents

Appellate Case No. 2025-000971

RECORD ON APPEAL

Volume 1 of 3

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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

Case No. 2024-46-01354

Latif Taheri-Azar.....Appellant,

v.

Tim Haake and Justin Marlow.....Respondents

NOTICE OF APPEAL

Latif Taheri-Azar appeals the judgments of the York County Circuit Court dated March 21, 2025, and April 18, 2025. Respondents received written notice of entry of these orders via e-filing on March 21, 2025, and April 18, 2025.

May 16, 2025

s/ Rolf M. Baghdady
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RECEIVED
May 16 2025
SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP4601354

Latif Taheri Azar
PLAINTIFF(S)

Tim Haake et al
DEFENDANT(S)

RECEIVED
May 16 2025
SC Court of Appeals

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Reconsider is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/18/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: Latif Taheri Azar VS Tim Haake , defendant, et al

Case Number: 2024CP4601354

Type: Order/Electronic Form 4

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2025-04-18 12:23:13 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Latif Taheri-Azar,)
C/A No. 2024-CP-46-01354

Plaintiff,)

v.)

Tim Haake and Justin Marlow,)

Defendants.)

**ORDER GRANTING DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT**

RECEIVED

May 16 2025

SC Court of Appeals

This matter came before the Court on Tuesday, March 11, 2025, upon Defendants' motions for summary judgment. Plaintiff was represented at the hearing by his attorney of record, Rolf M. Baghdady. Defendant Tim Haake was represented by his attorney of record, Steve D. Dluzneski, and Defendant Justin Marlow was represented by his attorney of record, Dan D'Agostino. Based upon the arguments and submissions, and for the reasons set forth in this order, I find and conclude that Defendants are entitled to judgment in their favor as a matter of law.

Standard of Consideration

Summary judgment should be granted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law." Rule 56(c) S.C. R. Civ. P.; Bowen v. Lee Process Sys. Co., 342 S.C. 232, 536 S.E.2d 86 (Ct. App. 2000). A party seeking summary judgment has the burden of clearly establishing, with use of the record properly before the court, the absence of a triable issue of fact. Stanford Fire Ins. Co. v. Marine Contracting and Towing, 301 S.C. 418, 392 S.E.2d 460 (1990). Once the moving party has met that burden, the nonmoving party must come forward with some evidence showing there

is a genuine issue for trial in order to avoid summary judgment. Baughman v. American Tel., 306 S.C. 101, 410 S.E.2d 537 (1991). In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from that evidence in a light most favorable to the non-moving party. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).

Findings of Fact

In support of their motions for summary judgment, Defendants submitted a Memorandum in Support and several exhibits, one of which was the transcript of Plaintiff's deposition. Plaintiff also submitted a Memorandum in Opposition to the Defendants' motions for summary judgment. Based upon the evidence before the Court, I make the following findings of fact:

1. Plaintiff was the owner of real property located at 2124 Windemere Road in Rock Hill, York County, South Carolina, which is situated within the Poplar Forest subdivision (the "Property").
2. Plaintiff sought to build, and did build, a new home at the Property.
3. Defendants are property owners within the Poplar Forest subdivision.
4. On or about April 30, 1966, a set of Restrictive Covenants for the Poplar Forest Subdivision were recorded in the Office of the Clerk of Court for York County, South Carolina (the "Covenants"). At the time that the Plaintiff built the new home at the Property, the Covenants were still in full force and effect. The Covenants imposed certain architectural requirements and use standards on all lots within the Poplar Forest subdivision, which includes the Property. Contained within the Covenants were minimum square footage requirements, as well as a mechanism for enforcement of the Covenants.

5. Plaintiff submitted plans to the City of Rock Hill (the “City”) for the new home that he intended to build at the Property, and those plans were ultimately approved. Plaintiff then began building the new home at the Property.

6. On February 22, 2024, the City issued a stop work order for the Plaintiff’s construction of the new home at the Property.

7. On February 28, 2024, six days after the City issued its stop work order, Defendant Justin Marlow sent an e-mail to Mike Nugent at the City, in which he advised Mr. Nugent that he was sending the e-mail “on behalf of the Poplar Forest HOA,” which was accompanied by a “letter and supporting documents to express the concerns of Mr. Haake and the Poplar Forest HOA with respect to the construction underway at [the Property].”

8. By Plaintiff’s own sworn deposition testimony, the February 28th letter to Mr. Nugent formed the entire basis of his defamation claim against the Defendants. During the hearing on Defendants’ motions for summary judgment, Plaintiff’s counsel could point to no other statements by either of the Defendants that gave rise to Plaintiff’s defamation claim, despite having been given multiple opportunities by the Court to do so.

9. Plaintiff’s counsel was also unable to point to any evidence that would create a genuine issue as to material fact with regard to Plaintiff’s declaratory judgment claim. In fact, Plaintiff sold the Property and left the Poplar Forest subdivision after this lawsuit was filed. As a result, defense counsel argued that the Plaintiff no longer has legal standing to pursue this claim.

10. The Court finds that the Plaintiff has failed to bring forward any evidence of a false and defamatory statement made by either of the Defendants concerning the Plaintiff. Even if the Defendants did falsely claim to be members of the Poplar Forest HOA, as Plaintiff’s counsel

argued and which is disputed, that purported false statement does not rise to the level of defamation under South Carolina law.

11. The Court also finds that the Plaintiff has not brought forward any evidence that would create a genuine dispute as to any material fact of his declaratory judgment claim. Additionally, since the Plaintiff sold the Property and moved out of the Poplar Forest subdivision after this lawsuit was filed, he no longer has the requisite legal standing to assert a claim for declaratory judgment against the Defendants.

Conclusions of Law

Defendants have established by the record that is properly before this Court in this case that they are entitled to summary judgment as to the Plaintiff's two remaining claims against them – namely, defamation and declaratory judgment.

The statements that the Plaintiff alleges that the Defendants made to the City were not defamatory because they did not concern the Plaintiff. Plaintiff is also unable to establish that those statements allegedly made to the City by way of Defendant Justin Marlow's February 28th letter were false. For these reasons, Defendants are entitled to summary judgment as to Plaintiff's claim for defamation.

This Court concludes that the Defendants are also entitled to summary judgment as to Plaintiff's claim for declaratory judgment for the reasons set forth herein.

Order and Judgment

Defendants' motions for summary judgment are hereby GRANTED. Plaintiff's remaining claims against the Defendants in this case are hereby dismissed with prejudice. This Order shall end this case.



York Common Pleas

Case Caption: Latif Taheri Azar VS Tim Haake , defendant, et al

Case Number: 2024CP4601354

Type: Order/Summary Judgment

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2025-03-20 14:53:33 page 5 of 5

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2024CP4601354

Latif Taheri Azar
 PLAINTIFF(S)

Tim Haake et al
 DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion to Dismiss Plaintiff's Cause of Action for Tortious Interference is **DISMISSED** by CONSENT of both parties.

The Plaintiff is granted leave to amend.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/25/2024 .

Justin Marlow

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: Latif Taheri Azar VS Tim Haake , defendant, et al

Case Number: 2024CP4601354

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2024-06-25 11:52:52 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Latif Taheri-Azar,

Plaintiff,

vs.

Tim Haake and Justin Marlow,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO:

SUMMONS

TO: THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Date: April 3, 2024

/s/ Rolf M. Baghdady

Rolf M. Baghdady / SC Bar #0464

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ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

CASE NO:

Latif Taheri-Azar,

Plaintiff,

COMPLAINT

vs.

Tim Haake and Justin Marlow,

Defendants.

TO: THE ABOVE-NAMED DEFENDANTS

Plaintiff Latif Taheri-Azar, by and through undersigned counsel, alleges on information and belief as follows:

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff Latif Taheri-Azar is a resident and citizen of York County, South Carolina currently constructing a residence in the city of Rock Hill, South Carolina.
2. Defendant Tim Haake is a resident and citizen of York County, South Carolina.
3. Defendant Justin Marlow is a resident and citizen of York County, South Carolina.
- 4.. This is an action for defamation, tortious interference with prospective business relations, and declaratory judgement.
5. Jurisdiction is proper in the Circuit Court in York County, South Carolina.
6. Venue is proper in the Court of Common Pleas in York County, South Carolina.

FOR A FIRST CAUSE OF ACTION—TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS

7. The allegations of paragraphs 1-6 above are repeated and realleged as though fully set forth herein.
8. Plaintiff Latif Taheri-Azar [hereinafter referred to as "Plaintiff"] has been harmed by Defendant Tim Haake's and Defendant Justin Marlow's [hereinafter referred to collectively as

“Defendants”] in the following manners:

- a. For intentionally interfering with the permitting procedure for the building process in the City of Rock Hill;
- b. For harassing the Plaintiff; and
- c. For using improper means and an improper purpose to force different construction requirements on the improvements of Plaintiff’s property.

9. These actions have damaged the Plaintiff because they have caused delays in Plaintiff’s ability to sell the property he is developing.

10. Plaintiff has been damaged by the intentional actions of Defendants and is entitled to recover judgment for actual and punitive damages.

FOR A SECOND CAUSE OF ACTION—DEFAMATION

11. The allegations of paragraphs 1-10 above are repeated and realleged as though fully set forth herein.

12. Defendants represented, by *innuendo*, in writing that they were the authorized agents of Poplar Forest Corporation, and that Plaintiff was in violation of architectural requirements.

13. Defendants made these unprivileged representations in writing to the third parties, thereby publishing them to the City of Rock Hill, and to the Plaintiff’s neighbors.

14. The Defendants made these publications with malice.

15. The representations were false because there is no Poplar Forest Corporation in existence at the office of the Secretary of State of South Carolina.

16. The misrepresentations concerned and damaged the Plaintiff, thereby causing him to suffer special harm and special damages because these actions prompted the City of Rock Hill to delay the permitting process for the Plaintiff’s construction of the improvements.

17. The misrepresentations were intentional and malicious; therefore, Plaintiff is entitled to

recover actual and punitive damages from the Defendants, jointly and severally.

FOR A THIRD CAUSE OF ACTION—DECLARATORY JUDGMENT

18. The allegations of paragraphs 1-17 above are repeated and realleged as though fully set forth herein.

19. Defendants are not the authorized agents of Poplar Forest Corporation.

20. Plaintiff is entitled to a declaratory judgment that Defendants are not the authorized agents of Poplar Forest Corporation.

WHEREFORE, PLAINTIFF PRAYS the Court will:

1. Enter judgement for special damages, actual damages, punitive damages, and the costs and expenses of this action, including reasonable attorney fees;
2. Enter a declaratory judgment that Defendants are not the authorized agents of Poplar Forest Corporation; and,
3. For such other and further relief as may be just and proper.

Date: April 3, 2024

/s/ Rolf M. Baghdady
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ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	C/A NO.: 2024-CP-46-01354
Latif Taheri-Azar,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT TIM HAAKE'S
v.	)	MOTIONS TO DISMISS, ANSWER TO
	)	PLAINTIFF'S COMPLAINT,
	)	AND COUNTERCLAIM
Tim Haake and Justin Marlow,	)	
	)	
Defendants.	)	
_____	)	

NOW COMES Defendant Tim Haake (hereinafter "Haake"), by and through the undersigned counsel, and responds to the Plaintiff's Complaint as follows:

FIRST MOTION TO DISMISS
(As to Plaintiff's Cause of Action for Tortious Interference with Prospective Contractual Relations)

NOW COMES Defendant Haake, and hereby moves this Court to dismiss Plaintiff's first cause of action against him, for alleged tortious interference with prospective contractual relations, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because Plaintiff's Complaint fails to state a claim upon which relief can be granted as to this cause of action against Defendant Haake. In support of this Motion, Defendant Haake would show unto the Court as follows:

1. Plaintiff has alleged in his Complaint that certain actions by Defendant Haake "have damaged the Plaintiff because they have caused delays in Plaintiff's ability to sell the property he is developing," and that, as a result, Plaintiff "is entitled to recover judgment for actual and punitive damages." Pl. Compl. ¶¶ 9 and 10.

2. It is well-established in South Carolina that “a cause of action for intentional interference with prospective contractual relations generally stands following the loss of an identifiable contract or expectation.” See United Educational Distributors, LLC v. Educational Testing Service, 350 S.C. 7, 14, 564 S.E.2d 324, 328 (Ct. App. 2002). “The plaintiff must actually demonstrate, at the outset, that he had a truly prospective (or potential) contract with a third party. This does not require plaintiff to prove the tort in his initial pleadings; rather, the allegations must present facts that give rise to some reasonable expectation of benefits from the alleged lost contracts.” Id. at 15, 329. “The reasonable expectation need not be based on an enforceable contract. Rather, plaintiffs must allege ‘either a business relation with specific third parties or with an identifiable prospective class of third persons.’” Id. The Court in United Educational Distributors cited Fredrick v. Simmons Airlines, Inc., 144 F.3d 500, 503 (7th Cir. 1998) (applying Illinois law), where the plaintiff “failed to identify any third parties with whom he had a valid expectation to conduct business,” and as a result, “the court did not allow the tortious interference action to stand.” “In fact, the court [in Fredrick] found plaintiff ‘failed to allege any reasonable expectation of a business relationship at all’ since ‘[h]e does not claim that he had been offered a job by any other airline, or even that he had interviewed or applied for such positions’ to create a sufficient expectancy of employment.” Id. at 17, 329. The Court in United Educational Distributors ultimately held that the plaintiff had “failed to plead any potential contract was thwarted by any alleged tortious conduct on the part of [the defendant],” and upheld the circuit court’s dismissal of the plaintiff’s action for tortious interference with prospective contractual relations pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Id.

3. Here, all that the Plaintiff has alleged is that certain actions by Defendant Haake have supposedly “caused delays in Plaintiff’s ability to sell the property he is developing.”

Plaintiff did not allege any “business relation with specific third parties or with an identifiable prospective class of third persons,” as the South Carolina Court of Appeals discussed in United Educational Distributors. In fact, the allegations made in Plaintiff’s Complaint in this case are similar to those in Fredrick, in that the Plaintiff here has “failed to identify any third parties with whom he had a valid expectation to conduct business.” The Plaintiff here has “failed to plead any potential contract was thwarted by any alleged tortious conduct” by Defendant Haake. Plaintiff has only made a vague assertion that Defendant Haake’s actions somehow caused delays in Plaintiff’s ability to sell the property that he is developing. This, according to the South Carolina Court of Appeals in United Educational Distributors, is woefully insufficient to make the Plaintiff’s threshold showing to maintain a cause of action for tortious interference with prospective contractual relations against Defendant Haake.

4. Based upon and due to the foregoing, Defendant Haake respectfully moves that the Court dismiss the Plaintiff’s cause of action against him for tortious interference with prospective contractual relations pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

ANSWER TO PLAINTIFF’S COMPLAINT

FOR A FIRST DEFENSE **(Qualified General Denial)**

1. Except as specifically admitted or qualified hereafter, Haake denies all allegations in the Plaintiff’s Complaint and demands strict proof thereof.

2. Haake admits the allegations of Paragraph 1, upon information and belief.

3. Haake admits the allegations of Paragraphs 2 and 3.

4. Paragraph 4 constitutes a statement of the Plaintiff’s basis for bringing this action, to which no response from Haake is necessary. To the extent that a response from Haake is deemed necessary, Haake denies the allegations of Paragraph 4 and demands strict proof thereof.

5. Haake admits the allegations of Paragraphs 5 and 6.

6. Paragraph 7 does not require a response.

7. Haake denies the allegations of Paragraph 8, including all subsections, a through c, and demands strict proof thereof.

8. Haake denies the allegations of Paragraphs 9 and 10, and demands strict proof thereof. In further response to Paragraph 9, Haake affirmatively alleges and will show that the Plaintiff failed to construct the home at issue in this litigation pursuant to the plans that the Plaintiff submitted to, and that were approved by, the City of Rock Hill. Any damages that Plaintiff has suffered in connection with this case were caused by the Plaintiff's own actions and omissions.

9. Paragraph 11 does not require a response.

10. Responding to Paragraph 12, Haake admits that he represented that he is the Chair of the Architectural Review Committee of the Poplar Forest Subdivision, and that Plaintiff was in violation of one or more architectural requirements of the said Subdivision. Both of these representations were true and accurate when Haake made the representations, and they remain true and accurate as of this litigation, upon information and belief.

11. Responding to Paragraph 13, Haake denies that his representations discussed in Paragraph 10 herein above were unprivileged. Haake admits that he discussed his concerns with the house that the Plaintiff was constructing within his Subdivision with staff at the City of Rock Hill, and that he expressed dissatisfaction with the said house to his neighbors. Haake denies the remaining allegations of Paragraph 13 and demands strict proof thereof.

12. Haake denies the allegations of Paragraphs 14, 15, 16, and 17, and demands strict proof thereof.

13. Paragraph 18 does not require a response.

14. Haake denies the allegations of Paragraphs 19 and 20, and demands strict proof thereof.

15. WHEREFORE, Haake denies that Plaintiff is entitled to the relief requested in the “WHEREFORE” Section set forth in his Complaint, including all subsections, one through three, and the costs and fees demanded.

FOR A SECOND DEFENSE AND BY WAY OF A SECOND MOTION TO DISMISS
(Failure to State a Claim, Rule 12(b)(6), SCRCP)

16. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

17. Subject to and without waiving the above responses and other defenses, Plaintiff’s claims, in whole or in part, are barred for failure to state a claim upon which relief can be granted, and should therefore be dismissed as a matter of law pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Haake’s Conduct in Conformity with Law and/or Contract)

18. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

19. Plaintiff’s claims are barred because Haake has behaved in conformity with the law and all contractual obligations, to the extent any valid or enforceable contract exists.

FOR A FOURTH DEFENSE
(Negligence of Others)

20. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

21. Any damage allegedly sustained by Plaintiff was caused or contributed to or by the negligence of persons, firms, corporations, or entities other than Haake, and such negligence of

other parties bars Plaintiff's recovery against Haake, and/or comparatively reduces Haake's percentage of fault, if any. Any acts or omissions by Haake were superseded by the negligence and wrongful conduct of others.

FOR A FIFTH DEFENSE
(Justification and Privilege)

22. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

23. Plaintiff's claims are barred, in whole or in part, because Haake's conduct was justified in that the actions taken by Haake were in good faith, acting for a legitimate business purpose, and in furtherance of his own interests by means that are lawful.

FOR A SIXTH DEFENSE
(Failure to Mitigate Damages)

24. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

25. Plaintiff failed to mitigate his damages or has suffered no damages.

FOR A SEVENTH DEFENSE
(Failure to Allege Facts Sufficient to Show Malice, Recklessness, or Intentional Misconduct)

26. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

27. Plaintiff's Complaint fails to state sufficient factual content to plausibly suggest that Haake acted with malice, gross negligence, recklessness and outrageous indifference and disregard for the rights of others, such that Plaintiff would be entitled to an award of punitive damages.

FOR AN EIGHTH DEFENSE
(Speculative Damages)

28. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

29. Plaintiff's damages, if any, are entirely speculative, and Plaintiff is therefore not entitled to an award of damages against Haake.

FOR A NINTH DEFENSE
(Absence of Damages Suffered)

30. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

31. Plaintiff has suffered no actual damages.

FOR A TENTH DEFENSE
(Unclean Hands)

32. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

33. Plaintiff's claims against Haake are barred by the doctrine of unclean hands, and the balance of the equities favors Haake.

FOR AN ELEVENTH DEFENSE
(S.C. Code §§ 15-32-520 and 15-32-530, and Unconstitutionality of Punitive Damages)

34. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

35. Plaintiff is statutorily barred from any award of punitive damages in excess of the limitation set forth in South Carolina Code §§ 15-32-520 and 15-32-530, and Haake further asserts any and all additional statutory caps and limitations to punitive damages as laid out pursuant to South Carolina statutory law and case law. Haake further pleads as an affirmative defense that

punitive damages violate the United States and South Carolina Constitutions and violate Due Process.

FOR A TWELTH DEFENSE
(Violation of S.C. Code Ann. § 40-11-30)

36. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

37. Upon information and belief, the Plaintiff is not licensed contractor in the State of South Carolina, as required by S.C. Code Ann. § 40-11-30. By performing contracting work for which the total cost of construction is greater than ten thousand dollars, the Plaintiff has violated the licensing requirement provided for by S.C. Code Ann. § 40-11-30.

FOR A THIRTEENTH DEFENSE
(Truth)

38. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

39. Haake pleads the affirmative defense of the truth of his statements as a complete and absolute defense to Plaintiff's claim against him for defamation.¹

FOR A FOURTEENTH DEFENSE
(Reservation)

40. Haake re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

41. Haake specifically reserves the right to file and assert any and all additional defenses in response to Plaintiff's Complaint, including any additional affirmative or special defenses, or any such other matters constituting avoidance, which may subsequently come to the

¹ See Kunst v. Loree, 424 S.C. 24, 40, 817 S.E.2d 295, 303 ("The truth of the matter is a complete defense to an action based on defamation.").

attention of Haake, to the full extent permitted by the law, including those that become available or apparent during discovery.

BY WAY OF COUNTERCLAIM AGAINST PLAINTIFF

PARTIES, JURISDICTION, AND VENUE

1. Upon information and belief, Plaintiff is a citizen and resident of York County, South Carolina, and the owner of a home and lot (“Plaintiff’s Home”) bearing the address of 2124 Windemere Road, Rock Hill, South Carolina 29732 in the Poplar Forest Subdivision in York County, South Carolina (the “Subdivision”).

2. Defendant Haake is a citizen and resident of York County, South Carolina who is the Chair of the Architectural Review Committee of the Subdivision.

3. Upon information and belief, Defendant Justin Marlow (“Marlow”) is a citizen and resident of York County, South Carolina who is the President of the Subdivision.

4. Defendants Haake and Marlow are members of the Subdivision who own real property within the Subdivision.

5. Defendant Haake brings this action pursuant to the South Carolina Declaratory Judgment Act to have the rights, status, and other legal relations of the parties declared, including as to the following matters:

- a. The validity and enforceability of the Restrictive Covenants for Poplar Forest Subdivision (the “Covenants”), a true and accurate copy of which is attached hereto as Exhibit A and is incorporated herein by reference;
- b. The authority of the Defendants to enforce the Covenants as to properties and property owners within the Subdivision;
- c. Whether Plaintiff’s Home is a part of the Subdivision and subject to the Covenants;

- d. Whether the Plaintiff violated any of the terms and/or conditions of the Covenants.
6. This court has subject matter jurisdiction and personal jurisdiction over all parties.

Venue is proper in York County.

GENERAL ALLEGATIONS

1. Haake re-alleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

2. The Poplar Forest Subdivision is an established neighborhood community located in York County, South Carolina.

3. On or about April 30, 1966, a set of Restrictive Covenants for the Poplar Forest Subdivision were recorded in the Office of the Clerk of Court for York County, South Carolina. The Covenants purported to impose certain architectural requirements and use standards on all lots within the Subdivision, including provisions imposing minimum square footage requirements and limitations on use of properties within the Subdivision.

4. The Covenants also contained an enforcement provision, which purports to grant “any other person or persons owning any real property” within the Subdivision to “prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either prevent him or them from so doing or to recover damages or other dues for such violation.”

5. In or about September 2023, Plaintiff began clearing a lot within the Subdivision for the purpose of constructing Plaintiff’s Home thereon.

6. In or about January 2024, Plaintiff began constructing Plaintiff’s Home.

7. In connection with the construction of Plaintiff’s Home, Plaintiff submitted plans to the City of Rock Hill (the “City”) that were ultimately approved. Upon information and belief,

the plans that Plaintiff submitted to the City for Plaintiff's Home complied with the terms and conditions of the Covenants in all respects.

8. Following the City's approval of the plans for Plaintiff's Home, however, Plaintiff unilaterally changed the construction plans and built a home that was inconsistent with the plans that Plaintiff had previously submitted to the City and that were approved, to wit: the house that Plaintiff actually constructed did not comply with the minimum square footage requirements set out in the Covenants.

9. Upon discovering that Plaintiff's Home did not comply with the Covenants, as well as the construction plans that Plaintiff submitted to the City, Haake brought Plaintiff's non-compliance to the attention of City officials. The City, following its own independent investigation, ordered that the construction of Plaintiff's Home cease until Plaintiff submitted an acceptable drainage plan and agreed to build Plaintiff's Home pursuant to the approved plans, which included the minimum square footage required by the Covenants.

10. In bringing his concerns regarding Plaintiff's non-compliance with the Covenants to the attention of City officials, Haake was fulfilling his duty under the enforcement provision of the Covenants to prevent Plaintiff from violating the same. Rather than simply addressing the area(s) of non-compliance with the Covenants and continuing the construction of Plaintiff's Home, Plaintiff chose to file suit against Haake and Marlow for acting in ways that are authorized under the Covenants.

11. Haake is informed and believes that he is entitled to declarations by the Court that (1) the Covenants are valid and enforceable; (2) Plaintiff's Home is part of the Subdivision and is, therefore, subject to the Covenants; (3) Haake is authorized to enforce the terms and conditions of the Covenants pursuant to the enforcement provision contained therein; (4) Plaintiff's Home

violated one or more terms and/or conditions of the Covenants; and (5) Haake's actions to enforce the terms and conditions of the Covenants as to Plaintiff's Home were fair and reasonable.

FOR A COUNTERCLAIM AGAINST PLAINTIFF
(Declaratory Judgment Pursuant to the South Carolina Declaratory Judgment Act)

12. Haake re-alleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

13. Under the laws of South Carolina, the restrictive covenants of a subdivision or neighborhood association are considered to be the foundational governing documents for the association.

14. The Covenants empower "any other person or persons owning any real property" within the Subdivision to "prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from so doing or to recover damages or other dues for such violation."

15. Due to his ownership of real property within the Subdivision, Haake is among the persons with enforcement authority under the Covenants pursuant to the enforcement provision set out therein.

16. Haake was acting well within his authority granted by the Covenants when he involved the City officials in the non-compliance matter involving Plaintiff's Home.

17. Haake's actions in this matter are entirely consistent with the spirit and intent of the enforcement provision contained in the Covenants.

18. In light of the foregoing, Haake is entitled to judicial declarations of the following:

- a. That the Covenants are valid and enforceable;
- b. That Plaintiff's Home is part of the Subdivision and is, therefore, subject to the Covenants;

- c. That Haake is authorized to enforce the terms and conditions of the Covenants pursuant to the enforcement provision contained therein;
- d. That Plaintiff's Home violated one or more terms and/or conditions of the Covenants; and
- e. That Haake's actions to enforce the terms and conditions of the Covenants as to Plaintiff's Home were fair and reasonable.

19. In the event that the Court makes the foregoing judicial declarations, Haake is informed and believes that such judicial declarations would render Plaintiff's claims against Haake moot.

20. Because Haake has instituted this action as a matter of general benefit to the Subdivision and other residents of the said Subdivision, Haake is entitled to an award of costs and fees.

WHEREFORE, Haake prays for the following relief:

- 1. That this Court dismiss Plaintiff's cause of action against Haake for tortious interference with prospective contractual relations, with prejudice, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.
- 2. That this Court dismiss Plaintiff's claims against Haake with prejudice, and that Plaintiff have and recover nothing from Haake.
- 3. For judicial declarations of the following:
 - a. That the Covenants are valid and enforceable;
 - b. That Plaintiff's Home is part of the Subdivision and is, therefore, subject to the Covenants;
 - c. That Haake is authorized to enforce the terms and conditions of the

Covenants pursuant to the enforcement provision contained therein;

d. That Plaintiff's Home violated one or more terms and/or conditions of the Covenants; and

e. That Haake's actions to enforce the terms and conditions of the Covenants as to Plaintiff's Home were fair and reasonable.

4. For the costs and fees of this action, pursuant to the provisions of the South Carolina Declaratory Judgment Act.

5. For such other and further relief as the Court may deem just and proper.

HAMILTON MARTENS, LLC

s/ Steve D. Dluzneski
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S.C. Bar # 102019
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Counsel for Defendant Tim Haake

May 9, 2024
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

RESTRICTIVE COVENANTS FOR
POPLAR FOREST SUBDIVISION

The following restrictive covenants are applicable to property of Poplar Forest Corp. in Ebenezer Township, Tax District No. 3, York County, South Carolina, specifically shown on Plat of said property, prepared April 13, 1966 by R. H. Maret, Registered Surveyor, to which said plat (Plat Book 29 Page 192, R. M. C. Office, York, S. C.) reference is invited.

1. All lots in the tract shall be known and described as residential lots, and no structures shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling not to exceed two and one-half stories in height and a private garage for not more than three cars and storage or servant's room. No duplex apartments or any other type apartment shall be permitted.
2. No building shall be located on any residential building plot nearer than 50 feet to front lot line, nor nearer than 20 feet to any side street line. No building except a garage or other outbuilding located 100 feet or more from the front lot line shall be located nearer than 20 feet to any side lot line. Pumpouses shall be excluded from this provision.
3. Each numbered lot of the recorded plat as hereinabove referred to shall constitute an individual building lot and no such building lot shall be subdivided in any manner whatsoever except wherein the building lot would be increased in size thereby.
4. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. There shall be no beauty parlors or repairs shops or store buildings of any kind or nature located upon the said premises. Nothing herein contained shall be interpreted to prohibit a home workshop for hobby purposes. No chickens, hogs, cows, horses, ponies, or other animals or birds are permitted. This provision, however, shall not apply to pets so long as same are not in excessive numbers; hogs, cows, horses, and ponies are not classified as pets.
5. No trailer, basement, tent, shack, garage, barn or other outbuilding erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.
6. The ground area of the main structure, exclusive of one story open porches and garages, shall be not less than 1800 square feet in the case of a one story structure, and in the case of one and one-half or two or two and one-half story structures, the total square footage shall not be less than 2500.
7. An easement is reserved over the rear ten feet of each lot for utility installment and maintenance.
8. Lot owners shall submit to an Architectural Committee comprising the Board of Directors of Poplar Forest Corp. construction plans and specifications including location of house on lot, and no structure shall be erected or altered until said plans

EXHIBIT

A

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have been approved in writing by said Committee. Such approval shall not be unreasonably withheld.

8. The purchaser of each lot shall provide a sewerage disposal system meeting the requirements of the State Board of Health when, as, and if any dwelling is erected thereon.

9. These covenants are to run with the land and shall be binding on all the parties and all persons claiming under them until May 1, 1992, at which time said covenants shall be automatically extended for successive periods of ten years unless by a vote of the majority of the then owners of the lots it is agreed to change the said covenants in whole or in part.

10. If the parties hereto, or any of them, or their heirs and assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said developments or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from so doing or to recover damages or other dues for such violation.

11. Invalidity of any one of these covenants by judgment of court order shall in no way affect any of the other provisions which shall remain in full force and effect.

12. It is understood and agreed by and between the grantor and the grantee that for a period of ten years from the date hereon, that in the event the grantee shall elect to sell or dispose of said property, that said grantee hereby grants unto the grantor, his heirs, successors or assigns, a ten-day option to purchase said property with all improvements thereon at any bona fide offer received by said grantee for said property, provided, however, that the grantor, his heirs and assigns, agrees that the provisions of the within option are hereby specifically waived and released in favor of the rights of lien creditors taking or holding a mortgage or mortgages upon said premises from the said grantee.

IN WITNESS WHEREOF, the said Poplar Forest Corp. has caused its corporate seal to be hereto affixed, and these covenants to be signed, executed, acknowledged and delivered, in its name and behalf, by Alton G. Brown, its President, he being duly authorized therefor, this 26th day of April, 1966.

POPLAR FOREST CORP.

Witnesses:

Peggy B. Montgomery
Robert W. Ward

Alton G. Brown
Alton G. Brown, President

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	C/A NO.: 2024-CP-46-01354
Latif Taheri-Azar,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT TIM HAAKE'S
v.	)	MOTION TO DISMISS PLAINTIFF'S
	)	CAUSE OF ACTION FOR
	)	TORTIOUS INTERFERENCE WITH
Tim Haake and Justin Marlow,	)	PROSPECTIVE CONTRACTUAL
	)	RELATIONS
Defendants.	)	
_____	)	

TO THE PLAINTIFF, LATIF TAHERI-AZAR, AND HIS ATTORNEY, ROLF M. BAGHDADY, ESQUIRE:

PLEASE TAKE NOTICE that Defendant Tim Haake (“Haake” or “Defendant Haake”), by and through his undersigned counsel, hereby moves this Honorable Court for the dismissal of Plaintiff’s cause of action against him for tortious interference with prospective contractual relations pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The basis for this Motion is more fully stated in the First Motion to Dismiss contained in Defendant Tim Haake’s Motions to Dismiss, Answer to Plaintiff’s Complaint, and Counterclaim, which is being filed contemporaneously with this Motion. In further support thereof, Defendant Haake would respectfully show unto this Honorable Court as follows:

1. Plaintiff has alleged in his Complaint that certain actions by Defendant Haake “have damaged the Plaintiff because they have caused delays in Plaintiff’s ability to sell the property he is developing,” and that, as a result, Plaintiff “is entitled to recover judgment for actual and punitive damages.” Pl. Compl. ¶¶ 9 and 10.

2. It is well-established in South Carolina that “a cause of action for intentional interference with prospective contractual relations generally stands following the loss of an

identifiable contract or expectation.” See United Educational Distributors, LLC v. Educational Testing Service, 350 S.C. 7, 14, 564 S.E.2d 324, 328 (Ct. App. 2002). “The plaintiff must actually demonstrate, at the outset, that he had a truly prospective (or potential) contract with a third party. This does not require plaintiff to prove the tort in his initial pleadings; rather, the allegations must present facts that give rise to some reasonable expectation of benefits from the alleged lost contracts.” Id. at 15, 329. “The reasonable expectation need not be based on an enforceable contract. Rather, plaintiffs must allege ‘either a business relation with specific third parties or with an identifiable prospective class of third persons.’” Id. The Court in United Educational Distributors cited Fredrick v. Simmons Airlines, Inc., 144 F.3d 500, 503 (7th Cir. 1998) (applying Illinois law), where the plaintiff “failed to identify any third parties with whom he had a valid expectation to conduct business,” and as a result, “the court did not allow the tortious interference action to stand.” “In fact, the court [in Fredrick] found plaintiff ‘failed to allege any reasonable expectation of a business relationship at all’ since ‘[h]e does not claim that he had been offered a job by any other airline, or even that he had interviewed or applied for such positions’ to create a sufficient expectancy of employment.” Id. at 17, 329. The Court in United Educational Distributors ultimately held that the plaintiff had “failed to plead any potential contract was thwarted by any alleged tortious conduct on the part of [the defendant],” and upheld the circuit court’s dismissal of the plaintiff’s action for tortious interference with prospective contractual relations pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Id.

3. Here, all that the Plaintiff has alleged is that certain actions by Defendant Haake have supposedly “caused delays in Plaintiff’s ability to sell the property he is developing.” Plaintiff did not allege any “business relation with specific third parties or with an identifiable prospective class of third persons,” as the South Carolina Court of Appeals discussed in United

Educational Distributors. In fact, the allegations made in Plaintiff's Complaint in this case are similar to those in Fredrick, in that the Plaintiff here has "failed to identify any third parties with whom he had a valid expectation to conduct business." The Plaintiff here has "failed to plead any potential contract was thwarted by any alleged tortious conduct" by Defendant Haake. Plaintiff has only made a vague assertion that Defendant Haake's actions somehow caused delays in Plaintiff's ability to sell the property that he is developing. This, according to the South Carolina Court of Appeals in United Educational Distributors, is woefully insufficient to make the Plaintiff's threshold showing to maintain a cause of action for tortious interference with prospective contractual relations against Defendant Haake.

4. Based upon and due to the foregoing, Defendant Haake respectfully moves that the Court dismiss the Plaintiff's cause of action against him for tortious interference with prospective contractual relations pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

This Motion is based upon the Plaintiff's Complaint, the relevant rules of the South Carolina Rules of Civil Procedure, relevant South Carolina case law, and argument of counsel at the hearing on this matter.

The undersigned counsel certifies, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, that he had no duty of consultation with opposing counsel prior to filing this Motion because it is a Motion to Dismiss, and, as such, consultation would serve no useful purpose.

[ATTORNEY SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

s/ Steve D. Dluzneski
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S.C. Bar # 102019
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Counsel for Defendant Tim Haake

May 9, 2024
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Latif Taheri-Azar,

Plaintiff,

vs.

Tim Haake and Justin Marlow,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO: 2024-CP-46-01354

**REPLY TO DEFENDANT TIM HAAKE'S
COUNTERCLAIM**

TO: STEPHEN DLUZNESKI, ATTORNEY FOR TIM HAAKE

The Plaintiff, Latif Taheri-Azar, by and through undersigned counsel, responds to the Answer and Counterclaim of Defendant Tim Haake (hereinafter referred to as "Defendant") and respectfully alleges as follows:

FOR A FIRST REPLY

1. Plaintiff repeats and realleges all the allegations of the Complaint as though fully set forth herein.

FOR A SECOND REPLY

2. Plaintiff realleges all of the allegations of paragraph 1 above as though fully set forth herein.
3. Plaintiff denies the allegations of Defendant's Counterclaim against Plaintiff, except Plaintiff admits paragraphs 1-4 of the Defendant's Counterclaim's Parties, Jurisdiction, and Venue and admits f the paragraphs 2-4 of the General Allegations.
4. All of the remaining allegations of Defendant's Counterclaim are denied and strict proof demanded thereof.

WHEREFORE, Plaintiff prays that the Court enters judgment as follows:

1. In accordance with Plaintiff's Complaint;
2. Dismisses Defendant's Counterclaim; and
3. For such further and other relief as may be just and proper.

Date: June 10, 2024

s/ Rolf M. Baghdady
Rolf M. Baghdady / SC Bar #0464
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ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Latif Taheri-Azar,	)	
	)	
Plaintiff,	)	ANSWER
	)	(Jury Trial Demanded)
vs.	)	
	)	
Tim Haake and Justin Marlow,	)	Case No.: 2024-CP46-1354
	)	
Defendants.	)	
	)	

The Defendant, Justin Marlow, responding to the allegations of the Complaint, would allege and show as follows:

1. All allegations of the Complaint not specifically admitted are denied.
2. The Defendant admits the allegations of paragraphs 1, 2 and 3.
3. Responding to the allegations of Paragraph 4, this Paragraph does not require an answer.
4. The Defendant admits the allegations of paragraphs 5 and 6.
5. Responding to the allegations of Paragraph 7, this Paragraph does not require an answer.
6. The Defendant denies the allegations of paragraphs 8, 9, 10, 12, 13, 14, 15, 16, 17, 19 and 20.

WHEREFORE, having fully pled, Defendant requests this court to dismiss the Plaintiff's claims against this Defendant. In the alternative, Defendant requests a jury trial on all issues in this case.

Respectfully submitted.

York, SC
July 2, 2024

s/Daniel D'Agostino
S.C. Bar No.: 65088
D'AGOSTINO/DAVIS LAW GROUP
25 West Liberty Street
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Attorney for Defendant Justin Marlow

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	

Latif Taheri-Azar,	)	C/A No.: 2024-CP-46-01354
	)	
Plaintiff,	)	
	)	DEFENDANT TIM HAAKE'S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	
Tim Haake and Justin Marlow,	)	
	)	
Defendants.	)	
_____	)	

Defendant Tim Haake ("Haake") moves for summary judgment, pursuant to Rule 56, S.C. R. Civ. P. This motion is based upon the fact that there is no material issue of fact in dispute and Haake is entitled to judgment in his favor as a matter of law. Haake's arguments in support of this motion are more fully set forth in the Memorandum in Support of Defendant Tim Haake's Motion for Summary Judgment filed with this motion.

This motion will be based upon the pleadings, discovery responses and affidavits of record, the transcript of Plaintiff's deposition, the Memorandum in Support of Defendant Tim Haake's Motion for Summary Judgment filed with this motion, the South Carolina Rules of Civil Procedure and other applicable statutory and case law. Counsel certifies, pursuant to Rule 11, S.C. R. Civ. P., that he had no obligation to consult with Plaintiff's Counsel prior to filing this motion.

[SIGNATURE ON FOLLOWING PAGE]

January 24, 2025

s/ Steve D. Dluzneski
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ATTORNEYS FOR DEFENDANT
TIM HAAKE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	

Latif Taheri-Azar,	)	C/A No.: 2024-CP-46-01354
	)	
Plaintiff,	)	
	)	MEMORANDUM IN SUPPORT
v.	)	OF DEFENDANT TIM HAAKE'S
	)	MOTION FOR SUMMARY JUDGMENT
Tim Haake and Justin Marlow,	)	
	)	
Defendants.	)	
_____	)	

This action arose from alleged malfeasance by the Defendants in connection with a new home that the Plaintiff was building in the Poplar Forest subdivision within the City of Rock Hill, South Carolina. Plaintiff filed suit on April 3, 2024, against Defendants Tim Haake (“Haake”) and Justin Marlow (“Marlow”), and asserted causes of action against them for tortious interference with prospective contractual relations¹, defamation, and declaratory judgment. Because Plaintiff cannot meet one or more essential elements of his remaining two causes of action against the Defendants, his claims fail as a matter of law, and Haake is entitled to summary judgment.²

UNDISPUTED FACTS

For purposes of this motion, the court may consider the following facts as undisputed:

1. Plaintiff was the owner of real property located at 2124 Windemere Road in Rock Hill, York County, South Carolina, which is situated within the Poplar Forest subdivision (the “Property”);

¹ Plaintiff’s claim for tortious interference with prospective contractual relations was dismissed by Judge Dan Hall on June 25, 2024.

² This Memorandum refers to various portions of the written transcript of Plaintiff’s deposition and other related documents. Plaintiff’s deposition transcript and other related documents are either attached hereto as exhibits or are already in the record of this case.

2. Plaintiff sought to build, and did build, a new home at the Property;
3. Defendants are property owners within the Poplar Forest subdivision;
4. On or about April 30, 1966, a set of Restrictive Covenants for the Poplar Forest Subdivision were recorded in the Office of the Clerk of Court for York County, South Carolina (the “Covenants”). At the time that the Plaintiff built the new home at the Property, the Covenants were still in full force and effect. The Covenants imposed certain architectural requirements and use standards on all lots within the Poplar Forest subdivision, which includes the Property. Contained within the Covenants were minimum square footage requirements, as well as a mechanism for enforcement of the Covenants;
5. Plaintiff submitted plans for the new home that he intended to build at the Property to the City of Rock Hill, and those plans were ultimately approved;
6. Plaintiff began building a new home at the Property after the City of Rock Hill approved Plaintiff’s submitted plans;
7. On February 22, 2024, the City of Rock Hill issued a stop work order for the Plaintiff’s construction of the new home at the Property;
8. On February 28, 2024, Defendant Justin Marlow (“Marlow”) sent an e-mail to Mike Nugent at the City of Rock Hill, in which Marlow advised Mr. Nugent that he was sending the e-mail “on behalf of the Poplar Forest HOA,” which was accompanied by a “letter and supporting documents to express the concerns of Mr. Haake and the Poplar Forest HOA with respect to the construction underway at [the Property]”;
9. In response to a question by Haake’s counsel during his deposition in this case on December 12, 2024, the Plaintiff testified under oath that, “other than that letter” to Mr. Nugent on February 28, 2024 – six days *after* the City of Rock Hill issued the stop work order for the

Plaintiff's new home construction project at the Property – he has “no other information” about Haake making any false statements about the Plaintiff or the Plaintiff's business;

10. Plaintiff also testified under oath during his deposition in this case that his relationship with the City of Rock Hill actually “got better” as a consequence of the work stoppage “because the more they know my work, the more they trust my work”;

11. In fact, according to the Plaintiff, the “whole matter” of his claims against Haake and Marlow in this case is because “they represented they were on the HOA” of the Poplar Forest subdivision.

APPLICABLE LAW

Summary Judgment

A motion for summary judgment should be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c) S.C. R. Civ. P. When considering a motion for summary judgment, the court must view the facts in a light most favorable to the non-moving party. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)(citing Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994); Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)).

Defamation

“The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff...The elements of a cause of action for defamation include: (1) a false and defamatory statement concerning another, (2) an unprivileged publication to a third party, (3) fault on the part of the publisher, and (4) either actionability of the statement irrespective of special harm or the existence

of special harm caused by the publication.” Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 578, 556 S.E.2d 732, 737 (Ct. App. 2001).

“It is the trial court’s function to determine initially whether a statement is susceptible of having a defamatory meaning...A motion for summary judgment should be granted if the court determines the publication is incapable of any reasonable construction that would render the words defamatory.” Id.

“Defamation does not focus on the hurt to the defamed parties’ feelings, but on the injury to their reputations.” Kunst v. Loree, 424 S.C. 24, 45, 817 S.E.2d 295, 306 (Ct. App. 2018).

Declaratory Judgment

“Declaratory judgment actions are neither legal nor equitable and, therefore, the standard of review depends on the nature of the underlying issues...In an action for declaratory relief, the burden of proof rests with the party seeking the declaration, and that party must meet its burden by a greater weight or preponderance of the evidence.” SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla, 415 S.C. 72, 82, 781 S.E.2d 115, 120-21 (Ct. App. 2015).

ARGUMENT

- I. Plaintiff cannot meet his burden of proof with regard to his defamation claim against Haake because Plaintiff cannot establish one or more essential elements of the claim.

A. “A False and Defamatory Statement Concerning the Plaintiff”

Plaintiff does not allege that Haake made any false or defamatory statements about him or his business. By Plaintiff’s own sworn deposition testimony, the “whole matter” of his claims against Haake and Marlow is because “they represented they were on the HOA” of the Poplar Forest subdivision. See Pl. dep. Tr. Page 139, Lines 16-21. This is simply not a “false and defamatory statement concerning [Plaintiff],” which is an element that the Plaintiff must prove in order to maintain his defamation claim against Haake and Marlow. Haake’s and Marlow’s alleged

representation that they “were on the HOA” to the City of Rock Hill has absolutely nothing to do whatsoever with the Plaintiff or the Plaintiff’s business. As an important side note, the Plaintiff was unable to provide any evidence that any alleged statements or representations made by Haake or Marlow resulted in any adverse effect upon the Plaintiff’s reputation, which is the harm that the South Carolina Court of Appeals in Boone commented is the central purpose of the tort of defamation. In fact, the Plaintiff testified that “it’s speculation” when asked by Marlow’s attorney during his deposition whether any of the statements or representations allegedly made by Haake and Marlow had any adverse effect upon Plaintiff’s reputation. See Pl. dep. Tr. Page 104, Lines 11-22. Based on Plaintiff’s own sworn deposition testimony, he is unable to establish that any of Haake’s and Marlow’s alleged statements and representations negatively impacted his reputation, nor is the Plaintiff able to establish that Haake and Marlow made any false and defamatory statement *concerning the Plaintiff*. Haake’s and Marlow’s alleged statements and representations may have hurt Plaintiff’s feelings, and bruised Plaintiff’s ego, but as the South Carolina Court of Appeals noted in Kunst, this is not the focus of the claim of defamation.

It warrants mention that the Plaintiff testified during his deposition that, “[o]ther than that letter” that Marlow e-mailed to Mike Nugent at the City of Rock Hill on February 28, 2024, “I have no other information about” Haake making any false statements about the Plaintiff or Plaintiff’s business. See Pl. dep. Tr. Page 125, Lines 8-13. In actuality, the February 28, 2024, letter to which the Plaintiff referred could not have caused any of his claimed damages in this case (i.e., the alleged 45-day work stoppage about which the Plaintiff is complaining – See Pl. dep. Tr. Page 104, Line 17) because that letter was e-mailed to Mike Nugent six days *after* the City of Rock Hill issued the stop work order for the Plaintiff’s project at the Property. It is this letter, according to the Plaintiff himself, that forms the “base of everything” and the “whole matter” of his claims

against Haake and Marlow. Other than the Plaintiff's hurt feelings, and bruised ego, the Plaintiff is unable to point to any injury to his reputation that the February 28th letter caused.

Based on the foregoing, Plaintiff is unable to establish that Haake and Marlow made any "false and defamatory statement" *concerning the Plaintiff* in this case. Simply put, Haake's and Marlow's alleged representation that "they were on the HOA" of the Poplar Forest subdivision, no matter to whom this alleged representation was made, is capable of any reasonable construction that would render those words defamatory toward the Plaintiff. In fact, those words had nothing whatsoever to do with the Plaintiff. Consequently, on this basis alone, Plaintiff's claim for defamation against Haake and Marlow fails as a matter of law.

B. "Actionability of the Statement Irrespective of Special Harm or the Existence of Special Harm Caused by the Publication"

Even if the Court finds in this case that Plaintiff's defamation claim against Haake and Marlow does not fail as a matter of law based upon the foregoing discussion, Plaintiff's claim for defamation also fails as a matter of law because the Plaintiff is unable to establish "either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication," which is another essential element of a defamation claim in South Carolina. In an attempt to support his allegation of harm in this case, the Plaintiff testified during his deposition that Haake and Marlow "stopped [Plaintiff's] work for 45 days." See Pl. dep. Tr. Page 104, Line 17. Plaintiff blames this work stoppage on the letter that Marlow e-mailed to Mike Nugent at the City of Rock Hill on February 28, 2024. However, the February 28th letter could not have been the reason for the 45-day work stoppage because it was e-mailed almost a week after the work stoppage was ordered. Additionally, the Plaintiff testified that his relationship with the City of Rock Hill actually got better in conjunction with the work stoppage. See Pl. dep. Tr. Page 138, Lines 22-25; Page 139, Lines 1-3. By the Plaintiff's own account, his position vis-à-vis the

City of Rock Hill was not harmed in connection with the new home construction project at the Property, but rather it improved.

Therefore, in addition to not being able to demonstrate any actionability of any statements or representations in the February 28th letter, because the harm that the Plaintiff claims to have suffered (i.e., the 45-day work stoppage) began almost a week *before* that letter was even sent, the Plaintiff is also unable to demonstrate any harm, special or otherwise, that directly and proximately resulted from that letter. In fact, the exact opposite is true; namely, that the Plaintiff's relationship with the City of Rock Hill improved after the February 28th letter was sent. This forms a second basis for the failure of Plaintiff's defamation claim as a matter of law.

C. Conclusion – Defamation

For the reasons discussed herein, and based on any additional bases discussed during the hearing in this matter, Plaintiff's claim for defamation against Haake fails as a matter of law and should be dismissed.

II. Plaintiff also cannot meet his burden with regard to his declaratory judgment claim in this case because Plaintiff had actual knowledge from one or more independent sources that an HOA did, in fact, exist for the Poplar Forest subdivision.

By way of his declaratory judgment claim in this case, Plaintiff alleges, and seeks a declaration by this Court, that "Defendants are not the authorized agents of Poplar Forest Corporation." Under South Carolina law, Plaintiff bears the burden of proving that he is entitled to this declaration by the Court by the preponderance of the evidence. See SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla, 415 S.C. 72, 82, 781 S.E.2d 115, 120-21 (Ct. App. 2015). Plaintiff has not put any credible evidence forward in this case that Haake is not an authorized agent of the Poplar Forest subdivision. In fact, the Covenants provide for the exact opposite conclusion.

The Covenants are titled “Restrictive Covenants for Poplar Forest Subdivision,” and contain an enforcement provision that authorizes “any other person or persons owning any real property” within the Poplar Forest subdivision to “prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from so doing or to recover damages or other dues for such violation.” Plaintiff testified during his deposition that he has no reason to believe that the Covenants are not valid and no reason to believe that they are not enforceable. See Pl. dep. Tr. Page 37, Lines 20-25; Page 38, Line 1. Under the enforcement provision of the Covenants, which Plaintiff conceded under oath during his deposition are both valid and enforcement, *any person or persons owning real property in the Poplar Forest subdivision* has/have the right and privilege to prevent any other person or persons from violating the Covenants.

In this case, Haake and Marlow both own real property within the Poplar Forest subdivision, which makes them “authorized agents” of the Poplar Forest subdivision with the right and privilege to prevent the Plaintiff, and anyone else, from violating or attempting to violate the Covenants. The enforcement provision of the Covenants is plain and clear on its face, and it not subject to any other reasonable interpretation.

For these reasons, and based on any additional bases discussed during the hearing in this matter, Plaintiff’s claim for declaratory judgment against Haake fails as a matter of law and should be dismissed because the Plaintiff cannot propound any credible evidence to rebut Haake’s standing under the enforcement provision of the Covenants to prevent the Plaintiff from violating or attempting to violate the Covenants. This is precisely what occurred in this case.

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CONCLUSION

Haake is entitled to summary judgment on both of Plaintiff's remaining claims against him in this case for the reasons discussed herein. Plaintiff's two remaining claims fail as a matter of law, and this Court should grant summary judgment in favor of Haake.

January 24, 2025

s/ Steve D. Dluzneski

Steve D. Dluzneski

S.C. Bar 102019

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ATTORNEYS FOR DEFENDANT TIM HAAKE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Latif Taheri-Azar,	)	Case No: 2024-CP-46-01354
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Tim Haake and	)	DEPOSITION OF
Justin Marlow,	)	
	)	Latif Taheri-Azar
Defendants.	)	

Date: Thursday, December 12, 2024

Time: 10:08 a.m.

Location: Hamilton Martens, LLC
241 Oakland Avenue
Rock Hill, South Carolina

Reported by:
Darlene Pastel, CVR-CM

ELECTRONICALLY FILED - 2025 Jan 24 1:10 PM - YORK - COMMON PLEAS - CASE#2024CP4601354

APPEARANCES

For the Plaintiff: Rolf M. Baghdady, Esq.
Rolf M. Baghdady, PA
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For the Defendants: Stephen D. Dluzneski, Esq.
Hamilton Martens, LLC
Rock Hill, South Carolina

Daniel D. D'Agostino, Esq.
D'Agostino Law Firm
Jacqueline N. Davis, Esq.
York, South Carolina

Also Present: Tim Haake
Justin Marlow

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STIPULATIONS

It is stipulated by and between counsel for the
respective parties that all objections are reserved
until the time of trial, except as to the form of
the questions.

- - - -

The reading and signing of this deposition is
reserved by the deponent and counsel for the
respective parties.

Whereupon,

Latif Taheri-Azar, being duly sworn and cautioned
to speak the truth, the whole truth, and nothing
but the truth, testified as follows:

EXAMINATION

BY MR. DLUZNESKI:

Q Would you please state your full name for the
record.

A Latif Taheri-Azar.

Q Okay. We have met on at least one occasion before
at a hearing on a motion in this case. My name is
Steve Dluzneski. I'm an attorney here in Rock
Hill, and I represent Tim Haake in this litigation
that you filed against him and Justin Marlowe.

You are here today for your deposition in this
case. A deposition is essentially a

1 question-and-answer session in which I will ask you
2 questions and you will answer my questions so that
3 I can gather additional information related to this
4 case and to ensure that there are no surprises at
5 mediation or trial. Do you understand that?

6 A Yes, sir.

7 Q I would like to initially go over some ground rules
8 for depositions that you need to be aware of. Have
9 you ever been deposed before?

10 A No.

11 Q Okay. The first ground rule that I would like to
12 cover with you is that everything that is being
13 said here today is being recorded and will be
14 converted into a written transcript. Because of
15 this, it is exceptionally important that we not
16 talk over one another and that we allow each other
17 to finish our questions and answers before
18 interjecting another question or answer.

19 Is that acceptable to you?

20 A Sure.

21 Q In line with making sure that we have a clear
22 record of your deposition today, I'm going to ask
23 that you respond verbally to the questions that I
24 ask you as opposed to shaking or nodding your head
25 or responding uh-huh or uh-uh. Is that fair?

1 A Yes.

2 Q During the course of the deposition here today, I
3 may ask a question that your attorney has an
4 objection to the way that I asked that question.
5 If he has an objection, let him get the objection
6 on the record so that the court reporter has a
7 record that there was an objection made. And that
8 even though there has been an objection made, I'm
9 going to ask that you answer the question that was
10 asked of you. Do you understand that?

11 A I understand.

12 Q And the only reason that you wouldn't answer a
13 question is if your attorney for some reason
14 instructs you not to. Do you understand that?

15 A I do.

16 Q Okay. If I ask you a question and you don't
17 understand my question, I'm going to ask you to let
18 me know that you didn't understand my question and
19 request that I rephrase it. Is that fair?

20 A Fair.

21 Q If I ask you a question -- if I ask you a question
22 during your deposition here today and you answer
23 the question, I will assume that you understood my
24 question. Is that fair?

25 A Yes.

1 Q Okay. This deposition here today will likely take
2 some time, because I do have quite a bit to go
3 through with you. But it's not an endurance
4 contest, and I'm not trying to test your stamina.
5 So if we need to take a break during your
6 deposition -- if you need to stretch your legs,
7 take a bathroom break, whatever -- just let me know
8 and we can take whatever breaks we need.

9 However, if there's a question pending when
10 you ask to take a break, I'm going to ask that you
11 answer the pending question before we break.

12 Is that fair?

13 A That's fair.

14 Q Okay. And if we take a break during the course of
15 your deposition here today, you are not permitted
16 to discuss your testimony with anybody including
17 your attorney during the break.

18 Do you understand that?

19 A Yes.

20 Q Okay. And if we do take a break and you speak with
21 anybody during the break, I will be able to ask you
22 about the content of those -- of that conversation
23 when we get back on the record. Is that fair?

24 A Fair.

25 Q Okay. When we started your deposition today, the

1 court reporter placed you under oath. This means
2 that your testimony here today is subject to the
3 same rules of perjury as if we were in court and
4 you were testifying before a judge.

5 Do you understand that?

6 A Yes.

7 Q Do you have any questions for me about the ground
8 rules that I just went through with you or the
9 procedure for your deposition today?

10 A No.

11 Q Okay. Are you under the influence of any
12 medication, drug, or alcohol today that would
13 prevent you from being able to testify truthfully
14 and accurately?

15 A No.

16 Q Is there any other reason that you cannot give
17 truthful and accurate testimony here today?

18 A No.

19 Q Okay. What did you do to prepare for your
20 deposition?

21 A I went through my files.

22 Q Okay.

23 A And read the instructions from my attorney.

24 Q Okay. Tell me everyone with whom you have spoken
25 regarding or related to your deposition here today

1 other than your attorney.

2 A Nobody.

3 Q Okay. Tell me what documents you reviewed in

4 preparation for your deposition here today.

5 A The communications that I had with the City and

6 copied the defendant.

7 Q Okay. Anything else?

8 A I don't recall anything else.

9 Q Okay. What is your date of birth?

10 A 02/26/1946.

11 Q That would make you how old?

12 A 78.

13 Q Okay.

14 A Close to 79.

15 Q Okay. Where were you born?

16 A I was born in Iran.

17 Q What city in Iran were you born in?

18 A City of Oromieh.

19 Q Okay. How do you spell that?

20 A O-r-o-m-i-e-h.

21 Q Okay. In what city and state do you presently

22 reside?

23 A In city of Fort Mill, the state of South Carolina.

24 Q And with whom do you live?

25 A By myself.

1 Q Okay. How long have you lived in Fort Mill?

2 A Seven years.

3 Q Okay. Where did you live before you moved to

4 Fort Mill?

5 A I moved -- I lived in Fullerton, California.

6 Q Okay. How long were you in Fullerton, California?

7 A In Fullerton, California -- let's see. I lived

8 roughly about four years.

9 Q Okay. All right. What made you move to

10 South Carolina from California?

11 A I have my kids here.

12 Q Okay.

13 A In the Carolinas.

14 Q Gotcha. Okay. Are you married?

15 A No.

16 Q Have you ever been married?

17 A Yes.

18 Q Okay. Are you divorced?

19 A 23 years ago. 24 years.

20 Q All right. And how long were you married?

21 A 24 years.

22 Q Okay. You mentioned children. How many children

23 do you have?

24 A I have one question, if I can. Are they relevant

25 to the case?

1 Q Well, sir -- sir, you're here to answer my
2 questions.
3 A Okay.
4 Q This is your deposition.
5 A I have three children.
6 Q Okay. And what are your children's names and ages?
7 A Laia is 49 years.
8 Q Okay.
9 A Reza is 42.
10 Q Okay.
11 A And Missy is 40 years.
12 Q Okay. Just so the court reporter has those names
13 accurately, can you spell each one of those names?
14 A Laia is L-a-i-a. Reza is R-e-z-a. Missy is
15 M-i-s-s-y.
16 Q Okay. And where do each of your children live?
17 A One of them is -- lives -- Laia lives in Charlotte.
18 Missy is in Fort Mill. And Reza is in -- I believe
19 he's in North Carolina.
20 Q Okay. Where did you attend high school?
21 A I attended in Tehran, Iran.
22 Q Okay. What was the name of your high school?
23 A T-e-h -- oh, the name of ...
24 Q The name of the high school, yes.
25 A That's long. I have to spell it. Darolfoonoon.

1 That means D-a-r-o-l-f-o-o-n-o-o-n.

2 Q Okay. And what -- did you graduate from high

3 school?

4 A Yes.

5 Q Okay. When did you graduate?

6 A It was -- let me go back. I have to calculate it.

7 Q Okay.

8 A When I was 17, and now I'm -- that makes it how

9 many years difference? 17 from 78. That is 61

10 years ago.

11 Q Okay. All right. That's fair. Did you attend any

12 college or technical school after high school?

13 A Yes.

14 Q All right. Where did you go to college or

15 technical school?

16 A I went to the University of Engineering and

17 Technology, Lahore.

18 Q Where is that school?

19 A That's in Pakistan.

20 Q Okay. All right. What years did you attend that

21 school?

22 A 1968 to 1973.

23 Q Okay. Did you graduate from that school?

24 A Yes.

25 Q All right. What degree did you earn?

1 A A bachelor's of mechanical engineering.

2 Q Okay.

3 A Bachelor of science in mechanical engineering.

4 Q Did you go to any other college or technical school

5 after your bachelor's degree?

6 A Yes. In Germany I had nuclear power plant

7 training.

8 Q Okay.

9 A And that was in Erlangen.

10 Q In what?

11 A Erlangen, West Germany.

12 Q West Germany?

13 A Yes.

14 Q Okay. All right. When were you in that

15 educational program?

16 A 1976.

17 Q Okay. Just for that one year?

18 A Yes.

19 Q Okay. Did you graduate from that program?

20 A Yes.

21 Q Okay. What degree or credential did you earn from

22 that program?

23 A It was a certificate.

24 Q A certificate in what?

25 A In nuclear power plant turbine -- turbine

1 machinery.

2 Q Okay. After that program, did you pursue any other
3 education?

4 A No.

5 Q Okay. All right.

6 A Sorry. I did.

7 Q Okay.

8 A I went to appraiser training here in -- it's CPCC,
9 here in Charlotte.

10 Q Okay.

11 A I graduated from that school. I got a certificate
12 of being a real estate appraiser.

13 Q Okay.

14 A As training.

15 Q Okay. When did you graduate with your real estate
16 appraiser's certificate?

17 A That was 2019.

18 Q Okay.

19 A Or around that -- I'm not 100 percent. Maybe 2020.

20 Q All right. So we have the bachelor's of science in
21 mechanical engineering. The nuclear plant's
22 education in West Germany. And then your
23 certificate from CPCC.

24 Do those programs cover your educational
25 background?

1 A I will say yes.

2 Q Okay. Do you hold any licenses or certifications
3 other than a driver's license?

4 A I have a general contractor's license in the state
5 of South Carolina.

6 Q Okay.

7 A I have a general contractor's license in the state
8 of North Carolina.

9 Q Okay.

10 A I had a general contractor's license in the state
11 of California.

12 Q Okay.

13 A I had a general contractor's license in the state
14 of Virginia.

15 Q Okay.

16 A But I didn't renew them. You know, every year you
17 have to renew, and those I didn't need I didn't
18 renew.

19 Q Okay. All right. So you have a GC license in the
20 states of South Carolina -- or had a GC license in
21 the states of South Carolina --

22 A I have it.

23 Q Okay. So South Carolina is current. It's active?

24 A Current. North Carolina is current.

25 Q Okay.

1 A The other three are not current.

2 Q California, Virginia -- and what's the third state
3 that's not current?

4 A It was California, Virginia, and Georgia.

5 Q Georgia, okay. All right. So North Carolina and
6 South Carolina are active licenses?

7 A Yes.

8 Q Okay. When did you obtain both of those licenses?

9 A In North Carolina I had the -- my general
10 contractor's license in 1992. Then I moved to
11 California and didn't renew it. When I came back
12 in 2017 -- back to the Carolinas. So I
13 reinstated -- I got it again in 2018.

14 Q That was South Carolina?

15 A North Carolina.

16 Q North Carolina.

17 A Then South Carolina is reciprocal, and I got that
18 one -- I think I did that before I started building
19 in South Carolina in -- I think it was 2023. Or
20 maybe '22. Somewhere along that line.

21 Q So 2022 or '23 is when you received your
22 South Carolina GC license?

23 A Yes.

24 Q Okay.

25 A Before I started the house on Windemere Road.

1 Q Okay. Specifically, regarding your South Carolina
2 GC license, has that license ever been suspended or
3 revoked for any reason?

4 A No.

5 Q Okay. And you indicated that it's active
6 currently?

7 A Yep.

8 Q Okay. All right. Have you ever been charged with
9 or convicted of a crime?

10 A No.

11 Q Okay. Have you ever filed for bankruptcy?

12 A No.

13 Q All right. I want to get your employment
14 background. So when you completed the education
15 that you told us about -- most recently at CPCC.
16 That was your real estate appraiser's certificate.

17 What was your first job after completing your
18 education?

19 A My first job was superintendent of quality control
20 in General Motors.

21 Q Okay.

22 A In Iran.

23 Q Okay. When did you hold that GM job?

24 A That was 1973.

25 Q Okay.

1 A After my graduation.

2 Q All right. And then how long were you at GM?

3 A That was about a year.

4 Q A year. So 1973 to 1974?

5 A Yes.

6 Q Okay. And your position title there again was

7 what?

8 A Superintendent of quality control.

9 Q Okay. And what did that job entail? What were

10 your daily job duties?

11 A To check the entire quality of every single car

12 that was manufactured, assembled.

13 Q Okay.

14 A And I was running the department.

15 Q Okay. All right. Why did you -- and you said that

16 was in Iran?

17 A Yes.

18 Q Okay. Why did you leave that job?

19 A I left for a better position with National Iranian

20 Oil Company. And I was a senior engineer.

21 Q So after you left GM, you went to the National

22 Iranian Oil Company?

23 A Yes.

24 Q Okay. And how long were you there?

25 A I was there from 1974 until 1976.

1 Q Okay.

2 A Two years. Three years. Sorry.

3 Q Okay. And then where did you go to work after
4 National Iranian Oil Company?

5 A I went for the training, for nuclear power plant,
6 to Germany.

7 Q Okay.

8 A I was hired by the nuclear -- Iran. They were
9 building a nuclear power plant in Iran, so I had
10 the training.

11 Q What made you leave Iran and go to Germany?

12 A I was assigned to go to Germany by the company.

13 Q Okay.

14 A For that training.

15 Q All right. And how long were you in Germany
16 working?

17 A About a year.

18 Q Okay. So '76 to '77?

19 A '76 -- short of '77.

20 Q All right. And then after that nuclear power plant
21 work, where did you go to work?

22 A After that I went back to NIOC.

23 Q Okay. Did you have the same job position that you
24 did previously?

25 A I did have the same job, but -- let me see. I was

1 in NIOC in Iran -- let me correct myself. After
2 that I went to -- that was like a -- it was a
3 textile plant. That textile plant was not like --
4 it was like caprolactam, from chemical resins and
5 all that. And I was a technical manager out there.

6 Q Okay.

7 A So NIOC -- and I prefer to go. This was a project,
8 and they were building that project. All the
9 construction work, they had to start it. And then
10 installation of all of the machinery and equipment,
11 that's where I was the technical manager from 1976
12 to -- until whatever they call -- the revolution
13 happened, and I quit.

14 Q Okay. So after --

15 A 1976 to 1978.

16 Q Okay. So in 1978 where did you go to work?

17 A In 1978 I had -- I was again -- I was in
18 construction. I was a project manager for
19 different big projects, like -- at the time I was
20 the CEO of a construction company.

21 Q What was the name of that construction company?

22 A It's Tunnel Sakhteman. Sakhteman is
23 S-a-k-h-t-e-m-a-n.

24 Q Okay.

25 A We were building multiple residential units,

1 highways. And at the same time I was an advisor to
2 a \$2 billion steel mill complex. 7,000 employees.

3 And after that, I left the country.

4 Q You left what country?

5 A Iran.

6 Q Okay.

7 A I left. I couldn't stand the ruling.

8 Q The what?

9 A The ruling government.

10 Q Okay.

11 A So I came to the United States.

12 Q Okay. When --

13 A 1985.

14 Q 1985 you came to the U.S.

15 A Yes.

16 Q Did you work in the construction field in the U.S.
17 as well?

18 A The way I came to the U.S., I registered a joint
19 venture construction company in San Diego.

20 Q Okay.

21 A And ever since I started doing construction work.

22 Q What was the name of that joint venture company?

23 A Same thing, Tunnel Sakhteman.

24 Q Okay. All right. What happened to that company in
25 California?

1 A That company couldn't stand on its feet. I mean,
2 the revenue was low and all that.

3 So then I became -- like sole proprietorship.
4 I started working under my own name.

5 Q Okay. So after the company in California, you
6 started working under your own name. You didn't
7 establish another company for your work?

8 A It was my name, but I had a company -- like in
9 California, after I moved from Charlotte back
10 there, like Multiscope. Because in construction
11 there are, I think, 16 different divisions.
12 Starting from civil work, ending to finishing and
13 all that.

14 Q Okay.

15 A So different companies. They have to be all
16 licensed for those or a general contractor. So I
17 had my general contractor's license plus concrete
18 and -- a speciality contractor. So that's why my
19 company was named Multiscope, which was a sole
20 proprietorship. And we would do -- you know
21 anything related to construction.

22 Because like -- I was a contractor for the
23 Air Force there. They wanted some bulletproof
24 walls and things like that. There aren't many
25 companies being able to do certain things. So with

1 my technical background and through all that, I was
2 confident and I did it. I worked for Palm 29 in
3 Palm Desert for the Army.

4 And basically in California I was working --
5 doing only public work. Like courthouses, parks,
6 schools, hospitals.

7 Q Uh-huh, okay. All right. Did you ever hold a
8 specialty contractor's license?

9 A Yes. That was in California.

10 Q Okay. Did you ever hold a specialty contractor's
11 license here in South Carolina?

12 A No.

13 Q Okay.

14 A In South Carolina and North Carolina, the only
15 buildings I have done is residential.

16 Q Okay. All right. So by way of orienting
17 ourselves, you're aware that we're here today to
18 talk about the lawsuit that you filed against my
19 client and Justin Marlowe; is that right?

20 A That's right. But I have one more thing to add to
21 my resume.

22 Q Certainly.

23 A For a year I worked with a consulting firm in
24 California. And that consulting firm's clients,
25 they were insurance companies, like bonding

1 companies. We would take the companies -- the
2 construction companies in the middle of the job
3 were filing bankruptcy. We would take over
4 everything and get the construction completed for
5 the insurance company. And that's a part of the
6 job I did.

7 Q What's the name of that company that you did
8 consulting work for?

9 A That's Lovet-Silverman.

10 Q Okay. How do you spell Lovet and --

11 A L-o-v-e-t. Lovet-Silverman.

12 Q Okay. And Silverman is S-i-l-v-e-r-m-a-n?

13 A That's correct.

14 Q Okay. All right. So getting back to this
15 particular case, tell me, what made you file this
16 lawsuit against my client and Mr. Marlowe?

17 A The reason I filed it was because -- because of the
18 defendants or the gentlemen you named, their
19 action, the City put a hold on my construction for
20 45 days, which I've documented, and claiming that
21 they are the authorities of an HOA. Which from
22 right day one when I filed to get a building permit
23 for that property, for the house I built, I
24 declared that there is no active HOA there.

25 Because that's one of the requirements of the

1 City of Rock Hill's building permit that if there
2 is an HOA, I have to have their confirmation of my
3 plan with the HOA. So that's when -- then
4 three-quarters of the job was complete, the City
5 informed me that their staff are informed that
6 there is an HOA and they have some points. Either
7 I get their approval for my plans or else. And
8 they put a hold.

9 Again, communicated with them for 45 days
10 that -- you know, there's no -- no HOA recorded by
11 the rules. And I provided them with different
12 documentation that this is how an HOA is registered
13 and applied and all of the above.

14 Q Okay.

15 A That was the cause.

16 Q Okay. So similarly, tell me everything that you're
17 claiming that my client did wrong that gave rise to
18 you -- to file this lawsuit. Each thing that Tim
19 did wrong.

20 A I can start from -- since he started, you know, to
21 the effect of imposing to me that there is an HOA
22 in the subdivision. And that was right around --
23 as it's documented, his own writing, from the
24 beginning of my construction. And I kept notifying
25 that there is no legal HOA in this neighborhood,

1 Forest whatever subdivision.

2 Q Okay. Let's talk about that. So your contention
3 is that my client approached you when you started
4 building and told you that there's an HOA?

5 A That's his own -- I just replied that there is no
6 HOA.

7 Q How did you determine that there was no HOA?

8 A First of all, there is insurance title. So if
9 there was an HOA, it would come in the title
10 insurance.

11 Secondly, I went myself personally to the
12 register of deeds -- not because the gentleman,
13 because of the City -- to make sure that what I'm
14 doing is what the City requires. If there's an
15 HOA, I needed to find the address, the names, to be
16 able to communicate.

17 So at the register of deeds, they told me
18 there is no HOA. So that's how I informed the City
19 that there is no HOA. The only thing there is a
20 recorded covenant, and that recorded covenant was
21 talking -- all they were talking about was -- like
22 you cannot build anything -- I mean the setbacks,
23 the side -- like 50 feet.

24 Q Yeah, we'll talk about the --

25 A Right.

1 Q -- restrictive covenants.

2 A So I complied with the covenants of the recorded --
3 which was done 60 years ago.

4 Q When did you become aware of the restrictive
5 covenants?

6 A Before I started building. At the time I was
7 applying for the permit, for a building permit.

8 Q Okay. And in connection with that, you
9 investigated and determined that there was a set of
10 restrictive covenants for this particular
11 subdivision; right?

12 A Yes. It's -- whatever.

13 Q Did you review those CCRs before you started
14 building?

15 A Yes.

16 Q Okay. Now, in your complaint in this case -- and
17 your complaint being what you filed or your
18 attorney filed on your behalf with the court -- you
19 asserted claims against my client for tortious
20 interference with prospective contractual
21 relations, defamation, and for declaratory
22 judgment; is that correct?

23 A Yes.

24 Q Okay. And are you aware -- and I believe you were
25 at this hearing. I subsequently filed a motion to

1 dismiss your claim for tortious interference, and
2 your attorney agreed with me on that. So the
3 tortious interference claim is off the table at
4 this point. Do you agree with that?

5 A Yes.

6 Q Okay. So what we're dealing with in this case on
7 your side is a claim for defamation and a claim
8 seeking a declaratory judgment. Do you agree with
9 me on that point?

10 A Yes.

11 MR. BAGHDADY: Answer as best you can.

12 Q (MR. DLUZNESKI) If you don't know the answer to
13 my -- a question I ask, you can say "I don't know."
14 But what I'm asking you is to testify to the best
15 of your personal knowledge.

16 A I'm testifying to best of my knowledge.

17 Q Okay. All right. So going with that, since those
18 are the two claims that you have -- and the
19 declaratory judgment claim is a little bit
20 technical, so I'm not going to ask you a whole lot
21 about that.

22 With regard to the defamation claim, how
23 specifically did my client defame you as you are
24 alleging in this lawsuit?

25 How did he defame you?

1 A Number one -- I don't need to put numbers on it.

2 Q Just --

3 A I get a text from the gentleman that, one, the

4 siding is against the regulation of HOA.

5 "Neighbors are angry. They are armed and they're

6 coming at you." I responded that I'm in

7 compliance, and I do not anticipate neighbors to do

8 anything illegal. Like false HOA or something.

9 Because I have continuously -- in writing, in

10 texts, in everywhere -- I have notified that there

11 is no active HOA. That -- I have investigated.

12 Q So who told you that neighbors were armed and that

13 they were coming after you?

14 A Mr. Haake. Text.

15 Q It was in a text message that he sent to you?

16 A It was in a text message.

17 Q Okay. At that point, what were your relations like

18 or what were your interactions like with the

19 neighbors in that subdivision?

20 A Absolutely normal. Normal thing. But after that

21 text, this lady comes to me, who's the daughter of

22 Sophia Beers -- she passed away. She comes to me

23 and said, "Can I talk to you?" I said, "Of

24 course." And she says -- she repeats exactly the

25 same wording. She tells me "vinyl siding is

1 against the regulations of HOA" and "you are not in
2 compliance." And she was kind of hysteric -- and
3 that's probably off the record. And "neighbors are
4 angry; they're coming at you." She repeated the
5 same wording.

6 Then I had two more neighbors. They came --
7 "can we see the house?" I say, "Of course. But be
8 careful, because there's construction going on.
9 There could be nails." I believe that neighbor
10 lives at the end of this Windemere Road. They went
11 in. They came out. They said, "It's a beautiful
12 house. But be careful with" -- at 94 years old
13 because -- I don't think I should tell these
14 things. Because that's just he say/she says.

15 But neighbors reacted to it. Every neighbor
16 who came, saw. Because there was something going
17 on. Maybe -- that's my best guess. That's why
18 these neighbors are coming. And so there was
19 reaction of neighbors coming and, you know,
20 looking. They wanted to verify this and that.
21 Which was unusual to me.

22 Q Did any of the neighbors who spoke with you become
23 hostile or pull a weapon on you or anything like
24 that?

25 A No, they didn't.

1 Q Okay. Did any group of neighbors ever come after
2 you in a hostile manner after you say that my
3 client sent you that message?

4 A The first lady, she was hostile.

5 Q Okay. Tell me what you mean by that.

6 A Because she was -- I could see she was angry. She
7 said, "No, you are not in compliance." I was
8 saying, "Yes, I'm in compliance, lady." And she
9 says, "No, you're not."

10 And she was kind of yelling at me. But I was
11 very professional, quiet. "I respect your opinion,
12 ma'am." And that was it.

13 Q That was Sophia?

14 A No. That was Sophia's daughter. Sophia was
15 94 years old, and she passed away.

16 Q So the discussion that you just described --

17 A The daughter.

18 Q -- was with Sophia's daughter?

19 A Exactly.

20 Q Okay. All right. Any other ways that you claim
21 that Tim defamed you?

22 A Yes. Because the communication I was getting -- I
23 was communicating with the City. But I was copying
24 them so that, you know, they get the response. So
25 there was communication, yeah.

1 Because when I was saying that I will take
2 legal action if this annoyance continues, then he's
3 writing me back that -- "threatening the members,
4 any member of the HOA," which is false, "we will
5 take legal action." So that was another kind of
6 threat. In my mind, that's -- so I took it as a
7 serious threat.

8 Q Okay. So that's another instance of what you
9 believe was defamation by Tim?

10 A What happens -- I am not going after --

11 Q Let me stop you. If you could answer my question,
12 yes or no, and then if you want to explain, you can
13 explain as much as you want. But --

14 A Can you repeat that -- your question?

15 Q Yes. What you described Tim saying in the emails
16 between you and the City -- okay? You just
17 described some email communications that you-all
18 had.

19 A Yes.

20 Q Was what Tim said in those emails another instance
21 of what you believe was defamation?

22 A Definitely.

23 Q Okay. And how -- why? Why do you believe that?

24 A The reason was -- it was discrediting me and my
25 work to a third party.

1 Q Okay.

2 A The City and neighbors. They have letters -- a
3 letter to neighbors, the whole neighborhood,
4 defaming my work, my character, that this guy is
5 self-judging. Well, I have the record of all these
6 actions. I go by the rules.

7 Q Okay.

8 A Self-judging would not take me to get my occupancy
9 permit. So these are kind of intimidating and
10 defamation, both at the same time.

11 Q Okay. So let me summarize what we've discussed so
12 far as what you believe to have been defamatory.

13 First, you talked about the message that Tim
14 sent talking about neighbors -- as you say "coming
15 after you."

16 A "Coming at you."

17 Q Okay. "Coming at you."

18 A "Armed and coming at you."

19 Q So you believed that that was defamatory?

20 A I believe so.

21 Q Okay. All right. And then this second instance
22 that according to you was defamatory by Tim was
23 participating in emails with the City talking about
24 concerns that he had about your work.

25 A Concerns that him as the chairman of the HOA, not a

1 person. If it was a person, he could do anything
2 he wants. But as a member of the HOA, active HOA,
3 puts me in big trouble, can ruin my whole building.

4 Q Okay.

5 A That was the intention that I felt he has.

6 Q So that was the second instance, according to you,
7 that you believe was defamatory?

8 A It's not only "I believe." I trusted --
9 inflammatory and defamation.

10 Q All right. Any other instances of defamatory
11 statements that you allege that Tim made?

12 A I have to go through files and -- I don't have all
13 of them in my mind. But if I go through files, you
14 know, probably I find some more.

15 Q Okay.

16 A For now, I will say yes.

17 Q Okay. And you testified at the beginning of this
18 deposition that you reviewed files and documents in
19 preparation for this deposition; correct?

20 A That is right. But, you know, how much you can
21 keep in your memory -- I just looked at the
22 highlights and important things.

23 Q Okay.

24 A But if you want to go to details, I have to review
25 it again and point to them and make a list.

1 Q So from your own recollection as you're sitting
2 here, are there any other incidents of defamation
3 by Tim other -- besides the two that we just talked
4 about?

5 A These are the two outstanding ones.

6 Q Okay. All right. You alleged in your complaint
7 that my client and Mr. Marlowe represented in
8 writing that they were authorized agents of
9 Poplar Forest Corporation and that you were in
10 violation of architectural requirements; is that
11 correct? Is that accurate?

12 A It's accurate that that's what they wrote.

13 Q Okay. So how are these statements defamatory?

14 A Number one, because they are not. That's a false
15 claim.

16 Q That they're --

17 A They are --

18 Q -- not true?

19 A They are not true.

20 Q Okay.

21 A They are not representatives of the HOA the way it
22 was in the covenant that was recorded in 1960s.

23 Q Okay.

24 A There are no members of that corporation. So
25 that's number one.

1 And then number two is that they are
2 advertising -- they sent throughout the
3 neighborhood that this guy -- sorry for my
4 French -- is an idiot. He's doing things on his
5 own way.

6 He doesn't respect -- I respect the rules and
7 provisions that's out there, wherever I live, in
8 every community. So they're making me look like a
9 disrespectful person. That is defamation in my
10 calculation.

11 Q Okay. All right. So you were upset that Tim and
12 Justin Marlowe disrespected you?

13 A I'm not upset. I have notified them then don't
14 continue these things. Don't -- like don't put
15 your nose in my business that I have with the City.
16 I'm doing my own thing.

17 Q Okay.

18 A They didn't stop.

19 Q All right. Let's take a look at the restrictive
20 covenants that we've already mentioned a couple of
21 times --

22 A Sure.

23 Q -- already.

24 A It's hard to read this one. I have another copy.

25 Q Okay.

1 A I'll look at my copy.

2 Q Yeah, it didn't copy too, too well.

3 A Of course, this page is not in the recorded
4 covenant.

5 Q That's fine.

6 A This is what they have fabricated.

7 Q Okay.

8 A From here on.

9 (Defendants' Exhibit No. 1 marked for identification.)

10 Q (MR. DLUZNESKI) Well, let's talk about that. You
11 said that the cover page of the restrictive
12 covenants -- that for the record says "Poplar
13 Forest Neighborhood Bylaws August 11, 2012." Why
14 do you believe as you just testified that those
15 were fabricated? And by whom?

16 A This covenant was recorded in -- like 60 years ago.
17 Right?

18 Q Okay.

19 A And this page says August 11, 2012. Which is not
20 60 years ago. So this page is added to -- for the
21 public. Which is not part of the recorded
22 covenant.

23 Q Okay. That page, however, does not change any of
24 the recorded covenants --

25 A No. What I'm saying --

1 Q -- is that right?

2 A No. The reason I'm pointing out that this is what
3 they sent to the neighbors and to the City.

4 Q Okay.

5 A Because I have -- right in the beginning when I was
6 applying for permits, the City was pointing out for
7 that, and they sent me copies of this with --
8 signed and all that.

9 So you compare them, and I saw the difference
10 in what is recorded and this. Which is in 1960s
11 and --

12 Q Regardless --

13 A Anyway.

14 Q What is shown in Exhibit 1 to your deposition --
15 which is inclusive of two pages. It's titled
16 Restrictive Covenants for Poplar Forest
17 Subdivision. This is the document that was
18 actually recorded in York County; is that correct?

19 A That's correct.

20 Q Okay. All right. Do you have any reason to
21 believe that these restrictive covenants are not
22 valid?

23 A No.

24 Q Okay. Do you have any reason to believe that these
25 restrictive covenants are not enforceable?

1 A No.

2 Q Okay. All right. Let's take a look at -- and for
3 the record, I'm going to read a few of these
4 paragraphs, and I want you -- and then I'm going to
5 ask you if it's an accurate reading. Okay?

6 A Yes.

7 Q Let's take a look at paragraph 10 of these
8 restrictive covenants.

9 A Okay.

10 Q Paragraph 10 reads as follows: "If the parties
11 hereto or any of them or their heirs and assigns
12 shall violate or attempt to violate any of the
13 covenants herein, it shall be lawful for any other
14 person or persons owning any real property situated
15 in said developments or subdivision to prosecute
16 any proceedings at law or in equity against the
17 person or persons violating or attempting to
18 violate any such covenants and either to prevent
19 him or them from doing so or to recover damages or
20 other dues for such violation." Is that an
21 accurate reading of paragraph 10?

22 A I have to answer in two parts. The first part is
23 yes. The second part, as a person, yes. But as
24 HOA members, that makes a big difference.

25 If as a person goes to the City, and says "I

1 want this building to have this siding and that
2 siding," the City would put it in the trash file.
3 But if he goes as an HOA authorized member, the
4 City has got to, as their requirement, consider it
5 seriously.

6 Q So, sir, how do you answer my question? Was what I
7 read an accurate reading of paragraph 10 of the
8 restrictive covenants?

9 A No. That's about a person. Any person -- even if
10 they live in Alaska, they can come and make a, you
11 know, claim or complaint in any --

12 Q Did I read paragraph 10 accurately?

13 A You did it.

14 Q Okay. All right. So let's talk about
15 paragraph 10. During the times at issue in this
16 lawsuit, did my client own real estate within the
17 subdivision?

18 A Many other people did as well.

19 Q Did my client own real estate within the
20 subdivision?

21 A I don't know.

22 Q Okay. Do you have any reason to doubt that he did
23 own it?

24 A No, I don't. But I'm not going into records and
25 see that that particular property is registered in

1 exactly his name. His brother's name. I don't
2 know that part. So that is the accurate answer.

3 Q Okay.

4 A But yeah, I mean, looking at it from there, he
5 lived there. Yeah, I'm sure.

6 Q Okay. So what is your opinion -- and if you don't
7 know, you can say "I don't know." What is your
8 opinion about whether my client had the right under
9 paragraph 10 to, quote, "prosecute any proceedings
10 at law or in equity against the person or persons
11 violating or attempting to violate any such
12 covenants and either to prevent him or them from
13 doing so"?

14 A Your client as the member, authorized member of the
15 HOA, he didn't have any of these rights. But as a
16 neighbor alone, yeah, he could have done all of
17 that.

18 Q Okay.

19 A But he didn't. He claimed falsely that he's the
20 chairman of the architectural committee. That's a
21 total false statement. That's defamation.

22 Q Okay. So maybe let me phrase this question in a
23 slightly different way.

24 If my client had reason to believe that you
25 were violating these restrictive covenants during

1 the times that you were building a house within the
2 subdivision in which he lived --

3 A Yes.

4 Q -- did he have the right under paragraph 10 to stop
5 you from violating the covenants?

6 A He did not have the right to stop me himself. He
7 could go and apply a civil lawsuit somewhere.
8 According to the response, he finally -- he finally
9 got from the City attorney. That this is a civil
10 case.

11 Q So he could have enlisted -- your opinion is that
12 he could have enlisted the services of somebody
13 else to prevent you from violating the covenants.
14 Is that what you're saying?

15 A No. What I'm saying is that as a member of this
16 HOA, he had no right. Because he was not.

17 Q Even though he was a property owner within the
18 subdivision?

19 A Even though. As a member of the HOA -- even if he
20 owned the whole neighborhood, he couldn't. Because
21 he was not a member of the HOA.

22 Q Okay. How about Justin Marlowe? Did --

23 A Same.

24 Q -- Justin Marlowe have the right to stop you if he
25 believed that there was a violation? Stop you from

1 violating these covenants?

2 A He himself -- or anybody by himself could not come
3 and say "stop." They couldn't. They have to go
4 through the legal procedure and process, whatever
5 it is, the right. But personally, they could not
6 come and stop me.

7 Q The testimony you just gave, where are you getting
8 the information you just testified about, and why
9 are you saying what you're saying?

10 A That's how I understand. That's how I -- get
11 through these documents. That's the law.

12 Q Did you consult with an attorney about these
13 restrictive covenants before you began building in
14 the subdivision?

15 A No. I had sufficient -- sufficient knowledge,
16 experience in building. That I was -- you know, an
17 expert witness as well. Because I've been in
18 construction -- I don't know -- 50 years.

19 Q Okay. Do you have any legal background or
20 training?

21 A Legal background or training --

22 Q Training in the law.

23 A No, I don't have training in the law. But I've
24 been a consultant in that firm, which was working
25 for -- I'm sure the company -- they had a 24-story

1 building in New York. All lawyers.

2 Q All right. Let's take a look at paragraph 9 of the
3 restrictive covenants. Directly above
4 paragraph 10.

5 A Okay.

6 Q Again, I'm going to read it, and I'm going to ask
7 you a very simple question, whether or not what I
8 read is an accurate reading of paragraph 9.

9 Paragraph 9 reads as follows: "These
10 covenants are to run with the land and shall be
11 binding on all the parties and all the persons
12 claiming under them until May 1, 1992, at which
13 time said covenants shall be automatically extended
14 for successive periods of 10 years unless by a vote
15 of the majority of the then owners of the lots it
16 is agreed to change the said covenants in whole or
17 in part." Is what I just read an accurate reading
18 of paragraph 9?

19 A Yes.

20 Q Is that what it says?

21 A That's what it says.

22 Q Okay.

23 A That's what you read. That's what is typed here.

24 Q All right. So are you aware of any vote by a
25 majority of the property owners within this

1 subdivision after May 1, 1992, to change these
2 restrictive covenants in whole or in part?

3 A No.

4 Q Okay. So if that didn't happen, would you agree
5 with me that after May 1, 1992, these restrictive
6 covenants were automatically extended for
7 successive periods of 10 years?

8 A That's correct.

9 Q Okay. And that -- that extension would run through
10 the period in which you were building within this
11 subdivision?

12 A That's right.

13 Q Okay. Can you give me any reason why based on what
14 we just discussed that these restrictive covenants
15 would not have still been in effect at the times at
16 issue in your lawsuit?

17 A There's no reason.

18 Q Okay.

19 A I followed these 100 percent.

20 Q So when you testified a little while ago that these
21 were recorded 60 some odd years ago --

22 A Yes.

23 Q -- you don't disagree with me that they were still
24 in effect when you were building within this
25 subdivision?

1 A That's why the City asked me to comply with it.
2 And I did. It's a 25-foot setback, which is
3 zoning. This is, you know, different. It's 50. I
4 moved it to 50.

5 Q Okay.

6 A So I complied 100 percent.

7 Q All right. And to be clear, you built a house
8 within this Poplar Forest subdivision; right?

9 A That is correct.

10 Q And that is the basis of your lawsuit against my
11 client and Mr. Marlowe; is that right?

12 A Yes. The house, yes.

13 Q Okay.

14 A Whatever happened because of it.

15 Q All right. Now, we talked about from a timing
16 prospective. But would you agree with me that
17 these restrictive covenants would have applied to
18 the lot on which you built the house?

19 A That's right.

20 Q Okay. And do you also agree with me, to be clear,
21 that since you were building a house within this
22 subdivision you were bound by these restrictive
23 covenants?

24 A That's true.

25 Q Okay. All right. Let's take a look at paragraph 6

1 of the restrictive covenants. On page 1. And I'm
2 going to read it for you and ask you if it's an
3 accurate reading, and then we'll talk about it.

4 All right. Paragraph 6 says: "The ground
5 area of the main structure exclusive of one story
6 open porches and garages shall be not less than
7 1,800 square feet in the case of a one-story
8 structure. And in the case of one-and-one-half or
9 two or two-and-one-half story structures, the total
10 square footage shall not be less than 2,500 square
11 feet." Is that an accurate reading of paragraph 6?

12 A Yes.

13 Q Okay. Now, how tall was the house that you built
14 within this subdivision? How many stories?

15 A It's one story.

16 Q Okay. So this paragraph of the restrictive
17 covenants would require the house that you built to
18 have been no less than 1,800 square feet; correct?

19 A Correct.

20 Q Okay.

21 A Including enclosed porch.

22 Q Well, it says "exclusive of one-story open
23 porches" --

24 A Open porches. But closed porches it's ...

25 Q Okay. Enclosed porches can be counted towards the

1 1,800 square feet?

2 A That is correct.

3 Q Okay.

4 A This is the house.

5 Q Okay. We'll take a look at the house. All right.

6 We'll actually take a look at the house now. Let's
7 look at the -- well, I've got the construction plan
8 that you submitted to the City.

9 A All of them or part of them? Yeah, I will see.

10 (Defendants' Exhibit No. 2 marked for identification.)

11 Q (MR. DLUZNESKI) All right. This is Exhibit 2 to
12 your deposition. Are these copies of the
13 construction plans that you submitted to the City
14 for the house that you built within my client's and
15 Mr. Marlowe's subdivision?

16 A Let me look at them.

17 Q Certainly.

18 MR. D'AGOSTINO: Number 2?

19 MR. DLUZNESKI: Number 2.

20 A Yes.

21 Q (MR. DLUZNESKI) And these were approved by the
22 City, were they not?

23 A Yes.

24 Q Okay. Do you see on each one of these pages the
25 City of Rock Hill stamp with "approved" on it?

1 A Yes.

2 Q All right. And what is the date on which these
3 plans were approved by the City?

4 A This date is -- let me see. I'm looking to find
5 where the date ...

6 Q It should be right below, I believe, the "approved"
7 stamp.

8 A It needs a magnifying glass, I think.

9 THE COURT REPORTER: May I? I can help with
10 that.

11 MR. DLUZNESKI: Sure.

12 THE DEPONENT: Thank you.

13 MR. DLUZNESKI: That should help you a
14 little bit.

15 A Can you find it yourself?

16 Q (MR. DLUZNESKI) I would represent to you that
17 under the City of Rock Hill stamp where it says
18 "approved," there is a date that appears of
19 4/8/2024, which means April 8, 2024.

20 Would you agree with that as the date of
21 approval?

22 A Yes. But let me make a comment.

23 Q Sure.

24 A The original plans, they were submitted in -- they
25 were approved in October 2023.

1 Q Okay.

2 A And at that time the garage was on the left side.

3 So -- and the City had asked me -- because of the
4 topography situation of the parcel of that land --

5 Q Uh-huh.

6 A Before I start the footing, the construction, they
7 have to come and approve my grading and the storm
8 drainage. That's in my permit. They have it
9 noted. So before I do -- you know, after grading
10 when I did the soils and things, the City inspector
11 came and approved my grading on 11/7/2023. The
12 City approval. Pre-footing grading.

13 So that means they approved the location, the
14 contour of the soil, and storm drain system.

15 Q Okay.

16 A And then on 11/10/23, the City inspector Jim
17 McConnell comes there to inspect the footing. The
18 location as per the plan and, you know, everything
19 that is in the permit. So he comes, and he says,
20 "You have to flip the house." I said "yes."
21 Because of the grading situation.

22 He said, "I have to call the office." He
23 calls the office. They say, "Yeah, it's okay."

24 Q Sir, I think we're getting off -- that's not the
25 question I asked you.

1 A I'm explaining to you. Correct me.

2 Q You explained that there was a prior set of plans
3 in October 2023 that were the initial set of
4 plans --

5 A Exactly.

6 Q -- approved by the City; is that correct?

7 A Yes, that's correct.

8 Q Okay.

9 A These are -- this is the -- they wanted me to show
10 the flip for their records. Not that there was
11 anything wrong with what I have done. Because
12 everything was approved.

13 Q Okay. So --

14 A They need to keep this in the record.

15 Q All right. So between the October 2023 plans and
16 these April 2024 plans, would it be accurate to say
17 that the only thing that would have changed between
18 those two sets of plans is that the orientation of
19 the house was changed?

20 A No.

21 Q Okay.

22 A Plus the -- plus that they were -- like a door in
23 the original plan might have been.

24 Q Okay.

25 A Because they were communicating there were two

1 doors. I put -- double doors. I put one door.

2 And minor cosmetics like that, which is between me
3 and the City.

4 Q Okay.

5 A The City doesn't enforce anybody to put a double
6 door or single door.

7 Q So it had nothing to do with square footage or --

8 A Nothing at all.

9 Q Okay. All right. Well, let's --

10 A Everything is exactly the same. A mirror copy of
11 the original structure of plan and layout.

12 Q All right. Okay. Let's turn to page 3 of this
13 packet. And there is a -- it says Sheet Number 3
14 in the lower right of the page.

15 A Yeah, "as built."

16 Q Okay. Do you see a heading titled "floor plan" in
17 the lower left of this page?

18 A Yes.

19 Q All right. Under that heading, there's some square
20 footage notations inside a box. Do you see those?

21 A Yes.

22 Q Okay. Do you see a notation inside the box under
23 the floor plan heading on page 3 of the plans
24 packet that indicates square footage of 1,807
25 square feet?

1 A Yes.

2 Q And beside that, does it indicate, quote, "in
3 compliance with CCR restrictions"?

4 A Yes.

5 Q Did you make those notations?

6 A Yes.

7 Q Okay. What CCR restrictions was this notation
8 referring to?

9 A The floor plan?

10 Q What CCR restrictions -- what CCR restrictions were
11 you referring to?

12 A All of them.

13 Q You mean Exhibit 1 to your deposition?

14 A Exhibit 1. Paragraph 6 or 7 and 8.

15 Q Okay. So that was a reference to paragraph 6 of
16 the restrictive covenants that we just talked
17 about, that talks about the 1,800 square feet
18 agreement.

19 A Exactly, yes.

20 Q Okay. So you represented to the City that the
21 house that you were building within the defendants'
22 subdivision was going to be -- or was 1,807 square
23 feet and that it would therefore be in compliance
24 with the restrictive covenants that we looked at a
25 little while ago; right?

1 A That's true.

2 Q Okay. And so the City approved your construction
3 plans based in part on those representations;
4 right?

5 A That's correct.

6 Q Okay.

7 A And let me explain it to you that the -- when the
8 appraiser came and -- when I was selling it, they
9 measured it. It was a little bit over that. It
10 was 1,813.

11 Q Okay.

12 A So like six, seven square feet bigger.

13 Q So from the plans that the City reviewed and
14 approved, the house you were building was in
15 compliance with the restrictive covenants?

16 A That's correct.

17 Q Okay. So if my client had reason to believe during
18 the construction project that you had changed the
19 construction plans in such a way that would make
20 the house not meet the square footage requirement
21 provided in the restrictive covenants, do you agree
22 with me that paragraph 10 of the restrictive
23 covenants authorized my client to take action to
24 prevent you from violating that square footage
25 requirement?

1 A No. Because your client's objection was as the
2 chairman of the architectural committee, which is
3 false representation.

4 As an individual, he could go to the City, and
5 they would throw his complaint to the trash.

6 Q How do you know that the City would have done that?

7 A The City has got its own rules and its own people.
8 It's not going to listen to everybody in the
9 community unless they are authorized.

10 Q Okay. So -- so is it your testimony that if Tim or
11 Justin went to the City of Rock Hill and said "hey,
12 this new house in our subdivision does not meet the
13 square footage requirements" --

14 A Yes.

15 Q -- that the City would have completely disregarded
16 that?

17 A No. They have come to me and they would check the
18 plans and everything. And -- probably. This is
19 all -- it's speculation. And neither -- I don't
20 like your speculation. I don't even like my own
21 speculation.

22 Q Well, sir, here's what's happening. You've
23 provided testimony --

24 A I'm here --

25 Q Let me finish my question, please.

1 A Sorry. I'm sorry.

2 Q Okay. You've testified that the City would have
3 done certain things had Mr. Haake or Mr. Marlowe
4 went to the City and made these complaints in their
5 own personal capacities. You've testified about
6 what the City would have done in that situation.

7 A Is it --

8 Q Hold on. I'm simply asking you for the basis of
9 that testimony and why you believe that would have
10 happened. Who at the City did you talk to that
11 told you what you just testified about?

12 A No. I'm pointing out this: If they go as the
13 authorized HOA members architectural -- chairman of
14 architectural committee or president of the HOA
15 falsely and the City doesn't know it's false or
16 correct, they would handle it differently than any
17 other neighbor or any other people living in the
18 city are free to go and have a claim. These two
19 would be treated totally differently.

20 Q How do you know that? Who at the City told you
21 that?

22 A Because it is the City's requirement. It's in
23 writing. That they need the approval of the HOA.
24 So when they go and say "we have not approved this
25 building" and "we are the HOA" or "I'm the HOA,"

1 the City has got to take action against me and say
2 "hey, you falsely claimed, declared that there is
3 no HOA. Now here they are."

4 So it becomes a different process. When
5 somebody goes and says "I'm living at such and such
6 address in Rock Hill" -- sorry if I'm speaking too
7 loud. And they will do it totally different.
8 Because they are not even any authorized -- what do
9 you call it -- authorized, legally obligating the
10 City to look into it. It's their duty to look at
11 it as a constituent, as they look at everybody.

12 Even if you live here, they'll say, "Latif is
13 building that thing. I think those are wrong."
14 They wouldn't consider it as the HOA member.

15 Q So would you agree with me that if Tim and Justin
16 went to the HOA -- or went to City rather -- went
17 to the City in their own individual capacities, in
18 their own individual capacities outside of any HOA,
19 and said "look, we have some concerns about this
20 house that's going up in our neighborhood meeting
21 square footage requirements of the restrictive
22 covenants," would the City have gone out according
23 to you and investigated their concerns?

24 A If I'm the City -- you're asking me. If I'm the
25 City, I will look into it. Of course, I will look

1 into it. But as an HOA, I have an obligation to
2 stop the work.

3 Q Okay. And --

4 A Because he doesn't have the document. They
5 wouldn't -- if as an individual goes there, they're
6 not going to stop my work right away. They come in
7 the process between me and you. But the City says
8 "go and get the approval before I release you to
9 continue your work."

10 Q And in this particular case, sir, the City did
11 investigate the concerns; right? They sent
12 somebody out; correct?

13 A They sent five inspectors out, not "somebody."

14 Q Okay. They sent one or more individuals out to
15 investigate these claims.

16 A And they're officers.

17 Q Right?

18 A Of course.

19 Q Okay.

20 A Because of the HOA claim. They had to. They were
21 obligated to do.

22 Q But you just testified that even if Mr. Haake and
23 Mr. Marlowe made complaints as private citizens the
24 HOA would have -- or the City would have
25 investigated. Right?

1 A As an individual -- but that would be a
2 different -- they wouldn't stop my thing because I
3 am lacking certain requirements.

4 Q Okay.

5 A Getting the consent of every neighbor is not a
6 requirement of the City to issue a permit. But
7 getting the HOA approval is the requirement of the
8 City. The City has to stick to it.

9 And when they found out that I don't have this
10 requirement -- that there's possibly an active HOA,
11 they have to stop the building.

12 Q The City did go out and do an investigation;
13 correct? They sent somebody out --

14 A Yes.

15 Q -- to do an investigation?

16 A They did.

17 Q Okay. They scheduled a meeting out at the project
18 site; right?

19 A They had to. Because there was a claim that we are
20 HOA. They have not approved -- "why the hell did
21 you issue the permit without our consent?"

22 Q Is that a yes or a no, sir? They scheduled a
23 meeting to investigate the claims about the house
24 you were building; correct? Yes or no.

25 A They scheduled -- yeah. I have an email from Mike

1 Nugent, yeah.

2 Q Okay.

3 A They scheduled a meeting. He came to me, and he

4 said that everything stops. I said, "What?"

5 Q All right. Let's --

6 A "I have everything approved."

7 Q Okay.

8 A I don't want to continue. But --

9 Q Let's --

10 A -- it becomes milky.

11 Q All right. Let's take a look at another exhibit.

12 A Go ahead.

13 (Defendants' Exhibit No. 3 marked for identification.)

14 Q (MR. DLUZNESKI) So in the course of the City's

15 investigation, one of the things that they

16 discovered was that the house you were building did

17 not have an acceptable drainage plan; isn't that

18 right?

19 A Which part are you referring to?

20 Q I'm just asking you a question. Then we'll take a

21 look at the document. My question was: In the

22 course of the City's investigation, one of the

23 things that they discovered was that the house that

24 you were building did not have an acceptable

25 drainage plan; isn't that right?

1 A They approved the drainage plan that I initially
2 submitted. Okay. And they came and checked it and
3 approved it. Then later on after this claim, they
4 came and -- not that they didn't approve. They
5 wanted to see that those swales are functioning.
6 And finally that was it.

7 Q All right. Let's take a look at what's been marked
8 as Exhibit 3 to your deposition. Down at the
9 bottom it says -- do you see a heading that says
10 "Infrastructure - Stormwater - Kenny Lombard," and
11 then it has Mr. Lombard's email address? And it
12 has some review comments under there; right?

13 Do you see those review comments?

14 A Yes.

15 Q Okay. And to the right in that section, it says
16 "not approved"; is that right?

17 A That's correct.

18 Q Okay. So the review comments say, quote, "The
19 revised house location will likely interfere with
20 the existing through drainage on this parcel. A
21 grading plan must be provided to show exactly how
22 and where this water will be directed. While the
23 current site plan does show the location of several
24 bypass swales, it is unclear if these are feasible
25 or adequate to convey this drainage."

1 Is that an accurate reading of that comment?

2 A Yes.

3 Q Okay. And the City also determined that the house
4 that you were building, in fact, also did not meet
5 the square footage requirement set forth in the
6 restrictive covenants; is that right?

7 A Where is that?

8 Q Is that right? Do you recall that, whether the
9 City determined --

10 A Never. The City never determined that. They had
11 the plan. They had the square footage. They had
12 the covenant.

13 Q Let's take a look --

14 A And here -- I want to mention to you. These
15 things -- I responded to them in paper, in emails.
16 And they were approved. So that was their error.

17 Q All right. So your -- is it your testimony right
18 now here under oath that the City never determined
19 that the house that you were building did not meet
20 the square footage requirement?

21 Is that your testimony?

22 A Yeah, that's how they issued my occupancy permit.

23 MR. DLUZNESKI: Okay. Let's take a look at
24 Exhibit 4. She's going to mark it and then give
25 you that one.

1 (Defendants' Exhibit No. 4 marked for identification.)

2 THE DEPONENT: Mind you --

3 MR. DLUZNESKI: Hold on.

4 THE DEPONENT: I have something to say.

5 MR. DLUZNESKI: Well, we're not recording
6 right now. You are here to answer questions.

7 Q (MR. DLUZNESKI) Exhibit 4 you have in front of
8 you. It's two pages. Is that correct?

9 A Correct.

10 Q Okay. The first page is a calendar invite from
11 Mike Nugent at the City of Rock Hill for Thursday,
12 February 22. "Meet to discuss the project on
13 site." He's referring to your project; correct?

14 This is the date of the site meeting; right?

15 A Yes.

16 Q Okay. Turn to page 2 of Exhibit 4. It's an email
17 from Mike Nugent to my client and his wife,
18 Annemarie. Do you see that?

19 A Yeah, I see that.

20 Q Okay. And Mike Nugent's email says, "Great meet
21 you today. The building living space is 1,683
22 square feet not including the porches and garage.
23 Will keep you posted." Is that an accurate reading
24 of Mr. Nugent's email?

25 A Yes.

1 Q Okay. 1,683 square feet is less than 1,800 square
2 feet; is that right?

3 A Living space.

4 Q Okay. So not including the porches and garage;
5 right?

6 A That's correct.

7 Q Okay. And the restrictive covenants indicate that
8 it is a minimum 1,800 square foot requirement
9 excluding --

10 A Open.

11 Q -- the porches and garage?

12 A Open porches.

13 Q Okay.

14 A This is a closed porch. So that adds to -- that's
15 why they issued me the occupancy permit. So
16 that's -- I am in compliance with the covenant and
17 the City.

18 Q So you're saying even in light of this email from
19 Mike Nugent that the City of Rock Hill never
20 determined that the house you were building --

21 A No.

22 Q -- was less than 1,800 square feet?

23 A They were never determined that it is less than the
24 covenant requirement.

25 Q Okay. So after this meeting in February, on

1 February 22 --

2 A That's why he never emailed me.

3 Q Can you allow me to finish my question, please --

4 A I'm sorry.

5 Q -- before you interject an answer?

6 So the City after this inspection on
7 February 22, 2024, issued a stop work order on the
8 house; correct?

9 A Yes.

10 Q Okay. And they stopped -- they ordered further
11 construction of the house to cease until you
12 submitted an acceptable drainage plan and agreed to
13 build the house pursuant to the approved plans with
14 regard to the square footage requirement; is that
15 right?

16 A That is ...

17 Q That's why you had the work stoppage; right?

18 A No. I stopped the work because I was waiting for
19 them to approve my change order.

20 Q What change order?

21 A They wanted me to show the house has flipped to --
22 I mean, the garage has gone to the right side.
23 Because they needed for the record. And that's
24 what my change order was. I mean, of the entire
25 thing.

1 So at the same time, there were some cosmetic
2 changes that the City was asking me to do on that
3 change order. But they stopped reviewing the
4 change order. Mike Nugent came personally and told
5 me "you have to stop the work." I said,
6 "Everything here is approved. I have the record of
7 it. You cannot stop my work." Right?

8 And he said, "At least don't do the handrails
9 in front." This is all verbal things. And he said
10 that. He said, "I'm trying to help you." But this
11 is not help. I have done everything with an
12 inspection, step by step, and whatever I've done,
13 it is 100 percent approved to this point whether --
14 what do you call it -- expressed or implied.

15 Q Okay.

16 A And he said, "Okay. Just don't do the handrails at
17 least" and things like that. But I couldn't
18 proceed any further. Because I had to wait and see
19 what happens with my change order. Because they
20 wanted me to change -- like if they had the right,
21 they would legally authorize things. The City may
22 have forced me to remove all my brick around the
23 house and take the garage door out. Put the list
24 of demands that -- not this gentleman as an
25 individual. The HOA wants it. Every time you

1 refer to him as Tim Haake, Mr. Haake a person, it's
2 just not right. Because my complaint against these
3 individuals is they are falsely representing
4 themselves as the authorities of the HOA.

5 Q All right. Well, let's --

6 A That's the story in brief.

7 Q Well, let's stay with the work stoppage. So is it
8 your testimony that the City did not order the work
9 stoppage because -- let me finish my question,
10 please.

11 A Yeah, I'm waiting.

12 Q Is your testimony that the City did not stop --
13 because I want to make sure this is crystal clear.

14 Is it your testimony that the City did not
15 order work to stop because of the square footage
16 requirement and the adequate -- or inadequate
17 drainage plan?

18 A No.

19 Q Okay. That wasn't why the City ordered the work
20 stoppage?

21 A Not at all. It was because of claiming there's an
22 active HOA. That was the only reason. That's
23 why --

24 Q That's the only reason. They said, "You need HOA
25 approval before we're going to allow you to

1 continue working"?

2 A Before even they'd look at your change order. Even
3 look at your project, period.

4 Q Okay. All right. My client doesn't work for the
5 City; right?

6 A I don't know.

7 Q Okay.

8 A I know he works for some German company.

9 Q A German company is not the City of Rock Hill;
10 right?

11 A No. That's what I'm saying. So I know -- because
12 he gave me his business card. And on the business
13 card I can see that -- if he has other businesses
14 or other things, I wouldn't know.

15 Q Goettfert is his company?

16 A Lubrication testing equipment.

17 Q All right.

18 A If he has other businesses, I'm not aware.

19 Q Well, as long as we can agree the City of Rock Hill
20 is not a German owned company, then that's --

21 A No. I trust that he doesn't work for the City of
22 Rock Hill.

23 Q All right. So in this particular case, though, the
24 City came out. They performed their own
25 investigation at the site; right?

1 A That's correct.

2 Q Okay. And then it was based on that investigation
3 or following that investigation that they ordered
4 the work stoppage; right?

5 A The work stoppage -- I explained how it happened.
6 It was because of HOA, not because of the
7 investigation.

8 Q And who at the HOA told you "we're ordering you to
9 stop work because of the HOA"? Who at the City
10 told you that?

11 A I have his email. Ryan. He's in zoning. He
12 explicitly emailed me that. "We're not reviewing
13 your change order" and --

14 Q What is his full name?

15 A Ryan -- I have one of his emails. Ryan Hammond.

16 Q Ryan Hammond is the one that according to you at
17 the City who told you, you can't continue work
18 because of the HOA?

19 A Here it is. "Review: At this time the staff has
20 advised there is an active HOA for this
21 neighborhood. Provide signed HOA approval or
22 confirmation that the board is inactive." That was
23 his first email. So I continued. "Hey, there is
24 no HOA."

25 And he sent that note, "this is on hold until

1 the City attorney comes." So they put my project
2 on hold.

3 Q Okay. All right. What are you asking that my
4 client do or what are you asking from my client in
5 this case? You're the plaintiff. What are you
6 asking from my client?

7 A I'm asking the damages he imposed on me because of
8 this false representation.

9 Q Which are how much?

10 A In my mind -- I have to discuss this later on with
11 my attorney. In my mind there were three cases.
12 One is your attorney [sic]. The other one is
13 Mr. Justin Marlowe. And then combined. So there
14 are three cases in my opinion. I'm not -- in that
15 part, technical legal thing. But altogether I can
16 consent for your client being individually and
17 jointly conspiring against me in a way. I think
18 that he imposed damages of \$50,000 including my
19 attorney fees and ...

20 Q Where does that 50,000 -- tell me how you calculate
21 that?

22 A It was 45 days exactly from the time this guy
23 put -- I mean, the City put my project on hold
24 until they started working on it and released the
25 hold. Right? For that 45 days, a full-time

1 superintendent and project manager -- the domino
2 effect of later on losing the subs, rescheduling
3 them. Because they don't only work for me.
4 There's a sub for the plumbing. They have their
5 own schedule.

6 So all these extensions of time and not being
7 able to schedule the material and time they
8 imposed -- over \$50,000. Probably, maybe 80-,
9 \$90,000. So I'm consenting to \$50,000.

10 Q How much per day do you believe you were damaged as
11 a result of the defendants' alleged activities?

12 A This is my job. This is how I get paid. This is
13 my only business.

14 Q Okay.

15 A So if you quote me 45 days out of my income, it is
16 damaging me a thousand dollars a day, period. Just
17 for myself. But I'm consenting that. I'm saying
18 me and, and, and, and.

19 Q Okay.

20 A That's how I come to it.

21 Q Now, you purchased this property, 2124 Windemere
22 Road, in June 2023 for 75,000; isn't that right?

23 A That is right.

24 Q Okay. And you sold the property a year later in
25 June 2024 for \$408,000; isn't that right?

1 A Yeah, that sounds correct.

2 Q So if my math is correct -- and I went to law
3 school so I wouldn't have to do math.

4 A Yes.

5 Q But if my math is correct, you turned a profit of
6 \$333,000 in connection with 2124 Windemere Road
7 over a one-year time period; is that right?

8 A No. Your calculation is wrong.

9 Q How is my calculation wrong?

10 A I bought the bare, vacant property for \$75,000. I
11 invested in that property. I improved it. Those
12 improvements are not profit. Those improvements
13 are expenses.

14 Q How much did you spend on building the improvement;
15 i.e., the house? How much did the house cost you
16 to build?

17 A I don't have the number right in my mind.

18 Q This is your business, sir. You just testified --

19 A Yeah, I can --

20 Q -- to that.

21 A -- tell you. I can tell you the vicinity of -- I
22 wasn't prepared to bring numbers here. Because I
23 thought that I'm dealing with the HOA thing. But
24 this is like a different thing. I'm not answering
25 to the HOA complaint of mine. I'm answering how

1 much a building costs.

2 So I can tell you -- let's say 380-, 370,000.

3 But I have the actual 100 percent factual numbers
4 in my office.

5 Q Did you provide those 100 percent actual, factual
6 numbers in discovery in this case?

7 A No.

8 Q You didn't?

9 A No. Because I didn't think it's relevant.

10 Q Okay.

11 A It's not relevant because I'm not defending my
12 construction expenses. I am claiming that there
13 was a damage because of vicious defamation against
14 me and my work.

15 Q Okay. So let's take a look at -- just finishing
16 up. I want to make sure that I'm clear on your
17 discovery responses. You recall that you -- we
18 sent discovery responses to you earlier in this
19 case; is that right?

20 A That's right.

21 Q Or a discovery request to you in this case.

22 A That is right.

23 Q Okay. And part of those consisted of
24 interrogatories or written questions for you to
25 answer. Do you remember those?

1 A I remember.

2 Q All right.

3 A Not one by one. But I remember you sent me.

4 Q You remember receiving those and working with your
5 attorney to respond; right?

6 A Yes.

7 Q Okay. All right. I do have several of these I
8 want to go through. Unfortunately, the only copy
9 of your responses that I have has my notes on it.
10 So I'm not going to have that as an exhibit. But
11 what I'll do is I'll just read them each, and we'll
12 go through your answers.

13 A Fine.

14 Q Interrogatory Number 1 asked you to give the names
15 and addresses of persons known to you or your
16 counsel to be witnesses concerning the facts of
17 this case and indicate whether or not written or
18 recorded statements have been taken from the
19 witnesses and indicate who has possession of such
20 statements.

21 In response to that, you listed my client,
22 Justin Marlowe, and Ryan Hammond as witnesses. Are
23 there any other witnesses that you are aware of
24 that have knowledge of the facts of this case
25 and/or who you may call to testify at trial?

1 A To testify at trial? That's a two-part question in
2 my mind. If there are other people -- yes. City
3 of Rock Hill or whoever working there. Mike
4 Nugent. What is his relationship in their
5 department, building department, with Ryan and all
6 that? I don't know. But I copied them together.
7 Like the email you showed me for the meeting was
8 Mike Nugent. Mike Nugent, Ryan --

9 Q Mike Nugent.

10 A Nugent, right. Mike Nugent and Ryan, they both
11 came to the field. Jimmy, the inspector came. So
12 those people are aware of this situation. But
13 whether I want them as witnesses or not, I don't
14 want them as a witness. I have their written
15 communications.

16 Q All right. Number 3 asked for names and addresses
17 of all insurance companies which have insurance
18 coverage relating to the claim. Your answer is
19 none. So you don't have any insurance companies
20 that insure your work when you do a home building
21 project?

22 A I have liability -- I have it -- liability
23 insurance and all that. But it's for me, for my
24 job if I hurt some neighbor or something.

25 Q Okay.

1 A But nothing to do with this claim.

2 Q Okay.

3 A As far as I thought is relevant or nonrelevant.

4 Q Okay. Number 4 asked for names and addresses of

5 any expert witnesses who you or your counsel

6 propose to use as a witness at the trial of this

7 case. You indicated in your answer was none have

8 been identified yet. Is that true? Have you

9 retained an expert witness in connection with this

10 case or no?

11 A No. I don't need one.

12 Q Okay. Number 5. In your response to Interrogatory

13 Number 5, I want to ask about one of your

14 statements in your answer. It says per you, the --

15 this delay led to a 45-day delay at \$1,500 per day.

16 How did you calculate the \$1,500 per day?

17 A As I mentioned before, a project manager --

18 Q How much does a project manager cost per day?

19 A A project manager is about 180,000 a year. So you

20 divide it per day.

21 Q Okay. And what is that?

22 A That's average. That's an average salary of a

23 project manager.

24 Q Okay.

25 A Then a superintendent is probably 60,000, 80,000,

1 in that range.

2 Q Okay.

3 A And then the domino effect of the delays that
4 follows. So that's how --

5 Q When you say "domino effect of the delays that
6 follow," what do you mean by that?

7 A If you stop an ongoing process at a point when
8 everything has got momentum, at one point sharply,
9 not preplanned, then everything goes into chaos.

10 Later on you have to again rearrange
11 everything, and that takes time. Reschedule every
12 sub. You are falling behind everybody's line. So
13 those are the domino effects.

14 Q Okay. Let's move on to Interrogatory 12. Because
15 in that interrogatory, I asked you to set forth an
16 itemized statement of all of your damages exclusive
17 of pain and suffering. Your answer was: "Over 45
18 days of halting work in the middle of construction
19 activities, caused 1,500 a day in damages including
20 but not limited to (1) loss of scheduled
21 subcontractors and activities; (2) punitive
22 damages; (3) loss of income; (4) costs associated
23 with maintaining an unfinished building.

24 What costs were associated with maintaining
25 this building during that 45-day period?

1 A Because of the rain, winds. Everything else.

2 Temporary fencing. You know, I had to put like a

3 temporary retainer wall at some point.

4 Q How much did that cost?

5 A I mean, a temporary fence by itself would be

6 something -- probably 6-, \$7,000.

7 Q And you're able to document that in this case you

8 did that?

9 A I wasn't asked to document those items later. But

10 I can do that. But how much material was, how much

11 labor I paid.

12 Q Okay.

13 A The working under the rain and things like that.

14 Those things, they are all --

15 Q How about loss of income? And I'll say you listed

16 loss of income separate from the loss of scheduled

17 subs and activities. So what loss of income did

18 you suffer?

19 A Because that is the only income I have. Right?

20 Q You only do one project at a time?

21 A I'm doing one project at a time.

22 Q Okay. So how -- what's the total amount of income

23 that you claim to have lost during that 45-day

24 period?

25 A Divide 180,000 by 365, multiplied by 45.

1 Q Why 180,000?

2 A That's the average salary of a project manager.

3 Q So were you acting as the project manager in
4 connection with this case?

5 A That is correct.

6 Q Okay.

7 A I was a full-time project manager.

8 Q Okay. And how -- how -- where does that
9 information come from? How do you know that
10 180,000 is the average salary -- average annual
11 salary of a project manager?

12 A I have been in the construction business for over
13 50 years, and I know that. I've hired and fired.

14 Q Okay.

15 A And I still do. And I've worked.

16 Q Okay.

17 A I was employed.

18 Q All right. Punitive damages. What punitive
19 damages are you talking about?

20 A That -- I think I would leave it to my attorney to
21 discern.

22 Q Okay. You don't know about that even though you're
23 the plaintiff in this case?

24 A I'm the plaintiff. But I don't know the
25 technicality to put a fine line between punitive

1 damages and the other damages I'm claiming.

2 Q All right. And then Number 1, loss of scheduled
3 subcontractors and activities. Tell me what
4 specific subcontractors you lost as a result of
5 that 45-day delay?

6 A I had -- I lost the painters scheduled. They
7 couldn't come on time.

8 Q Who was the painter?

9 A The painter is -- Jose somebody. I have the name
10 and addresses.

11 I have the cabinet installer.

12 Q Who is the cabinet installer?

13 A I can provide their names. And then I had a
14 cabinet company shipping me the cabinets. That's
15 USA Cabinets from New York.

16 Q Okay.

17 A And I had HVAC contractor.

18 Q Who was --

19 A That's T&C.

20 Q Who was that?

21 A T&C. I had a plumbing contractor. That's Shick
22 Plumbing.

23 Q Okay.

24 A I have an electrical contractor.

25 Q Okay.

1 A That is Thomason Electric.

2 Q Okay.

3 A Then I had the ornamental iron contractor.

4 Q Ornamental iron?

5 A For the handrail and steps.

6 Q All right.

7 A That was -- his company is his own name. He's a

8 small, small company. And a variety of things.

9 Then I had again the siding contractor. I had a

10 stone or masonry contractor.

11 Q Okay. Who were the siding and masonry contractors

12 that you used?

13 A I have to get their names. I don't have them with

14 me.

15 Q Okay. Go ahead. Sorry.

16 A These are what I can remember right now.

17 Q Okay. Weren't you able to just reschedule those

18 contractors after the delay was lifted?

19 A Yeah, I had to work on it and reschedule them.

20 Q Okay.

21 A Their schedules change. I wanted everybody again.

22 It's not like they can come back tomorrow. It's

23 like a domino effect. It's a process.

24 Q Okay. You claim that my client harassed you in

25 your lawsuit. How did my client harass you?

1 A That neighbors are angry and coming at -- armed and
2 coming at you. That I considered harassment.

3 Q Did you ever call the police or seek a restraining
4 order --

5 A No.

6 Q -- as a result of that alleged harassment?

7 A No.

8 Q Okay. So it must not have been that bad; right?

9 A If somebody had come with a gun, shotgun,
10 neighbors, yeah, I would call the police. But that
11 didn't happen. I only received some yelling at me.

12 Q Okay.

13 A From that neighbor I said.

14 Q All right. You allege in your complaint that my
15 client used improper means and an improper purpose
16 to force different construction requirements on the
17 improvement of your property. What do you mean by
18 that?

19 A Yeah, by falsely claiming that he's the chairman of
20 the architectural committee. He wanted to somehow
21 use the City to force me -- that was the intention.
22 To force me to remove, demolition some part of the
23 built construction and to construct it according to
24 his wish.

25 Q How do you know that that was my client's

1 intention? Did you talk to him and he told you
2 that?
3 A No. It's in writing.
4 Q Okay.
5 A He's got the list.
6 Q A list of what?
7 A The list of changes he wants me to make on my
8 building that is built already. I mean, to some
9 degree.
10 Q And those changes were consistent with the
11 restrictive covenants; right?
12 A No.
13 Q They weren't?
14 A Not at all.
15 Q Did you ultimately make those changes?
16 A No.
17 Q You did not?
18 A None of them.
19 Q How were you able to continue work if you didn't
20 make those changes?
21 A It was between me and the City. What the City
22 wanted -- I did what the City wanted. Not what he
23 wanted.
24 Q So those requested changes weren't -- did not cause
25 the work stoppage; right?

1 A Those requested changes --

2 Q The changes that you just testified Tim wanted you
3 to make to the house did not --

4 A His --

5 Q -- cause the work stoppage; right? Or the delay?

6 A His claim as the chairman of the architectural
7 committee -- with his lease, the package -- it
8 caused the stoppage. Yes.

9 Q It could cause or did cause?

10 A His action caused the stoppage. Part of his action
11 was his demand.

12 Q Okay.

13 A As the lease.

14 Q All right. You also claimed that my client made
15 these publications to the City with malice.

16 What do you mean?

17 A Bad intention.

18 Q Okay. How do you know that he had a bad intention?

19 A Because it would hurt me. It's obvious that it
20 would hurt me. He wanted me to demolish what I
21 professionally built.

22 Q All right. When did you list the property for
23 sale?

24 A After -- that's my policy. I always list them for
25 sale after I get the occupancy permit. So that --

1 Q When?

2 A That was -- I think somewhere in May. I don't --

3 Q May 2024?

4 A I don't remember exactly. But it was -- let me
5 look at the occupancy permit, and I will tell you.

6 Q Sure.

7 A I have a copy of it. I think it's May 2024.

8 Q Okay.

9 A Yeah, it's May 2024.

10 Q All right. And then when did you start
11 construction?

12 A October 2 I got the approval from the City for my
13 building plans.

14 Q Okay.

15 A Then maybe October 4, 5. Somewhere in that
16 vicinity.

17 MR. DLUZNESKI: All right. Give me one
18 moment.

19 MR. D'AGOSTINO: Let's take a break.

20 MR. DLUZNESKI: Yeah, let's take a
21 five-minute break.

22 (Off the record from 11:54 a.m. until 12:03 p.m.)

23 Q (MR. DLUZNESKI) I just have a couple of things I
24 wanted to follow up with you on. For all these
25 subcontractors, do you have proof of workers' comp

1 for any of them? Workers' comp coverage?

2 A I've got to get it from them in case.

3 Q From who?

4 A From the subcontractors.

5 Q From the subs. Okay. Before you started this
6 construction project, did you tell my client or any
7 of the neighbors that it was your intention to
8 build this house for yourself?

9 A What I said -- I said I liked the neighborhood and
10 I would consider. But later on -- many places I've
11 built, maybe I should consider, yeah. Like another
12 one. It wasn't for myself. There was no intention
13 to build it for myself when I bought the lot. I
14 purchased the lot to build a house for sale. That
15 was the intention.

16 Q All right.

17 A But I was not talking to him. I was talking to his
18 wife. Very gracious lady.

19 Q You were talking to Annemarie?

20 A Annemarie is her name, right. Yeah, I was talking
21 to her. She was telling me that deers were running
22 here and giving me the history of the place. That
23 there were so many builders and people that came
24 and couldn't build in here. And I said, "I'm going
25 to build it." She said, "That means you know what

1 you're doing." I said, "I'm confident."

2 Q Okay. All right. The initial plans, when you were
3 initially designing this house, the porch that we
4 talked about was not -- it was a covered porch
5 initially, but it wasn't screened in; is that
6 correct?

7 A That was in the plan. But that wasn't my
8 intention.

9 Q Okay. What do you mean? The plans didn't
10 accurately reflect what you were going to build?

11 A No. See, I don't recall any building in 50 years
12 that I've built that they don't have change orders.
13 As you move on, you know, you see the things
14 visually, you compare them dimensionally, and what
15 you have in your backyard. Then you pick -- make
16 the changes.

17 Q When did you make the decision to screen in the
18 porch?

19 A The decision -- when I saw the covenant. In the
20 covenant it was asking for 1,800 square feet. So I
21 had to comply with it. That's why I decided to
22 make a covered porch to comply with the covenant.

23 Q Did the City tell you, you had to cover the porch?

24 A The City didn't tell me. I had to comply. The
25 City would not give me the occupancy permit if I

1 didn't have that 1,807 or 1,813 square feet
2 including the covered porch.

3 Q Okay. So is it your testimony that you made the
4 decision to screen in that porch on your own before
5 February 22, 2024, when the City came out and
6 inspected?

7 A Of course.

8 Q Okay. But you can't tell me when that decision was
9 made or when you decided to do that?

10 A Yes, I can tell you. I had to comply with the
11 covenant. So the day I started getting the permit
12 and -- you know, before that, I'm reading the
13 covenant. I knew that I had to comply with it.
14 And it was easy for me to make it a covered porch
15 to comply. Otherwise I had to extend the --

16 Q The house.

17 A The house. Which was -- not I want it or not.
18 Because of the way the layout of the land is, it
19 was very tight. Right? For me making a 1,800
20 square feet house versus 1,700 or 1,600 something
21 is not a big deal if I have the room. But even in
22 the beginning when I started submitting the plans,
23 I kind of communicated with Ryan, who's the guy
24 who --

25 Q Ryan Hammond at the City.

1 A Yes. Who approved this. And I was telling him --
2 look, this isn't safe. After grading we would
3 really find out how many square feet could you fit
4 in this place. I said, you know -- I complied.
5 And that's what I did.

6 Q Okay.

7 A So the decision was made prior to February --

8 Q February 22, 2024.

9 A Of course.

10 Q Okay. And the City didn't tell you, you needed to
11 screen in the porch to comply with the minimum
12 square footage requirement?

13 A The City needs me to comply with the covenant. The
14 City doesn't tell anybody to go and do this or go
15 and do that. They do not instruct you. You are
16 obligated to comply with their rules. And that's
17 what I did. There could have been back and forth
18 and some change orders or some things. But it's
19 between the builder and the City. No individual in
20 the neighborhood.

21 Q Those change orders that you've talked about a
22 couple of times today, were any of those change
23 orders in writing?

24 A All of them are. They're documented.

25 Q Okay. Are those change orders that you --

1 A That plan that you see is the result of change
2 orders. That's why it's in 2024.

3 MR. DLUZNESKI: Okay. I don't have anything
4 else.

5 MR. D'AGOSTINO: Before I get started, he's
6 referred to stuff in that folder the whole time
7 during his deposition. Can I take a look at that?

8 MR. BAGHDADY: You sure can.

9 EXAMINATION

10 BY MR. D'AGOSTINO:

11 Q My name is Dan D'Agostino. I represent Mr. Marlowe
12 in this lawsuit. Thank you for being here today.

13 A Pleased to meet you.

14 Q Good to meet you. Prior to today, have you ever
15 met my client?

16 A I don't recall. Maybe. Because some people -- a
17 lady and a gentleman were walking there with their
18 dog. They would, you know, say hi. That's the
19 only thing. And I'm surprised -- because his house
20 from where I'm building -- I built that house is
21 quite far. It's almost a mile away.

22 Q Okay. You don't recall meeting him before today,
23 do you?

24 A Not at all.

25 Q Do you ever recall speaking with him before today?

1 A This gentleman?

2 Q Yes.

3 A No.

4 Q All right. Now, you have two claims against him as
5 well -- I talked to your attorney on that first
6 claim about tortious interference with prospective
7 contractors. We agreed that's not going forward as
8 it relates to my client. But you have two claims
9 against my client: defamation -- actually, that's
10 what you have. There's a lawsuit -- there's a
11 second cause of action for defamation. That's
12 against my client.

13 So what are your claims that my client
14 specifically did to defame you?

15 A He wrote a letter with the attachment to the City
16 of Rock Hill, copying the entire neighborhood,
17 according to -- so that is the bases.

18 Q What things did he say that defamed you in that
19 letter?

20 A He defamed my work. He defamed what's happening,
21 which comes back to my --

22 Q I'm going to make a list.

23 A -- business. Right.

24 Q Your work.

25 A My business. That's what I do.

1 Q Your business. So you're saying he defamed your
2 work. He defamed your business.

3 A Right.

4 Q What else?

5 A That's it. I don't have no personal thing with
6 him.

7 Q Now, what specifically -- because I need to know --
8 this is the only chance I have probably to talk to
9 you unless we are at trial. So what specifically
10 did he say about your work -- and when you say
11 "your work," was it your work that you did --

12 A Exactly.

13 Q -- that defamed you?

14 A That my work is not in compliance with HOA
15 regulation. It's not in compliance -- and he had
16 pages of previous contractors who have applied for
17 permits in the same lot and what was their review
18 for those things. Like a 12-foot garage door has
19 to have in that neighborhood a median. That median
20 is two feet. You would be left with five feet for
21 each garage door. No car can pass through. Every
22 car -- my Saturn is six feet six inches to get --
23 these are the things like that. So they were
24 causing trouble.

25 Q I want to -- so did he -- so every complaint about

1 your work has to do with whether your building, the
2 home that you're building complied with the
3 guidelines he says of the restrictive covenant; is
4 that correct?

5 A The correct way -- he misrepresented himself as the
6 president of the homeowner association falsely.

7 Q No, you're going --

8 A And --

9 Q You're not answering the question.

10 A I'm answering your question, sir.

11 Q No, sir. You're not.

12 A I am.

13 Q You're saying he misrepresented himself. I'm
14 asking you how he defamed you. Because you brought
15 this lawsuit.

16 A That's right.

17 Q You said he said things that --

18 A Because of.

19 Q -- defamed you -- let me finish my question.

20 A I'm sorry.

21 Q The rules require you to let me finish my question,
22 and then I'll let you --

23 A I'm sorry.

24 Q -- finish your answer.

25 A Okay.

1 Q But you have to answer my question.

2 A Sure.

3 Q You brought this lawsuit and you've alleged he
4 defamed you. I asked you how, and you said he --
5 your work. So what I want to know is what about
6 your specific work that he said that defamed you?

7 A He wrote a letter to the neighborhood and to the
8 City -- he wrote it to the City and copied the
9 neighborhood or both -- telling about my work, that
10 it is not in compliance, it is -- like this guy
11 doesn't know what he's doing.

12 Q Did he say you did not know what you were doing?

13 A No. That's the effect of. What he did is not in
14 compliance. What needs to be -- I mean, he's got
15 the prescription because of whatever communication
16 prior -- the City of Rock Hill he had with others.
17 Not me. And which was false.

18 Q Okay. You also said he defamed your business.

19 What did he do to defame your business?

20 A Writing to the City and to the neighbors that the
21 construction that I am doing, I've done, is not in
22 compliance, is not following the guidelines, is not
23 following the things. That's the -- that's hurting
24 my business.

25 Q Okay.

1 A That's how the City put a hold on my business.

2 Q Okay. Now, so everything about the defamation case
3 as it relates to my client deals with the letter he
4 wrote to the City and to the neighbors; is that
5 correct?

6 A That is correct.

7 Q Anything that you're claiming is defamation is
8 contained within that letter?

9 A Exactly.

10 Q Okay. And I've got your file. You've handed it to
11 me. I want to make sure this is what we're talking
12 about. I've taken it out of your file. And
13 there's something highlighted. Is that what we're
14 talking about?

15 A Yes.

16 Q That's the sum total of everything associated with
17 my client?

18 A That's correct.

19 Q All right. We're going to have that marked and
20 I'll get you a copy before we leave. We'll put
21 that as Exhibit Number 5.

22 (Defendants' Exhibit No. 5 marked for identification.)

23 THE DEPONENT: That's the only thing.

24 Q (MR. D'AGOSTINO) All right. Now, let me go back.
25 I jumped ahead of myself. You said -- you talked

1 about your education and your experience. When did
2 you get your license to build homes or your
3 contractor's license in South Carolina?

4 A In South Carolina. I believe it's -- let's say
5 it's 2022. Before I started this home.

6 Q How many homes in South Carolina have you built?

7 A Right now I have one finished listing. It's under
8 contract.

9 Q Where is that one?

10 A That one is 1148 Hickory Lane.

11 Q Okay. That's the lot you owned at the same time
12 you owned this lot; right?

13 A That lot -- yeah.

14 Q Okay.

15 A Then there's another one. It is 409 Mint Street.
16 Just completed.

17 Q You finished that one?

18 A I'm waiting for my occupancy permit. All the
19 approvals are done. And once I get the occupancy
20 permit, I will list it.

21 Q Okay.

22 A Then I have three more lots that -- after this.
23 Because I build one at a time. In Rock Hill. If
24 you want the addresses, I'll give them to you.

25 Q Well, so prior to this home, how many had you built

1 in South Carolina?

2 A That was the first one. That's --

3 Q This was the first one.

4 A Because of that, I got the South Carolina license.

5 Q Okay. You had your license before you started this
6 one?

7 A Yes.

8 Q How many employees do you have working for you?

9 A I have subcontractors.

10 Q Okay.

11 A Everybody -- it's like -- everybody is a
12 subcontractor.

13 Q Okay. So all these people who you said had to slow
14 up, they're subcontractors. You pay -- you give
15 them a 1099 at the end of each year?

16 A Yes.

17 Q So you have a W-9 for each one of these people so
18 you can transmit to the IRS how much you've paid to
19 each one of these?

20 A That's correct.

21 Q All right. So as part of the other attorney's
22 questions about your damages, you gave a list of
23 people. And he also asked you in his discovery
24 about documents. So when we ask you to supplement
25 your discovery, you can give us the information

1 about the workmen's comp and the W-9s you have for
2 each one of these contractors --

3 A They're -- it's not in there yet.

4 Q -- so we can track down and speak with them?

5 A I have not recorded it. Because at the end of the
6 year I'm supposed to submit all those.

7 Q Well, this was in 2024. So you'll be able to get a
8 W-9 for all of these people?

9 A In the future. Because I have not recorded the
10 taxes yet for 2024.

11 Q Usually, I believe the way it works, is you have to
12 get a W-9 at the time they start working for you.

13 A It is a 1099.

14 Q Well, you give them a 1099. You get a W-9.

15 A Yes. That -- these subcontractors and all that.
16 We have the time until the end of the year.

17 Q Sure. We'll follow up. Since we're at the end of
18 the year, we'll follow up with you on that.

19 Now, you have no full-time employees that you
20 give a W-2 to?

21 A No.

22 Q All right. And you build one house at a time.

23 A At a time, correct.

24 Q Now, you said you know job superintendents make
25 \$180,000 a year.

1 A Job project managers.

2 Q Project managers. What size company is that with?

3 A The company that can do -- let's say \$1 million

4 work a year.

5 Q \$1 million profit work a year; right?

6 A Not profit.

7 Q Gross?

8 A Gross.

9 Q Okay. How much are you doing per year?

10 A I do like three houses.

11 Q Okay. So what project managers have you worked

12 with that make \$180,000 a year that you're familiar

13 with? What companies do they work with? We need

14 to double-check that. Because you're basing your

15 damages on that. So we need to double-check that.

16 A Yeah, you can -- McCarthy Building Company. There

17 are many companies.

18 Q Where are they located?

19 A I can give you the list.

20 Q I would like to know --

21 A Choate.

22 Q -- from you right now. I'm familiar with them.

23 They do a lot more than \$1 million a year in net.

24 A I know. But you can check with them.

25 Q In net, not gross.

1 A I don't know their --

2 Q That's after expenses.

3 A I don't know their income. I don't know their

4 volume. But you're asking me the companies that

5 pay that kind of salary. That's my understanding

6 from your question. And I said companies like

7 Choate, like McCarthy.

8 Q Sure.

9 A And sometimes more.

10 Q Okay. How many employees do those companies

11 usually have?

12 A Those companies -- see, they have projects, and

13 their employees varies from the size and number of

14 projects they have.

15 Q That's right.

16 A So from time to time.

17 Q Right. But it's not a company that has --

18 A Even the project managers -- they are not licensed

19 project managers. If they have a highway somewhere

20 that's in South Carolina, they go and mobilize for

21 that highway. They employ. And then after the

22 project is done --

23 Q Sure.

24 A -- they dissolve.

25 Q Well, let's talk about you then and your history.

1 Because you're saying it's based on you. Before --
2 when did you start working for yourself?

3 A As long as I remember really.

4 Q Okay.

5 A In the U.S. I've always worked for myself. No, I
6 was hired with -- sorry -- as a consultant. I
7 worked for Lovet-Silverman.

8 Q For who?

9 A Lovet-Silverman. He took the note.

10 Q Okay.

11 A And that was a consulting firm. Every -- any --
12 their client was St. Paul Insurance Company and
13 other bonding companies. So these construction
14 companies that went bankrupt, they give the key to
15 our company. We went and completed the work,
16 because they were under a bond. And paid the
17 vendors. Whoever. And I was one of the people,
18 senior consultant, to verify every single thing, to
19 buy out the subcontractors. So that's where I
20 worked as an employee.

21 Q And when you worked for that company, when was it?

22 A That was -- I believe it was 2003.

23 Q Okay. In the last five years, have you made your
24 money as a contractor, a building contractor?

25 A As a builder.

1 Q As a builder.

2 A Yes.

3 Q All right. So from 2020 to now, have you done
4 anything other than build homes?

5 A I have flipped homes. For many years. When
6 people -- before COVID.

7 Q Are you basing your \$180,000 a year on your income?

8 A I do.

9 Q Okay. So when I ask for your tax returns for the
10 last five years, you're going to show taxable
11 income of \$180,000 a year?

12 A It fluctuates. I'm not going to provide that to
13 you because this case to me is irrelevant to my
14 taxes and my properties and my assets.

15 Q Sir, you just testified to me and the other
16 attorney that you based your losses on your income
17 and what you're losing. So we're going to want
18 to -- and I get to ask you questions now about your
19 income.

20 A Sure, sure.

21 Q So last year, 2023, what did you pay taxes on?
22 How much?

23 A 2023. I have to look at my taxes, and I can give
24 you the answer. But I am giving you the answer
25 based on my experience. Based on my 50 years. I'm

1 averaging them. I said -- okay. In 2002, 2006,
2 when I was running Multiscope, this is as a project
3 manager what I was making.

4 Q But how many employees did you have of a project
5 manager were you over?

6 A I was a project manager.

7 Q Okay. So how many people and projects did you
8 have?

9 A I had 17, 18 people. But none of them were a
10 project manager.

11 Q Okay.

12 A So it was -- based on my experience, I'm telling
13 you the average income of a project manager is
14 this. My experience is not contained with during
15 the pandemic or right after that I'm getting
16 started.

17 Q If you want to say you're basing it upon your 50
18 years of experience, then I'm going to ask you for
19 your 50 years of taxes.

20 A I don't have them.

21 Q Okay. Well, we're going to need something. And so
22 what I'm going to do -- and I'm going to do as much
23 as I can right now. Let's start with this project.
24 This happened in 2023 and 2024. Some of the
25 subcontractors you hired -- because you started

1 your house in 2023; right? This house.

2 A That was October 2023.

3 Q So do you have the W-9s for the employees who
4 worked for you in 2023?

5 A Yeah, I do have everything.

6 Q Okay. We can get those.

7 A But let me tell you. These are irrelevant. And
8 I'm not going to give you -- those are totally
9 irrelevant because this case is somebody, some
10 people, your client falsely representing himself as
11 the president of the HOA that is -- that's defaming
12 me. What my income is, what my income was, what I
13 do doesn't have any relevancy for this frame of
14 investigation. So I refuse to give you any of
15 those paperwork.

16 Q Okay. Well, let's carry that a little further
17 then. So you're upset because you said he
18 represented himself as president of the HOA. This
19 was your first house. You've built multiple houses
20 since this house; correct?

21 A Yes.

22 Q And you've been able to get jobs well, haven't you?

23 A I've been able to.

24 Q Yes. And what he said to the people in his
25 neighborhood, you don't have any proof that's

1 affected you, has it? It hasn't --

2 A I don't understand your question. Because you're

3 going all around the place.

4 Q I'm going to stand up. My back is killing me.

5 A Oh, yeah. Feel free.

6 Q Don't take this as anything --

7 A You're not attacking me. I know.

8 Q My back has been fused all the way. So I've got to

9 stand up.

10 A I understand.

11 Q So my question to you is: What you say he said to

12 his neighbors and the City, that hasn't had any

13 adverse effect upon your reputation, has it?

14 A That is your justification.

15 Q I'm asking you. Has it had any adverse effect upon

16 your reputation?

17 A He stopped my work for 45 days.

18 Q That's not the question. The question is: Has it

19 had any adverse effect upon your reputation?

20 A Has it had -- eventually if some neighbor wanted to

21 buy -- it's all speculation.

22 Q It's speculation.

23 A Wanted to buy that house, so I had to drop the

24 price. Or he said "this guy doesn't know what he's

25 doing" because he trusted him.

1 Q Well, sitting here today --

2 A I have to answer you speculating. I'm not in the
3 mind of people. But if I make an action to hurt
4 you intentionally, how you are hurt -- I wouldn't
5 know. He wouldn't know. She wouldn't know.

6 Q My question to you --

7 A But I'm hurt.

8 Q My question to you is: Sitting here today, you
9 don't know of any way that that letter has
10 adversely affected your business at all, do you?

11 A I know that his letter was intended to hurt me and
12 it must have hurt me.

13 Q No.

14 A Maybe there was a neighbor who wanted to buy the
15 house for more money.

16 Q Sitting here today, is there anybody that has not
17 done business with you that you know of, who has
18 said anything -- because I want to know who it
19 is -- who has said anything negative about you as a
20 result of the letter my client wrote to the City
21 and to the neighbors? And if somebody has said
22 that they wouldn't work with you, that it affected
23 your income, I want to know who it is.

24 A No, I don't have a particular name.

25 Q Okay. So as it relates to -- let's go back to your

1 damages. This house alone. You bought the
2 property for 75,000; right?

3 A That's correct.

4 Q You sold it for 408,000; right?

5 A That's right.

6 Q All right. And said -- and then you said -- when
7 you told him, the other attorney, that you had
8 380,000 in it, did that include the land?

9 A That includes everything.

10 Q That includes everything.

11 A Yeah, it's not accurate. But it's just --

12 Q Ballpark.

13 A Ballpark.

14 Q So when I ask you for the breakdown of all your
15 numbers, you'll be able to document the 75- --
16 that's easy. Closing costs, that's easy.

17 Did you borrow money to buy this land -- the
18 property?

19 A No.

20 Q So you built it out of pocket?

21 A Exactly.

22 Q And the construction costs all came out of pocket?

23 A That's right.

24 Q Where do you bank?

25 A Wells Fargo.

1 Q Is that where you run all your business money
2 through?

3 A Yes.

4 Q And do you have a separate company that you do this
5 in, or do you do it individually?

6 A It's both.

7 Q So what's the name of your company?

8 A It's Latif Taheri-Azar, General Contractor.

9 Q Is it incorporated?

10 A No.

11 Q Does it have a separate bank account from your bank
12 account?

13 A It's sole proprietorship, if I'm answering you
14 correctly. My -- I have two accounts from my
15 personal account just to keep the track of the
16 checks that I'm putting myself. I transfer
17 gradually from my own account to the other -- my
18 own business.

19 Q All right. Now --

20 A There's no separation between me and my business.

21 Q On February 22, 2024, how far along was your house
22 before you stopped working?

23 A Ballpark. Probably 75 percent.

24 Q 75 percent.

25 A Probably.

1 Q Okay. And so what was left to do at that time?
2 When the City -- you say the City told you to stop,
3 what was left to do on the house?

4 A The things according to the original approved plans
5 and everything was left is probably painting, some
6 sheetrock. Cabinets. Fence. Rails.

7 Q Okay.

8 A And landscaping. Putting all of these finishes for
9 electrical, HVAC, plumbing.

10 Q And in your lawsuit you said you stopped from
11 February 21 -- in your discovery -- and you started
12 back on April 8, 2024; right?

13 A That's exactly according to the release --

14 Q Okay.

15 A The stop and release -- it's documented on those
16 papers.

17 Q And you did not --

18 A 45 days hard stop. Then the domino effect.

19 Q Okay. Now --

20 A Those are the pictures of some neighborhood houses
21 showing that -- there are 30 percent of the houses
22 are vinyl siding there. And these guys tell me
23 that it's against the regulation and covenant. Or
24 bylaws, whatever.

25 Q Is this folder you brought with you today all the

1 paperwork you have associated with the inspections
2 on this house? Or is this just associated with
3 this lawsuit?

4 A These papers are just for my own personal reference
5 for the deposition that I thought I may need to
6 refer to.

7 Q Okay.

8 A That's it.

9 Q You got your certificate of occupancy on April 29,
10 2024; is that correct?

11 A Yes.

12 Q So you did everything that was left to do on that
13 house between April 8 and April 29?

14 A April 8 and April 29?

15 Q Yes.

16 A No, it was February somewhere that they started
17 this thing.

18 Q I understand. But you said you stopped and you
19 didn't do anything at all between April -- between
20 February 21 and April 8.

21 A You're talking about the remainder of the work that
22 I completed after they released it, yes.

23 Q Did you do any work between February 21 and
24 April 8?

25 A No, I answered your question. It's correct.

1 Between that time and this time, I finished.

2 Q Let me ask it again.

3 A Okay.

4 Q You said they told you to stop on February 21.

5 A Yeah, I stopped the work.

6 Q Did you do any work at all --

7 A No.

8 Q So you didn't have any work at all done after
9 February 21 until April 8?

10 A That sounds --

11 Q Is that right?

12 A That sounds correct.

13 Q And then between April 8 and April 29, you had the
14 other 25 percent of the house done?

15 A The bulk of it was left. I mean, that 25 percent
16 or 75 percent I told you --

17 Q Okay.

18 A -- it was just ballpark. I'm thinking what was
19 left -- yeah, it was a fast pace thing if it moves
20 on.

21 MR. D'AGOSTINO: Let me put a sticker on
22 this one too. And can I have that other one? I
23 have some questions about that one.

24 (Defendants' Exhibit No. 6 marked for identification.)

25 THE DEPONENT: See, the percentage of

1 contractual work is not always the volume and time
2 of the work. Sometimes it's one little piece.

3 Plus the cabinets could be a one-day job probably.

4 But it is 15, 20 percent of the job by itself.

5 Q (MR. D'AGOSTINO) Okay. Well, the reason why I had
6 this marked --

7 A That's why I have to explain all this construction
8 business.

9 Q Your site plans/plat submittals, you submitted that
10 to the City on August 9, 2023. At that time you
11 say -- the question was: "Are there any recorded
12 deeds, restrictions, or restrictive covenants that
13 apply to this property that are contrary to,
14 conflict with, or prohibit the permitted activities
15 being requested?" And you submitted "no."

16 Correct?

17 A Whatever is there is correct.

18 Q All right. And here you gave your contractor --
19 your electrical contractor was James Russell
20 Thomason. Mechanical was T&C Heating and Cooling.
21 And plumbing was Arthur Allen Shick of Shick's
22 Plumbing. Those are the people who did the work on
23 this house; right?

24 A Correct.

25 Q And you gave estimates of 10,000, 9,600, and

1 10,387; correct?

2 A You asked me?

3 Q You gave a -- you got a take-off on this

4 beforehand; right?

5 A Yeah.

6 Q And you've submitted it as a new construction of

7 2,278 square feet detached residential building.

8 A What about that?

9 Q I'm just reading what you wrote. 2,278 square feet

10 detached residential building.

11 A New construction of --

12 Q You put 1,800 --

13 A 1,600 heated. The original plan was 1,600.

14 Q You put 1,600 heated/conditioned square footage.

15 678 unheated. Correct?

16 A Yes.

17 Q Okay. Have you ever been involved in any other

18 lawsuit before?

19 A No.

20 Q Have you ever hired a lawyer before?

21 A No.

22 Q When did you first see a lawyer for this case? Or

23 for anything associated with this home?

24 A That was the first time I communicated with

25 Mr. Baghdady. That was -- I would have to look at

1 the record of the exact date.

2 Q What made you go to Columbia?

3 A I got his information from lawyers referral service

4 of South Carolina.

5 Q Okay.

6 A And I'm glad I did.

7 Q Okay.

8 A No prior knowledge.

9 Q You paid your fee of \$8,119 when you got the -- on

10 October 2, 2023; right?

11 A To the City of Rock Hill.

12 Q Okay.

13 A Everything on that page, is what I did.

14 Q Okay.

15 A All those papers are valid.

16 Q Now, do you have any documents or file with --

17 every time the City comes out and does an

18 inspection they give you a receipt or something;

19 right?

20 A No.

21 Q They don't?

22 A No. They email me most of the time.

23 Q All right. Do you have the emails -- did you print

24 out the emails for each inspection?

25 A Each inspection -- that list that you see, on the

1 top.

2 Q Yeah, but that's not everything.

3 A That is.

4 Q Well, it stops on -- you have February 22 to --

5 A After -- when I finished --

6 Q Everything. Yes.

7 A Yeah, they emailed me. Every time they just put it

8 in the thing or they emailed me.

9 Q So there are other inspection results that we don't

10 see here?

11 A Is there a final inspection here?

12 Q No, sir. Unless it's attached.

13 A I brought this just because of this case. How it

14 started and how was my situation. But after this

15 final inspection and landscaping inspection.

16 Q So there's a final inspection. There's a

17 landscaping inspection. What other inspections are

18 there?

19 A That's it.

20 Q Now, this printout right here -- what's the date,

21 if you know, of that printout that you've attached?

22 A That's the problem with the City. They don't put

23 dates on these.

24 Q Well, what do you remember the date for that --

25 A So I have to go and find out the emails and things.

1 Yeah, this is February 24. If they did the
2 February 22 meeting, that's around February 24.

3 Q Okay. The reason why I ask is because -- it
4 says --

5 A That's for the basis of my 45 days. It's right in
6 this letter.

7 Q Okay. Well, there are several things that weren't
8 approved by the City. You've got "please verify
9 what additional costs associated with this change
10 order. Permit technicians."

11 What change order were they talking about?

12 A The change order that I have to flip the house.
13 That the garage was on the left and now it's going
14 on the right.

15 Q Okay.

16 A That's the main thing. Like showing the plan.
17 That there's a single door, not double door. I had
18 to show them in the plan. Although I did it. It
19 was in compliance, but they wanted for the record.
20 Those things don't -- did not stop my work. The
21 only thing that stopped my work is the HOA
22 approval.

23 Q Well, do you have anything in writing saying --

24 A Yes.

25 Q So you're saying --

1 A Those documents I showed you.

2 Q Show me in here where it says that the HOA approval
3 or a lack of approval was the only thing that
4 stopped your work.

5 A I will show you. This first one.

6 Q Okay.

7 A They put a halt on my project.

8 Q When was this one dated?

9 A That one is February 24. Same time. Back and
10 forth we were communicating.

11 Q We can get this from the City with the dates on it.
12 Or you can provide it with the dates.

13 A I will look to the emails. Because they send
14 emails and they go -- that's what I'm saying. I
15 don't know why the City does that. They don't have
16 dates on my -- see, we have a portal. We go onto
17 our portal, and we see the history of every project
18 that we have. Each builder has. And it shows it
19 like that. But I can get the dates for you.

20 Q The reason why I ask is because this seems to be
21 different. Because on this infrastructure
22 stormwater on a prior printout, it's different than
23 what you showed me. This is -- what you showed me
24 says page 1 is page 3 of 3. You haven't printed
25 out three pages. Down here it's dated 3/28/2024.

1 And so --

2 A I don't know if that's the date I printed it or
3 it's that date.

4 Q Well, the reason why I ask that is because you have
5 this one over here. The first one you refer to is
6 page 3 of 3. You haven't given us pages 1 and 2.
7 And this one is dated March 7, 2024.

8 A I did not bring these here to give it to you, sir.
9 I brought it only for my memory.

10 Q That's fine.

11 A If you want more pages and I'm required to give you
12 after consulting with my attorney, I will be glad
13 to give you. But there are a bunch of other things
14 between me and the City.

15 Q It appears that this form was from March 7, 2024,
16 where there were three things not approved. It
17 appears that this next form, where the issue about
18 the additional cost associated with the change
19 order, it appears that one was approved on March --
20 on or about March 28, 2024. And you still had a
21 zoning issue not approved and you had this
22 stormwater conditionally approved.

23 A The only thing that was holding my project was this
24 HOA matter. Those things -- they were a process
25 that I write to the City. I send them an email.

1 They work on it. But with this one, they put a
2 halt on anything.

3 Q Do you have anything to show the difference --

4 A No, I don't have -- but they put a halt on my
5 project because of that. I can show you.

6 Q Do you have anything --

7 A I have -- there are millions of -- every day, every
8 general contractor, each builder is communicated
9 with the City for different change orders.

10 Q So is the answer --

11 A They put a halt. They did not -- they are halting
12 the review because of HOA.

13 Q Answer my question. Do you have anything in
14 writing that specifically says "this is the only
15 reason why we're halting your project"? Is there
16 anything in writing from the City at that time?

17 A In fact, they have it in writing that your project
18 is -- the review of your project is on hold until
19 the City attorney finds out.

20 Q Okay. But there were several things on these. So
21 my question is: Is there anything specific --

22 A My project was on in halt for anything. It was in
23 the process of the change order review. But they
24 were not reviewing my change order because of
25 non-approval of the HOA that they claim. That was

1 the only reason.

2 (Defendants' Exhibit No. 7 marked for identification.)

3 Q (MR. D'AGOSTINO) In the last five years, besides
4 building homes, how else have you made money?

5 A My retirement.

6 Q Okay. Where is that retirement from?

7 A Retirement is from Social Security. I'm 78 years
8 old.

9 Q Okay. Where else?

10 A And rental. I have some rentals.

11 Q Where are those located?

12 A They are all in Charlotte.

13 Q Okay. What else?

14 A So flipping homes.

15 Q Okay. What else?

16 A Building homes.

17 Q What is the name of your -- do you have a company
18 with a different name in Charlotte that you own
19 your rental homes in?

20 A No.

21 Q Did you ever meet with the City attorney about this
22 matter?

23 A No. I didn't have to.

24 Q Okay. As a result of the letter that Mr. Marlowe
25 wrote, did you respond and give something in

1 writing to the City, to Mr. Nugent?

2 A I believe I did.

3 Q All right. And in that letter, you actually

4 addressed all of these issues, did you not?

5 A Which issues?

6 Q The HOA issue. The square footage. And the --

7 A Yes.

8 Q -- stormwater.

9 A Yes, I did.

10 Q How quickly after you got the letter did you send

11 your letter to Mr. Nugent?

12 A Maybe in a day or two.

13 Q Okay. How quickly did he respond?

14 A I don't think he ever responded.

15 Q Okay.

16 A He referred the matter to Ryan Hammond.

17 Q And who is Ryan Hammond?

18 A He's the zoning department or the officer.

19 Q Okay. What experience or knowledge do you have

20 about homeowners associations and laws relating to

21 the homeowners associations?

22 A I believe I sent a whole package of how the

23 homeowners association is created, how the

24 members -- the board is elected. In fact, in the

25 neighborhood that I live, I have a homeowners

1 association.

2 Q Okay.

3 A So I read those bylaws and the system. And how
4 they elect and how they have to record their
5 meetings.

6 Q Is that the one in North Carolina?

7 A No. I live in Fort Mill, South Carolina.

8 Q So are you on the homeowners association in
9 Fort Mill, South Carolina?

10 A Yeah, where I live there is -- you have a
11 homeowners association.

12 Q What is that neighborhood?

13 A That neighborhood is Dogwood Hills.

14 Q How long have you been on the board?

15 A I'm not on the board. I said where I live we have.

16 Q Okay.

17 A To be clear -- no, I've never been a member of any
18 HOA board.

19 Q Have you ever filed a complaint with the HOA board?

20 A No. As an example, you know, I see how they
21 create. And I did a study after these gentlemen
22 claimed the HOA. And knowing that, I've checked
23 with the register of deeds, with the secretary of
24 state, that they are not. And there are other
25 ways. So that's how I became a little bit more

1 knowledgeable. I'm not 100 percent knowledgeable
2 like a lawyer for HOAs. But I know the basics.

3 Q So does the information -- do you know if the
4 restrictive covenants have to be recorded of record
5 in the courthouse to be valid?

6 A That is what I understand.

7 Q Do the HOA rules and bylaws have to be recorded to
8 be valid according to you?

9 A To my understanding. That's my understanding.
10 That's why I was trying to find out if there are
11 other ways that they could be authorized.

12 Q And who did you ask about the homeowners
13 association when you bought this property?

14 A Number one is the listing in MLS. Normally, if
15 they are, they put it. In the listing they'll put
16 1,800 square feet. Then on the title insurance --
17 I got the title insurance, and I read it. There's
18 a covenant. Then when I applied for the permit, I
19 have -- as I said, the City sent me a copy of the
20 covenant. Then I complied with everything in my
21 plan.

22 Q My question was: Whom did you ask about the
23 existence or nonexistence of a homeowners
24 association? Not the restrictive covenants but the
25 homeowners association.

1 A Who did I ask?

2 Q Yes, sir.

3 A I asked the register of deeds. I asked the
4 secretary of state.

5 Q Did you ask anyone in the subdivision?

6 A In the subdivision, I didn't ask anybody. Anybody
7 who came -- I told one neighbor. Because I was
8 taking a picture. One of the neighbors started
9 following my car. I stopped, and he came to me.
10 And he said, "Why did you take a picture of my
11 house?" I said I was getting it as an example that
12 these houses are -- there are so many houses with
13 vinyl siding and all that. And these people are
14 claiming the HOA -- he said, "No. I bought this
15 house because there is no HOA in this community."

16 Then again, my neighbor, same thing. He said,
17 "No, we don't have a homeowners association."

18 Yeah, I talked to some neighbors.

19 Q And who were those people?

20 A One of them is the neighbor next to this house.
21 It's Rusty Thomason. The other one I don't know
22 his name. But I know his house because I took
23 pictures.

24 Q Okay. I just want to be able to go talk to them
25 and make sure -- so I understand what they

1 understand about the HOA. So Rusty --

2 A If you're asking me who did I ask -- I'm not saying
3 they are experts. But these are some neighbors.

4 Q Okay. You don't own any other property in this
5 subdivision, do you?

6 A No.

7 Q You don't own any real estate now, do you?

8 A Do I --

9 Q In this subdivision.

10 A This was the last vacant lot.

11 Q I understand.

12 A That was sitting there 40 years. No.

13 Q I want to make sure you don't own any other real
14 estate in this subdivision.

15 A No. I don't have any interest financially,
16 asset-wise, houses in that subdivision.

17 MR. D'AGOSTINO: I'm done with my questions.
18 Thank you.

19 MR. BAGHDADY: I have a few follow-ups.

20 MR. DLUZNESKI: I also do. But, Rolf, if
21 you want to go first, you can.

22 Or you want to see what I'm going to ask
23 first and then you can --

24 MR. BAGHDADY: Sure. If you want to, go
25 ahead.

1 MR. DLUZNESKI: All right.

2 REEXAMINATION

3 BY MR. DLUZNESKI:

4 Q Sir, Mr. D'Agostino asked you about your defamation
5 claim against his client, Justin Marlowe. I want
6 to ask you a similar question just to make sure we
7 nail this down as far as my client Tim Haake goes.

8 Other than representing to the City that he
9 was affiliated with the HOA for the Poplar Forest
10 subdivision, did my client make any false
11 statements about you or your business to anyone?

12 A Other than that letter, I have no other information
13 about this point.

14 Q Okay. So you have no knowledge or no belief that
15 my client made any false statements about you or
16 your business to any third party?

17 A I have no knowledge, but I have belief. Because
18 that lady -- the daughter of Ms. Sophia Beers comes
19 to me, comes angry and yelling at me. So there was
20 some communication maybe. Maybe not.

21 Q But you don't know if there was any such
22 communication?

23 A I don't, no.

24 Q Okay.

25 A I knew that his wife and her, they were walking,

1 talking. And when I was driving. I could see them
2 together.

3 Q Okay.

4 A Whether -- what in specific they talked about, I
5 have no proof.

6 Q You don't know. Okay. So you have no evidence as
7 you're sitting here today to believe that Tim Haake
8 made any false statements about you or your
9 business to any third parties?

10 A I have no knowledge. But my belief is to me.

11 Q Okay.

12 A I'm honest. As I have to be.

13 Q You are under oath.

14 A Yes.

15 Q Are you familiar with how people are elected to
16 serve in HOA positions?

17 A In my HOA, I know that there's a quorum, whatever.
18 We go there, and we have the dockets when we go,
19 that we want this guy as president or that guy.
20 That's how I know.

21 Q Okay. Are you aware that those elections are
22 also -- are oftentimes done informally? In an
23 informal process?

24 A I didn't know that.

25 Q Okay. So you don't know how the Poplar Forest

1 subdivision runs any of those types of activities?

2 A I know that Poplar Forest subdivision has got a
3 covenant and has got street -- street statement,
4 what the entry of Poplar Forest is. The members of
5 the corporation, Poplar Forest Corporation, and
6 they are the only ones.

7 Q Okay. Did you --

8 A So any other thing to me is contrary to the
9 recorded covenants, explicit instruction.

10 Q Okay. Did you know about the restrictive covenants
11 that we've talked about here today in August 2023?

12 A I knew about the covenant before I started that
13 house.

14 Q Okay. Would that have been in August '23?

15 A When I applied for the permit was sometime early in
16 August. So I knew it.

17 Q Okay. You submitted -- and this is Exhibit 6 to
18 this deposition. You submitted a site plans/plat
19 submittal form to the City of Rock Hill; is that
20 correct?

21 A I should have. It's a requirement.

22 Q Okay. And you signed that form on August 9, 2023;
23 is that correct?

24 A That sounds correct.

25 Q Okay. If you knew about these restrictive

1 covenants before you started building, why did you
2 mark "no" in response to the question: "Are there
3 any recorded deed restrictions or restrictive
4 covenants that apply to this property that are
5 contrary to, conflict with, or prohibit the
6 permitted activity been requested?"

7 Why did you answer that question in the
8 negative?

9 A It was communication between me and Ryan Hammond
10 from zoning. I said because that corporation
11 doesn't exist -- because I was looking for an HOA.
12 So I'm going with the City of Rock Hill's zoning
13 regulation. That's why I wrote that. And then
14 Ryan said, "No, you have to respect everything in
15 the recorded covenant." So that's why I had to
16 change the documents for my permit.

17 Q You also submitted a residential building permit
18 application to the City of Rock Hill; correct?

19 A I had to, yes.

20 Q And you signed that permit application; right?

21 A Of course.

22 Q All right. And by signing that application, one of
23 the certifications that you made was that to the
24 best of your knowledge all information provided in
25 the application is true and correct; right?

1 A That's correct.

2 Q Okay. You also indicated "no" about any recorded
3 deed restrictions or restrictive covenants that
4 apply to the property. If you knew about these
5 restrictive covenants, because they were recorded
6 in the register of deed's office, why did you say
7 you had no knowledge of those?

8 A The reason was I went to the register of deeds and
9 asked her directly about the restriction of
10 building in that property. And she looked at -- I
11 was looking for HOA. Because the plans accordingly
12 have to go to the HOA, and they would verify
13 whether I'm in compliance with the covenants,
14 whether it's what they like, similar to this or
15 similar to that. Whatever it is.

16 At that point the register of deeds told me
17 "no, there is no such thing." That's why I
18 submitted those plans. And then Ryan Hammond said,
19 "No, you have to comply with the recorded
20 covenants." I said, "But there is no HOA and that
21 corporation doesn't exist anymore." He guided me.
22 He informed me. He instructed me that although
23 there is none, the corporation is not there, but
24 you have to follow that -- I said "okay."

25 I did not do -- otherwise I followed the

1 thing. That was a process of learning. Okay. If
2 a company is dissolved and gone, you have to still
3 follow the thing. Up to that point, I was unaware.
4 I am now just restricted to the City of Rock Hill
5 but not to the instruction of some company that
6 doesn't exist anymore.

7 Q So you didn't believe when you filed those two
8 forms -- the permit application and the plat
9 submission form that we just talked about -- that
10 you were bound by these restrictive covenants?

11 A Yes. Because I thought that the company is not
12 there. But I was instructed that "no, you've got
13 to do it." And I did it. And that was -- again,
14 that was before issuing me the building permit.

15 Q So you believe that all the representations that
16 you made to the City in those documents were true
17 and accurate?

18 A Yes.

19 Q Okay.

20 A To the best of my knowledge.

21 MR. DLUZNESKI: That's all I have.

22 Rolf, do you have anything?

23 MR. BAGHDADY: Yes, I do have some questions
24 here.

25 MR. DLUZNESKI: Okay.

1 EXAMINATION

2 BY MR. BAGHDADY:

3 Q My first question to you is: What is your native
4 language?

5 A Farsi.

6 Q All right.

7 A Persian.

8 Q And today's deposition was conducted without a
9 translator or interpreter.

10 MR. D'AGOSTINO: Wait a minute. Wait a
11 minute. If we've got a language barrier that we're
12 going to have, we needed to know that at the very
13 beginning. If he needed a translator, that should
14 have been told to us before today started.

15 MR. DLUZNESKI: Additionally, I would say in
16 my open instructions to him I advised him that if I
17 asked a question and he didn't answer that he
18 needed to tell me he did not understand it.

19 MR. BAGHDADY: Okay.

20 MR. D'AGOSTINO: Putting that on the record.

21 Q (MR. BAGHDADY) Next question. They used a word in
22 the English language called "defamation," and they
23 asked a lot of questions using the term defamation.
24 And so I want to break that down to you a little
25 bit into some particular components.

1 All right. And they -- in a couple of your
2 documents -- and they marked them as exhibits. And
3 I think in Exhibit Number 2 maybe there are emails
4 from Justin Marlowe and from Tim Haake.

5 A Yes.

6 Q All right. So I'd like to break the word up,
7 defamation, with a couple of components. The first
8 thing is: a false statement by the defendant
9 concerning the plaintiff. And I'd like you to
10 focus on what false statement did Tim Haake make in
11 writing about the construction of the property in
12 this subdivision?

13 A That he is the chairman of the architectural
14 committee of the neighborhood. That's totally
15 false. That HOA -- there was no active, legally
16 applicable HOA out there. And I notified them in
17 occasions that there is no HOA.

18 Q Okay.

19 A That was in writing.

20 Q And now when we talked about you as the plaintiff,
21 your business, your construction of that house is a
22 sole proprietorship. So it's only and exclusively
23 your name, your Social Security number, and your
24 business.

25 A That's correct.

1 Q It's you. It's one and the same as you.

2 A One and the same. It's me.

3 Q Now, they communicated that to whom?

4 A To the City of Rock Hill, different individuals in
5 the building department, and to the neighbors.

6 Q Okay. How did they communicate it to the
7 neighbors?

8 A In writing. According to these documents.

9 "Hello neighbors." That's Mr. Marlowe's or
10 Mr. Haake's.

11 Q All right. Now let's focus particularly on
12 Justin Marlowe. What did he say that was false
13 concerning you?

14 A That he's supporting the HOA. He's the president
15 apparently of the HOA. And now -- in different
16 documents. And now it's time for action, to impose
17 our wishes or whatever to this builder.

18 Q And who did he communicate that to?

19 A To the City of Rock Hill.

20 Q Okay. Did he communicate that to any neighbors
21 that you know of?

22 A According to his letter, to all the neighbors.

23 Q All right. And he published that statement to the
24 neighbors in writing?

25 A Yes.

1 Q And you produced those copies?

2 A Yes.

3 Q And they're here in Defendants' Exhibit 5?

4 A That's correct.

5 Q Now let's talk a little about the harm. What was
6 the harm that was caused by the publication of
7 those false statements concerning you?

8 MR. D'AGOSTINO: Object to the form of the
9 question.

10 Q (MR. BAGHDADY) You can still answer it.

11 A The City put a hold on reviewing my work. The City
12 put a hold on my construction, of continuation of
13 my construction for 45 days directly and probably
14 several more days indirectly.

15 Q Okay. Did it deter third persons from dealing with
16 you?

17 MR. D'AGOSTINO: Object to the form of the
18 question.

19 Q (MR. BAGHDADY) You can still answer it.

20 A It deterred the City of Rock Hill, and it caused me
21 damage. It deterred them from the normal course of
22 their procedure and process in dealing with my work
23 as a regular thing. They put a halt. It went to
24 the City attorney. That's unusual.

25 Q And did the City attorney ultimately conclude that

1 the statements by Tim Haake and Justin Marlowe were
2 false?

3 MR. D'AGOSTINO: Object to the form.

4 MR. DLUZNESKI: Object to the form of the
5 question.

6 A That's what I understand.

7 Q (MR. BAGHDADY) All right. And how did you learn
8 that?

9 A I got an email from Ryan Hammond that we will get a
10 message from the City attorney. That's a civil
11 matter. And they started releasing the hold on my
12 project. And the next day it was approved. My
13 change order was approved. That's in writing,
14 email.

15 Q Have they ever given you anything -- Justin Marlowe
16 and/or Tim Haake -- to show that they were, in
17 fact, the chairman of the architectural committee
18 and on the board of directors of the homeowners
19 association?

20 A No. Not a single document.

21 Q Have they ever provided to you any written
22 documents establishing any meetings or records of
23 any meetings appointing them by homeowners that
24 they are, in fact, the chairman and/or on the board
25 of a homeowners association?

1 A No.

2 Q Have --

3 A The only thing that I have is Mr. Tim Haake in his
4 letter writing that Mr. Justin Marlowe has accepted
5 to be the president of the HOA, which is not
6 legally -- that was in their communication with
7 neighbors or the City or me.

8 Q Did the declaration indicate that the homeowners --
9 the members of the homeowners association were the
10 members of a corporation?

11 A Can you repeat the question?

12 Q Yes. If you want to look at ...

13 A I can answer that these people never showed me that
14 they are a member of such corporation.

15 Q I'd like you to look at what is -- you probably
16 want to look at your own. Paragraph 7(a).

17 A I cannot read it.

18 Q Somewhere you've got a good copy of that.

19 A If you can read it, read it to me.

20 Q It's even hard for me to see. "Lot owners shall
21 submit to an architectural committee comprising
22 board of directors of Poplar Forest Corporation" --
23 has anyone ever showed you that Poplar Forest
24 Corporation is an entity in existence?

25 A No.

1 Q You checked the records of the South Carolina
2 Secretary of State to see if there was any Poplar
3 Forest Corporation?

4 A The answer was no.

5 MR. BAGHDADY: Okay. I have no further
6 questions.

7 REEXAMINATION

8 BY MR. DLUZNESKI:

9 Q You testified that the actions of Justin Marlowe
10 and Tim Haake deterred the City of Rock Hill from
11 dealing with you; right?

12 A From not dealing with me.

13 Q That's what your testimony was, sir.

14 A No. That's a misphrase.

15 Q Okay.

16 A Deterred the City of Rock Hill to handle the
17 project in the normal course of action. They
18 pushed it to the City attorney, which -- you know
19 the whole thing.

20 Q The truth of the other matter is --

21 A My relationship with the City of Rock Hill is the
22 same or better even after that. So deterring -- if
23 deterring is that there's an animosity between them
24 and me, no, it's not like that. But because of the
25 case, they deterred -- the City of Rock Hill

1 deterred from the course of action to something
2 that they caused. Delaying my project, not looking
3 at my -- a change order request at all. They say
4 "unless this issue of the HOA is resolved, we are
5 not going to even look at it."

6 Q Well, the fact of the matter is, that the City
7 continued working with you and actually allowed you
8 to complete construction of the house; right?

9 A That's what I'm saying. The City of Rock Hill and
10 I -- our relationship, my business relationship
11 with them stays good all the time. But deterred
12 this particular project from its normal course of
13 communication to a halt. That's a deterrence to
14 me.

15 Q So it deterred the City but it didn't deter the
16 City. Is that what your testimony is?

17 A No, it didn't deter the City. It deterred the
18 project's sequence of operation.

19 MR. DLUZNESKI: Okay. That's all I have.

20 REEXAMINATION

21 BY MR. D'AGOSTINO:

22 Q So I want to follow up on that. So your
23 relationship with the City never changed. In fact,
24 it --

25 A My relationship --

1 Q -- got better according to what you just said.

2 A Yeah, because the more they know my work, the more
3 they trust my work. That's -- yeah.

4 Q Sure. And --

5 A That's normal.

6 Q And everything you keep talking about today is --
7 the biggest complaint you seem to have voiced is
8 that they represented to the City that they were in
9 a homeowners association and they weren't. That's
10 the complaint, isn't it?

11 A That's the base of all these --

12 Q Okay.

13 A -- crisis and costs.

14 Q That's what I want to understand.

15 A Yes.

16 Q And because they represented they were on the HOA,
17 that's the base of everything you've complained
18 about?

19 A That's it. Yeah.

20 Q Okay.

21 A That's the whole matter.

22 MR. D'AGOSTINO: That's all. Thank you.

23 REEXAMINATION

24 BY MR. BAGHDADY:

25 Q I just want to follow up on the "deter" component.

1 A Yes, that deterred for me.

2 Q When you're using the word in English, the word
3 deter means "slow down."

4 MR. D'AGOSTINO: Object to the form.

5 Q (MR. BAGHDADY) To stop.

6 A That's what I understood.

7 Q So it deterred the City of Rock Hill from
8 continuing the process of approving your --
9 actually stopped the --

10 A My construction.

11 Q -- the construction of your project because of
12 their false statement?

13 A Yes.

14 MR. D'AGOSTINO: Object to the form of the
15 question.

16 Q (MR. BAGHDADY) Okay. Put it in your own words.
17 What happened after they made their false
18 statements to the City of Rock Hill about the
19 homeowners association's existence and their
20 authority?

21 MR. D'AGOSTINO: Object to the form of the
22 question.

23 A The City of Rock Hill -- they practically stopped
24 my work for 45 days because they did not even want
25 to look at my case, my file, my construction

1 process. I can't even -- I couldn't even ask for
2 an inspection. Nothing. They stopped to find out
3 whether this claim of an HOA is going to stand.
4 Then I would be in a different situation if they
5 were true. Then I have to demolish certain parts
6 of the thing and all that to satisfy their wishes.

7 That's how my project, my business was
8 deterred. Not personally, not my -- in that
9 project. For my other projects, I think they --
10 now they listen with me even more. They give me
11 more validity that this guy, you know, if he says
12 something, let's look at it carefully or whatever.
13 That's my perception. But anyway. They deterred
14 the course of action.

15 MR. BAGHDADY: Okay. No further questions.

16 MR. D'AGOSTINO: I don't have anything else.

17 MR. DLUZNESKI: Nothing else.

18 FURTHER DEPONENT SAITH NOT.

19 (Whereupon, there being no further questions, the
20 deposition was concluded at 1:18 p.m.)

21 (*This transcript may contain quoted material.

22 Such material is reproduced as read or quoted by
23 the speaker.)

24

25

State of South Carolina)
) CERTIFICATE
County of York)

Be it known that Darlene Pastel took the foregoing proceeding and hereby attests:

That I was then and there a notary public in and for the State of South Carolina at-large and that by virtue thereof I was duly authorized to administer an oath;

That the deponent/witness was first duly sworn to testify to the truth, the whole truth, and nothing but the truth concerning the matter in the controversy aforesaid;

That the foregoing transcript represents a true, accurate, and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Unless otherwise noted, this notary public administered the oath. Please refer to the transcript for any exceptions.

In witness thereof, I have hereunto affixed my signature and title.



Darlene Pastel, CVR-CM

Date: 12/24/2024
Notary public for South Carolina
My Commission expires 09/20/2027

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

RESTRICTIVE COVENANTS FOR
POPLAR FOREST SUBDIVISION

The following restrictive covenants are applicable to property of Poplar Forest Corp. in Ebenezer Township, Tax District No. 3, York County, South Carolina, specifically shown on Plat of said property, prepared April 13, 1966 by R. H. Maratt, Registered Surveyor, to which said plat (Plat Book 29 Page 192, R. H. C. Office, York, S. C.) reference is invited.

1. All lots in the tract shall be known and described as residential lots, and no structures shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling not to exceed two and one-half stories in height and a private garage for not more than three cars and storage or servant's room. No duplex apartments or any other type apartment shall be permitted.

2. No building shall be located on any residential building plot nearer than 50 feet to front lot line, nor nearer than 20 feet to any side street line. No building except a garage or other outbuilding located 100 feet or more from the front lot line shall be located nearer than 20 feet to any side lot line. Pump houses shall be excluded from this provision.

3. Each numbered lot of the recorded plat as hereinabove referred to shall constitute an individual building lot and no such building lot shall be subdivided in any manner whatsoever except wherein the building lot would be increased in size thereby.

4. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. There shall be no beauty parlors or repairs shops or store buildings of any kind or nature located upon the said premises. Nothing herein contained shall be interpreted to prohibit a home workshop for hobby purposes. No chickens, hogs, cows, horses, ponies, or other animals or birds are permitted. This provision, however, shall not apply to pets so long as same are not in excessive numbers, hogs, cows, horses, and ponies are not classified as pets.

5. No trailer, basement, tent, shack, garage, barn or other outbuilding erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

6. The ground area of the main structure, exclusive of one story open porches and garages, shall be not less than 1800 square feet in the case of a one story structure, and in the case of one and one-half or two or two and one-half story structures, the total square footage shall not be less than 2500.

7. An easement is reserved over the rear ten feet of each lot for utility installation and maintenance.

8. Lot owners shall submit to an Architectural Committee comprising the Board of Directors of Poplar Forest Corp. construction plans and specifications including location of house on lot, and no structure shall be erected or altered until said plans

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APR 24 8 11 AM '25

PENGAD 800-531-6888
12/2/24
DEFENDANT'S
EXHIBIT
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EXHIBIT
A

191

have been approved in writing by said Committee. Such approval shall not be unreasonably withheld.

8. The purchaser of each lot shall provide a sewerage disposal system meeting the requirements of the State Board of Health when, as, and if any dwelling is erected thereon.

9. These covenants are to run with the land and shall be binding on all the parties and all persons claiming under them until May 1, 1992, at which time said covenants shall be automatically extended for successive periods of ten years unless by a vote of the majority of the then owners of the lots it is agreed to change the said covenants in whole or in part.

10. If the parties hereto, or any of them, or their heirs and assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said developments or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from so doing or to recover damages or other dues for such violation.

11. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

12. It is understood and agreed by and between the grantor and the grantee that for a period of ten years from the date hereon, that in the event the grantee shall elect to sell or dispose of said property, that said grantee hereby grants unto the grantor, his heirs, successors or assigns, a ten-day option to purchase said property with all improvements thereon at any bona fide offer received by said grantee for said property, provided, however, that the grantor, his heirs and assigns, agrees that the provisions of the within option are hereby specifically waived and released in favor of the rights of lien creditors taking or holding a mortgage or mortgages upon said premises from the said grantee.

IN WITNESS WHEREOF, the said Poplar Forest Corp. has caused its corporate seal to be hereto affixed, and these covenants to be signed, executed, acknowledged and delivered, in its name and behalf, by Alton G. Brown, its President, he being duly authorized therefor, this 26th day of April, 1966.

POPLAR FOREST CORP.

Witnesses:

Alton G. Brown
Alton G. Brown

BY *Alton G. Brown*
Alton G. Brown, President



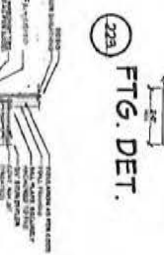
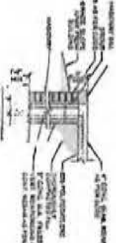
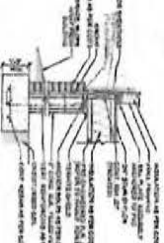
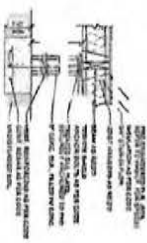
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APPROVED
ON 08/02/2024
Project No
20231548

AS BUILT

1. REFER TO FLOOR JOIST MANUFACTURER FOR JOIST SIZING, SPACING, CROSS BRACING REQUIREMENTS AND BEAM SIZES.
6. VERIFY THE QUANTITY AND LOCATION OF CRAWLSPACE VENTS WITH APPLICABLE CODES AT SITE.
9. ALL EXTERIOR DIMENSIONS ARE TO THE OUTSIDE OF THE STUDWALL AND DO NOT INCLUDE THE BRICK LEDGE (IF APPLICABLE)



SHEET NO.

1

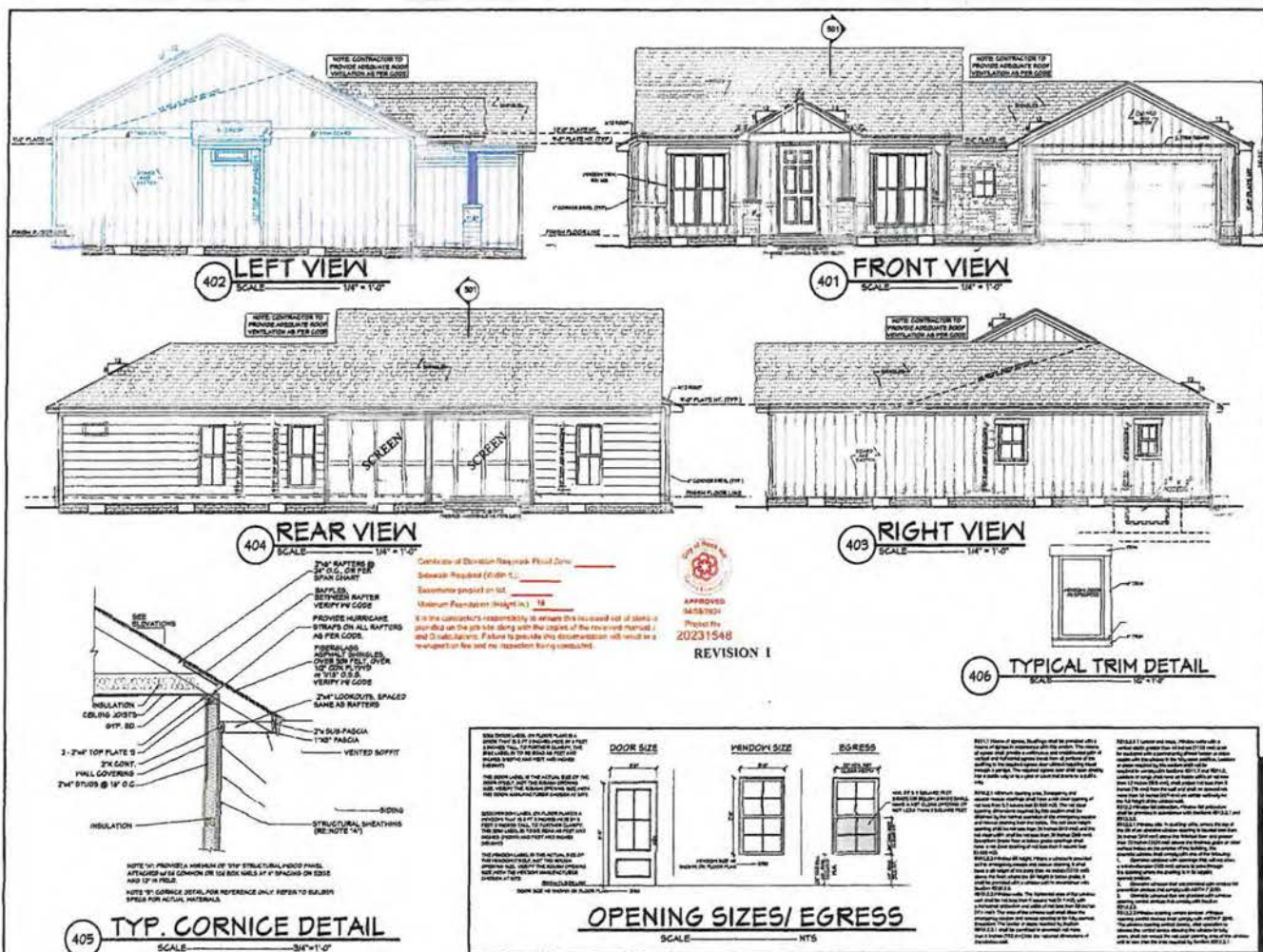
AS BUILT



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ELECTRONIC NOTES (2013-16C)

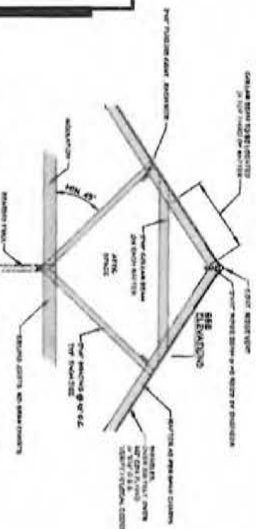


NOTE: SWITCHES AND ELECTRICAL CONNECTIONS ARE NOT SHOWN. OWNER TO LOCATE THESE ITEMS DURING ELECTRICAL WALK-THROUGH WITH ELECTRICAL CONTRACTOR AT SITE.

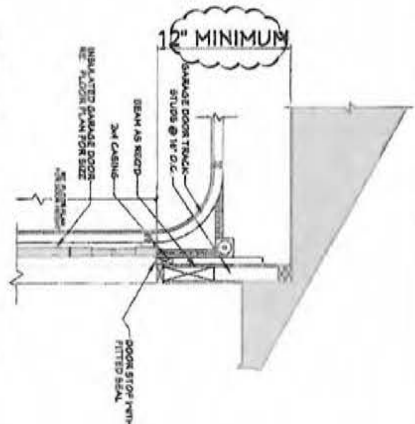


- CROSS SECTION NOTES:**
1. CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE CODES AT SITE.
 2. ALL ROOF BEAMS, HIP RAFTERS, & VALLEY RAFTERS TO BE 2" X 10" OR AS REQUIRED BY LOCAL ENGINEER.
 3. ALL ROOF JOISTS TO BE 2" X 10" OR AS REQUIRED BY LOCAL ENGINEER.
 4. CONTRACTOR TO PROVIDE EAVE SINGLES TO MEET APPLICABLE CODES.
 5. BUILDING FRACANCES TO PROVIDE ADEQUATE VENTILATION AS PER CODE AND TYPICAL.
 6. ALL LUMBER SIZES AND SPACING TO BE VERIFIED BY CONTRACTOR PRIOR TO CONSTRUCTION.
 7. CONTRACTOR TO PROVIDE ADEQUATE ROOF VENTILATION AS PER CODE BY CURRENT CODES.

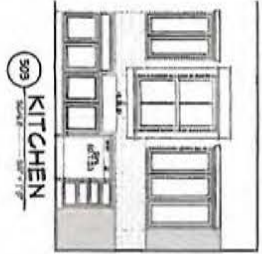
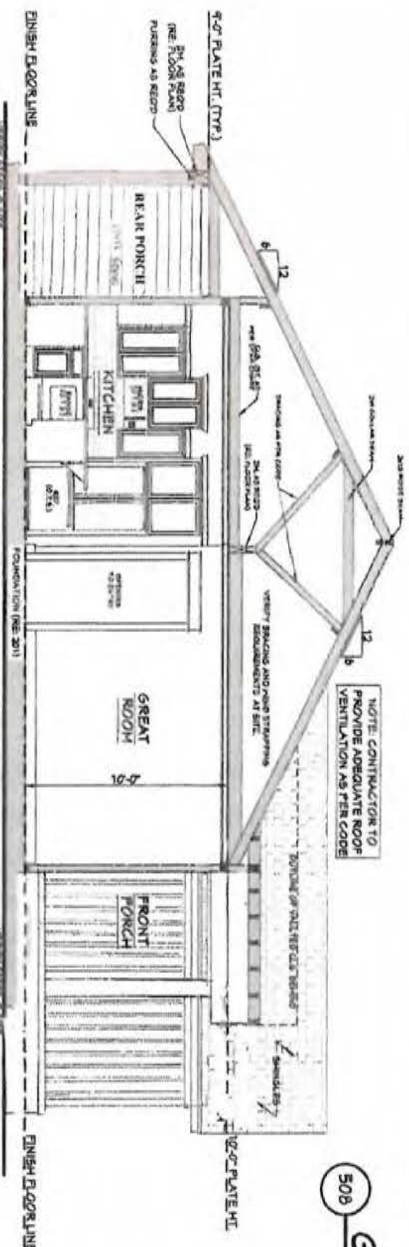
507 TYP. ROOF BRACING
SCALE: N.T.S.



508 GARAGE DOOR CLEARANCE
SCALE: N.T.S.

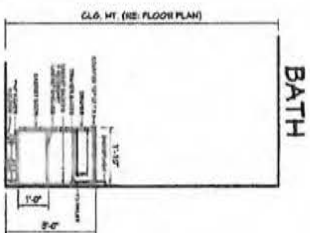
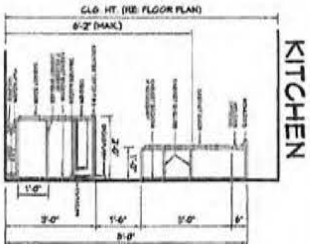


501 CROSS SECTION
SCALE: 3/8"=1'-0"



AS BUILT

506 TYP. CAB. SECTIONS
SCALE: N.T.S.



Pre-Drawn Plan ID:
1599R

DATE: 01/21/21
DRAWN BY: J.A.L.

SHEET NUMBER
5

HOUSE PLAN ZONE
Building Relationships

Website: www.houseplanzone.com
Email: sales@houseplanzone.com
Phone: 801.356.3254
Fax: 1.800.574.1351

COMMON PLEAS - CASE# 2024CP-4601354

	Date Received: _____ Received by: _____ District of Columbia Department of Corrections		2124 WINDEMERE RD. ROCK HILL, SC 29732	LATIF AZAR	Date: _____ Drawn by: _____	SHEET NUMBER 5
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APPROVED
04/08/2024
Project No
20231548

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The first of these is the *Journal of the American Medical Association*, which has been the most influential of the medical journals in the United States. It has been the most influential of the medical journals in the United States. It has been the most influential of the medical journals in the United States.

Footings and Slabs

For slab-on-grade footings up to 4" use 1" GMI or 2" steel bars with 48" spacing. Footing from UWO center to stem for walling is required.

For stem walling, use 2" steel bars with 48" spacing with 48" spacing for walling. All walling must be 12" minimum UWO. Use the 2" bar minimum rebar every 16" in GMI plate. #1 all walling.

For walling, use 2" steel bars with 48" spacing. Collect with 48" for walling.

All concrete to be used 2000 psi or 24 Day 1500

Reinforcing Steel

Reinforcing steel shall be 12" minimum with 48" bars of 1" minimum UWO. All steel to be 12" minimum UWO.

Reinforcing Steel

a. For slabs 4" to 6" use 1/2" UWO or 1/2" UWO.
b. For slabs 6" to 8" use 3/4" UWO or 3/4" UWO.
c. For slabs 8" to 10" use 1" UWO or 1" UWO.
d. For slabs 10" to 12" use 1 1/4" UWO or 1 1/4" UWO.
e. For slabs 12" to 14" use 1 1/2" UWO or 1 1/2" UWO.
f. For slabs 14" to 16" use 1 3/4" UWO or 1 3/4" UWO.
g. For slabs 16" to 18" use 2" UWO or 2" UWO.
h. For slabs 18" to 20" use 2 1/4" UWO or 2 1/4" UWO.
i. For slabs 20" to 22" use 2 1/2" UWO or 2 1/2" UWO.
j. For slabs 22" to 24" use 2 3/4" UWO or 2 3/4" UWO.
k. For slabs 24" to 26" use 3" UWO or 3" UWO.
l. For slabs 26" to 28" use 3 1/4" UWO or 3 1/4" UWO.
m. For slabs 28" to 30" use 3 1/2" UWO or 3 1/2" UWO.
n. For slabs 30" to 32" use 3 3/4" UWO or 3 3/4" UWO.
o. For slabs 32" to 34" use 4" UWO or 4" UWO.
p. For slabs 34" to 36" use 4 1/4" UWO or 4 1/4" UWO.
q. For slabs 36" to 38" use 4 1/2" UWO or 4 1/2" UWO.
r. For slabs 38" to 40" use 4 3/4" UWO or 4 3/4" UWO.
s. For slabs 40" to 42" use 5" UWO or 5" UWO.
t. For slabs 42" to 44" use 5 1/4" UWO or 5 1/4" UWO.
u. For slabs 44" to 46" use 5 1/2" UWO or 5 1/2" UWO.
v. For slabs 46" to 48" use 5 3/4" UWO or 5 3/4" UWO.
w. For slabs 48" to 50" use 6" UWO or 6" UWO.
x. For slabs 50" to 52" use 6 1/4" UWO or 6 1/4" UWO.
y. For slabs 52" to 54" use 6 1/2" UWO or 6 1/2" UWO.
z. For slabs 54" to 56" use 6 3/4" UWO or 6 3/4" UWO.
aa. For slabs 56" to 58" use 7" UWO or 7" UWO.
ab. For slabs 58" to 60" use 7 1/4" UWO or 7 1/4" UWO.
ac. For slabs 60" to 62" use 7 1/2" UWO or 7 1/2" UWO.
ad. For slabs 62" to 64" use 7 3/4" UWO or 7 3/4" UWO.
ae. For slabs 64" to 66" use 8" UWO or 8" UWO.
af. For slabs 66" to 68" use 8 1/4" UWO or 8 1/4" UWO.
ag. For slabs 68" to 70" use 8 1/2" UWO or 8 1/2" UWO.
ah. For slabs 70" to 72" use 8 3/4" UWO or 8 3/4" UWO.
ai. For slabs 72" to 74" use 9" UWO or 9" UWO.
aj. For slabs 74" to 76" use 9 1/4" UWO or 9 1/4" UWO.
ak. For slabs 76" to 78" use 9 1/2" UWO or 9 1/2" UWO.
al. For slabs 78" to 80" use 9 3/4" UWO or 9 3/4" UWO.
am. For slabs 80" to 82" use 10" UWO or 10" UWO.
an. For slabs 82" to 84" use 10 1/4" UWO or 10 1/4" UWO.
ao. For slabs 84" to 86" use 10 1/2" UWO or 10 1/2" UWO.
ap. For slabs 86" to 88" use 10 3/4" UWO or 10 3/4" UWO.
aq. For slabs 88" to 90" use 11" UWO or 11" UWO.
ar. For slabs 90" to 92" use 11 1/4" UWO or 11 1/4" UWO.
as. For slabs 92" to 94" use 11 1/2" UWO or 11 1/2" UWO.
at. For slabs 94" to 96" use 11 3/4" UWO or 11 3/4" UWO.
au. For slabs 96" to 98" use 12" UWO or 12" UWO.
av. For slabs 98" to 100" use 12 1/4" UWO or 12 1/4" UWO.
aw. For slabs 100" to 102" use 12 1/2" UWO or 12 1/2" UWO.
ax. For slabs 102" to 104" use 12 3/4" UWO or 12 3/4" UWO.
ay. For slabs 104" to 106" use 13" UWO or 13" UWO.
az. For slabs 106" to 108" use 13 1/4" UWO or 13 1/4" UWO.
ba. For slabs 108" to 110" use 13 1/2" UWO or 13 1/2" UWO.
bb. For slabs 110" to 112" use 13 3/4" UWO or 13 3/4" UWO.
bc. For slabs 112" to 114" use 14" UWO or 14" UWO.
bd. For slabs 114" to 116" use 14 1/4" UWO or 14 1/4" UWO.
be. For slabs 116" to 118" use 14 1/2" UWO or 14 1/2" UWO.
bf. For slabs 118" to 120" use 14 3/4" UWO or 14 3/4" UWO.
bg. For slabs 120" to 122" use 15" UWO or 15" UWO.
bh. For slabs 122" to 124" use 15 1/4" UWO or 15 1/4" UWO.
bi. For slabs 124" to 126" use 15 1/2" UWO or 15 1/2" UWO.
bj. For slabs 126" to 128" use 15 3/4" UWO or 15 3/4" UWO.
bk. For slabs 128" to 130" use 16" UWO or 16" UWO.
bl. For slabs 130" to 132" use 16 1/4" UWO or 16 1/4" UWO.
bm. For slabs 132" to 134" use 16 1/2" UWO or 16 1/2" UWO.
bn. For slabs 134" to 136" use 16 3/4" UWO or 16 3/4" UWO.
bo. For slabs 136" to 138" use 17" UWO or 17" UWO.
bp. For slabs 138" to 140" use 17 1/4" UWO or 17 1/4" UWO.
bq. For slabs 140" to 142" use 17 1/2" UWO or 17 1/2" UWO.
br. For slabs 142" to 144" use 17 3/4" UWO or 17 3/4" UWO.
bs. For slabs 144" to 146" use 18" UWO or 18" UWO.
bt. For slabs 146" to 148" use 18 1/4" UWO or 18 1/4" UWO.
bu. For slabs 148" to 150" use 18 1/2" UWO or 18 1/2" UWO.
bv. For slabs 150" to 152" use 18 3/4" UWO or 18 3/4" UWO.
bw. For slabs 152" to 154" use 19" UWO or 19" UWO.
bx. For slabs 154" to 156" use 19 1/4" UWO or 19 1/4" UWO.
by. For slabs 156" to 158" use 19 1/2" UWO or 19 1/2" UWO.
bz. For slabs 158" to 160" use 19 3/4" UWO or 19 3/4" UWO.
ca. For slabs 160" to 162" use 20" UWO or 20" UWO.
cb. For slabs 162" to 164" use 20 1/4" UWO or 20 1/4" UWO.
cc. For slabs 164" to 166" use 20 1/2" UWO or 20 1/2" UWO.
cd. For slabs 166" to 168" use 20 3/4" UWO or 20 3/4" UWO.
ce. For slabs 168" to 170" use 21" UWO or 21" UWO.
cf. For slabs 170" to 172" use 21 1/4" UWO or 21 1/4" UWO.
cg. For slabs 172" to 174" use 21 1/2" UWO or 21 1/2" UWO.
ch. For slabs 174" to 176" use 21 3/4" UWO or 21 3/4" UWO.
ci. For slabs 176" to 178" use 22" UWO or 22" UWO.
cj. For slabs 178" to 180" use 22 1/4" UWO or 22 1/4" UWO.
ck. For slabs 180" to 182" use 22 1/2" UWO or 22 1/2" UWO.
cl. For slabs 182" to 184" use 22 3/4" UWO or 22 3/4" UWO.
cm. For slabs 184" to 186" use 23" UWO or 23" UWO.
cn. For slabs 186" to 188" use 23 1/4" UWO or 23 1/4" UWO.
co. For slabs 188" to 190" use 23 1/2" UWO or 23 1/2" UWO.
cp. For slabs 190" to 192" use 23 3/4" UWO or 23 3/4" UWO.
cq. For slabs 192" to 194" use 24" UWO or 24" UWO.
cr. For slabs 194" to 196" use 24 1/4" UWO or 24 1/4" UWO.
cs. For slabs 196" to 198" use 24 1/2" UWO or 24 1/2" UWO.
ct. For slabs 198" to 200" use 24 3/4" UWO or 24 3/4" UWO.
cu. For slabs 200" to 202" use 25" UWO or 25" UWO.
cv. For slabs 202" to 204" use 25 1/4" UWO or 25 1/4" UWO.
cw. For slabs 204" to 206" use 25 1/2" UWO or 25 1/2" UWO.
cx. For slabs 206" to 208" use 25 3/4" UWO or 25 3/4" UWO.
cy. For slabs 208" to 210" use 26" UWO or 26" UWO.
cz. For slabs 210

[illegible][illegible]



AS BUILT

CEILING JOIST SPANS

CEILING JOIST SPANS FOR SOUTHERN PINE SPECIES
(Allowable spans for joists are limited to 10' maximum. Live load shall be 20 psf. Joist spacing shall be 16" on center.)

JOIST SIZE	SPACING	MAXIMUM SPAN (ft.)
2x4	16"	10'
2x6	16"	12'
2x8	16"	14'
2x10	16"	16'
2x12	16"	18'

RAFTER SPANS

RAFTER SPANS FOR SOUTHERN PINE SPECIES
(Allowable spans for rafters are limited to 10' maximum. Live load shall be 20 psf. Rafter spacing shall be 16" on center.)

RAFTER SIZE	SPACING	MAXIMUM SPAN (ft.)
2x4	16"	10'
2x6	16"	12'
2x8	16"	14'
2x10	16"	16'
2x12	16"	18'

RAFTER LENGTH CHART

RAFTER SIZE	SPACING	MAXIMUM LENGTH (ft.)
2x4	16"	10'
2x6	16"	12'
2x8	16"	14'
2x10	16"	16'
2x12	16"	18'

ROOF PLAN

SCALE: 1/4" = 1'-0"

ROOF PLAN NOTES:

1. CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE CODES.
2. ALL RIDGE BEAMS, HIP RAFTERS, & VALLEY RAFTERS CONTRACTOR TO TO BE 2" X 10" NO. 2 S.P. OR AS REQ'D BY ENGINEER.
3. ALL RAFTERS TO BE SIZED AS PER SPAN CHART.
4. CONTRACTOR TO WATERPROOF ALL ROOF INTERSECTIONS AS PER CODE.
5. CONTRACTOR TO VERIFY ALL ROOF PITCHES WITH EXTERIOR ELEVATIONS PRIOR TO CONSTRUCTION.
6. CONTRACTOR TO PROVIDE ADEQUATE ROOF VENTILATION AS PER CODE.

WALL/ROOF FASTENING DETAILS

SCALE: 1/4" = 1'-0"

COLUMN/BEAM LOCATIONS

SCALE: N.T.S.

TYP. ROOF BRACING

SCALE: N.T.S.

COMMON P.L.E.A.S. - 2025

Pre-Drawn Plan ID: 1599R

DATE: 01.21.21
DRAWN BY: JAL

SHEET NUMBER: 6

20231548
2124 Windemere Rd.
2124 Windemere Rd. Rock Hill, SC 29732
1,600 sqft new detached single family home
Change Order - House Flipped Due to Site Conditions

Plan Review Comments

Inspection - PAC - William Ashley - william.ashley@cityofrockhill.com -
803-329-5587

Approved

Review Comments:

Permit Technicians - Lyla Johnson - lyla.johnson@cityofrockhill.com -
803-329-5588

Not Approved

Review Comments:

Please verify what the additional cost is associated with this change order.

Zoning - Ryan Hammond - ryan.hammond@cityofrockhill.com - 803-329-5674

Not Approved

Review Comments:

At this time staff has been advised there is an active HOA/ARC board for this neighborhood, provide signed HOA approval or confirmation that the board is inactive.

Infrastructure - Stormwater - Kenny Lombard - kenny.lombard@cityofrockhill.com
- 803-329-7083

Not Approved

Review Comments:

1. The revised house location will likely interfere with the existing thru drainage on this parcel. A grading plan must be provided to show exactly how and where this water will be directed. While the current site plan does show the location of several bypass swales, it is unclear if these are feasible or adequate to convey this drainage.

2. City Staff strongly recommend coordinating a field visit to assess the current drainage patterns and to determine the best path forward for handling the thru drainage.

Please contact Kenny Lombard to setup this site visit. I may be reached at either:

803-329-7083

kenny.lombard@cityofrockhill.com



Meet to discuss the project on site Trash

Nugent, Mike <Mike.Nugent@cityofrockhill.com>
to Jimmy, me, annamarie@goettfert.com, tim@goettfert.com

Wed, Feb 21, 11:59 AM

This message has been deleted. [Restore message](#)

Feb

22
Thu

Meet to discuss the project on site

[View on Google Calendar](#)

When Thu Feb 22, 2024 6pm – 6:30pm (UTC)

Where 2124 Windemere Rd (2124 Windemere Rd, Rock Hill, South Carolina 29732)

Who annamarie@goettfert.com, McConnell, Jimmy, tim@goettfert.com, Nugent, Mike*

Yes

Maybe

No

More options

Agenda

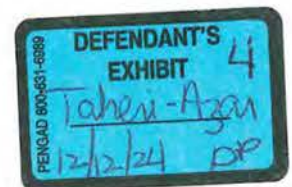
Thu Feb 22, 2024

No earlier events

6pm Meet to discuss the project on site

No later events

ELECTRONICALLY FILED - 2025 Jan 24 1:10 PM - YORK - COMMON PLEAS - CASE#2024CP4601354



Attachment D

Annemarie Haake

From: Nugent, Mike <Mike.Nugent@cityofrockhill.com>
Sent: Thursday, February 22, 2024 4:59 PM
To: Annemarie Haake; Tim Haake
Cc: Mcconnell, Jimmy
Subject: RE: Meet to discuss the project on site

Caution! This message was sent from outside your organization.

[Allow sender](#) | [Block sender](#)

Great meet you today! The building living space is 1,683 Sq.ft. not including the porches and garage. We'll keep you posted.

Michael Nugent, C.B.O

Building Official
Planning & Development
City of Rock Hill
P.O. Box 11706
155 Johnston Street (29730)
Rock Hill, South Carolina 29731-1706
o: 803-329-5598
m: 803-389-9526

Mike.Nugent@cityofrockhill.com
www.cityofrockhill.com

-----Original Appointment-----

From: Nugent, Mike
Sent: Wednesday, February 21, 2024 12:00 PM
To: Nugent, Mike; Mcconnell, Jimmy; latif.t.azar@gmail.com
Cc: [REDACTED]
Subject: Meet to discuss the project on site
When: Thursday, February 22, 2024 1:00 PM-1:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 2124 Windemere Rd (2124 Windemere Rd, Rock Hill, South Carolina 29732)

Email correspondence along with any related attachments to and from this address may be subject to the South Carolina Freedom of Information Act and may be disclosed to third parties in accordance with applicable law.

ELECTRONICALLY FILED - 2025 Jan 24 1:10 PM - YORK - COMMON PLEAS - CASE#2024CP4601354

2124 Windemere Tim Haake

Justin Marlowe <rj... Wed, Feb 28, 8:29 PM
to mike.nugent, me, Tim20x@yahoo.com

Hello Mr. Nugent, my name is Justin Marlowe, and I am writing on behalf of the Poplar Forest HOA. You have previously been in contact with Mr. Tim Haake, and together we have put together a letter and supporting documents to express the concerns of Mr. Haake and the Poplar Forest HOA with respect to the construction underway at 2124 Windemere Rd. You will find the letter and documents attached to this email.

We appreciate your time in looking over these materials, and in helping us come to a satisfactory resolution to the concerns addressed within, in a manner agreeable to all parties.

Thank-you very much, and please feel free to contact Mr. Haake or myself with any questions or requests for more information.

Justin Marlowe
rjustinm@gmail.com

Tim Haake
tim20x@yahoo.com

2 Attachments • Scanned by Gmail



PDF HOA 2124 Winde...

To the Boardmembers of the Poplar Forest Neighborhood
In support of the City of York, York County, Virginia, and the York County Board of Supervisors

Dear Boardmembers:

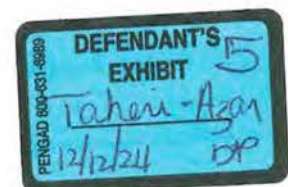
I am writing to you today to express my concerns regarding the proposed construction of a new home at 2124 Windemere Rd. I am a member of the Poplar Forest Neighborhood and I am concerned about the impact that this construction will have on the neighborhood. I am writing to you today to express my concerns and to request that you take action to address these concerns.

The proposed construction of a new home at 2124 Windemere Rd. is a violation of the Poplar Forest Neighborhood Covenants, Conditions, and Restrictions (CC&Rs). The CC&Rs prohibit the construction of a new home on a lot that is currently zoned for single-family residential use. The proposed construction of a new home at 2124 Windemere Rd. is a violation of the CC&Rs and I am writing to you today to request that you take action to address this violation.

I am writing to you today to request that you take action to address these concerns and to request that you take action to address this violation. I am writing to you today to request that you take action to address these concerns and to request that you take action to address this violation.

Sincerely,
Justin Marlowe

W HOA Letter.docx



To the Homeowners of the Poplar Forest Neighborhood

In copy to the City of Rock Hill, Attn. : Mr. Michale Nugent, C.B.O. and Mr. Latif Taheri-Azar

Hello Neighbors!

At our last meeting a few years back, Mr. Justin Marlowe agreed to serve as HOA president and offered support when needed, as with the planning of the last Octoberfest get together at the Haake's. Together, he and I (Tim Haake) are sending this letter regarding the Poplar Forest Neighborhood Bylaws, last edited and approved on August 11th, 2012. This self renewing document (see #9 of **attachment A**) does not need to be changed, but a need has arisen to enforce it. This letter is intended to keep you up-to-date and to also invite you to provide input or assistance if you wish.

The last empty lot in our neighborhood is now under development at 2124 Windemere Road, by Mr. Latif Taheri-Azar. Unfortunately he has so far failed to take our HOA restrictions into consideration. I spoke with him early in the process about our HOA and reiterated this again earlier this year. After this conversation, Mr. Taheri-Azar stated to me in writing: "There's (sic) no such recorded (sic) covenant restriction in Rock Hill register of deeds ... No such thing in my purchase contract and regardless any restrictions not recorded in registr (sic) of deeds are not legally enforceable, and I don't anticipate street would do anything illegal."

However, three days later, Mr. Taheri-Azar did copy me on the recorded CCR covenants and restrictions and judged himself to be in adherence to them.

As Architectural Committee Chair of the HOA, along with the HOA president Mr. Marlowe and many members of the Poplar Forest community, we formally disagree with this assessment.

Based on the available information, we take the four following exceptions, of which we herewith formally notify the city and Mr. Latif Taheri-Azar.

I.

Mr. Latif Taheri-Azar building permit states under "C" "This neighborhood has recorded CCR's and was provided to the applicant who states there is no active architectural committee at this time for approval."

This is an infill of the last property, and the HOA has had no need for such a committee over the last 20+ years. Our HOA specifically refers to the fact that we have one, which means that if need be, one would be created ad-hoc. Based on previous non-approval information by the city towards those that wanted to build on this lot (#20190991 Project by Harry Hagerty – **attachment B**), it was clear to the HOA that the city already requested everything our committee would be worried about. It states:

Zoning - PAC - Shana Marshburn - shana.marshburn@cityofrockhill.com - 803-326-2456

Not Approved

Review Comments:

1. Because the home is in an established neighborhood, the design of the home should **match most of the design features of the existing houses within the neighborhood**. The neighborhood is characteristic of split levels, one-story ranches, and two-story homes. None of the homes appear to have board and batten siding or have garages that extend past the conditioned area of the home. An alternative would be to meet the normal design standards. If making the necessary changes would require a completely new set of plans, staff would suggest electing to meet the current design standards. This would include providing minimum 18" exposed foundation clad in brick, stone stucco, or other acceptable durable masonry material, and a **minimum of 50% of brick, stone, or stucco on the front facade**. In addition, street-facing garage doors that are wider than 12 feet and less than 18 feet behind the front facade **must be broken up into two doors. Street-facing garage doors must also be recessed at least two feet behind the conditioned area of the home.**

Furthermore, the city itself, in its overlay plan on its website, says under #3

- a. **No vinyl siding is allowed on any façade.**
- b. Only brick, or brick veneer, stone, or stone veneer, stucco, wood, or Hardiplank, or combinations of those materials, may be used.

With this direction, the city clearly shows a value difference between these materials and vinyl siding, which is to say, to protect existing home values, the city makes a clear distinction, and our HOA may take comfort in the fact that the non-approval letter is in full alignment thereof.

In accordance with the previously mentioned non-approval, our HOA is asking Mr. Latif Taheri-Azar to have the façade as currently applied to be brought into compliance, the vinyl removed and exchanged for allowed material, and that the new plans are to be

approved of by the architectural committee as selected by the president. The HOA is also asking the city to please oversee this change and advise, as necessary.

II.

The document on "CITY OF ROCK HILL Single Family Requirements for Infill Lots" goes on to say: **15-No change in existing drainage patterns** (see **attachment C**).

Again, it was clear to the HOA that the city already requested everything of concern to our committee regarding drainage. There was never a problem before, as the properties were even. Now they are clearly not. The above non-approved report did suggest a retaining wall and states in #2 (**attachment B** "Infrastructure): ... **"Regrading or shifting the swale will need to account for the integrity of through drainage and not adversely impact adjacent property."** The emergency wooden retaining wall, as a stop gap measure will soon be rotten way and is already now not able to deal with the flow of water as is.

Together with the previously mentioned non-approval, our HOA is asking Mr. Latif Taheri-Azar to have the pattern be brought into compliance and as it is difficult after the fact to change the swales, a properly designed and built brick wall, with a deep foundation needs to be build under the guidance of the city to prevent any damage to neighbors.

III.

The SQF minimum size as per our HOA is not fulfilled. As stated in #6 of our HOA, "The ground area, exclusive of one-story open porches and garages, shall be **not less than 1800 sqf** in the case of a one-story structure and in the case of a one and one half, or two, or two and one-half story structures, the total square footage shall not be less than 2500 sqf. Although the garage is on a different level, we may consider this a one-story structure. Without the porch or garage, it is supposed to have 1800 sqf and the provided plan says 1599, while an email from the city (by M Nugent CBO of Feb 22, '24) says 1683 sqf (see **attachment D**). Either number shows that the minimum has not been met. The plan also does not show the house being built. The HOA requests current plans to be able to calculate sqf. and a plan how to bring the building into HOA minimum sqf and design specifications for approval and guidance by the city.

IV.

Again, the zoning review made clear that garage doors over 12 feet in width must be broken up into two doors. Just installed was a single door with ~15 feet in width (see attachment B, Zoning). We ask the garage door to be brought into compliance.

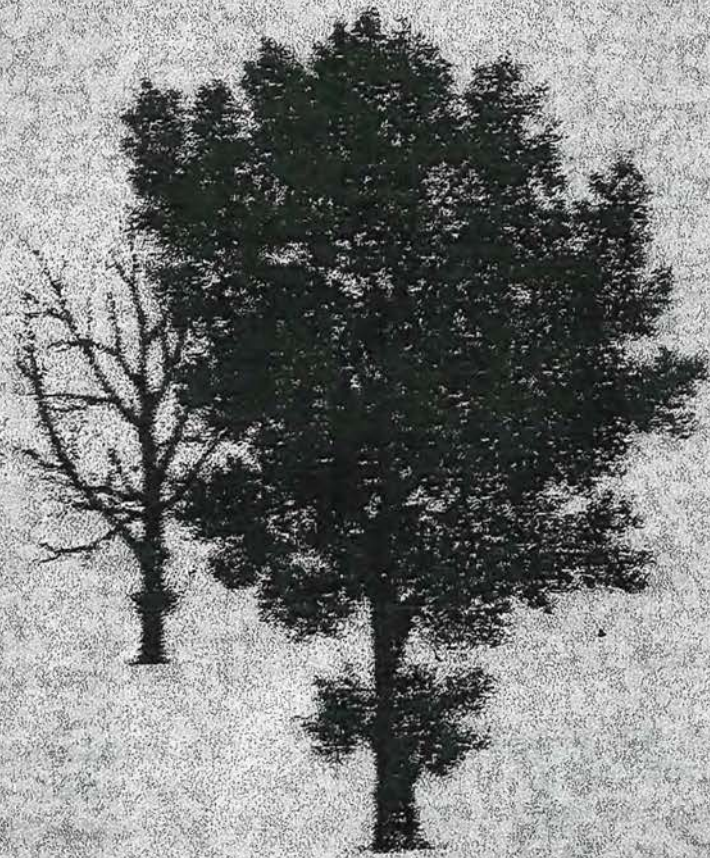
Mr. Marlowe and I look forward to a timely and productive resolution to these concerns, in the best interest of all involved parties.

With best regards,

Mr. Justin Marlowe, HOA President of the Poplar Forest Neighborhood
237 Grady Drive E-Mail: rjustinm@gmail.com Phone: 808 268 6487

Mr. Tim Haake, HOA Architectural Committee Chair of the Poplar Forest Neighborhood
394 Grady Drive E-Mail: tim20x@yahoo.com Phone: 803 322 5560

Rock Hill, SC, 2/27/2024



**Poplar Forest
Neighborhood Bylaws
August 11, 2012**

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

RESTRICTIVE COVENANTS FOR
POPLAR FOREST SUBDIVISION

The following restrictive covenants are applicable to property of Poplar Forest Corp. in Ebenezer Township, Tax District No. 3, York County, South Carolina, specifically shown on Plat of said property, prepared April 13, 1966 by R. H. Maret, Registered Surveyor, to which said plat (Plat Book 29 Page 192, R. M. C. Office, York, S. C.) reference is invited.

1. All lots in the tract shall be known and described as residential lots, and no structures shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling not to exceed two and one-half stories in height and a private garage for not more than three cars and storage or servant's room. No duplex apartments or any other type apartment shall be permitted.

2. No building shall be located on any residential building plot nearer than 50 feet to front lot line, nor nearer than 20 feet to any side street line. No building except a garage or other outbuilding located 100 feet or more from the front lot line shall be located nearer than 20 feet to any side lot line. Pumphouses shall be excluded from this provision.

3. Each numbered lot of the recorded plat as hereinabove referred to shall constitute an individual building lot and no such building lot shall be subdivided in any manner whatsoever except wherein the building lot would be increased in size thereby.

4. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. There shall be no beauty parlors or repairs shops or store buildings of any kind or nature located upon the said premises. Nothing herein contained shall be interpreted to prohibit a home workshop for hobby purposes. No chickens, hogs, cows, horses, ponies, or other animals or birds are permitted. This provision, however, shall not apply to pets so long as same are not in excessive numbers; hogs, cows, horses, and ponies are not classified as pets.

5. No trailer, basement, tent, shack, garage, barn or other outbuilding erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

6. The ground area of the main structure, exclusive of one story open porches and garages, shall be not less than 1800 square feet in the case of a one story structure, and in the case of one and one-half or two or two and one-half story structures, the total square footage shall not be less than 2500.

7. An easement is reserved over the rear ten feet of each lot for utility installment and maintenance.

a. Lot owners shall submit to an Architectural Committee comprising the Board of Directors of Poplar Forest Corp. construction plans and specifications including location of house on lot; and no structure shall be erected or altered until said plans

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BOOK --- PAGE ---
APR 30 8 38 AM '66
YORK COUNTY, S.C.

have been approved in writing by said Committee. Such approval shall not be unreasonably withheld.

8. The purchaser of each lot shall provide a sewerage disposal system meeting the requirements of the State Board of Health when, as, and if any dwelling is erected thereon.

9. These covenants are to run with the land and shall be binding on all the parties and all persons claiming under them until May 1, 1992, at which time said covenants shall be automatically extended for successive periods of ten years unless by a vote of the majority of the then owners of the lots it is agreed to change the said covenants in whole or in part.

10. If the parties hereto, or any of them, or their heirs and assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said developments or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from so doing or to recover damages or other dues for such violation.

11. Invalidity of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

12. It is understood and agreed by and between the grantor and the grantee that for a period of ten years from the date hereon, that in the event the grantee shall elect to sell or dispose of said property, that said grantee hereby grants unto the grantor, his heirs, successors or assigns, a ten-day option to purchase said property with all improvements thereon at any bona fide offer received by said grantee for said property, provided, however, that the grantor, his heirs and assigns, agrees that the provisions of the within option are hereby specifically waived and released in favor of the rights of lien creditors taking or holding a mortgage or mortgages upon said premises from the said grantee.

IN WITNESS WHEREOF, the said Poplar Forest Corp. has caused its corporate seal to be hereto affixed, and these covenants to be signed, executed, acknowledged and delivered, in its name and behalf, by Alton G. Brown, its President, he being duly authorized therefor, this 26th day of April, 1966.

POPLAR FOREST CORP.

Witnesses:

Henry B. Montgomery
Robert W. Ward

BY *Alton G. Brown*
Alton G. Brown, President

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STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

Personally appeared before me Robert M. Ward
and made oath that (s)he saw Poplar Forest Corp.'s seal affixed
to the foregoing covenants and that (s)he also saw Alton G. Brown,
President of said Poplar Forest Corp. sign the same, and that
(s)he, with Peggy B. Montgomery witnessed the execution
thereof.

Robert M. Ward

SWORN to before me this
26 day of April, 1966.

Peggy B. Montgomery
Notary Public for South Carolina

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Permit Application Center
Planning and Development Department
155 Johnston Street or P.O. Box 11706
Rock Hill, SC 29731-1706
Phone (803) 329-5590 Fax (803) 329-7228
www.cityofrockhill.com



Letter of Notification for Plan Review

2124 Windemere - New House

Plan Reviewed:
Residential Detached Building Plan

Status:
Not Approved

20190991
2124 Windemere - New House
2124 Windemere
Construct single family residence, 4 Bedrooms, 3 1/2 Baths, 1 Story
Residential Detached Building Plan -

Project Contact:

Harry Hagerty
Ventura Homes
259 Heritage Blvd
Fort Mill, SC 29715
Phone: 704-363-6169
Email: buddy@geblc.com

We reviewed your new home plan and it was not approved. Please address the review comments listed on the attached report and submit revised plans with a response letter. Use the attached Plan Resubmittal Instructions to guide you when preparing your plans. Plans will not be routed for review if not accompanied by a response letter.

All plan submittals should be addressed to Cecilia Carey, Permit Center Assistant, ph. 803-817-5176, Cecilia.Carey@cityofrockhill.com.

When revised plans are received, we will route the plans to staff for review. Please feel free to contact us with any questions you may have. You are also welcome to come in and sit down with the reviewers and discuss your project.

The following comments are grouped as "Review Comments" or "Advisory Comments". "Review Comments" are items related to your plan review that require action on your part. "Advisory Comments" are informational notes that may be important in the future and are for your information.

ELECTRONICALLY FILED - 2025 JAN 24 11:10 PM - YORK - COMMON PLEAS - CASE#2024CP4601354

20190991

212 Windemere - New House

2124 Windemere

Construct single family residence, 4 Bedrooms, 3 1/2 Baths, 1 Story

Residential Detached Building Plan -

ELECTRONICALLY FILED - 2025 Jan 24 1:10 PM - YORK - COMMON PLEAS - CASE#2024CP4601354

Plan Review Comments

Infrastructure - Stormwater - Tim Brooks - tim.brooks@cityofrockhill.com -
803-817-5107

Not Approved

Review Comments:

1. Based on the City's GIS database, water and sanitary sewer appears to be accessible within the Windemere ROW. Please show proposed water meter and sewer tap locations on the site plan. Water and sewer fees (as applicable) are to be paid in the Inspections Division at City Hall. The City will install the water meter and sewer service after payment for the services. The water meter and sewer cleanout shall not be located within the driveway.
2. The lot has a few topographical challenges that warrant the need for a grading and drainage plan. There is an existing swale sweeping through the middle of lot, apparently graded in with construction of the adjacent 2136 Windemere lot. In addition, according to GIS LIDAR topography, the natural grade near the back northeast corner of the lot is approximately 10 feet higher than the elevation at the ROW. Based on the house layout provided, this would require significant excavation of the existing ground along the back northeast corner and most likely construction of a retaining wall to make up for differences in grade. A swale will need to be graded in to convey runoff around home and to the road ROW. This will also need to be addressed with the grading plan. The existing swale running through the middle portion of the lot will most likely need to be shifted to account for house layout. Regrading or shifting the swale will need to account for the integrity of through drainage and not adversely impact adjacent property. Please note as an FYI, even though the upstream drainage area feeding across the subject lot and into the existing swale appears to be small (approximately two acres), it is still imperative to grade in an adequate swale between the home and the cut slope, in order to convey runoff away from the home's foundation and crawlspace and toward the Windemere ROW.
3. There is an existing overhead electric line running adjacent to the back property line. This will need to be shown on the site plan, based on actual survey (field locate). If there is an easement associated with the line, this too, needs to be shown on the plan. If there is no easement, Utilities may require that a new easement agreement is acquired, as part of the single family approval process.
4. Show silt fencing location on site plan.
5. Since this is an Infill Lot, no NPDES Permit will be required. However, due to the existing site topographical constraints, an engineered grading plan based on a topographical survey, needs to be submitted for review and approval. The grading plan will need to include the layout of the proposed house, driveway and patio, as applicable.
6. Please note, retaining walls that exceed 4 feet in height, as measured to bottom of footer, will require a separate permit from Building Inspections.
7. It is advisable to obtain a Geotech observation, or at least perform an investigation to identify any rock formations that could impeded excavation in areas designated for such, prior to establishing a grading and drainage plan.

Advisory Comments:

Contractor must comply with the attached Single Family Infill Requirements.

20190991

2124 Windemere - New House

2124 Windemere

Construct single family residence, 4 Bedrooms, 3 1/2 Baths, 1 Story

Residential Detached Building Plan -

Inspection - PAC - Harvey Middleton - harvey.middleton@cityofrockhill.com -

Not Approved

Review Comments:

Please correct or provide the following

1. Based on zoning review, minimum design standards have not been met. A complete building plan review cannot be performed until design standards have been achieved

Once zoning standards have been achieved and an appropriate house type is selected please insure the following

- a. If floor system will consist pre-engineered floor trusses indicate the size/spacing of the proposed members (provide manufacturers specifications)
- b. Plan states all beams to be sized by a licensed structural engineer; Engineer shall be SC licensed and beam sizes shall be shown on the building plans.
- c. Plans states " footing sizes/location to be verified by licensed structural engineer. Engineer certification will be required from a SC engineer
- d. Risers heights or stairs shall be noted on the plans
- e. Currently Sheet 7 (roof plan) contains span charts and do not specify what size rafters or ceiling joist will be used. The plans do not indicate ridge beam/ ridge board sizes depending on the framing method nor does it indicate any valley sizes/supports. A complete layout will assess the proposed conventional framing of the roof.
- f. Carbon monoxide detectors shall be required
- g. Crawl space and attic ventilation calculations will be required
- h. Dwelling - garage fire separation shall be in accordance with section R302.6, 2015 SC residential code
- i. Wall bracing information/detail shall be provided for the residence and garage
- j. The Manual J did not include the selected heating and cooling units or their rated outputs (BTUH)
- k. Provide the manufacturers cut sheet/specification for the windows to verify the u-factor and SHGC. Additionally emergency egress windows for the bedroom should be indicated and tempered windows for hazardous windows shall be identified.

Based on a preliminary review of the current plans engineered stamped drawings will be required for the foundation, floor and roof plans.

Zoning - PAC - Shana Marshburn - shana.marshburn@cityofrockhill.com -
803-326-2456

Not Approved

Review Comments:

1. Because the home is in an established neighborhood, the design of the home should match most of the design features of the existing houses within the neighborhood. The neighborhood is characteristic of split levels, one-story ranches, and two-story homes. None of the homes appear to have board and batten siding or have garages that extend past the conditioned area of the home. An alternative would be to meet the normal design standards. If making the necessary changes would require a completely new set of plans, staff would suggest electing to meet the current design standards. This would include providing minimum 18" exposed foundation clad in brick, stone stucco, or other acceptable durable masonry material, and a minimum of 50% of brick, stone, or stucco on the front facade. In addition, street-facing garage doors that are wider than 12 feet and less than 18 feet behind the front facade must be broken up into two doors. Street-facing

20190991

2124 Windemere - New House

2124 Windemere

Construct single family residence, 4 Bedrooms, 3 1/2 Baths, 1 Story

Residential Detached Building Plan -

garage doors must also be recessed at least two feet behind the conditioned area of the home.

Infrastructure - Impact Fees - Kathy Paterniti - kathy.paterniti@cityofrockhill.com -
803-329-5515

Approved

Review Comments:

Impact fees - \$\$3924

Water tap - \$1150

sewer tap - \$1460

Infrastructure - Landscape - Danny Jones - danny.jones@cityofrockhill.com -
803-329-5688

Approved

Review Comments:

ELECTRONICALLY FILED - 2025 Jan 24 1:10 PM - YORK - COMMON PLEAS - CASE#2024CP4601354

Residential Building Permit



Report Code: 101 - Single Family Houses Detached
Permit Number: 202309209 Date Issued: 10/02/2023

Site Address:	2124 WINDEMERE RD	Tax Map ID:	5941004006
Zoning:	SF-3	Owner Name:	AZAR LATIF TAHERI
Special Districts:		Address:	907 CRANBERRY CIR
Subdivision:	POPLAR FOREST Phase 1	Owner Phone:	
Lot Number:	1	City Utilities:	Water, Sewer & Electric
Building Use:	Single Family Residential		

Contractors

General Latif Taheri-Azar - Latif Taheri-Azar - 704-615-2411 - SC Lic. No. 125050 - BD 2
907 Cranberry Circle Fort Mill, SC 29715

Electrical James (Rusty) Thomason - JAMES RUSSELL THOMASON JR - 803-448-6367 - SC Lic. No. 110631 - EL
1863 Bon Rea Drive Rock Hill, SC 29730

Mechanical Timothy Parker - T and C Heating and Cooling - 336-929-9917 - SC Lic. No. 116495 - AC 2
1141 Babbage Ln. Indian Trail, NC 28079

Plumbing Arthur Shick III - Shicks Plumbing Solutions - 803-207-1990 - SC Lic. No. 44370 - Res_Plumbing N/A
5012 Mt. Gallant Rd. ROCK HILL, SC 29732

Permit Details

Occupancy Type:	No. of Units:	1	No. of Bedrooms:	3
Construction Type:	No. of Stories:	1	No. of Baths:	3
Square Footage: 2,362	No. of Buildings:	1	Is Bldg. Sprinklered:	

Minimum Setbacks

Front: 25 Sides: 10 Rear: 25

Description of Work

Construct single family dwelling. 3 Bedrooms, 3 Baths, 1 Story. Setbacks approved as shown on site plan. Setbacks measured from exterior building wall per section 6.5.6 and 6.6 of RH Zoning Ordinance. Subcontractors included in permit. Project 20231548

Conditions

- Due to the location of this lot within a critical drainage design area, a Pre-footing Grading Inspection is required to ensure the stormwater measures have been properly installed and are functioning as intended. Please contact Clay Daniels at 803-487-5365.
- Homes being constructed on infill lots under section 9.2.1.C. must use one of the following:
 - An 18-inch crawl space that is clad with brick, brick veneer, stone, stone veneer, stucco or other masonry material on the front and side facades.
 - A slab foundation, provided that the foundation supporting the floor framing on the front façade is an average of at least 18 inches above grade on the front and side facades and is clad with brick, brick veneer, stone, stone veneer, stucco or other masonry material on the front and side facadesSEE CONDITIONS 3 AND 4 ON THE CONDITIONAL LETTER

Fees

Valuation of project:	\$150,000.00	Fees:	Grading Fee	15.00
			UG Electric Fee	400.00
			3/4" WTR Tap & Meter	1,150.00
			Sewer Tap Fee	1,460.00
			Permit Fee	780.00
			Plan Review	195.00
			Plan Resubmittal	195.00
				<u>\$4,195.00</u>



Certificate of Occupancy



C.O. Issue Date:	04/29/2024	Tax Map ID #:	5941004006
Permit Number:	202309209	Subdivision / Lot:	POPLAR FOREST Phase 1 1
Site Address:	2124 WINDEMERE RD	Contractor:	Latif Taheri-Azar
Owner:	AZAR LATIF TAHERI	Contractor Address:	907 Cranberry Circle, Fort Mill, SC 29715
Owner Address:	907 CRANBERRY CIR	Occupancy Class:	
Codes In Effect:	Residential: 2018 IRC, Commercial: 2018 IBC & 2017 NEC, 2009 IECC	Sprinklered:	
Construction Type:			
Permit Description:	Construct single family dwelling. 3 Bedrooms, 3 Baths, 1 Story. Setbacks approved as shown on site plan. Setbacks measured from exterior building wall per section 6.5.6 and 6.6 of RH Zoning Ordinance. Subcontractors included in permit. Project 20231548		
C.O. Conditions:	Change Order - window specification changed. No additional contract value per contractor. 4/8/2024-Change Order - House Flipped Due to Site Conditions		

This is to certify that the above structure has been inspected and found to conform to all applicable building codes and ordinances pertaining to construction with the City of Rock Hill and is hereby released for lawful use or occupancy. This certificate is issued pursuant to Section 110 of the International Building Code, as adopted by the City of Rock Hill, which requires the issuance of a Certificate of Occupancy prior to occupying any new or altered building or for any change of occupancy classification in an existing building. Please note that the structure is also subject to any conditions or requirements listed on the zoning compliance form and any regulations in the Rock Hill Zoning Ordinance.

Jimmy McConnell

Building Inspector

Mike Nugent

Building Official

Planning & Development Department, 155 Johnston St., Room 300, P.O. Box 11705, Rock Hill SC 29731 Ph. 803-329-5590 Fax 803-329-7228 www.cityofrockhill.com/plandev

BUSINESS LICENSE



Latif Taheri-Azar
907 Cranberry Circle
Fort Mill, SC 29715

License No 202308281

Business Name: Latif Taher-Azar

Physical Location: Outside City Limits

Business Type: General Contractor - BD2

Conditions:

This license is not a permit. This business license expires on the completion of the project located at 2124 Windemere Rd.

Subject to the provisions and applicable statutes and ordinances and such provisions and regulations as may at any time be imposed by the State of South Carolina or City of Rock Hill. Notify this office prior to any change in location or ownership.

Rebecca Mullett

NON-TRANSFERABLE

Authorized Signature

Business License, P.O. Box 11706, Rock Hill, SC 29731 Ph 803-329-5590

Planning & Development Department803-329-5586 / Amy.Britz@cityofrockhill.com

Physical (By Appointment Only): 155 Johnston Street, Rock Hill, SC 29730

Mailing: PO Box 11706, Rock Hill, SC 29731-1706

www.cityofrockhill.com**SITE PLANS/PLATS SUBMITTAL FORM**

Upload this form along with all site plans, plats and related documents that you submit through our Online Services portal at www.cityofrockhill.com/online-services. Upload a new form when any of the information changes.

Project name: 2124 Windemere Rd.Address(es): 2124 Windemere Rd. Rock Hill, SC 29732 Acres: .5513

(Use tax map number if no address assigned)

Type of site plan/plat: Sketch plan ☐ Minor site plan ☒ Major site plan ☐
 Minor subdivision/recombination plat ☐ Preliminary plat ☐

PROJECT DESCRIPTION

Land use: Single-family detached ☒ Single-family attached ☐ Multi-family ☐
 Commercial/Institutional ☐ Industrial ☐

If residential, number of lots or units: 1

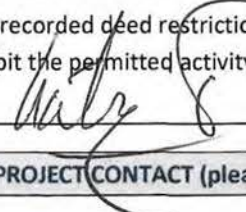
If non-residential, land use type(s): _____ square feet: _____
 (office, restaurant, warehouse, etc.)

If subdividing or recombining land, number of lots to be created: _____ or combined: _____

Additional project description: _____

DESIGN PROFESSIONALName: Latif Taheri-Azar Company: _____Phone: 704-615-2411 Email: latif.t.azar@gmail.com City Business Lic. #: 202308281Address: 907 Cranberry Cir. Fort Mill, SC 29715**PROPERTY OWNER**Property Owner Name: Latif Taheri-Azar Company: _____Phone: 704-615-2411 Email: latif.t.azar@gmail.comAddress: 907 Cranberry Cir. Fort Mill, SC 29715

Are there any recorded deed restrictions or restrictive covenants that apply to this property that are contrary to, conflict with, or prohibit the permitted activity being requested? Yes ☐ No ☒

Signature:  Date: 08/09/23**ADDITIONAL PROJECT CONTACT (please use additional sheets if more than one)**

Name: _____ Company: _____

Phone: _____ Email: _____ City Business Lic. #: _____

Address: _____

Planning & Development Department803-329-5590 / permits@cityofrockhill.com

Physical (By Appointment Only): 155 Johnston Street, Rock Hill, SC 29730

Mailing: PO Box 11706, Rock Hill, SC 29731-1706

www.cityofrockhill.com**RESIDENTIAL BUILDING PERMIT APPLICATION**

Property Owner: Latif Taheri-Azar Phone: 704-615-2411
 Property Owner Address: 907 Cranberry Cir Fort Mill, SC 29715 Email: latif.t.azar@gmail.com
 Construction Address: 2124 Windemere Rd. Rock Hill, SC29732 Subdivision: _____ Lot #: _____
 Contractor Name: Latif Taheri-Azar Phone: 704-615-2411 Email: latif.t.azar@gmail.com
 Contractor Address: 907 Cranberry Cir. Fort Mill, SC 29715 State Lic.#: _____ City BL #: _____
 Description of Work: New construction of a 2,278 sqft. detached residential building

Heated/Conditioned SF: 1,600 Unheated SF: 678 # Bedrooms: 3 # Baths: 3 Stories: 1 # of Buildings: 1 # of Units: 1
 Are you upgrading or relocating your electric service? ☐ Yes ☒ No

Will a fire sprinkler system be installed or modified? ☐ Yes ☒ No
 Heating: ☐ Gas ☒ Electric Water Heater: ☐ Gas ☒ Electric

If all appliances are electric, residential customers may qualify for City [Smart Choice rebates](#) and loans.

Valuation of Work: \$ 192,000 Total cost of project--Include site development, professional design, and all subcontractors, but exclude land cost

Electrical Contractor: JAMES RUSSELL THOMSON JR Phone: 803-448-6367 Contract Cost \$ 10,000
 Electrical Contractor Address: 2136windemere Rd. Rock Hill, SC 29732 State Lic.# 110631 City BL# 4107955

Mechanical Contractor: T & C Heating and Cooling Phone: 704-628-5978 Contract Cost \$ 9,600
 Mechanical Contractor Address: 1002 Sunflower Ln. Indian Trail, NC 28079 State Lic.# 116495 City BL# 202306341

Plumbing Contractor: Arthur Allen Shick III, Shicks Plumbing Solutions LLC Phone: 803-207-1990 Contract Cost \$ 10,387
 Plumbing Contractor Address: 5012 Mt. Gallant Rd Rock Hill, SC 29732 State Lic.# 44370 City BL# 202201497

Gas Contractor: _____ Phone: _____ Contract Cost \$ _____
 Gas Contractor Address: _____ State Lic.# _____ City BL# _____

Other Contractor: _____ Phone: _____ Contract Cost \$ _____
 Other Contractor Address: _____ State Lic. # _____ City BL # _____

Other Contractor: _____ Phone: _____ Contract Cost \$ _____
 Other Contractor Address: _____ State Lic. # _____ City BL # _____

Flood Zones

Is this property located in a flood zone? ☐ Yes ☒ No

If yes, what is the floodzone classification? _____ Also attach a [Flood Elevation Certificate](#).

Stormwater Culverts

For projects with entrances on City-maintained streets, will you need a culvert installed under your driveway?

☐ Yes ☒ No

For projects with entrances on SCDOT maintained streets, please contact the SCDOT office at (803) 327-6186.

Deed Restrictions/Restrictive Covenants

Are there any recorded deed restrictions or restrictive covenants that apply to this property which are contrary to, conflict with, or prohibit the permitted activity being requested? For example, is there a mandatory architectural review or homeowner association approval required? ☐ Yes ☒ No

- If yes, please describe restrictions: _____
- Also upload a [Homeowners' Association \(HOA\) approval letter](#) (see example below).

Other Required Permit Applications/Forms—upload all that apply along with your building permit application

- [New Contractor Packet](#) – Required for contractors applying for their first permit in the City
- [Owner/Builder Affidavit](#) - If owner acts as their own contractor (must reside in house for 2 years)
- [Underground Electric Installation Request Form](#)— In most cases, the City is the electrical provider. Submit this form when you are ready for the underground electric line to be installed. This should be done when the meter base has been installed on the home but before you request your temporary power inspection.
- [Irrigation System Permit Application](#) - A separate application and permit are required for the installation of an irrigation system and backflow preventer.
- [Fence/Wall Permit Application](#)
- [Demolition Application](#)
- Renovations are subject to State and Federal [asbestos regulations](#).
- A [Lead Paint Removal Certification](#) is required for work on a structure built before 1978.
- A [Certificate of Appropriateness Application](#) if the property is located within one of the City's [historic districts](#).

Certifications

- I certify to the best of my knowledge that all information provided herein is true and correct and all work performed under this permit shall conform to the plans and specifications herewith submitted and to all applicable Building Codes and Laws and Ordinances pertaining thereto.
- By signing this application, I certify that I have the authority to make the foregoing application and I am the property owner or an authorized agent for the company performing the work stated above. I understand that I must use contractors and subcontractors licensed or registered with the State of South Carolina.
- I further understand that if any information provided is found to be incorrect or falsely stated that this permit will be null and void and that I may be responsible for violation of other related state laws and local ordinances.
- I certify no construction or portion of construction will be built over or under any electrical, water, sewer, storm water or any other utility easements or rights-of-way.

Applicant Signature: _____

Applicant Title: Contractor and Property Owner

(Contractor, Property Owner, etc.)

Planning & Development Department803-329-5590 / permits@cityofrockhill.com

Physical (By Appointment Only): 155 Johnston Street, Rock Hill, SC 29730

Mailing: PO Box 11706, Rock Hill, SC 29731-1706

www.cityofrockhill.com

RESIDENTIAL BUILDING PERMIT APPLICATION: STORMWATER EROSION CONTROL ADDENDUM

NOTE: You may not cut trees or grade the lot until you have been issued a grading permit.

NPDES Permit Number (if applicable): _____ Permit Holder Name: _____

Anticipated Start Date: _____ Anticipated Completion Date: _____

- ☒ **Option 1:** If you are building on a residential lot, will disturb less than one acre, and the lot is not part of a subdivision, we will review stormwater erosion control along with your building permit application, and will issue a grading permit along with your building permit. This option works well when grading does not need to start before the building permit is issued. We will charge a grading plan review fee of \$15 along with your building permit fees.
- ☐ **Option 2:** If you are building on a residential lot located in a subdivision and you are the listed permit holder of a valid NPDES permit for that subdivision, we will not review stormwater erosion control or issue a grading permit as part of the building permit application review.
- NPDES Permit Number: _____
- ☐ **Option 3:** If you are building on a residential lot(s) in a subdivision (developed after 1992) and are not the permit holder of a valid NPDES permit for that lot(s):

- A. You can obtain secondary permit status on an existing NPDES permit. Submit the following to the City, which will mail them to SCDHEC:
1. SCDHEC [Individual Lot Notice of Intent Application](#). You will need to get a copy of the original grading plans for the subdivision from the current NPDES primary permit holder.
 2. \$125 fee for SCDHEC.
- SCDHEC review time may take up to 7 business days. The City will charge a grading plan review fee of \$15 along with your building permit fees.
- or -
- B. Apply for your own primary NPDES permit. Submit the following to the City; we will mail the SCDHEC components to the agency for you:
1. SWPPP/ site plan with Engineer's Certification.
 2. SCDHEC [Individual Lot Notice of Intent Application](#)
 3. \$125 fee for SCDHEC.
 4. City grading permit fee of \$250 per disturbed acre or portion thereof rounded up to next whole acre.
- Plan review times are as follows: City - up to 10 business days, SCDHEC - up to 7 business days.

Certifications

Erosion control measures are required to be in place prior to any site work taking place and shall remain in place at all times until the project is completed and approved by the City.

I hereby certify the following:

- ☒ I will ensure that all earthwork operations are performed in such a manner as to control erosion and prevent sedimentation from entering streams, adjacent properties or being tracked onto roadways.
- ☒ I will ensure that all erosion control structures will be inspected and maintained by the home builder/general contractor for stability and operation at the end of each workday.
- ☒ I will ensure that a construction entrance is installed in accordance with SCDHEC standards to serve as tire scrubber.
- ☒ I will ensure that silt fence is installed along the low spots of the property and along all lower adjacent properties.
- ☒ I will ensure that the road is swept daily (not washed/hosed down) if sediment gets on the road.
- ☒ I will ensure that a swale is constructed to drain away from adjacent property or direct to designated stormwater feature/control.
- ☒ I understand that building inspections will not be performed if erosion control measures are not in place.
- ☒ I understand that erosion control inspections are not scheduled inspections and may take place at any time. I certify that the City of Rock Hill may enter the property stated on the permit application for the purpose of investigation and inspection of land disturbing activities at a frequency deemed necessary to carry out the duties prescribed in the Stormwater Management and Sediment Control Regulations of the Rock Hill Zoning Ordinance.
- ☒ I will ensure that any additional permanent and/or temporary sediment and erosion control will be installed as determined necessary by the City to reduce erosion.
- ☒ I understand that failure to install or maintain erosion control measures will result in a Stop Work Notice and/or Fines, and/or any other remedies available according to the Rock Hill Zoning Ordinance. I also understand that each day any such violation exists shall constitute a separate offense.

VIOLATION	MAXIMUM FINE AMOUNT (PER DAY OF VIOLATION)
Failure to submit "as-built" plan	\$100
Failure to record deed of easements	\$100
Failure to follow approved Stormwater Management and Sediment Control Plan or the notes on a it	\$250
Failure to comply with Notice of Violation	\$250
Failure to protect off-site areas from sedimentation or other stormwater-related damages	\$250
Failure to comply with a stop work order	\$1,000

- ☒ I am the authorized agent for the company performing the work stated above. All information provided is true. I further understand that if any information provided is found to be incorrect or falsely stated that this permit will be null and void and that I may be responsible for violation of other related state laws and local ordinances.

Signature: _____

Date: _____

Applicant or NPDES permit holder if applicable

Printed Name: _____

Latif Taheri-Azar

Payment page

Thank you for your payment

Reference number AM0A5A6A0A46

Amount 8,119.00

Latif, you have successfully completed your payment.

Your payment was processed successfully. Your permit, permit card and receipt have been emailed to you.

Bill-to-address

Latif Taheri-Azar
907 Cranberry Circle
Fort Mill, SC 29715
US

Thank you for your business!

Secure payments by  **PayPal**

Copyright © 1999-2023 PayPal. All rights reserved.



Receipt 84241

Date: 10/02/2023

Cashier: WebPublic

Latif Taheri-Azar
Latif Taheri-Azar
907 Cranberry Circle
Fort Mill, SC 29715

Payment Items

Form of Payment

Building Permit - 202309209 - Construct single family dwelling. 3 B

Web Payment \$8,119.00

2124 WINDEMERE RD

Total \$8,119.00

3/4" WTR Tap & Meter

\$1,150.00

Grading Fee

\$15.00

Permit Fee

\$780.00

Plan Resubmittal

\$195.00

Plan Review

\$195.00

Sewer Tap Fee

\$1,460.00

UG Electric Fee

\$400.00

Impact Fee - 2124 WINDEMERE RD - 11320

Fire Impact Fee

\$744.00

Sewer Impact Fee

\$2,110.00

Water Impact Fee

\$1,070.00

Total

\$8,119.00

Thank you for your payment.



1900 Literature

ELECTRONICALLY FILED - 2025 Jan 24 1:10 PM - YORK - COMMON PLEAS - CASE#2024CP4601354

rot, corrode, fade or peel. Air pockets in the frame insulate the inside surfaces from exterior cold and heat maintaining energy efficiency.

QUICK LINKS

[Contact Us](#)

[Warranty](#)



ENERGY STAR 6 COMPLIANT
INSTALLATION INSTRUCTIONS

Comfort View Products LLC

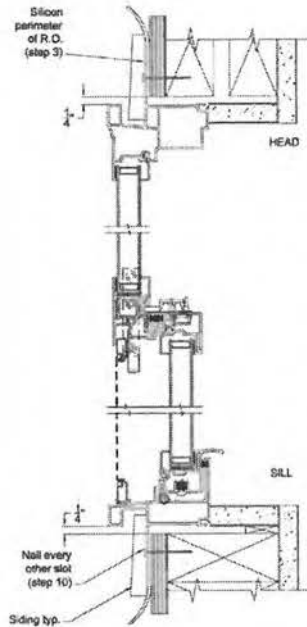
Toll Free: 1-888-895-1800 Office: 770-251-4050 Fax 770-252-2240 320 Coweta Industrial Parkway
Bldg 7 Suite C-I Newnan, GA 30265

2023 © Comfort View Products



1900 Series

Vinyl Single-Hung Windows



**10 Year
Warranty
on Glass Failure**

**Limited Lifetime
Warranty
Available on
Frame**

Features & Benefits

- Welded frame and sash construction
- Covered block and tackle balance system
- Sloped sill frame with wider brick mould style exterior
- Built in J-channel to accept vinyl siding
- 1-1/4" prepunched nailing fin
- Tilt-in sash for easy cleaning
- 5/8" insulated glass standard (3/4" glazing optional)
- 13/16" internal grids or 1/1 lites
- Factory assembled multiple units with continuous head and sill
- Available with optional 4-9/16" and 6-9/16" wood jamb extensions
- 3-1/4" frame depth
- Removable meeting rail
- Available in white, almond and clay

Comfort View Products uses only premium quality vinyl extrusions to produce durable and eye-appealing windows. Permanent finishes eliminate the need for painting. The sash and frame will not rot, corrode, fade or peel. Air pockets in the frame insulate the inside surfaces from exterior cold and heat maintaining energy efficiency.

1900 Series Window Sizing

Nominal Size	Actual Window Dimension
2030	23.5 x 35.5
2040	23.5 x 47.5
2044	23.5 x 51.5
2050	23.5 x 59.5
2060	23.5 x 71.5
2430	27.5 x 35.5
2440	27.5 x 47.5
2444	27.5 x 51.5
2450	27.5 x 59.5
2460	27.5 x 71.5
2830	31.5 x 35.5
2840	31.5 x 47.5
2844	31.5 x 51.5
2850	31.5 x 59.5
2860	31.5 x 71.5
3030	35.5 x 35.5
3040	35.5 x 47.5
3044	35.5 x 51.5
3050	35.5 x 59.5
3060	35.5 x 71.5
3830	43.5 x 35.5
3840	43.5 x 47.5
3844	43.5 x 51.5
3850	43.5 x 59.5
3860	43.5 x 71.5
4030	47.5 x 35.5
4040	47.5 x 47.5
4044	47.5 x 51.5
4050	47.5 x 59.5
4060	47.5 x 71.5

(888) 895-1800 • www.comfortviewproducts.com

27 First Avenue • PO Box 368 • Newnan, GA 30264

Phone (770) 251-4050 • Fax (770) 252-2240

Comfort View Products uses only premium quality vinyl extrusions to produce durable and eye-appealing windows. Permanent finishes eliminate the need for painting. The sash and frame will not

NFRC Energy Star Energy Rating

Series	Glass Type	Low-e Type	OA IG Thickness	U value	SHGC 1/1	SHGC D/L	VT 1/1	VT D/L
900	Clr	N/A	5/8"	0.49	0.62	0.56	0.65	0.58
900	Low-E	Cardinal 270	5/8"	0.35	0.30	0.27	0.55	0.49
900	Low-E / Argon	Cardinal 270	5/8"	0.31	0.30	0.27	0.55	0.49
900	Low-E	Cardinal 366	5/8"	0.35	0.22	0.20	0.51	0.46
900	Low-E / Argon	Cardinal 366	5/8"	0.30	0.22	0.20	0.51	0.46

Series	Glass Type	Low-e Type	OA IG Thickness	U value	SHGC 1/1	SHGC D/L	VT 1/1	VT D/L
901	Clr	N/A	5/8"	0.48	0.66	0.60	0.69	0.62
901	Low-E	Cardinal 270	5/8"	0.33	0.32	0.29	0.59	0.52
901	Low-E / Argon	Cardinal 270	5/8"	0.29	0.31	0.28	0.59	0.52
901	Low-E	Cardinal 366	5/8"	0.33	0.24	0.22	0.54	0.49
901	Low-E / Argon	Cardinal 366	5/8"	0.28	0.23	0.21	0.54	0.49

Series	Glass Type	Low-e Type	OA IG Thickness	U value	SHGC 1/1	SHGC D/L	VT 1/1	VT D/L
920	Clr	N/A	5/8"	0.48	0.62	0.56	0.65	0.58
920	Low-E	Cardinal 270	5/8"	0.35	0.30	0.27	0.55	0.49
920	Low-E / Argon	Cardinal 270	5/8"	0.30	0.29	0.26	0.55	0.49
920	Low-E	Cardinal 366	5/8"	0.34	0.22	0.20	0.51	0.45
920	Low-E / Argon	Cardinal 366	5/8"	0.29	0.22	0.20	0.51	0.45

Series	Glass Type	Low-e Type	OA IG Thickness	U value	SHGC 1/1	SHGC D/L	VT 1/1	VT D/L
1900	Clr	N/A	5/8"	0.49	0.63	0.57	0.65	0.58
1900	Low-E	Cardinal 270	5/8"	0.35	0.30	0.27	0.55	0.49
1900	Low-E / Argon	Cardinal 270	5/8"	0.31	0.30	0.27	0.55	0.49
1900	Low-E	Cardinal 366	5/8"	0.35	0.22	0.20	0.51	0.46
1900	Low-E / Argon	Cardinal 366	5/8"	0.30	0.22	0.20	0.51	0.46

Series	Glass Type	Low-e Type	OA IG Thickness	U value	SHGC 1/1	SHGC D/L	VT 1/1	VT D/L
1901	Clr	N/A	5/8"	0.47	0.66	0.62	0.69	0.62
1901	Low-E	Cardinal 270	5/8"	0.33	0.31	0.28	0.59	0.52
1901	Low-E / Argon	Cardinal 270	5/8"	0.28	0.31	0.28	0.59	0.52
1901	Low-E	Cardinal 366	5/8"	0.32	0.24	0.22	0.54	0.48
1901	Low-E / Argon	Cardinal 366	5/8"	0.28	0.28	0.21	0.54	0.48



Egress Window Formulas

An Egress window must satisfy all four International Residential Code (IRC) Criteria.

- > Minimum width of Opening : 20 inches
- > Minimum height of Opening: 24 inches
- > Minimum Net clear opening: 5.7 sq ft (5.0 sq ft for ground floor)
- > Maximum sill height above floor: 44 inches

Net Opening with Bottom Sash Open

Width

Series

900	Width = Window Dimension - 4.6875
920	Width = Window Dimension ÷ 2 - 3.6875
1900	Width = Window Dimension - 4.8125
5900	Width = Window Dimension - 4.5625
1500 Egress	Width = Window Dimension - 7.375
1500 Std Hd	Width = Window Dimension - 11.750

Height

Series

900	Height = Window Dimension / 2 - 3.00
920	Height = Window Dimension - 4.750
1900	Height = Window Dimension / 2 - 3.000
5900	Height = Window Dimension / 2 - 5.125
1500 Egress	Height = Window Dimension - 5.750
1500 Std Hd	Height = Window Dimension - 5.750

Standard Egress Sizes

Clear Opening (inches)

1900 Series	Width	Height
3050	30 3/4"	26 3/4"
2850	26 3/4"	26 3/4"

Square Foot Area
5.71 sq ft

4.96 sq ft - Does not meet

920 Series	Width	Height
5032	26 1/16"	32 3/4"
5230	27 1/16"	30 3/4"

Square Foot Area
5.92 sq ft
5.78 sq ft

900 Series	Width	Height
3050	30 13/16"	26 3/4"
2850	26 13/16"	26 3/4"

Square Foot Area
5.7 sq ft
4.98 sq ft - Does Not Meet

5900 Series	Width	Height
3054	30 15/16"	26 5/8"
3050	30 15/16"	24 5/8"

Square Foot Area
5.7 sq ft
5.3 sq ft

1500 Eg. HrdW	Width	Height
2440	20 1/8"	41 3/4"
2444	20 1/8"	45 3/4"

Square Foot Area
5.835 sq ft
6.394 sq ft

1500 Std HrdW	Width	Height
3040	23 3/4"	41 3/4"
3050	23 3/4"	53 3/4"

Square Foot Area
6.88 sq ft
8.86 sq ft

Tested Product Information

Series	Window Type	Product Rating	Test Unit Size		Design Pressure psf	Wind Equivalent mph	C.A.R. Number	Test Report Number
			Max Width	Max Height				
1900	Single Hung	H-R30	44"	72"	30,0	110	178 - 119	NCTL-110-11412-1
1900	Single Hung	H-R40	44"	72"	40,0	127	178 - 124	ATI-90639.02-602-44-R3
1900	1900 Single Hung	H-R45	44"	72"	45,0	134	178-121	ATI-90640.02-602-44-R3
1900	HP Single Hung	H-R50	36"	72"	50,0	142	178 - 125	ATI-93310.01-602-44-R3
1900	Twin HP Single Hung	H-R50	89"	72"	50,0	142	178 - 126	ATI-90641.02-602-44-R3
1900	Twin HP SH w/ Stack	H-R50	72"	108"	50,0	142	178-135	AI-03658-A1
1900	Oriel Single Hung	R-PG40	40"	80"	40,0	127	178-137	NCTL-110-14923-1
1950	Replacement SH	Same as 1900 Series Rating given same size & configuration						
1901	Picture Window	FW-R50	48"	72"	50,0	142	178 - 127	ATI-90643.01-602-44-R2
900/950	Single Hung	R-PG30	44"	72"	30,0	110	NI012963-R1	Intertek E5439.02-501-47
900/950	Single Hung	R-PG40	44"	72"	40,0	127	NI012963.01-R1	Intertek E5439.02-501-47
900/950	HP Single Hung	R-PG50	44"	72"	50,0	142	NI012963.02-R3	Intertek E5439.02-501-47
900/950	Twin Mullied Single Hungs	R-PG35	72"	84"	35,0	118	NI013478-R1	Intertek F7692.02-501-47
920/ 952	Horizontal Slider OX or XO	HS-R35	72"	48"	35,0	118	NI012999	F5687.02-501-47/ W-1892
920 / 952	Horizontal Slider OX or XO	HS-R50	72"	48"	50,0	142	NI012999.01R1	Intertek E8068.02-501-47
901/951	Fixed Picture Window	CW-PG60/FW-C60	44"	72"	60,0	155	NI013674	Intertek E8069.02-501-47
901/951	Fixed Picture Window	CW-PG55/FW-C55	48"	72"	55,0	148	NI013674.02	Intertek E8069.02-501-47
901/951	Fixed Picture Window	CW-PG40/FW-C40	72"	72"	40,0	127	NI013674.03	Intertek E8069.02-501-47
5900	Double Hung	H-R25	44"	72"	25,0	100	178 - 116	ATI-81296.02-501-47
5900	Double Hung	H-R30	44"	72"	30,0	110	178 - 117	ATI-81296.02-501-47
5901	Fixed Picture Window	FW-R45	48"	72"	45,0	134	178 - 118	ATI-80859.02-501-47
5950	Replacement DH	Same as 5900 Series Rating given same size & configuration						
1000	Sliding Glass Door XO	R-PG40	72"	80"	40,0	127	178-140	ATI-C6316.03-501-47
1000	Sliding Glass Door XO	R-PG50	72"	80"	50,0	142	178-139	ATI-C6316.03-501-47
1000	Sliding Glass Door XO	SD-R50	72"	96"	40,0	127	178-140	ATI-C6316.03-501-47
1500	Casement	LC-PG35	37"	75"	35,0	118	178-142	ATI-C8900.03-501-47
1500	Casement	LC-PG25	37"	75"	25,0	100	178-143	ATI-C8900.03-501-47
1500	Casement	LC-PG45	37"	75"	45,0	134	178-144	ATI-C8900.03-501-47
1500	Casement	LC-PG50	37"	75"	50,0	142	178-145	ATI-C8900.03-501-47
1500	Casement	R-PG50	24"	60"	50,0	142	178-146	ATI-C8900.03-501-47
1500	Casement	R-PG80	24"	60"	80,0	179	178-147	ATI-C8900.03-501-47

NFRC Energy Star Energy Rating

Series	Glass Type	Low-e Type	OA IG Thickness	U value	SHGC 1/1	SHGC D/L	VT 1/1	VT D/L
5900	Clr	N/A	5/8"	0.47	0.61	0.55	0.64	0.57
5900	Low-E	Cardinal 270	5/8"	0.34	0.29	0.26	0.54	0.48
5900	Low-E / Argon	Cardinal 270	5/8"	0.29	0.29	0.26	0.54	0.48
5900	Low-E	Cardinal 366	5/8"	0.33	0.22	0.20	0.50	0.45
5900	Low-E / Argon	Cardinal 366	5/8"	0.29	0.21	0.19	0.50	0.45

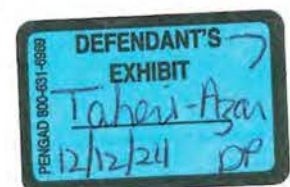
Series	Glass Type	Low-e Type	OA IG Thickness	U value	SHGC 1/1	SHGC D/L	VT 1/1	VT D/L
5901	Clr	N/A	5/8"	0.48	0.68	0.61	0.71	0.64
5901	Low-E	Cardinal 270	5/8"	0.32	0.32	0.29	0.60	0.54
5901	Low-E / Argon	Cardinal 270	5/8"	0.28	0.29	0.32	0.60	0.54
5901	Cardinal 366	Cardinal 366	5/8"	0.32	0.24	0.22	0.56	0.50
5901	Low-E / Argon	Cardinal 366	5/8"	0.27	0.22	0.24	0.56	0.50

Series	Glass Type	Low-e Type	OA IG Thickness	U value	SHGC 1/1	SHGC D/L	VT 1/1	VT D/L
1000	Low-E	Cardinal 270	5/8"	0.33	0.31	0.27	0.58	0.51
1000	Low-E / Argon	Cardinal 270	5/8"	0.29	0.30	0.27	0.58	0.51
1000	Low-E	Cardinal 366	5/8"	0.32	0.23	0.21	0.53	0.47
1000	Low-E / Argon	Cardinal 366	5/8"	0.28	0.23	0.20	0.53	0.47

Series	Glass Type	Low-e Type	OA IG Thickness	U value	SHGC 1/1	SHGC D/L	VT 1/1	VT D/L
1500	Low-E	Cardinal 270	5/8"	0.31	0.26	0.24	0.48	0.44
1500	Low-E / Argon	Cardinal 270	5/8"	0.27	0.26	0.24	0.48	0.44
1500	Low-E	Cardinal 366	5/8"	0.31	0.20	0.18	0.45	0.41
1500	Low-E / Argon	Cardinal 366	5/8"	0.27	0.19	0.18	0.45	0.41

Series	Glass Type	Low-e Type	OA IG Thickness	U value	SHGC 1/1	SHGC D/L	VT 1/1	VT D/L
1600	Low-E	Cardinal 270	5/8"	0.31	0.26	0.24	0.45	0.44
1600	Low-E / Argon	Cardinal 270	5/8"	0.28	0.26	0.24	0.48	0.44
1600	Low-E	Cardinal 366	5/8"	0.31	0.20	0.18	0.45	0.41
1600	Low-E / Argon	Cardinal 366	5/8"	0.27	0.19	0.18	0.45	0.41

Date	Name	Status	Inspector	Comment
2/22/2024	Courtesy	Not Approved	Jimmy McConnell	Met with and Contractor and neighbors to discuss new home being built. 0.00 Fee Charged
1/26/2024	Insulation	Approved	Jimmy McConnell	Recheck plumbing in crawlspace later
1/24/2024	Framing All Roughs	Approved	Jimmy McConnell	Will recheck pressure on water at insulation inspection, and move smoke detector away from return.
1/23/2024	Exterior Sheathing	Approved	Jimmy McConnell	
1/23/2024	House Wrap	Approved	Jimmy McConnell	
1/19/2024	Water/Sewer	Approved	Jimmy McConnell	
1/17/2024	Water/Sewer	Not Approved	Jimmy McConnell	Frozen solid, water at end of ditch, Need to Drain and try again in warmer weather. 25.00 Fee Charged
12/13/2023	Open Floor	Approved	Jimmy McConnell	
11/10/2023	Footing	Approved	Jimmy McConnell	
11/9/2023	Footing	Not Approved	Jimmy McConnell	Soft soil 25.00 Fee Charged
11/7/2023	Pre-Footing Grading	Approved	Clay Daniels	



Meet to discuss the project on site Trash

Nugent, Mike <Mike.Nugent@cityofrockhill.com>
to Jimmy, me, annemarie@goettfert.com, tim@goettfert.com

Wed, Feb 21, 11:59 AM

This message has been deleted. [Restore message](#)

Feb

22
Thu

Meet to discuss the project on site

[View on Google Calendar](#)

When Thu Feb 22, 2024 6pm – 6:30pm (UTC)
Where 2124 Windemere Rd (2124 Windemere Rd, Rock Hill, South Carolina 29732)
Who annemarie@goettfert.com, McConnell, Jimmy, tim@goettfert.com, Nugent, Mike*

[More options](#)

Agenda

Thu Feb 22, 2024

No earlier events

6pm Meet to discuss the project on site

No later events

ELECTRONICALLY FILED - 2025 Jan 24 1:10 PM - YORK - COMMON PLEAS - CASE#2024CP4601354

20231548
2124 Windemere Rd.
2124 Windemere Rd. Rock Hill, SC 29732
1,600 sqft new detached single family home
Change Order - House Flipped Due to Site Conditions

Plan Review Comments

Inspection - PAC - William Ashley - william.ashley@cityofrockhill.com -
803-329-5587

Approved

Review Comments:

Permit Technicians - Lyla Johnson - lyla.johnson@cityofrockhill.com -
803-329-5588

Not Approved

Review Comments:

Please verify what the additional cost is associated with this change order.

Zoning - Ryan Hammond - ryan.hammond@cityofrockhill.com - 803-329-5674

Not Approved

Review Comments:

At this time staff has been advised there is an active HOA/ARC board for this neighborhood, provide signed HOA approval or confirmation that the board is inactive.

Infrastructure - Stormwater - Kenny Lombard - kenny.lombard@cityofrockhill.com
- 803-329-7083

Not Approved

Review Comments:

1. The revised house location will likely interfere with the existing thru drainage on this parcel. A grading plan must be provided to show exactly how and where this water will be directed. While the current site plan does show the location of several bypass swales, it is unclear if these are feasible or adequate to convey this drainage.

2. City Staff strongly recommend coordinating a field visit to assess the current drainage patterns and to determine the best path forward for handling the thru drainage.

Please contact Kenny Lombard to setup this site visit. I may be reached at either:
803-329-7083
kenny.lombard@cityofrockhill.com

ELECTRONICALLY FILED - 2025 Jan 24 1:10 PM - YORK - COMMON PLEAS - CASE#2024CP4601354

To:

Mr. Latif Azar, Builder

Mr. Ryan Hammond City Planner, Rock Hill, SC

Mr. Justin Marlowe, HOA President Poplar Forest

This is to inform you that the HOA, after internal and external deliberations have approved the building plan to the city as shown on Pre-Drawn Plan ID 1599. This specifically refers to the architectural side of our concerns and does not address our concerns with the drainage flow to the north of the property, which will have to be discussed with the appropriate department at the city asap. We are awaiting to hear from the city when we can have a meeting and with whom.

With regards to the approval of the HOA for the build, per Pre-Drawn Plan ID 1599, we would like to point out that we insist on the detailed performance features as shown.

Specifically:

1. Use the same brick type and color as already used on this build to finish the wall between the garage and the house, as shown.
2. Use the same brick type and color as already used on this build to finish the columns around the entrance and use timber for columns above, as shown.
3. Install a finishing ledge above the brick work as shown.
4. Frame the windows as shown.
5. Install a garage door as shown.
6. Install an entrance door as shown.
7. Modify the entrance with timber support as shown.

Especially the entrance as a whole, is currently not proportioned correctly and looks completely different as shown in the plan. It is the little changes in appearance that make a big difference.

The HOA would like to note that any threats, or defamation, to any of its members may lead legal action.

We welcome a speedy settlement to facilitate a quick finish of the build and await to hear back from the city, regarding their findings on the proposed plan changes.

We want to thank the city to take good care of their constituency.

Sincerely, Tim Haake, HOA Architectural Committee Chair.

394 Grady Drive, Rock Hill, SC 29730

tim20x@yahoo.com

3/5/2024

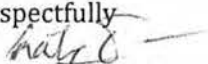
Request for C.O. / As built floor plan
 Project # 20231548
 2124 Windemere Rd.
 2124 Windemere Rd. Rock Hill, SC 29732

Subject: Response to Review Comments

Regarding Permit Technician – Ms. Lyla Johnson’s Review Comments “please verify what additional cost is associated with this change”,
 This is to verify that there is no additional cost for this change

Regarding Zoning – Mr. Ryan Hammond’s Comments “AT this time staff has been advised there is an active HOA/ARC board for this neighborhood, provide signed HOA approval or confirmation that the board is inactive.”
 This is to verify that there is no legitimate legally recorded HOA for Poplar Forest Neighborhood / Subdivision
 Attached you will find a copy of Chapter 30 Home Owners Association Article 1 South Carolina Home Owners Association, Act
 There is absolutely no Recorded HAO that is in compliance with the directives of above referenced Act including but not limited to Declaration, “Home Owners association or association means an entity developed to manage and maintain a planned community” there is no such recorded HOA entity as Poplar Forest Neighborhood association.
 Enforceability of Governing Documents that clearly states “in order to be enforceable a home owners association’s governing documents MUST be recorded in the clerk of courts, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located.”
 Considering the above I strongly dispute the existence of any legally active HOA and expect City of Rock Hill Building department to disregard any none compliant claim of HOA and proceed with reviewing my change order

Regarding Infrastructure – Stormwater – Mr. Kenny Lombard’s Comments
 The permit approved site plan, grading and drainage did not change due to flipping the house and per attached copy of Inspection sequence as directed the AS BUIT Pre-Footing Grading was inspected and Approved on 11/7/2023 and footing inspection performed on 11/9/2023 and approved on 11/10/2023 inspection.
 As discussed at job site meeting a temporary treated lumber retaining wall (22” on higher end and 4” on lower end) has been installed as a precautionary measure to further protect the silt fence in case of flooding along side the neighbor’s drive way during the earlier newly graded site and heavy rain period, and will be removed in landscaping / planting stage prior to request for Occupancy permit.

Respectfully

 Latif Taheri-Azar

20231548
2124 Windemere Rd.
2124 Windemere Rd. Rock Hill, SC 29732
1,600 sqft new detached single family home
Change Order - House Flipped Due to Site Conditions

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803-329-5587

Approved

Review Comments:

Permit Technicians - Lyla Johnson - lyla.johnson@cityofrockhill.com -
803-329-5588

Approved

Review Comments:

Zoning - Ryan Hammond - ryan.hammond@cityofrockhill.com - 803-329-5674

Not Approved

Review Comments:

Zoning review paused pending determination of HOA requirements.

Infrastructure - Stormwater - Kenny Lombard - kenny.lombard@cityofrockhill.com
- 803-329-7083

Conditional

Review Comments:

1. All swales shall be installed and functional prior to issuance of a C.O. Please contact the City Inspector, 803-487-5365, for final stormwater inspections.
- Please also contact the City Inspector prior to any grading activities.
 - No grading shall be allowed on neighboring properties without that property owner's explicit written permission.

2124 Windemere Ryan Hommand



Hammond, Ryan <Ryan.Hammond@cityofrockhill.com>

to me

Tue, Mar 12, 12:53 PM



Mr. Azar,

Can you provide the title insurance for this lot?

Ryan Hammond
Planner I
Planning and Development
City of Rock Hill
P.O. Box 11706
150 Johnston Street (29730)
Rock Hill, South Carolina 29731-1706
o: 803-329-5674

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3/12/24, 2:44 PM

2124 Windemere - latif.t.azar@gmail.com - Gmail

Latif Azar <latif.t.azar@gmail.com>
to Ryan

1:27 PM (1 hour ago)

Mr. Hammond

Attached please find copies of Title insurance documents for subject lot.

Respectfully,

Latif Taheri-Azar
Phone: 704-615-2411

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COMMONWEALTH LAND TITLE INSURANCE COMPANY

File Number: 23-146 TAHERI AZAR

Policy Number: 814514040-230402912

SCHEDULE B EXCEPTIONS FROM COVERAGE

In addition to the Exclusions, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Rights of parties in possession of the Land.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Any lien, or right to a lien, for labor, services, or material heretofore or hereafter furnished.
4. Taxes for the year 2023 and subsequent years, a lien not yet due and payable.
5. Mortgage from LATIF TAHERIAZAR to , dated June 14, 2023, filed for record on June 14, 2023, in the principal sum of \$.
4. Restrictions and easements of record.
5. Taxes and assessments for the year 2023 and subsequent years, which are a lien, but are not yet due and payable.
6. All matters shown on plat recorded in Plat Book 161, Page 134, York County, South Carolina Records, including but not limited to the following:
 - a. Right of Way for Windermere Road and 75' wide undisturbed area (Millwood Plantation Dev., Inc.) to the right of the lot.
7. The matters contained in the document shown below which, among other things, may contain or provide for: easements, liens for liquidated damages, private charges or assessments, option to purchase, right of first refusal, or the prior approval of a future purchaser or occupant, and covenants, conditions, and restrictions, but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document.

Entitled: Restrictive Covenants for Poplar Forest Subdivision
 Recording Date: 04/30/1966
 Recording No: Book 350, Page 190 in the Office of the Register of Deeds for York County, South Carolina.
8. Assessments and maintenance charges as set forth in the above Restrictions. No liability is assumed for payment of said charges.
9. General Permit to Rock Hill Telephone Company recorded in Deed Book 454, Page 18 in the Office of the Register of Deeds for York County, South Carolina.
10. No insurance is afforded as to the exact amount of acreage contained in the Land.

The exception(s) in Schedule B omit(s) any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.



Hammond, Ryan

11:14 AM (12 minutes ago)

to me, Tim, Justin

After consulting with the Planning and Development Director, we will have the City's attorney determine our approach regarding this HOA issue. The plan review will remain paused until I have a determination, I will reach out to both parties as soon as I hear back. I don't have a timeframe, will keep you all updated as soon as I get it.

Ryan Hammond
Planner I
Planning and Development
City of Rock Hill
P.O. Box 11706
150 Johnston Street (29730)
Rock Hill, South Carolina 29731-1706
o: 803-329-5674

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6

**Hammond, Ryan**

10:29 AM (7 hours ago)

to Tim, me, Justin

The attorney should be providing a message soon, but essentially, this will be a civil matter between the HOA and the builder. We will continue our review of the change order.

Ryan Hammond
Planner I
Planning & Development
City of Rock Hill
P.O. Box 11706
155 Johnston Street (29730)
Rock Hill, South Carolina 29731-1706
o: 803-329-5674

20231548
2124 Windemere Rd.
2124 Windemere Rd. Rock Hill, SC 29732
1,600 sqft new detached single family home
Change Order - House Flipped Due to Site Conditions

Plan Review Comments

Inspection - PAC - William Ashley - william.ashley@cityofrockhill.com -
803-329-5587

Approved

Review Comments:

Permit Technicians - Lyla Johnson - lyla.johnson@cityofrockhill.com -
803-329-5588

Approved

Review Comments:

Zoning - Ryan Hammond - ryan.hammond@cityofrockhill.com - 803-329-5674

Approved

Review Comments:

Infrastructure - Stormwater - Kenny Lombard - kenny.lombard@cityofrockhill.com
- 803-329-7083

Conditional

Review Comments:

1. All swales shall be installed and functional prior to issuance of a C.O. Please contact the City Inspector, 803-487-5365, for final stormwater inspections.
- Please also contact the City Inspector prior to any grading activities.
 - No grading shall be allowed on neighboring properties without that property owner's explicit written permission.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
Latif Taheri-Azar,	)	
	)	
Plaintiff,	)	DEFENDANT JUSTIN MARLOW'S MOTION
	)	FOR SUMMARY JUDGMENT
Vs.	)	C.A. No.: 2024-CP46-01354
	)	
Tim Haake and Justin Marlow,	)	
	)	
Defendant.	)	
_____	)	

Defendant Marlow moves for summary judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Defendant Marlow joins in Defendant Haake's motion and the basis set forth in his motion as well as memorandum. The facts, and the argument, set forth by the Co-Defendant apply to this Defendant as well, and there is no need to retype and or restate the facts.

Judgment should be granted, as the Plaintiff fails to satisfy the elements of a cause of action for defamation. This Defendant never made any false or defamatory statement about the Plaintiff. Plaintiff has no evidence because none exists of any representations being made to any third parties. The only basis for the defamation is the letter which was sent to the City of Rock Hill. The letter was never disseminated to anyone outside or was sent to the City of Rock Hill. The letter was never disseminated to any third parties. The Plaintiff's deposition and his own testimony establishes that there was no defamation in this situation.

As it relates to the declaratory judgment action, this issue is moot. The Plaintiff no longer owns any property in the subdivision. The Defendants do own property within the subdivision. The Plaintiff lacks standing to ask the court for any decision as it relates to the restrictive covenants.

For the above reasons, and the reason set forth in the Co-Defendant's Motion for Summary Judgment and Memorandum, this Defendant moves for summary judgment and for this action to be dismissed with costs to the Plaintiff.

January 28, 2025

/s/ Daniel D. D'Agostino
S.C. Bar No.: 65088
D'AGOSTINO/DAVIS LAW GROUP
25 West Liberty Street
York, South Carolina 29745
dan@ddllplaw.com
Office: 803-628-6509
Fax: 803-628-7990
Attorney for Defendant Justin Marlow

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

CASE NO: 2024-CP-46-01354

Latif Taheri-Azar,

Plaintiff,

v.

Tim Haake and Justin Marlow,

Defendant.

**MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION AND
MEMORANDUM FOR SUMMARY
JUDGMENT**

**TO: STEVE DLUZNESKI, ATTORNEY FOR DEFENDANT TIM HAAKE,
AND DAN D'AGOSTINO, ATTORNEY FOR DEFENDANT JUSTIN
MARLOWE**

INTRODUCTION

Plaintiff Latif Taheri-Azar [hereinafter referred to as "Plaintiff"] hereby submits a Memorandum in Opposition to Defendants' Motion for Summary Judgment. This action arose from Defendants' defamatory actions towards Plaintiff in connection with the construction of a residence in Poplar Forest subdivision within the City of Rock Hill, South Carolina. Defendants made false and defamatory statements to other property owners within the subdivision and the City of Rock Hill, which were not privileged and were injurious to Plaintiff. Defendants' Memorandum in Support of Summary Judgment misleadingly contradicts the record and the e-mail upon which Defendants mostly rely and explicitly refers to additional previous communications Defendants had with the City of Rock Hill. Defendants can neither show that there is no genuine issue as to any material fact nor that Defendants are entitled to judgment as a matter of law.

FACTS

1. Plaintiff was the owner of real property located at 2124 Windemere Road in Rock Hill, York County, South Carolina, which is situated within the Poplar Forest subdivision [hereinafter referred to as the “Property”]. Judge Dan Hall dismissed Plaintiff’s claim for tortious interference with prospective contractual relations on June 25, 2024. This Memorandum refers to various portions of the written transcript of Plaintiff’s deposition and other related documents. Plaintiff’s deposition transcript and other related documents are either attached hereto as exhibits or are already in the record of this case.
2. Plaintiff has considerable experience in construction, in addition to myriad other credentials and experience. Plaintiff is 78 years old, originally from Iran, moved to the United States in 1985, and English is not his first language. (See Deposition of Plaintiff taken on December 12, 2024 and filed January 24, 2025, pp. 8-23.)
3. Plaintiff has a general contractor’s license in the states of South Carolina and North Carolina. (See Deposition of Plaintiff taken on December 12, 2024 and filed January 24, 2025, p. 14, lns. 4-8.)
4. Defendants are property owners within the Poplar Forest subdivision.
5. On or about April 30, 1966, a set of Restrictive Covenants for the Poplar Forest Subdivision were recorded in the Office of the Clerk of Court for York County, South Carolina. The Plaintiff had researched these covenants prior to beginning construction and complied with them.
6. Paragraph 6-7a of the Restrictive Covenants for the Poplar Forest Subdivision states the following:

6. The ground area of the main structure, exclusive of one-story open porches and garages, shall be not less than 1800 square feet in the case of a one story structure, and in the case of one and one-half or two or two and one half story structures, the total square footage shall not be less than 2500.

7. An easement is reserved over the rear ten feet of each lot for utility installment and maintenance.

a. Lot owners shall submit to an Architectural Committee comprising the Board of Directors of Poplar Forest Corp. construction plans and specifications including location of house on lot; and no structure shall be erected or altered until said plans have been approved in writing by said Committee. Such approval shall not be unreasonably withheld.

(See attached "Certificate of No Record" for Poplar Forest Corp. from the Secretary of State of South Carolina.)

7. Plaintiff submitted plans for the new home that he intended to build at the Property to the City of Rock Hill, and those plans were ultimately approved.
8. Plaintiff began building a new home at the Property after the City of Rock Hill approved Plaintiff's submitted plans.
9. During the construction, Plaintiff received a threatening communication from Defendant Haake:

3 A I get a text from the gentleman that, one, the

4 vinyl siding is against the regulation of HOA.

5 "Neighbors are angry. They are armed and they're

6 coming at you." I responded that I'm in

7 compliance, and I do not anticipate neighbors to do

8 anything illegal. Like false HOA or something.

9 Because I have continuously -- in writing, in

10 texts, in everywhere -- I have notified that there

11 is no active HOA. That -- I have investigated.

12 Q So who told you that neighbors were armed and that

13 they were coming after you?

14 A Mr. Haake. Text.

15 Q It was in a text message that he sent to you?

16 A It was in a text message.

(See Deposition of Plaintiff on December 12, 2024 and filed January 24, 2025, pg. 28, lns. 3-16).

10. Plaintiff later had an interaction with another resident in which the same threatening wording was used. (See Deposition of Plaintiff taken on December 12, 2024 and filed January 24, 2025, p. 29, lns. 3-5).

3 that's probably off the record. And "neighbors are

4 angry; they're coming at you." She repeated the

5 same wording.

11. In addition to the inflammatory and threatening statements to Plaintiff himself, Defendants' communications with the City of Rock Hill, falsely representing an HOA, deterred the City of Rock Hill from associating or dealing with Plaintiff or, in other words, maligned his experience, knowledge, and work product in his occupation, leading to a stop work order, thus halting his construction. (See Deposition of Plaintiff taken on December 12, 2024 and filed January 24, 2025, p. 31, ln. 20 - p. 32, ln. 6).

20 Q Was what Tim said in those emails another instance

21 of what you believe was defamation?

22 A Definitely.

23 Q Okay. And how -- why? Why do you believe that?

24 A The reason was -- it was discrediting me and my

25 work to a third party.

1 Q Okay.

2 A The City and neighbors. They have letters -- a

3 letter to neighbors, the whole neighborhood,

4 defaming my work, my character, that this guy is

5 self-judging. Well, I have the record of all these

6 actions. I go by the rules.

12. It was evident and Plaintiff became aware that the Defendants were defaming him to the neighborhood prior to the issuance of the stop work order. (See Deposition of Plaintiff taken on December 12, 2024 and filed January 24, 2025, p. 29, lns. 15-21).

15 But neighbors reacted to it. Every neighbor

16 who came, saw. Because there was something going

17 on. Maybe -- that's my best guess. That's why

18 these neighbors are coming. And so there was

19 reaction of neighbors coming and, you know,

20 looking. They wanted to verify this and that.

21 Which was unusual to me.

13. On Thursday, February 22, 2024 at 4:59 p.m., Mike Nugent, City of Rock Hill building official, sent an e-mail communication with the subject, "Meet to discuss

the project on site,” to neighbors Annemarie Haake and Defendant Tim Haake, copying Jimmy McConnell, of City of Rock Hill building inspections, which stated the following:

- a. “Great to meet you today! The building living space is 1,683 Sq. ft. not including the porches and garage. We’ll keep you posted¹.”

14. Effective February 22, 2024, the City of Rock Hill issued a stop work order for the Plaintiff’s construction of the new home at the Property subsequent to the City meeting with Defendant(s)/neighbors:

“<https://rhbuild.cityofrockhill.biz/evolvepublic/>

Date: 2/22/2024

Name: Courtesy

Status: Not Approved

Inspector: Jimmy McConnell

Comment: “Met with [sic] Contractor and neighbors[sic] to discuss new home being built. 0.00 Fee Charged” (See document Defendant filed January 24, 2025 at 1:10pm.)

15. Ryan Hammond of City of Rock Hill Zoning, placed a notice in the permit file stating: “Zoning review paused pending determination of HOA requirements.” Thereafter, on March 12, 2024 at 11:14 a.m., Plaintiff received an email from the City from Ryan Hammond clearly reiterating that the stop work order was because of Defendant(s). The e-mail stated:

¹ The “ground area of the main structure exclusive of one-story open porches and garages” is 1,813 sq. ft.

a. "After consulting with the Planning Development Director, we will have the City's attorney determine our approach regarding the HOA issue. The plan review will remain paused until I have a determination, I will reach out to both parties as soon as I hear back. I don't have a timeframe, will keep you all updated as soon as I get it."

b. Plaintiff's deposition references this e-mail communication which is evidence that Defendants were the cause of the stop work order and associated damages to Plaintiff caused therefrom.

11 A I have his email. Ryan. He's in zoning. He

12 explicitly emailed me that. "We're not reviewing

13 your change order" and –

14 Q What is his full name?

15 A Ryan -- I have one of his emails. Ryan Hammond.

16 Q Ryan Hammond is the one that according to you at

17 the City who told you, you can't continue work

18 because of the HOA?

19 A Here it is. "Review: At this time the staff has

20 advised there is an active HOA for this

21 neighborhood. Provide signed HOA approval or

22 confirmation that the board is inactive." That was

23 his first email. So I continued. "Hey, there is

24 no HOA."

16. On February 28, 2024, Defendant Justin Marlow [hereinafter referred to as “Marlow”] sent an e-mail to Mike Nugent at the City of Rock Hill. The e-mail, entered into evidence as Defendants’ Exhibit 5 to Plaintiff’s Deposition dated December 12, 2024, with the therein referenced letter attached specifically stating, “[y]ou have previously been in contact with Mr. Tim Haake, and together we have put together a letter and supporting documents to express the concerns of Mr. Haake and the Poplar Forest HOA with respect to the construction underway at 2124 Windemere Rd....” (Defendants’ attachment to Memorandum in Support to Defendants’ Motion for Summary Judgment filed January 24, 2025).
17. Contrary to Defendants’ unprivileged communications with the City of Rock Hill, Plaintiff was in compliance with the Covenants Codes and Restrictions as he met the square footage requirement.

7 Q Okay. And the restrictive covenants indicate that

8 it is a minimum 1,800 square foot requirement

9 excluding –

10 A Open.

11 Q -- the porches and garage?

12 A Open porches.

13 Q Okay.

14 A This is a closed porch. So that adds to -- that's

15 why they issued me the occupancy permit. So

16 that's -- I am in compliance with the covenant and

17 the City.

18 Q So you're saying even in light of this email from

19 Mike Nugent that the City of Rock Hill never

20 determined that the house you were building –

21 A No.

22 Q -- was less than 1,800 square feet?

23 A They were never determined that it is less than the

24 covenant requirement.

(See Deposition of Plaintiff taken on December 12, 2024 and filed January

24, 2025, p. 63, lns. 7-24.)

18. Counsel for the City of Rock Hill finally informed Defendants that this was a civil matter.

8 According to the response, he finally -- he finally

9 got from the City attorney. That this is a civil

10 case.

(See Deposition of Plaintiff taken on December 12, 2024 and filed January 24,

2025, p. 41, lns. 8-10).

19. Plaintiff suffered damages, economic loss, capable of being assessed and calculated due to Defendants' defamatory statements to the City of Rock Hill.

20 Q Where does that 50,000 -- tell me how you calculate

21 that?

22 A It was 45 days exactly from the time this guy

23 put -- I mean, the City put my project on hold

24 until they started working on it and released the

25 hold. Right? For that 45 days, a full-time
1 superintendent and project manager -- the domino
2 effect of later on losing the subs, rescheduling
3 them. Because they don't only work for me.
4 There's a sub for the plumbing. They have their
5 own schedule.
6 So all these extensions of time and not being
7 able to schedule the material and time they
8 imposed -- over \$50,000. Probably, maybe 80-,
9 \$90,000. So I'm consenting to \$50,000.
10 Q How much per day do you believe you were damaged as
11 a result of the defendants' alleged activities?
12 A This is my job. This is how I get paid. This is
13 my only business.
(See Deposition of Plaintiff on December 12, 2024 and filed January 24,
2025, p. 69, ln. 20 - p. 70, ln. 13.)

20. Plaintiff was acting as general contractor and suffered damages in terms of cost of material and labor as he was utilizing several subcontractors. (See Deposition of Plaintiff taken on December 12, 2024 and filed January 24, 2025.)

STANDARD OF REVIEW

A Motion for Summary Judgment should be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

entitled to a judgment as a matter of law.” Rule 56(c) S.C. R. Civ. P. When considering a Motion for Summary Judgment, the Court must view the facts in a light most favorable to the non-moving party. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)(citing *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)).

I. DEFENDANTS’ STATEMENTS TO THE CITY OF ROCKHILL
DEFAMED PLAINTIFF IN THAT THEY WERE FALSE, MADE WITH
ILL WILL WITH THE INTENT TO HARM PLAINTIFF, AND WERE
INJURIOUS TO PLAINTIFF

To recover for defamation, the plaintiff must establish, by a preponderance of the evidence, that there was:

- (1) A false and defamatory statement by the defendant concerning the plaintiff;
- (2) an unprivileged publication by the defendant to a third party;
- (3) fault on the defendant’s part in publishing the statement; and
- (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication.

A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him....”

Ralph King Anderson, Jr., South Carolina Requests to Charge-Civil, 2009, SC Jurisprudence §14-6, pg. 134.²

In determining the defamatory character of language, the meaning of which is clear or otherwise determined, the business, or profession, or calling of the parties is an important factor. *Id.*

² “A defamatory communication is presumed to be false under the common law. The plaintiff does not have the burden of proving falsity. However, truth can be asserted as an affirmative defense, the burden of which is on the defendant.” Ralph King Anderson, Jr., South Carolina Requests to Charge-Civil, 2009, §14-6, pg. 134

The second major element of defamation that a plaintiff must prove is an unprivileged publication by defendant to a third party. The publication of defamatory matter is its communication, intentionally or by a negligent act, to a third party-someone other than the person defamed...To meet the requirement of “publication” for purposes of a defamation action, the third person to whom the defamation is communicated must know the defamatory statement was referring to the plaintiff...The third element of defamation is fault on the part of the publisher...

Id. at 135.

[I]f it is necessary to refer to facts or circumstances beyond the language itself in order to make the defamatory meaning of the statement clear, it is defamatory per quod...In cases involving defamation per quod, the plaintiff must introduce facts extrinsic to the statement itself in order to prove a defamatory meaning...

Id. at §14-7, pg. 136-137.

Defamation need not be accomplished in a direct manner. An insinuation may be defamatory. A mere insinuation is as actionable as a positive assertion if it is false and malicious and its meaning is plain. (citations omitted).

Id. at §14-8, pg. 137.

Defendants published defamatory statements regarding the Plaintiff in a letter to the City of Rock Hill and to the other residents of the subdivision of the subject property. The letter claimed that Defendants were representatives of the HOA and Plaintiff's construction of the new residence in the subdivision was in violation of the HOA's Covenants, Codes, and Restrictions. The defamatory statements were about Plaintiff and his construction of the new residence in the subdivision. The Plaintiff had done his due diligence and was not in violation of the recorded Covenants, Codes, and Restrictions. The Defendants were not members of an architectural review board for an HOA. The Defendants were not representatives of any HOA within the subdivision. The Defendants' statements were not privileged as they were not representatives of any HOA

and were not acting within any legal representative capacity for the HOA. The statements sent in their communications with the City of Rock Hill were made knowingly, intentionally, and willingly and thus the Defendants are at fault for false communications to the City of Rock Hill and to the other residents of the subdivision.

Furthermore, Defendants' defamatory statements pertaining to the Plaintiff, which they made to the City of Rock Hill caused harm to Plaintiff. Plaintiff was forced to delay and halt construction on the subject property for forty-five (45) days. The Defendants' statements caused a halt in the construction and consequential delays and rescheduling of subcontractors for the construction of the residence, thus constituting damages of approximately fifty-thousand dollars (\$50,000.00). See *Armstrong v. Shirvell*, No. 13-2368, pg. 21 (6th Cir. 2015) citing *Mich. Microtech, Inc. v. Federated Publ'ns, Inc.*, 466 N.W.2d 717, 722 (Mich. Ct. App. 1991) ("Special damages, a part of actual damages, are losses having economic or pecuniary value.") Therefore, the statements were injurious to Plaintiff's work and income.

II. DEFENDANTS' STATEMENTS TO THE CITY OF ROCK HILL WERE NOT PRIVILEGED

Defendants' statements to the City of Rock Hill pertaining to Plaintiff's construction of a residence on the subject property and alleged non-compliance with the recorded Covenants, Codes, and Restrictions were false, were not privileged, and were made with actual malice with a knowing intent to harm the Plaintiff.

"Where the defamation is made in good faith and with proper motives, a defendant may claim a qualified or conditional privilege... However, the qualified privilege exists only when the publication has occurred in a proper manner and to proper parties only."

Ralph King Anderson, Jr., South Carolina Requests to Charge-Civil, 2009, §14-16, pg. 146.

To recover for defamation, a private-figure plaintiff must prove the actions of the defendant were negligent. See *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998) (Toal, J. concurring) (noting the South Carolina Supreme Court has not explicitly addressed the question as to the standard of liability for a publisher of defamatory material relating to a private-figure plaintiff to prove negligence to recover for defamation and agreeing this is the appropriate standard of liability to be met by private figures). See also *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 347, 94 S. Ct. 2997, 3010, 41 L.Ed.2d 789, 809 (1974) (holding that “so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual.”); *Turf Lawnmower Repair, Inc. v. Bergen Record Corp.*, 655 A.2d 417, 423-24 n.1 (N.J. 1995) (citing 42 jurisdictions where negligence is the standard for private plaintiffs); 50 Am. Jur. 2d Libel and Slander §101 (1995) (most jurisdictions require private-figure plaintiff to prove negligence to recover for defamation).

Ralph King Anderson, Jr., South Carolina Requests to Charge-Civil, 2009, §14-11, pg. 140-141.

“Common law actual malice means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, meaning with conscious indifference toward the plaintiff’s rights. In other words, actual malice means the defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff, or that the statements were published with such recklessness as to show a conscious indifference toward the plaintiff’s rights.”

Ralph King Anderson, Jr., South Carolina Requests to Charge-Civil, 2009, § 14-12, pg. 141 and see *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998); *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987)

Additionally, “[t]o prove actual malice, the plaintiff must show that the defendant was actually by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff, or that the statements were published with such recklessness as to show a

conscious disregard for the plaintiff's rights." Ralph King Anderson, Jr., South Carolina Requests to Charge-Civil, 2009, §14-16, p. 147.

In the present case, the Defendants in communicating with the City of Rock Hill and neighbors within the subdivision, claimed to be members of an Architectural Committee of a Homeowners Association of the neighborhood. Defendant Justin Marlowe represented himself as president of an HOA and Defendant Tim Haake represented himself as Architectural Committee Chair. The only Restrictive Covenants for the Poplar Forest Subdivision were recorded April 30, 1966. Neither of these Defendants are listed in these original covenants and Poplar Forest Corp. does not even exist. (See attached "Certificate of No Record" for Poplar Forest Corp. from the Secretary of State of South Carolina.)

The South Carolina Homeowners Association Act provides as follows:

S.C. Code of Laws § 27-30-130 Enforceability of governing documents; recording requirements; rules, regulations, and amendments.

(A)(1) Except as otherwise provided in this section, in order to be enforceable, a homeowners association's governing documents must be recorded in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located.

(2) To continue to be enforceable, any governing document not recorded prior to the effective date of this section must be recorded by January tenth of the year following the effective date of this section in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located.

(B)(1) Rules, regulations, and amendments to rules and regulations:

(a) are effective upon passage or adoption; and

(b) must be made accessible to a homeowners association member upon the request of that member of the homeowners association, and, at the option of the homeowners association, via electronic mail or through methods provided by the homeowners association's bylaws that ensure

actual notice, unless they are:

(i) posted in a conspicuous place in a common area in the community; or

(ii) available on an Internet website maintained by the homeowners association, where they may be downloaded by the homeowner.

(2) In order to remain enforceable, a homeowners association's rules, regulations, and amendments to rules and regulations must be recorded in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county in which the property is located by January tenth of each year following their adoption or amendment.

(C) Homeowners associations in existence on the effective date of this section must record the documents required by subsections (A)(1) and (B)(2) by January tenth following the effective date of this section.

(D) The recording of the rules, regulations, bylaws, and amendments to rules and regulations are not subject to the requirements of witnesses and acknowledgements required under Section 30-5-30.

HISTORY: 2018 Act No. 245 (H.3886), Section 1, eff May 17, 2018.

In this case, the only restrictive covenants for the Poplar Forest Subdivision were recorded April 30, 1966 with the Register of Deeds for the County of York. Plaintiff neither contends the validity of these restrictive covenants nor that they have been automatically extended for a period of ten (10) years successively as stated in paragraph 9 of the recorded documents. Paragraph 7a. of the recorded covenants provides, "Lot owners shall submit to an Architectural Committee comprising the Board of Directors of Poplar Forest Corp. construction plans and specifications including location of house on lot..." However, as there is no Poplar Forest Corporation in existence, there can be no board of directors and thus duly authorized agent. Furthermore, no further governing documents have been recorded with the Register of Deeds as required by S.C. Code §27-30-103(B)(2).

In Defendants' Memorandum in Support of Defendant Tim Haake's Motion for Summary Judgment, Defendants do not even address that they falsely claimed to be President and Chair of an Architectural Committee but instead merely argue that they were authorized agents of the HOA because they are property owners within the subdivision and the recorded documents provide that:

[i]f the parties hereto, or any of them, or their heirs and assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said developments or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from so doing or to recover damages or other dues for such violation.

The common and mistaken reading of this provision is that the Defendants, as homeowners, may bring suit against another homeowner for violation of the covenants. However, there is nothing in these covenants that permits homeowners within the subdivision to fraudulently represent themselves as the HOA's President and Chair of a nonexistent Architectural Committee in order to communicate with the City of Rock Hill to halt another property owner's construction under false pretenses. The Defendants effectively usurped a nonexistent authority by defrauding the City as to their actual authority and falsely claimed Plaintiff's noncompliance with the recorded covenants, thus resulting in deterring the City from dealing with Plaintiff as shown by the stop work order.

Defendants' defamatory statements cannot be said to have been privileged. The Defendants falsely claimed to be representatives of an HOA, made false statements that Plaintiff was not following the recorded Covenants, Codes, and Restrictions, with the knowledge and intent that their statements, if made by a representative of an HOA as they

falsely claimed to be, would cause harm to the Plaintiff by causing the City of Rock Hill to halt Plaintiff's construction of the subject property. Falsely representing oneself as a representative of the HOA and making false statements about Plaintiff's work cannot be said to have been made in good faith, with proper motives, nor in a proper manner.

Not only can the statements not be found to be privileged, but the fact that the Defendants made the statements while knowingly falsely representing an HOA shows that the Defendants acted with actual malice as they acted recklessly and wantonly with ill will toward the Plaintiff, knowing that falsely representing the HOA to the City of Rock Hill would cause injury to the Plaintiff. See *Armstrong v. Shirvell*, No. 13-2368 (6th Cir. Feb. 02, 2015) citing *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968) (stating "[f]abrications of facts are clear examples of actual malice.)"

Whereas had the Defendants merely truthfully represented themselves simply as homeowners within the subdivision, the City of Rock Hill would not have delayed and actually halted Plaintiff's work, causing damage to Plaintiff, which is ultimately what the City of Rock Hill iterated to the Defendants when it informed them that this was a civil matter. Moreover, the Defendants' statements were also false and defamatory because the Plaintiff was not in violation of any Covenants, Codes, and Restrictions of the subdivision and the stop work order caused damage to Plaintiff by delaying the scheduled subcontractor work and, generally, the completion of construction.

Moreover, Defendants' Motion for Summary Judgment, which relies on the contention that the letter to the City of Rock Hill and the letter to the neighbors was sent six (6) days after the stop work order was issued, is also completely without merit because the city met with the Defendant(s) on February 22, 2024, as is evidenced by an

e-mail sent to Defendant(s) that started with the words, “Great to meet you today!” regarding Plaintiff’s subject property. Additionally, it is also without merit because the only reason that the City of Rock Hill would have issued a stop work order would have been due to the claim that an HOA existed.

The <https://rhbuild.cityofrockhill.biz/evolvepublic/> portal with the initial “Not Approved” status by inspector Jimmy McConnell includes the description/comment, “[m]et with [sic] Contractor and neibors [sic] to discuss new home being build. 0.00 Fee Charged,” dated February 22, 2024. Furthermore, the e-mail dated February 28, 2024 upon which Defendants’ rely so heavily in their Motion for Summary Judgment, with a letter and other documents attached, plainly mentions and refers to prior communications with the City of Rock Hill. In their Memorandum in Support of Summary Judgment, Defendants misleadingly claim that this was the first and only communication they had made to the City of Rock Hill while the communication plainly acknowledges prior communications on the matter, as it states “[y]ou have *previously* been in contact with Mr. Tim Haake.” [emphasis added]. Additionally, according to the Plaintiff’s deposition, Defendants’ defamation of Plaintiff to the other neighbors in the subdivision is apparent throughout Plaintiff’s construction of the subject property.

Finally, also contrary to Defendants’ Motion for Summary Judgment and Supporting Memorandum, Ryan Hammond of the Planning and Development department of the City of Rock Hill, confirms that Defendants were the cause of the stop work order, referring to it as an “HOA issue.”

III. DEFENDANTS’ STATEMENTS WERE NOT ONLY NEGLIGENT BUT WERE MADE WITH ACTUAL MALICE AND RESULTED IN SPECIAL HARM CAUSED BY THE PUBLICATION AND

DETERRED ROCK HILL FROM ASSOCIATING OR DEALING WITH PLAINTIFF

Defendants' defamatory statements caused damages to Plaintiff. The City of Rock Hill was deterred from associating or dealing with Plaintiff as is evidenced by the stop work order issued to Plaintiff delaying Plaintiff's construction and resulting in damage to Plaintiff.

"The law of defamation requires damages but recognizes two types: general and special. If a defamatory statement is actionable per se, the law dispenses with the requirement of proof of damages and instead presumes that certain "general damages" are the natural and proximate result of the defamation; such presumed damages include injury to reputation, mental suffering, hurt feelings, and "similar injuries, incapable of definite money valuation." If the defamatory statement is not actionable per se, the plaintiff must plead and prove "special damages." Special damages are a loss of money or some provable material injury to the property, business, profession, or occupation of the plaintiff that is capable of being assessed a monetary value." S.C. Jurisprudence, Aleta M. Pillick, Vol. 20 §7 pg. 107 (1993).

"If the plaintiff is not a public official or public figure, and if the common law does not require proof of actual malice, then the plaintiff may recover compensation for actual injury merely by proving that the defendant was negligent in publishing the defamatory statement." Id. at §42 pg. 141.

"Words that impugn the professional integrity of a person or which charge unfitness for his office or occupation are actionable per se." Id. §28 pg. 127.

In conducting an in-depth review and analysis of defamation law in the state of Michigan, which mirrors that of defamation law in South Carolina Courts, the United States Court of Appeals for the Sixth Circuit affirmed a \$3.5 million dollar jury award of damages for defamation in *Armstrong v. Shirvell*, No. 13-2368 (6th Cir. Feb. 02, 2015) citing *Ireland v. Edwards*, 584 N.W.2d 632, 636 Mich. Ct. App. 1998) (stating "[i]n

Michigan, a communication is [generally] defamatory if it tends to lower an individual's reputation in the community or deters third persons from associating or dealing with that individual.)

In the 2015 case *Armstrong v. Shirvell*, Christopher Armstrong, a former University of Michigan student council president, sued Andrew Shirvell, a former Michigan Assistant Attorney General, for defamation, false light invasion of privacy, intentional infliction of emotional distress, and stalking. No. 13-2368, pg. 1-8 (6th Cir. Feb. 02, 2015). Shirvell had engaged in a months-long campaign against Armstrong, including creating defamatory social media pages and blog posts, protesting outside Armstrong's house, and making false accusations about him. *Id.*

In *Armstrong*,² the Court found “[t]he jury was entitled to award Armstrong any economic benefits for tangible losses-such are losses in wages or profits flowing from the harm to his reputation. And having found that Shirvell acted with actual malice, it was also entitled to award damages for the actual damages Armstrong suffered to his profession or occupation. Again, it is highly unlikely that any of these categories of damages turned on any individual statement, or any particular number of statements...” *Id.* at 12.

While the Court in *Armstrong* found Armstrong to be a private figure and thus there was no need to establish actual malice in order to satisfy the prima facie elements of defamation, the Court also found that actual malice was relevant to be entitled to damages for the actual damages which he or she has suffered in respect to his or her property, business, trade, profession, occupation, or feelings. *Id.* at 17. The Court went on to state that “on the hand, if the publication of the defamatory statement was merely

negligent, a private figure may recover only for provable economic damages.” *Id.* “To show actual malice, plaintiff must prove that the defendant made the statement with knowledge that it was false or with reckless disregard of the truth (citations omitted)...Actual malice does not arise from a mere failure to investigate...but the purposeful avoidance of the truth is in a different category.” (citations omitted) *Id.* at 18. I

In holding that the record viewed in light most favorable to Armstrong contained plentiful evidence supporting the jury’s finding that Shirvell acted with actual malice, the Court reasoned that “a reasonable jury could conclude from the evidence that many of Shirvell’s statements were pure fabrications.” *Id.* at 19.

In affirming the jury’s finding actual malice, the Court considered an additional fact that Shirvell threatened Armstrong by stating, “You’re going down,” and describing the threat as inflammatory language supporting the view Shirvell was interested simply in reporting scandalous assertions about Armstrong rather than delivering the truth. *Id.* at 19.

Shirvell contended “that Armstrong failed to prove that the statements lowered Armstrong’s reputation, as required for a defamation claim.” *Id.* at 20. Shirvell argued that the blog did not damage Armstrong’s reputation but enhanced it, citing support Armstrong received from the university and elsewhere. The Court disagreed, stating “viewed in the light most favorable to Armstrong, this evidence simply shows that others were concerned about him and sought to help him...[t]his kind of reaction is not inconsistent with a damaged reputation.” *Id.* at 21. The Court affirmed that the District Court correctly declined to grant judgment as a matter of law in Shirvell’s favor.

In *Armstrong*, “Armstrong testified that he had applied to Teach for America before Shirvell’s campaign began, but that he was rejected from the program after the statements began to emerge on the blog and elsewhere.” *Id.* at 22. The Court held that “the jury was properly instructed to award economic damages for the defamatory statement that Shrivell made negligently, and for those statements made with actual malice – to award damages ‘for the actual damages which he or she has suffered in respect to his or her property, business, trade, profession, occupation, or feelings.’ ” (Citations omitted) *Id.* at 22.

Similar to Shirvell, Defendants sent threatening or inflammatory communications to Plaintiff. Additionally, Defendants’ statements regarding their representation of an HOA to the City of Rock Hill and the Plaintiff’s noncompliance with the restrictive covenants not only meet the standard of negligence, but, as completely fabricated facts made while intentionally avoiding Plaintiff’s communications pointing out the truth, constitute actual malice. Defendants also argue that Plaintiff’s reputation was actually enhanced; however, this argument is also without merit as a forty-five (45) day work stoppage is a specific loss to Plaintiff’s business and his income. Just as in *Armstrong*, Defendants’ false statements to the City of Rock Hill regarding the Plaintiff deterred a third party, the City of Rock Hill, from dealing or associating with Plaintiff, in that they withdrew their approval for continued construction and instead issued a stop work order. Plaintiff asserts that the forty-five (45) day delay caused specific financial damages which are capable of being assessed and amounted to at least approximately fifty-thousand dollars (\$50,000.00), not including the cost of commencing this litigation in order to recoup his damages.

THEREFORE, the Court should deny Defendants' Motion for Summary Judgment.

Respectfully submitted,

s/ Rolf M. Baghdady
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Chapin, S.C.
February 19, 2025

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of No Record

I, Mark Hammond, Secretary of State of South Carolina Hereby Certify that:

At this time, this office can find no record of an entity using the name: POPLAR
FOREST CORP

Given under my Hand and the Great Seal
of the State of South Carolina this 19th day
of February, 2025.


Mark Hammond, Secretary of State

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

CASE NO: 2024-CP-46-01354

Latif Taheri-Azar,

Plaintiff,

MOTION TO RECONSIDER

v.

Tim Haake and Justin Marlow,

Defendant.

**TO: STEVE DLUZNESKI, ATTORNEY FOR DEFENDANT TIM HAAKE, AND
DAN D'AGOSTINO, ATTORNEY FOR DEFENDANT JUSTIN MARLOWE**

Introduction

Plaintiff Latif Taheri-Azar [hereinafter referred to as "Plaintiff"], by and through undersigned counsel, Rolf M. Baghdady, hereby moves the Court to Reconsider its Order granting Summary Judgment for Defendants to prevent a clear error of law and to prevent manifest injustice. This action arose from Defendants' defamatory actions towards Plaintiff in connection with the construction of a residence in Poplar Forest subdivision within the City of Rock Hill, South Carolina.

Table of Authorities

Case Law

Armstrong v. Shirvell, No. 13-2368 (6th Cir. 2015)

Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)

Erickson v. Jones Street Publishers, L.L.C., 368 S.C. 444, 629 S.E.2d 653 (2006)

Eubanks v. Smith, 292 S.C. 57, 354 S.E.2d 898 (1987)

George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001)

Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974)

Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998)

Hutchinson v. Staton, 994 F.2d 1076 (1993)

Ireland v. Edwards, 584 N.W.2d 632 (Mich. Ct. App. 1998)

Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 443 S.E.2d 392 (1994)

Mich. Microtech, Inc. v. Federated Publ'ns, Inc., 466 N.W.2d 717 (Mich. Ct. App. 1991)

St. Amant v. Thompson, 390 U.S. 727 (1968)

Turf Lawnmower Repair, Inc. v. Bergen Record Corp., 655 A.2d 417 (N.J. 1995)

Rules/Statutes

Rule 56(c) S.C. R. Civ. P.

S.C. Code of Laws § 27-30-130

S.C. Code §27-30-103(B)(2)

Secondary Sources

50 Am. Jur. 2d Libel and Slander §101 (1995)

Ralph King Anderson, Jr., South Carolina Requests to Charge-Civil, 2009, SC

Jurisprudence §14-6, pg. 134.

S.C. Jurisprudence, Aleta M. Pillick, Vol. 20 §7 pg. 107 (1993).

Facts

- Plaintiff was the owner of the real property located at 2124 Windemere Road in Rock Hill, York County, South Carolina, which is situated within the Poplar Forest subdivision [hereinafter referred to as the “Property”].

- Plaintiff has many years of experience in the building construction industry as a builder and is a licensed general contractor in the states of South Carolina and North Carolina. (See deposition taken of Plaintiff on December 12, 2024 filed with Defendants' Memorandum in Support of Motion for Summary Judgment on January 24, 2025, p. 14, lns. 4-5 & p. 15, lns. 9-10.)
- Defendants are property owners within the Poplar Forest subdivision.
- On April 30, 1966 Restrictive Covenants for the Poplar Forest subdivision were recorded in the Office of the Clerk of Court for York County, South Carolina. (See deposition taken of Plaintiff on December 12, 2024 p. 25, ln. 8 - p. 26, ln. 3 filed with Defendants' Memorandum in Support of Motion for Summary Judgment on January 24, 2025.)
- Paragraph 6-7a of the Restrictive Covenants for the Poplar Forest subdivision states the following:

7. a. Lot owners shall submit to an Architectural Committee comprising the Board of Directors of Poplar Forest Corp. construction plans and specifications including location of house on lot; and no structure shall be erected or altered until said plans have been approved in writing by said Committee. Such approval shall not be unreasonably withheld.
- Poplar Forest Corp. did not exist a long time prior to the time Plaintiff applied for the building permit from the City of Rock Hill and even prior to the date of Plaintiff's purchase of the vacant lot on June 14, 2023.
- Since Poplar Forest Corp. did not exist, it did not have a Board of Directors to constitute a Homeowners' Association and/or an Architectural Review Board [hereinafter referred to as "HOA/ARC"].
- Defendants lied to the City of Rock Hill by falsely claiming Poplar Forest Corp. existed and by stating that they were the HOA/ARC board.

- Defendants lied about the Plaintiff to the City of Rock Hill with the intent to harm the Plaintiff.
- Defendants' lies about the Plaintiff defamed the Plaintiff by falsely discrediting Plaintiff's true and accurate statement and declaration to the City of Rock Hill when the Plaintiff stated there was no HOA/ARC board.
- Defendants' lies about the Plaintiff caused the City of Rock Hill to pause and suspend Plaintiff's building permit.
- Defendants' lies about the Plaintiff were the proximate cause of Plaintiff's unjust financial and reputation damages.
- Plaintiff, as required by the City of Rock Hill, followed the directives of the Recorded Restrictive Covenants for Poplar Forest subdivision, including setbacks, allowable square footage of the house, and all other restrictions indicated in the Recorded Restrictive Covenants into his plans and specifications for the new spec house that he intended to build at the property.
- With regard to article 6-7a of Restrictive Covenant Directives for HOA/ARC board approval of the plans and specs, the Plaintiff truthfully declared to the City of Rock Hill that there is no active HOA/ARC board in Poplar Forest subdivision.
- Ultimately, Plaintiff's plans and specs were approved and the City of Rock Hill issued the building permit on October 2, 2023 by accepting Plaintiff's declaration that there is no active HOA/ARC board in Poplar Forest subdivision.
- Plaintiff began building a new spec house at the property as per the City of Rock Hill's approved plans and specs, followed by stage-by-stage inspections and approvals, including, but not limited to, a pre-footing grading inspection approved by an infra-

structure inspector, Clay Daniels, which was the pre-condition for authorization to continue footing, foundation, open floor, framing, electrical, HVAC, plumbing, water/sewer, all trade rough ins, insulation, exterior sheeting, and house wrap stage by stage inspections which were all inspected and approved by the city inspector, Jimmy McConnell.

- On Thursday, February 22, 2024 at 4:59 pm, Mike Nugent from City of Rock Hill sent an e-mail communication with the subject, *“Meet to discuss the project on site”* to Annemarie Haake and to Defendant Tim Haake [hereinafter referred to as “Defendant Haake”] with a copy to Jimmy McConnell. The e-mail stated, *“Great to meet you today! The building living space is 1,683 Sq. ft. not including the porches and garage. We’ll keep you posted.”*
- Subsequent to Mike Nugent and building inspector Jimmy McConnell's meeting with Defendants/neighbors, inspector Jimmy McConnell issued a "Not Approved Status" on February 22, 2024. Prior to this date, Jimmy McConnell had inspected and approved all the work thus far; however, now Jimmy McConnell paused and suspended the building permit, putting an indefinite halt on the Plaintiff’s construction of the new spec house at the property.

<https://rhbuild.cityofrockhill.biz/evolvepublic/>

Date: 2/22/2024

Name: Courtesy

Status: Not Approved

Inspector: Jimmy McConnell

Comment: *“Met with [sic] Contractor and neighbors[sic] to discuss new home being built. 0.00 Fee Charged”*

(Defendants’ Memorandum in Support of Motion for Summary Judgment, Exhibit 7, filed on January 24, 2025.)

- Shortly after the "Not Approved Status" was placed on the building permit, Ryan Hammond from City of Rock Hill zoning board indicated in the official written communications that the reason for the building permit pause was the following: "At this time staff has been advised there is an active HOA/ARC board for this neighborhood, provide signed HOA approval or confirmation that the board is inactive.”
- After Plaintiff’s written communication with Ryan Hammond emphasizing that there is no active HOA/ARC board in Poplar Forest subdivision, and that Poplar Forest Corp. does not even exist and Defendants are lying and misrepresenting themselves as Poplar Forest subdivision board authorities, he received an e-mail from Ryan Hammond on March 12, 2024, at 11:14am clearly reiterating that the pause on the building permit was because of Defendant(s), which stated:

After consulting with the Planning Development Director, we will have the City’s attorney determine our approach regarding the HOA issue. The plan review will remain paused until I have a determination, I will reach out to both parties as soon as I hear back. I don’t have a timeframe, will keep you all updated as soon as I get it.

- Subsequently, on March 12, 2024 at 12:53pm, Plaintiff received another e-mail from Ryan Hammond asking for a copy of the property Title Insurance that would show if there is an active HOA/ARC board and Plaintiff provided the copy of it as another proof that there is no active HOA in Poplar Forest subdivision.

- Plaintiff's deposition references this e-mail communication, which is evidence that Defendants were the cause of the pause and associated damages to Plaintiff caused therefrom.

11 A *I have his email. Ryan. He's in zoning. He*
 12 *explicitly emailed me that. "We're not reviewing*
 13 *your change order" and –*
 14 Q *What is his full name?*
 15 A *Ryan -- I have one of his emails. Ryan Hammond.*
 16 Q *Ryan Hammond is the one that according to you at*
 17 *the City who told you, you can't continue work*
 18 *because of the HOA?*
 19 A *Here it is. "Review: At this time the staff has*
 20 *advised there is an active HOA for this*
 21 *neighborhood. Provide signed HOA approval or*
 22 *confirmation that the board is inactive." That was*
 23 *his first email. So I continued. "Hey, there is*
 24 *no HOA.*

(See deposition of Plaintiff taken on December 12, 2024 filed with Defendants'

Memorandum in Support of Motion for Summary Judgment on January 24, 2025, p. 68, lns. 11-24.)

- On February 28, 2024 Defendant Justin Marlow [hereinafter referred to as "Defendant Marlow"] sent an e-mail to Mike Nugent at the City of Rock Hill. The e-mail, entered into evidence as Defendant's Exhibit 5 to Plaintiff's Deposition dated December 12, 2024, with the therein referenced letter attached, specifically states, "*...[y]ou have previously been in contact with Mr. Tim Haake, and together we have put together a letter and supporting documents to express the concerns of Mr. Haake and the Poplar Forest HOA with respect to the construction underway at 2124 Windemere Rd....*"
- Contrary to Defendants' unprivileged communications with the City of Rock Hill, Plaintiff was in compliance with the Covenants, Codes, and Restrictions as he met the square footage requirement.

7 Q Okay. And the restrictive covenants indicate that
 8 it is a minimum 1,800 square foot requirement
 9 excluding –
 10 A Open.
 11 Q -- the porches and garage?
 12 A Open porches.
 13 Q Okay.
 14 A This is a closed porch. So that adds to -- that's
 15 why they issued me the occupancy permit. So
 16 that's -- I am in compliance with the covenant and
 17 the City.
 18 Q So you're saying even in light of this email from
 19 Mike Nugent that the City of Rock Hill never
 20 determined that the house you were building –
 21 A No.
 22 Q -- was less than 1,800 square feet?
 23 A They were never determined that it is less than the
 24 covenant requirement.

(See deposition of Plaintiff on December 12, 2024 filed with Defendants' Memorandum
 in Support of Motion for Summary Judgment on January 24, 2025, p. 63, lns. 7-24).

- Counsel for the City of Rock Hill finally informed the Defendants that this was a civil
 matter.

8 According to the response, he finally -- he finally
 9 got from the City attorney. That this is a civil
 10 case.

(See deposition of Plaintiff taken on December 12, 2024 filed with Defendants'
 Memorandum in Support of Motion for Summary Judgment on January 24, 2025, p. 41,
 lns. 8-10.)

- Defendant Haake admitted in his deposition that the City attorney told them that they had
 no standing because of the covenants as drafted.

4 Q Okay. So tell me what you remember about your
 5 conversation with that City -- with that person
 6 from the City. What did you tell them?

7 A *We were told more or less that based on this*
 8 *document that we had, that we had no standing.*

(See deposition of Defendant Haake taken on March 4, 2025, p. 43, lns. 4-8.)

- Plaintiff suffered damages/economic loss capable of being assessed and calculated due to Defendants' defamatory statements to the City of Rock Hill.

20 Q *Where does that 50,000 -- tell me how you calculate*
 21 *that?*

22 A *It was 45 days exactly from the time this guy*
 23 *put -- I mean, the City put my project on hold*
 24 *until they started working on it and released the*
 25 *hold. Right? For that 45 days, a full-time*
 1 *superintendent and project manager -- the domino*
 2 *effect of later on losing the subs, rescheduling*
 3 *them. Because they don't only work for me.*
 4 *There's a sub for the plumbing. They have their*
 5 *own schedule.*

6 *So all these extensions of time and not being*
 7 *able to schedule the material and time they*
 8 *imposed -- over \$50,000. Probably, maybe 80-,*
 9 *\$90,000. So I'm consenting to \$50,000.*

10 Q *How much per day do you believe you were damaged as*
 11 *a result of the defendants' alleged activities?*

12 A *This is my job. This is how I get paid. This is*
 13 *my only business.*

(See deposition of Plaintiff taken on December 12, 2024 filed with Defendants'

Memorandum in Support of Defendants' Motion for Summary Judgment on January 24,
 2025, p. 69, ln. 20 - p. 70, ln. 13.)

ARGUMENT

A Motion for Summary Judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c) S.C. R. Civ. P. When considering a Motion for Summary Judgment, the court must view the facts in a light most favorable to the non-moving party. *George v. Fabri*,