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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 2 of 3

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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)).

Plaintiff would like to again direct the Court's attention to the entirety of the record, particularly to the facts pointed out in the Memorandum in Opposition. Comparing Plaintiff's Opposition facts to Defendants' Motion for Summary Judgment and the same, being part of Defendants' Proposed Order, Plaintiff contends that there are several genuine issues of material fact. There are several key facts that are wholly missing from Defendants' argument and proposed Order which also, when included and the law applied, would garner a wholly different result.

The Order reasons its decision based on a different record, arbitrarily choosing to ignore certain other pertinent facts. As shown in the Opposition, contrary to the Order, Defendants had communicated with the City of Rock Hill prior to the letter on February 28, 2024 and had in fact met with the city about Plaintiff on February 22, 2024, the day Plaintiff was forced to halt construction.

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:

- A false and defamatory statement by the defendant concerning the plaintiff;
- an unprivileged publication by the defendant to a third party;
- fault on the defendant's part in publishing the statement; and
- 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, p. 134.

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.*

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 spec house 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 spec house 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 of 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.

Furthermore, Defendants' defamatory statements pertaining to the Plaintiff made to the City of Rock Hill caused harm the Plaintiff harm. Plaintiff was forced to delay and halt construction on the subject property for forty-five (45) days. Defendants' statements caused a halt in the construction and consequential delays and rescheduling of subcontractors for the construction of the residence, 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.") Thus, 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, Code, and Restrictions were false, 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, pg. 147.

In the present case, the Defendants in communicating with the City of Rock Hill and with neighbors within the subdivision, claimed to be members of an architectural committee of a homeowners' association of the neighborhood. Defendant Marlowe represented himself as President of an HOA and Defendant Haake represented himself as Architectural Committee Chair. The only Restrictive Covenants for the Poplar Forest Subdivision were recorded April 30, 1966.

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 on 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 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 reading of this provision is that they, as homeowners, may bring suit against another homeowner for violation of the covenants. There is nothing in these covenants that permits homeowners within the subdivision to fraudulently represent themselves to the City of Rock Hill as President and Chair of a nonexistent Architectural Committee for the HOA of a subdivision and 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 Plaintiff's compliance with the recorded covenants, thus resulting in deterring the City from dealing with Plaintiff as shown by the paused permit.

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/ARC board 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 themselves as a representatives of the HOA/ARC board in order to make false statements about Plaintiff's work cannot be said to have been made in good faith, with proper motives, and 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, 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 they 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 the 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, Code, and Restrictions of the subdivision and the paused permit caused damage to Plaintiff by delaying the scheduled subcontractor work and, generally, the completion of construction.

Moreover, Defendants’ Motion for Summary Judgment relies on the contention that the letter to the neighbors and to the City of Rock Hill was sent six (6) days after the permit was paused and thus is irrelevant is also completely without merit. The City met with the Defendant(s) on February 22, 2024, as is evidenced by an email sent to Defendant(s) that started with the words, “Great to meet you today!” regarding the subject property being constructed by Plaintiff. 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 email 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 is the first and only communication they have made to the City of Rock Hill while the communication itself plainly acknowledges

prior communications on the matter, as it states “[y]ou have *previously* been in contact with Mr. Tim Haake” **[bold 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 paused permit 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 THE CITY OF 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 paused permit 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 indepth 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, pp. 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 v. Shirvell*, 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 v. Shirvell* 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. 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, stating, “*You’re going down,*” describing the threat as inflammatory language supporting the view that 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 v. Shirvell*, “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 Shirvell 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.

Similarly to *Armstrong v. Shirvell*, in this case 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 income. Just as in *Armstrong v. Shirvell*, 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 him in that they withdrew their approval for continued construction and they issued a paused permit. 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.

WHEREFORE, PLAINTIFF PRAYS moves the Court reconsider its Order and deny the grant of Summary Judgment.

Respectfully submitted,

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Chapin, South Carolina
March 31, 2025

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
Steve D. Dluzneski
S.C. Bar # 102019
241 Oakland Avenue (29730)
Post Office Box 10940 (29731)
Rock Hill, South Carolina
(803) 329-7672 (voice)
(803) 329-7678 (facsimile)
steve.dluzneski@hamiltonmartens.com

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

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CLERK OF COURT

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 Code, as and if any dwelling is erected thereon.

9. These covenants run to run with the land and shall be binding on all the parties and all persons claiming under them until May 1, 1951, 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 terminate 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 subdivisions 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 in either case 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 parties and the grantee that for a period of ten years from the date hereof, that in the event the grantee shall elect to sell, dispose of said property, that said grantee hereby grants unto the grantor, his heirs, executors or assigns, a ten-day option to purchase said property with all improvements thereon at any bona fide value, submitted by said grantor for said property, provided, however, that the grantor, his heirs and assigns, agree that the provisions of the stipulations are hereby specifically waived and released in favor of the rights of their children, heirs, executors or assigns upon said property from this date forward.

13. Wherefore, the said Empire Forest Corp. has caused this deed to be signed, attested, acknowledged and delivered in presence of the said Attorney General, its President, its Secretary and its Treasurer, this 12th day of April, 1950.

EMPIRE FOREST CORP.

Attorney General, President

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	)	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

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APPEARANCES

For the Plaintiff: Rolf M. Baghdady, Esq.
Rolf M. Baghdady, PA
Chapin, South Carolina

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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1 STIPULATIONS

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

6 - - - -

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

10 Whereupon,

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

14 EXAMINATION

15 BY MR. DLUZNESKI:

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

18 A Latif Taheri-Azar.

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

24 You are here today for your deposition in this
25 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

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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

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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?

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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.

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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

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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 --

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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?

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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

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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.

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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?

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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.

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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

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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?

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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.

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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?

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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.

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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.

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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 --

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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.

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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?

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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.

ELIHC1 FROM CALLY FILED -- 2025 Jan 31 12:56 PM -- YORK -- COMMON FILES -- CASE# 2024 CP 4601 1334

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.

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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

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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.

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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.

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EXAMINATION

BY MR. BAGHDADY:

Q My first question to you is: What is your native language?

A Farsi.

Q All right.

A Persian.

Q And today's deposition was conducted without a translator or interpreter.

MR. D'AGOSTINO: Wait a minute. Wait a minute. If we've got a language barrier that we're going to have, we needed to know that at the very beginning. If he needed a translator, that should have been told to us before today started.

MR. DLUZNESKI: Additionally, I would say in my open instructions to him I advised him that if I asked a question and he didn't answer that he needed to tell me he did not understand it.

MR. BAGHDADY: Okay.

MR. D'AGOSTINO: Putting that on the record.

Q (MR. BAGHDADY) Next question. They used a word in the English language called "defamation," and they asked a lot of questions using the term defamation. And so I want to break that down to you a little 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?

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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

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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)
IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

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

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

HAMILTON MARTENS, LLC

P.O. Box 10940

Rock Hill, South Carolina 29731

(803) 329-7672

steve.dluzneski@hamiltonmartens.com

ATTORNEYS FOR DEFENDANT TIM HAAKE

Meet to discuss the project on site Trash

Nugent, Mike <Mike.Nugent@cityofrockhill.com>
to Jimmy, me, annemarie@goettfert.com, tim@goettfert.com
This message has been deleted. [Restore message](#)

Wed, Feb 21, 11:59 AM

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*

☐ Yes ☐ Maybe ☐ No [More options](#)

Agenda

Thu Feb 22, 2024

No earlier events

6pm Meet to discuss the project on site

No later events

RECEIVED FROM CALLY FILED -- 2025 Jan 24 12:56 PM -- YORK -- COMMON PLEAS -- CASE# 2024 CP46013354



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.

RECEIVED FROM CALLY/FILED -- 2025 Jan 24 12:56 PM -- YORK -- COMMONWEALTHS -- CASE# 2024 CP 4601 1354

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	



Taheri-Azar_0173

Meet to discuss the project on site

Trash

Nugent, Mike <Mike.Nugent@cityofrockhill.com>

to Jimmy, me, annemarie@goettfert.com, tim@goettfert.com

This message has been deleted. [Restore message](#)

Wed, Feb 21, 11:59 AM

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*

Yes

Maybe

No

More options

Agenda

Thu Feb 22, 2024

No earlier events

6pm

Meet to discuss the project on site

No later events

RECEIVED FROM CALLY/THLEED--202251Jan 3:41:12:16PM--YORK--COMMONWEALTHS--CASE#20224CP46013354

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

RECEIVED FROM CALL CENTER -- 2025 Jan 24 12:56 PM -- YORK -- COMMON PLEAS -- CASE# 2024 CP4601354

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 Recoded 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

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

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.

ELECTION CALLYTHLED--2025Jan 31 12:56PM--YORKK--COMMONPLEAS--CASE#2024CP46013354

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

ELECTRONICALLY FILED -- 2025 Mar 24 12:56 PM -- YORK -- COMMONPLEAS -- CASE# 2024 CP4601354

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

RECEIVED FROM CALLY/FILED--2025 Mar 31 12:56 PM--YORK--COMMONPLEAS--CASE#2024CP4601334

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 TAHERI AZAR 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

DIRECT FROM CALLY FILED--2025 Mar 24 12:06 PM--YORK--COMMONPLEAS--CASE#2024CP46013354

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

RECEIVED FROM CALLY/FILED--2025 Jan 31 12:56 PM--YORK--COMMONPLEAS--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

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.

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.

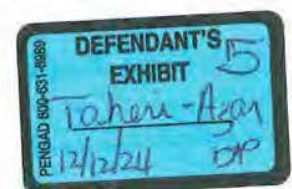
We appreciate your time in looking over these materials, and in helping us come to a satisfactory resolution to the concerns addressed within, in a manner agreeable to all parties.

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



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**

FILED FROM CALLY/FILED--202251Jan 34 12:46PM--YORK--CDDMMWONFILEAS--CASE#202240P4600 63364

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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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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:

Frederic B. Montgomery
Robert M. 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

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.

FILED: 2022 SEP 14 PM 1:00 BY: KATHLEEN K. COOK, CLERK OF COURTS - ROCK HILL, SOUTH CAROLINA

20190991

212 Windemere - New House

2124 Windemere

Construct single family residence, 4 Bedrooms, 3 1/2 Baths, 1 Story

Residential Detached Building Plan -

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:

RECEIVED FROM CALLY/THLEED--2025 Jan 31 12:56 PM--YORK--COMMONPLEAS--CASE#2024CP46013354

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,	)	
	)	Tim Haake
Defendants.	)	

Date: Tuesday, March 4, 2025

Time: 1:33 p.m.

Location: Regus - Fountain Park Place
331 East Main Street, Suite 200
Rock Hill, South Carolina

Reported by:
Darlene Pastel, CVR-CM

COPY

APPEARANCES

For the Plaintiff: Rolf M. Baghdady, Esq.
Rolf M. Baghdady, PA
Chapin, South Carolina

For the Defendants: Stephen D. Dluzneski, Esq.
Hamilton Martens, LLC
Rock Hill, South Carolina

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

Also Present: Latif Taheri-Azar
Lisa Baghdady

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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
waived by the deponent and counsel for the
respective parties.

Whereupon,

Tim Haake, being duly sworn and cautioned to speak
the truth, the whole truth, and nothing but the
truth, testified as follows:

EXAMINATION

BY MR. BAGHDADY:

Q Good afternoon, Mr. Haake.

This is Rolf Baghdady, and as you know, I'm
the attorney for Mr. Latif Azar, and this case has
been brought in York County alleging your
defamation of him and his business particularly
with respect to the existence of an HOA.

And I'll be asking you questions today. As
you now know, they are under oath. The court
reporter will be taking them down. If there's any
questions that I ask you that you don't understand,

1 please let me know, and I'll be glad to rephrase
2 them for you. Your attorney may object to the form
3 of the question. That's fine. Once he -- unless
4 he instructs you otherwise, you still get to answer
5 the question. And if you're ready to begin, I'll
6 go ahead and start.

7 I'll start with some easy questions. Sort of
8 walk me back in time through your history, starting
9 with presently. Where do you presently reside?

10 A 394 Grady Drive, Rock Hill, South Carolina 29732.

11 Q All right. And how long have you lived there?

12 A I don't know. But I would say 25-ish years.

13 Q All right. So somewhere around 2000 maybe. Late
14 '90s.

15 A I moved into the street of Grady Drive in 1996.

16 Q Okay.

17 A And then I lived for several years at a different
18 house before I moved to the other end of the
19 street, if that helps.

20 Q Okay, good. And before you lived here on
21 Grady Drive in Rock Hill, where did you live?

22 A In Germany.

23 Q Okay. And where in Germany did you live?

24 A At that time I lived in Medingen. That's what
25 Rock Hill is to Charlotte. By Dresden.

1 Q Oh, you lived near Dresden.

2 A Yeah.

3 Q That was firebombed in World War II.

4 A Yes.

5 Q Americans and the British.

6 A Uh-huh.

7 Q A refugee city.

8 A Uh-huh.

9 Q Okay. And how long did you live in the Dresden
10 area before that?

11 A For about five years.

12 Q Okay. And before Dresden, where did you live?

13 A Before Dresden I lived in Palm Beach, Florida.

14 Q Palm Beach. And so where in Palm Beach did you
15 live?

16 A Different places. Delray Beach. And Deerfield
17 Beach.

18 Q Delray and Deerfield. Is Deerfield actually in
19 Miami-Dade or Broward County? Or does it reach all
20 the way into Palm Beach County?

21 A I think Deerfield is in Palm Beach County. But I
22 don't swear to that.

23 Q Right. I think I've been to Deerfield. So what
24 were you doing in Palm Beach County?

25 A What have I been doing. I studied there sometime,

1 and that's pretty much it.

2 Q You studied. Was that like Florida International
3 University? Or what was there?

4 A No. I went to Lynn University, which is now
5 renamed to be something else.

6 Q You said Lynne, L-y-n-n-e?

7 A L-y-n-n. And it's now a different name.

8 Q Okay. What were you studying?

9 A I went for my master's in business.

10 Q Okay. So you got an MBA there. Any particular
11 concentration?

12 A Well, the MBA is actually from New York Institute
13 of Technology. They had a satellite operation at
14 that place.

15 Q And where is New York Institute of Technology
16 located?

17 A In New York.

18 Q Yeah. But where --

19 A I've only been there once or twice. You know, for
20 the last couple of things, you had to go there.
21 But it was really out of their satellite office at
22 Lynn University. They had a joint venture there or
23 something like that.

24 Q I see. Okay. And so how long were you in Palm
25 Beach? Was that like a two-year stint?

1 A That was -- I'm not good with these things without
2 my wife. Probably a little bit longer. And before
3 that I was in Munich studying physics. And before
4 that I was again in Florida. So I, you know --
5 that's where my problem comes from. Several times
6 back and forth. So to put numbers on there is a
7 little bit difficult.

8 Q Did you get a degree in physics?

9 A Yes.

10 Q Okay. What was your -- was that an undergraduate
11 degree? a master's degree?

12 A You would call it a bachelor.

13 Q It would be like a bachelor's degree.

14 A Uh-huh.

15 Q And which university in Munich?

16 A The Technical University of Munich.

17 Q And then before that, you were in secondary school
18 and living with your parents?

19 A Yes.

20 Q Are you originally from Munich?

21 A No. I moved a lot. So originally from Karlsruhe.
22 That's at the Rhine River.

23 Q Uh-huh.

24 A And so then we moved from Karlsruhe to Munich.

25 Q Okay. I gotcha. And so English -- how is your

1 English? I think it sounds pretty good to me. So

2 I assume you -- presume you're fluent in English?

3 A In the meantime I've lived more than half of my
4 life in America.

5 Q That explains why. It's good English?

6 A It's sufficient.

7 Q All right. So tell me a little bit about your
8 employment. After you were -- after you got your
9 degree in physics in Munich, what did you do?

10 A I came to America. I got my master's in -- then I
11 went to East Germany, Dresden, and ran a company
12 there.

13 Q And ran a company?

14 A Uh-huh.

15 Q Was it actually still the DDR when you went?

16 A No.

17 Q It was the former East Germany?

18 A It was after reunification.

19 Q It was after '92. Okay. All right. And so what
20 was your work there?

21 A That was a company with over 2,000 people. And --
22 I don't know how relevant this is. I could talk
23 hours about the topic. But I was more in the field
24 of technology and production.

25 Q What was the company that you -- had the 2,000

1 employees producing?

2 A Measurement instruments.

3 Q I see. Okay. What kind of measurement

4 instruments?

5 A Rheometers.

6 Q What was it?

7 A Rheometers. Rheology. That's basically what I'm

8 doing now. So we measure the thickness of a fluid.

9 Q Oh, interesting. All right. So then you went and

10 got your MBA in Palm Beach. After your MBA in

11 Palm Beach, you did your work in Dresden. And then

12 you came up to Charlotte and Rock Hill, and you've

13 been with the same company since?

14 A Yes.

15 Q Okay. And what's that company today?

16 A Say again.

17 Q What is the company's name today?

18 A Goettfert.

19 Q Goettfert?

20 A Uh-huh. Golf-Oscar-Echo-Tango-Tango-Foxtrot-Echo-

21 Romero-Tango.

22 Q Goettfert.

23 A Uh-huh.

24 Q So that's a German company.

25 A Yes.

1 Q And where are they headquartered?

2 A In Germany.

3 Q Yes. But where? Do you know?

4 A Buchen.

5 Q Where? Buchen?

6 A B-u-c-h-e-n.

7 Q Got it. All right. So Goettfert. And at

8 Goettfert -- this is where you're still doing like

9 measurements of fluids?

10 A Uh-huh.

11 Q And what kind of fluids do you measure? What sort

12 of -- the overall purpose?

13 A We -- most of our business has to do with molded

14 plastic.

15 Q Molded plastic.

16 A If you make anything out of plastic, you have to

17 melt it. And then it becomes like honey, which is

18 hot.

19 Q Yes.

20 A And then you put it into a form.

21 Q Right.

22 A And if you've made waffles or something like that,

23 you have an idea of how thick -- it's too thick;

24 it's too thin. You add something to it. Milk or

25 whatever to make it -- that it would work.

1 In the industry we like to do this a little
2 bit more precise and not by ...

3 Q Gotcha.

4 A Your feeling.

5 Q Very interesting. Okay. So then you moved into
6 your current subdivision while you were here
7 working for Goettfert.

8 A Uh-huh.

9 Q And still working for Goettfert. Tell me a little
10 bit about that, about -- tell me about the HOA
11 that's in existence at that.

12 A There was a lady that recently died, Sophia Beers.
13 She had the first house on the road. And she was
14 an elderly lady already back then. And she
15 organized everybody. And we also got this pamphlet
16 from the homeowner's association. And back then I
17 lived on the opposite side of the road for a few
18 years. Later on when I moved, I moved to the
19 corner of Windemere and Grady, and I was more or
20 less a neighbor of hers. And she was older, and so
21 I helped her in her house -- when she fell, with
22 her car.

23 But we had also an island on the street, and
24 that was -- I actually don't know to whom that
25 belongs. But she always took care of it. But she

1 had gotten too old to do that, so I helped her.
2 And there were other expenses there. So she
3 sometimes would go around knocking on doors and
4 trying to elicit money to do this and that and the
5 other. And she became too frail and old to do
6 that. So she asked me whether I could help her.
7 So I did that.

8 And then as it happened, I had two kids with
9 two cars and not enough parking. So I wanted to
10 build sort of a carport, and I had everything
11 prepared and bought the equipment and the material.
12 And she came and said, "No, no, no, no. You
13 mustn't do that. You haven't read the HOA. That's
14 not allowed. Something like this can only be put
15 on if it is attached to the house and not
16 separate." So I stopped that.

17 And -- and then later on she asked me whether
18 I could take up the presidency of the
19 homeowner's association. I said I could but I'd
20 rather have someone else do it. And so in the
21 meantime we had two brief presiding presidents.
22 They took this over for a couple of years, and then
23 they moved away.

24 And then we have these street parties,
25 get-togethers, homeowner's association meetings on

1 an irregular basis, and we discuss all kinds of
2 things there. And at one of these that was -- I
3 don't know whether -- probably before COVID, I
4 would think. One of the topics was who would do
5 this now. And I'm not quite certain whether we
6 volunteered Justin or whether Justin raised his
7 hand. But definitely we asked him whether he would
8 do it. He said yes, and we all affirmed that he
9 should be the new president.

10 At that time and until that time, we never had
11 any big need for anything formal. It was really to
12 keep everything fine and going and that island and
13 so on. Because all the land were filled up.
14 Several people have dual properties. Mine is on a
15 dual property.

16 Mr. Latif bought one that used to be a dual
17 property but was then separated. So that was kind
18 of a novelty issue. And at that time I was asked
19 by Justin to become the chair to take care of this,
20 because several people in the street had voiced an
21 opinion that they were not happy with this house
22 and thought that it didn't comply to the stipulated
23 rules. And because I was a neighbor, I was
24 volunteered to stick my head up.

25 I hope that answered your questions.

1 MR. BAGHDADY: Good. I thought that was a
2 very interesting narrative of the facts.

3 I'm going to hand you what's been -- has a
4 marking on it as Exhibit A and ask it to be marked
5 as Plaintiff's Exhibit 1 in your deposition.

6 (Plaintiff's Exhibit No. 1 marked for identification.)

7 Q (MR. BAGHDADY) I'd like to hand you what has been
8 marked as Plaintiff's Exhibit 1. Can you identify
9 that document? Feel free to pass it down to
10 counsel if they want to look at it.

11 A Is the first page missing?

12 Q Should there be more than that?

13 A I could more easily identify it if it were
14 complete.

15 Q Okay. So there are two pages there. Can you
16 describe the two pages that you have been handed?

17 A It looks official. "State of South Carolina,
18 County of York. Restrictive Covenants for Poplar
19 Forest Subdivision."

20 Q Okay. How would you describe that document?

21 A I haven't read it.

22 Q Okay. Take a moment and read it.

23 A Well, it's going to take me a little bit longer --

24 Q That's fine. Take your time.

25 A Okay. Yeah, I think this is known to me.

1 So what's the question?

2 Q So the question is: Do you recognize that
3 document? Have you --

4 A Yes.

5 Q -- read it before?

6 A Yes.

7 Q When's the first time you remember reading that
8 document?

9 A I -- I probably read it in 1996 when we -- yeah,
10 when we moved into our first house on Grady Drive.

11 Q Most likely you would have closed on your home with
12 an attorney.

13 A Yes.

14 Q And probably when you closed on the home, they
15 would have given you copies of the recorded
16 restrictions and a title insurance policy.

17 A Likely.

18 Q Right. So that's probably when you first saw it.

19 Did you consult with that document anytime
20 after you closed on your house?

21 A Yes, well, it came in when we bought the second
22 house. And at some point in time, I remember
23 having looked it up after I was informed that I
24 can't build my -- my carport.

25 And I must admit I don't recall whether I

1 found this. Because I -- I know that I wanted to
2 look it up, but actually I think I couldn't find it
3 at that time. And then we tried to get it from
4 someone else, and I think that's how I got a copy
5 then later on to also make you aware of it.

6 Q Okay. So then you saw it at the time of the --
7 when you wanted to build your carport and the lady
8 who was the -- sort of the chair --

9 A Yeah.

10 Q -- of the neighborhood told you "no, you can't do
11 that." She brought the restrictive covenants to
12 your attention, and you checked it. You saw what
13 you needed to do.

14 And then the next time you probably -- related
15 to refer to was when the plaintiff, Mr. Azar,
16 was --

17 A Yeah.

18 Q -- was looking to build on the lot or had commenced
19 construction on the lot.

20 And so you were aware of what the provisions
21 were for the restrictive covenants?

22 A Yeah.

23 Q Now, when you --

24 A May I make quickly -- you might not know it, but is
25 this the typical one that has the cover sheet with

1 the drawing and says "Poplar Forest Homeowner's
2 Association" on it?

3 MR. DLUZNESKI: You're testifying just based
4 off the exhibit in front of you.

5 A Well, that's why I specifically asked whether I
6 could have the whole one.

7 So I can't -- you know, word for word, I don't
8 know whether that is the document. The document
9 that we have would have had a cover sheet that
10 would have said something. Then I could have said
11 "it looks like the same one."

12 Q (MR. BAGHDADY) So there's a document out there --

13 MR. AZAR: Can I explain that?

14 MR. BAGHDADY: No, no. You don't need to
15 talk.

16 MR. AZAR: All right.

17 Q (MR. BAGHDADY) So when the -- so there's another
18 document that has the words "HOA" on it?

19 A I actually don't know exactly. But when -- if I
20 would see it, then I could say "that's the document
21 that I've had."

22 Q I don't have this document that you're referencing.

23 A Okay.

24 Q So you'll have to describe a little bit about it --

25 A We had it last time.

1 Q So you think it's in an exhibit in the deposition
2 last time?

3 A Yeah.

4 Q Well, I don't remember it. Tell me what else you
5 remember about it.

6 A The issue is whether this is the exact document. I
7 don't know whether that is -- it doesn't have the
8 seal on it. The other one had a seal on it. So
9 I -- I don't know whether this is the exact
10 document that we are all referring to. So ...

11 Q Okay. Well, that's fair enough.

12 A But I can stipulate that if -- it reads pretty much
13 the same thing. So I'm -- I want to assume that
14 this is the one that we are all talking about.

15 THE DEPONENT: (to Mr. Dluzneski) I mean,
16 could you answer that?

17 Q (MR. BAGHDADY) No, he can't answer any questions.

18 A He can't answer. Okay, good.

19 Q Just from what you know.

20 A Okay.

21 Q But I think you've made it clear what actually you
22 think applies there. So now, as you're looking at
23 that document -- and for the purpose of our
24 discussion today, let's assume that's the same as
25 the recorded document --

1 A Yeah.

2 Q -- for the restricted covenants that relate to this
3 subdivision.

4 A Uh-huh.

5 Q When you're using the word "HOA," does that
6 document create an HOA as far as you know?

7 MR. DLUZNESKI: Object to the form.

8 MR. BAGHDADY: You still have to answer.

9 MR. DLUZNESKI: You can answer, if you know.

10 A I don't know what the differences are.

11 Q (MR. BAGHDADY) I sort of perceived that. So if
12 you were going to use the words -- if you were
13 going to define the word "restrictive covenants"
14 for me, how would you define those words as you
15 understand them?

16 MR. DLUZNESKI: Object to the form.

17 You can answer.

18 A "Restrictive" means -- it tells to what you can and
19 cannot do. Not quite certain in regard to where
20 the difference would be to a homeowner's
21 association. I would think that a homeowner's
22 association would come up to have this. I mean,
23 this doesn't come out of nothing.

24 So someone must have said "we want these."
25 And it's probably not a person, or they would have

1 owned the whole thing. But it's an association of
2 people who live there, which I deem a homeowner's
3 association who would then come up with this.

4 Q (MR. BAGHDADY) Okay. So -- so you are kind of
5 making a distinction between restricted covenants
6 and a homeowner's association?

7 A One would ask to have the other done.

8 Q That's your perception?

9 A That's my perception.

10 Q Okay. So would it be your -- fair to say that your
11 perception is that because there are restricted
12 covenants that there must therefore be a
13 homeowner's association?

14 MR. DLUZNESKI: Object to the form.

15 You can answer if you know.

16 A I would -- I would think so.

17 Q (MR. BAGHDADY) Is that, in fact, your basis for
18 believing that there is an HOA at Poplar Forest
19 today?

20 A No.

21 Q Okay. Tell me a little bit about why you believe
22 there is, in fact, an HOA at Poplar Forest today.

23 A Because in the 25, 30 years I've lived there,
24 everyone on the street referred to it.

25 Q Okay. Tell me what documents you've seen that

1 create an HOA at Poplar Forest?

2 MR. D'AGOSTINO: Object to the form.

3 A None other than this here.

4 Q (MR. BAGHDADY) What documents have you seen that
5 the HOA -- other than what you're -- which is --
6 what's in front of you now is Plaintiff's
7 Exhibit 1. What other HOA documents have you seen?

8 A I have seen some papers that were talking about it.
9 How did I get those. I have a folder at home with
10 old stuff from Sophia Beers that I went through
11 once that had to do with that, and they were old.
12 And they talked about homeowner's association and
13 the like.

14 Q Do you still have that file?

15 A I would have to look for it. I don't know.

16 Q But you haven't given it to -- you haven't -- when
17 was the last time you saw that file?

18 A Before COVID.

19 Q And where was that file when you last saw it?

20 A In my office at home.

21 Q Okay. Where in your office at home was it?

22 A I have a stack of folders that are not immediately
23 important to me.

24 Q Okay.

25 A And when that becomes old and I haven't touched it

1 in a long time, they get dumped.

2 Q Okay. So they might be dumped as of today?

3 A I would have to look it up. It wasn't really
4 anything important in there. That's to my
5 knowledge. But I would have to look that up again.

6 If I thought it would be important, then I
7 would have brought it to light.

8 Q Okay. Tell me a little bit about the last
9 homeowner's association meeting you had.

10 A We had a good count. A lot of people were there.
11 Maybe, I would say, 40. And we talked about all
12 kinds of issues, but specifically that we needed a
13 new president. And as I said before, I don't
14 recall whether we volunteered Justin -- I think the
15 way we did this is he was the latest addition to
16 our street -- or whether he stuck his neck out. I
17 don't recall. But there was no one that objected
18 or who wanted that job, so we said "yes, please
19 do." And he got a loud applause, and that was it.

20 Q Okay. So tell me a little about that last meeting.
21 When was that last meeting you had?

22 A You asked that before. I think that was before
23 COVID, but I don't know when.

24 Q You only know it's pre-COVID. So would you use
25 the -- when would you use the COVID start date?

1 Was that the date that Governor Cuomo shut down
2 New York City? Do you know when -- when would you
3 say COVID began?

4 A I don't know when COVID began either anymore. And
5 those things are not important to me. I remember
6 only things that are important to me. But if that
7 is important, I can ask the person who gave that --
8 get-together and --

9 Q Okay. Who was that?

10 A I don't know his name. I know exactly where he
11 lives. Very nice gentleman. Don't tell him that I
12 don't recall his name. It's one of my weak points.
13 One of my many weak points.

14 But he has arranged it -- I think the party
15 before was held by me. And that is also several
16 years ago. So I can try to find out when that was.

17 Q Now, you said the "party before"? So it's like a
18 party for the homeowner's association?

19 A We do a get-together, and we bring food, and then
20 we discuss what's going on. And then as I said
21 before, the homeowner's association doesn't have --
22 or didn't have much to discuss over all these
23 years. So it's typically only talking about the
24 little island there. And then if somebody is in
25 distress or needs help, how we can help them, or --

1 you know, it's -- it's a helpful bunch there. And
2 so in that spirit, we try to be helpful.

3 Q How would the gathering be noticed?

4 Or how was the gathering noticed?

5 A Oh, we write up a piece of paper and stick it on
6 the side of the mailboxes.

7 Q Who wrote the ones for the last meeting?

8 Do you know?

9 A Yeah, probably the same person or his wife.

10 Q Okay. And you don't remember his name, but you
11 could let me know his name; right? You could look
12 it up eventually.

13 A If you want to know his name, I could call my wife.
14 She would know.

15 Q Okay. We'll figure it out hereafter.

16 All right. So somebody writes up a paper and
17 puts it on mailboxes. All right. Tell me about
18 the meeting. How does -- what happens at the
19 meetings? Sort of walk me through your memory of
20 the last meeting. What were the -- was there --

21 A Can we say you asked me twice? And I already
22 answered.

23 Q Well, I'll give you a more specific question as I'm
24 getting into the meeting.

25 Was there a -- a list of who the homeowners

1 are in the homeowner's association?

2 A Yes.

3 Q All right. Who has that list?

4 A Justin would have that list.

5 Q All right. Would someone have checked off who was
6 in attendance at the meeting --

7 A Yes.

8 Q -- on the list? Okay.

9 Would there have been a vote for the chairman
10 of the meeting?

11 A At that time the president was gone. They moved.
12 So we didn't have one. That was one of the reasons
13 we needed to have a new one. And so the chairman,
14 so to speak, was the person who invited us all. He
15 greeted us and said "this is what we're going to
16 discuss."

17 Q So there was an acting chairman of the meeting who
18 brought everyone together. Is this the same guy
19 that put the paper in the mailboxes?

20 A Yeah.

21 Q So he's the acting chairman of the meeting. He put
22 the notice out. And he set the agenda for the
23 meeting?

24 A Yeah. I -- I don't know whether you would now call
25 him a "chairman." He arranged everything. And if

1 you want to call that to be the chairman, you can.

2 But that is pretty much what happened.

3 Q I see. So walk me through a little bit about the
4 meeting. So wouldn't he have led it, led the
5 discussion? Tell me how the meeting went. Did you
6 eat first, or did you meet first and then eat? Or
7 was the food sort of available like buffet style
8 and was the eating during the meeting?

9 A We ate more or less before, and then we gathered.
10 The food was outside, and then we gathered inside
11 for the meeting.

12 Q Okay. Did anyone take notes?

13 A There was probably not note taking, because there
14 wasn't much to discuss.

15 Q Okay. So there wasn't like a secretary appointed
16 to keep the minutes?

17 A No. That was not necessary.

18 Q Okay. And so what do you remember the conversation
19 being and the agenda and the discussions being
20 about at the last meeting?

21 A I'm repeating myself. So we talked about whether
22 anybody needs any help, how certain people are
23 doing. We have some that need more help than
24 others in the street.

25 We have the island that needs to be taken care

1 of. We had a couple that is now living adjacent to
2 that island. They are doing that.

3 And the main point was really to find a new
4 president.

5 Q So tell me about the help people needed. What kind
6 of help did people need?

7 A Well, that's -- for instance, when you came and you
8 wanted to build, we would try to -- to help people.
9 It's just most of the people in the street, their
10 first inclination.

11 So I saw you are coming, went out, introduced
12 myself. And he said that he wants to build here.
13 And I asked, "Do you want to live here," and he
14 said, "I want to live here." And since -- I said,
15 "Since you want to live here and we are neighbors,
16 let me tell you of a couple of issues that I think
17 you should take care of. There is a lot of water
18 runoff from the hill, and I had issues with that.
19 So I would suggest before you start building that
20 you take that into consideration and maybe make a
21 French drain or whatever."

22 And I think you solved it by putting the house
23 a little bit higher up. That was a clever idea.

24 I didn't know at the time that he didn't have
25 a seller. For me it's -- problem of a seller. But

1 I also told him that, you know, there is a -- I
2 don't know what it's called -- PAD/PUD. Whatever.
3 There's a city behind our houses and that there's a
4 buffer zone. And so I gave him a couple of pieces
5 of information and also let him know that there's a
6 homeowner's association.

7 And I let him know that Justin -- I remember
8 that I didn't know the name, Justin, because I
9 referred to him always as the person with the palm
10 trees. And so I gave him these pieces of
11 information that I thought are helpful.

12 And we have other people who -- in the city on
13 the street -- have other needs. And we tried to
14 help them. And so those things are either
15 addressed by us directly or we discuss them if we
16 think other people could help better or we could do
17 it together.

18 Q Okay. So you just gave me an example of what the
19 help would be. It would be in terms of your
20 discussions and conversations that you had --

21 A Uh-huh.

22 Q -- with the plaintiff.

23 Were -- was that exactly the discussions that
24 took place at that homeowner's association meeting?

25 Or is that simply by way of example of the

1 kind of help?

2 A Yes. We discussed other people. Not him, because
3 he wasn't there at that time.

4 Q Okay. I wanted to clarify that it wasn't he.

5 A Uh-huh.

6 Q But that's the kind of things that you would
7 discuss in terms of help?

8 A Right.

9 Q Now, do you specifically remember what help people
10 needed at the last meeting --

11 A Yes.

12 Q -- that you were discussing?

13 All right. What specific help did people
14 need?

15 A I'm not discussing that. That's a personal,
16 private matter. If somebody has a need, then we
17 discuss this. That's confidential.

18 Q Well, it's probably not. But I don't feel like
19 overriding you or an objection. Maybe you have
20 some good reason, that it's personal and you didn't
21 want to discuss it.

22 A Well, you know that your neighbor has a certain
23 issue, and you don't want to talk about this now
24 with others. But, you know, then you might ask
25 some other neighbors "hey, can we not do this and

1 that for" --

2 Q Well, then take me to the island --

3 A Nothing --

4 Q So that was -- there was only one help discussion
5 at the last meeting, and it was that, that you
6 don't really want to get into --

7 A Yeah.

8 Q -- on the personal basis. And it wasn't Mr. Azar's
9 issue.

10 A Right, right.

11 Q All right. Now, the island, when you talk about
12 the island -- well, tell me about the island.

13 A What's there to say. It's, what, six yards,
14 six meters long and maybe four meters wide.
15 Something like that. And it's in the middle of the
16 road, and it has vegetation on it. And -- that
17 grows. And sometimes it overgrows and needs to be
18 cut. And unfortunately, we -- we sometimes find
19 other stuff in there.

20 So it needs regular maintenance, just like you
21 have to take care of your yard. That island is
22 smaller than your yard. But if nobody takes care
23 of it, it's an eye sore. So that thing is probably
24 the main issue that comes up every time we have a
25 meeting.

1 Q All right. So you had the island that needed to be
2 cared for. And Sophia was caring for it for a
3 time, and then she got older. And then everybody
4 else needed to step -- pitch in to take care of the
5 island. And was it -- was it like a help day that
6 was -- no money changed hands? Or was there
7 actually a budget that was set and contributions
8 demanded from the various owners?

9 A You asked me that already, and I told you that she
10 is -- she went around and she tried to elicit
11 funds. And it was not "give me money or I shoot
12 you," but, you know, she asked for it. Some people
13 gave and some people didn't.

14 And then she asked me to do that, and I did
15 the same thing. And at some point the couple that
16 moved into this house opposite of the island, I saw
17 them doing it without that I specifically asked
18 them to do it. But they did a very nice job. So I
19 went and bought them a case of wine and just said
20 thank you in the name of the street.

21 Q So it was purely voluntary?

22 A It was voluntary.

23 Q Now, in terms of the collection of the money and
24 the disbursement of the money, you gave them a
25 thing of wine. Where would the money get deposited

1 for -- that was given by the volunteers to
2 contribute to the cost of cleaning the island?

3 A Not quite certain what you mean. So when we --
4 when we knocked on the doors of people --

5 Q Right.

6 A -- and they gave us cash, it went into my pocket.
7 And then I paid a yardman to do that. Or I gave it
8 to Sophia, and she gave it to her yardman, and he
9 did it. Or -- with the wine, I just paid that
10 myself.

11 Q Okay. Did anyone give you any checks?

12 A I don't recall. No, I don't think so.

13 Q And there isn't any kind of PayPal or Venmo or
14 Zelle or checking account set up for the HOA?

15 A No. And to be quite honest, after almost 30 years,
16 I know where it makes sense to knock on the door
17 and where not. And so it's -- it's usually the
18 same people that put the good foot forward. And we
19 do this, and the others just enjoy it.

20 It's -- it's the other side of a coin from a
21 homeowner's association that doesn't have mandatory
22 fees. But we didn't want to have such a formal
23 setup.

24 Q So in reality, there is no formal setup of an HOA?

25 A We don't --

1 MR. DLUZNESKI: Object to the form.

2 MR. D'AGOSTINO: Object to the form.

3 A We don't have something where we have a president
4 and a secretary and write these things down and
5 publish a newsletter and -- so we don't do that.

6 We do this by affirmation. We get together.

7 Q (MR. BAGHDADY) Does the restrictive covenants
8 provide for a homeowner's association?

9 MR. DLUZNESKI: Object to the form.

10 Q (MR. BAGHDADY) If you know.

11 MR. DLUZNESKI: You can answer if you know.

12 A Say again.

13 Q (MR. BAGHDADY) Do you know if the restrictive
14 covenants provide for a homeowner's association?

15 A To my belief it's the other way around.

16 Q Okay. All right. So now take me forward. Walk me
17 through the steps of when you first met Mr. Latif
18 Azar. What can you tell me about that?

19 A Say again.

20 Q Do you remember the first time you met Mr. Azar?

21 A I already told you.

22 Q Tell me again. When's the first time you met him?

23 A He came out. I saw him. We knew that the property
24 was sold. So we suspected that he was the buyer.

25 So we went out and introduced us.

1 Q Do you know a date for when that happened?

2 A No.

3 Q Do you know an approximate date for when that
4 happened?

5 A The century. I mean, you -- ask him. He probably
6 knows better when -- when he went there first.
7 It's a more important date for him than for me.

8 Q Okay. Well, that's all right. If you don't know,
9 that's a fair answer.

10 A So -- well, I would think you ask only pertinent
11 questions hopefully.

12 So I introduced myself. And as I said before,
13 the assumption was that he's going to be my
14 neighbor. I try to have good neighborly relations,
15 as you can ask my neighbors.

16 Q Now, you have given me a narrative already when you
17 were using it as an example how you help people.

18 So is that the same --

19 A The story is not going to be a different one.

20 Q Okay. Well, I just want to confirm that that's
21 what you're doing. So this is the first time you
22 meet him, and you go through this narrative with
23 him.

24 A Yes.

25 Q All right. Now tell me the second time you meet

1 him.

2 A I -- there were several meetings we've had, when we
3 saw each other. And I don't know what the next one
4 was. I mean, I --

5 Q You don't know when it was or what transpired
6 during -- as a conversation in that meeting?

7 A Either.

8 Q I know you don't remember the date.

9 A Either.

10 Q You don't remember the date or the -- any
11 subsequent conversations?

12 A I remember conversations with him. I don't know
13 which is the next one.

14 Q Okay. All right. Well, then give me the
15 conversations as you remember them. How many
16 conversations do you think you had with him?

17 How many meetings did you have with him across
18 time?

19 A Half a dozen. Something like that.

20 Q Okay. So you had maybe half a dozen. You gave me
21 a narrative of the first one. Now give me a
22 narrative of some of the others, even though you
23 don't remember what order they happened.

24 A We talked about placement of yard trash. I think
25 that was more or less most of what we talked about

1 in these conversations. The -- one of the last
2 conversations was where I objected to him screaming
3 at my wife.

4 Q Well, tell me about that. You say he screamed at
5 your wife. Fill me in on that. When did that
6 happen and tell me about it?

7 A Don't know when that happened.

8 Q What did he scream at your wife?

9 A He -- I wasn't there. My wife says he -- she came
10 out with her car, and he ran after her. And she
11 stopped, and he screamed at her saying something to
12 the effect that "your husband never answers my
13 texts and doesn't care what I have to say."

14 And that was observed by some yard workers we
15 had as well who came there as well and said "what's
16 going on here?"

17 So -- but again, I wasn't there. And your
18 question was specifically to that point. And I --
19 basically after that, I tried to stay away. I
20 still every time I see him, I waved at him and said
21 "hi." But otherwise, I learned better not to say
22 anything.

23 Q Okay. What's your wife's name?

24 A Annemarie.

25 Q Annemarie.

1 A One word.

2 Q As one word. Okay. Same last name as you have?

3 A Yes.

4 Q All right. And so is that true? You did not
5 answer his texts and care what he says?

6 A No. Actually, we have a lot of text messages going
7 back and forth. And, again, this, I think, really
8 has only to do with the placement of yard debris.
9 He thought I put the yard debris in front of his
10 house, and I told him that I didn't.

11 And we had also texts about a homeowner's
12 association, that I'm not -- I'm not -- that we
13 don't have a homeowner's association and that I am
14 not valid to -- to say anything on that. And I
15 didn't want to discuss this. It is what it is.

16 And so if he -- I wanted to basically tell him
17 this is what I have. This is what you've got. And
18 so he first said, "This doesn't exist, and the PUD
19 doesn't exist." And I said, "Well, no, the PUD
20 does exist." Or PAD/PUD. I don't know what it is.

21 So he obviously said first "this doesn't
22 exist." He researched.

23 What is it in the city when they -- POD or
24 PAD? It is -- there somebody builds something big
25 and they have to --

1 MR. DLUZNESKI: Oh, like a zoning?

2 THE DEPONENT: A zoning thing.

3 MR. DLUZNESKI: Zoning issue.

4 Q (MR. BAGHDADY) You mean a PUD?

5 A PUD.

6 Q Planned Unit Development.

7 A Yeah, that's probably what it is. Sorry. PUD.

8 And so he said he -- he researched, and there
9 is none of this and there's no PUD. And I said,
10 "Well, there is, but sorry, I don't have more
11 information." I just wanted to let him know.

12 So I tried to be nice and give him
13 information. I told him I'm moving my yard trash
14 further away so that he has no problems. But this
15 was all not good enough. So I then later on
16 learned that he's not going to be my new neighbor,
17 that that was not his intention.

18 So I just basically gave up on it. I thought
19 I'm making the -- the situation worse by constantly
20 trying to put forth information that he doesn't
21 seem to want. So ...

22 Q So do you still have the texts that he sent you?

23 A I have it on my phone. He should have them on his
24 phone.

25 Q Okay. Well, I don't know if you have them on your

1 phone. And so there are -- so if we looked at your
2 phone, we would see texts to you that you did not
3 respond to?

4 Or did you respond to all of his texts?

5 A I haven't looked at this. There may be some that I
6 responded and some that I didn't respond.

7 Q Do you have a way to print your texts from your
8 phone?

9 A I can probably print them, yeah.

10 Q Is it an iPhone?

11 A It's an iPhone.

12 Q Okay. Did he also communicate with you by email?

13 THE DEPONENT: Did you?

14 Q (MR. BAGHDADY) If you remember.

15 A Probably. I -- I don't recall.

16 Q Would you still have those emails if he did?

17 A Maybe, maybe not.

18 Q Why not, if not?

19 A Because Yahoo deletes them automatically after some
20 time when I have them in a certain folder.

21 Q So if you left them in a standard in-box, they
22 don't get deleted. But Yahoo might delete them if
23 you put them somewhere else --

24 A No, I may --

25 Q -- so you could track them.

1 A I may delete them -- again ...

2 Q I see.

3 A If it's not important. I'm not quite certain. So
4 I may or may not, but I would have to look.

5 Q All right.

6 A And it could be that I have some and some not.

7 Q Okay. So you've given me a couple of meetings.
8 You gave me the narrative description of one
9 meeting early on about the property. And then you
10 gave me the description of the meeting with
11 Annemarie. And then you had meetings where you
12 just kind of waved at him from a distance.

13 A Uh-huh.

14 Q Do you remember any other meetings where you
15 actually had a conversation with him?

16 A Not that I recall.

17 Q Okay. Now, you've also communicated with people
18 from the City of Rock Hill about his property --

19 A Uh-huh.

20 Q -- haven't you?

21 All right. Now, did -- you have communicated
22 with them by email, haven't you?

23 A Yes.

24 Q Do you still have those emails?

25 A Same thing. I don't know whether I do or don't or

1 whether they are all there. But there aren't many.

2 Q Okay. And did you also have communications by text
3 with anyone at Rock Hill?

4 A The City of Rock Hill?

5 Q Anyone from the City of Rock Hill; right?

6 A I don't think so.

7 Q Okay. And did you have any communications by
8 telephone with anyone from the City of Rock Hill
9 related to his property?

10 A I don't think so.

11 Q Did you have any in-person meetings with anyone
12 from the City of Rock Hill?

13 A Yes.

14 Q All right. Do you remember how many in-person
15 meetings you had about the City -- with the City
16 people -- City of Rock Hill about his property?

17 A I would say one or two. I'm not quite certain
18 whether we had two.

19 Q All right. So if there were one or two, tell me
20 what you remember -- can you -- if you don't know
21 if there were one or two, then maybe your brain
22 only remembers one conglomerate meeting.

23 MR. D'AGOSTINO: Object to the form of the
24 question.

25 Q (MR. BAGHDADY) Is that correct?

1 MR. D'AGOSTINO: Object to the form of the
2 question.

3 Q (MR. BAGHDADY) Because I'm trying -- I want to
4 focus on --

5 A I'm --

6 Q -- what conversations you had with the City. And
7 I'm not sure how best to help you tell me what that
8 is in the one or two meetings.

9 A I -- I would say to the best of my recollection we
10 had one meeting.

11 Q Okay.

12 A But there could have been two. But I don't --
13 actually don't think so.

14 Q All right. Tell me about that meeting. First of
15 all, who do you remember being at that in-person
16 meeting?

17 A Whoever said they are in charge of this. I don't
18 know their name.

19 Q "In charge of this" being from the City?

20 A Yeah.

21 Q Okay. Can you describe that person to me in any
22 way, to identify them?

23 A I'm not good with that. 30 to 40. Male, white.

24 That just probably describes 60 percent of all the
25 people working there. I don't know.

1 But they are -- this is not a secret. They
2 are -- I probably can find out who that was if you
3 needed to.

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. And
9 that if we wanted to have anything specifically
10 done, that we didn't like from what we said, we
11 would have to go to -- and take a lawyer. To which
12 I said, "Well, we don't have an association fund,
13 and we are likely not going to do that."

14 This was our good foot forward for our
15 association to do what we can do. Go to the City,
16 say this is what we are unhappy with, and then do
17 what you do with it.

18 But they basically said "thank you; no, thank
19 you."

20 Q Okay. When you say "no standing," did they explain
21 to you why you had no standing?

22 A They explained that homeowner's associations have
23 come a long way and they have -- that we would have
24 had to nail these things further down, and we
25 didn't. And because of that, that's -- their

1 suggestion is if we in the future want to have more
2 leverage, we should consult a lawyer and go and
3 have these things rewritten.

4 Q Okay. Now, did you also discuss -- besides the
5 fact that those restrictive covenants were
6 discussed, a homeowner's association, did that no
7 standing relate to any of the specific requirements
8 for the development or improvements of the property
9 on the lots?

10 A They said that they were already looking at a lot
11 of the things that we were looking at. So that's
12 what they would go after. But the rest they said
13 is --

14 Q There was actually no violation of the restrictive
15 covenants?

16 MR. DLUZNESKI: Object to the form.

17 You can answer if you know.

18 A They -- they said that we had several points, that
19 we had written down that we wanted to discuss with
20 them. And they said some of these they see
21 themselves, and they would take a look at that.
22 And additional ones, they couldn't include.

23 Q (MR. BAGHDADY) So at your meeting, you were
24 discussing the matter, but they hadn't made their
25 decision yet?

1 Or they had made their decision and told you
2 there was no standing at all?

3 MR. D'AGOSTINO: Object to the form.

4 A Well, they didn't say they had no -- I have no
5 standing at all. They -- they said this exists.
6 But it doesn't give us enough ammunition to go
7 forth with it through the City. It would have to
8 be something that needs to go through a lawyer.

9 And they could -- there were things -- for
10 instance, the size of the house and so on, that
11 they were looking at as well. And so that was
12 acceptable to them, but not -- not everything.

13 Q (MR. BAGHDADY) So where you stand now, do you
14 believe that the improvements on the lot that
15 Mr. Azar improved are in violation of those
16 restrictive covenants?

17 A I couldn't tell. I didn't set foot on his land and
18 didn't see the house and didn't see what changes he
19 made. So I don't know.

20 Q Even today you don't know whether it's a violation
21 or not?

22 A No. I have to rely on that he did what the City
23 now wanted. And this -- and it seems that that's
24 all we can expect, what the City wants. And that
25 everything else we wanted is -- we didn't have

1 enough leverage, and we didn't want to go through
2 hiring a lawyer.

3 Q What's your perception of why and what was
4 happening when -- are you aware that the City put a
5 stop work order on the property?

6 A No. I heard it through a third party. But I
7 myself was not informed of it.

8 Q And who was the third party besides your lawyer
9 that told you that?

10 A Probably my wife. I'm not sure.

11 Q Did your wife have more to deal with this property
12 and the City and the communications than you did?

13 Or is it just because you've told her things
14 about it that she would now remember and be able to
15 tell us?

16 A Yeah.

17 Q The latter?

18 A Yeah.

19 Q Okay.

20 A I mean, she is the one that walks the street every
21 day and then meets the other neighbors. And the
22 other neighbors then tell her "hey, we have to do
23 something" and "get your husband to stick his neck
24 out." So that's how I got into this position.

25 But I don't recall -- you know, I also talked

1 to so many neighbors. I don't recall who said
2 what. I know about the stoppage. But we were -- I
3 wasn't informed about the stoppage. I didn't read
4 it in an email to me or something like that.

5 Q So you don't really know why the stoppage happened
6 or when the stoppage ended? Or when the stoppage
7 began?

8 A No.

9 Q You simply know that it did happen?

10 A Yeah. Again, for me this is inconsequential. At
11 that point, I did my deed. I went to the City. I
12 said, "Here, this is what the neighborhood wants,"
13 and went out knowing that they said, "Well, you
14 will have little success. You have to go to a
15 lawyer and see what they do."

16 And so the next thing that we will do at the
17 next homeowner's association meeting is to discuss
18 whether we want to take a lawyer and rewrite these
19 things so that it has more bite. Which means
20 everybody would have to fork over money. So I
21 don't know whether that's going to happen or not.

22 Q Well, there hasn't been any kind of meeting on that
23 subject yet; right?

24 A No.

25 MR. BAGHDADY: Let's take a brief break.

1 We've been at it for about an hour and a half, I
2 think.

3 MR. D'AGOSTINO: How late do you think
4 you'll be going?

5 MR. BAGHDADY: Oh, I'm thinking I'm close to
6 done.

7 MR. D'AGOSTINO: Okay. Great.

8 (Off the record from 2:40 p.m. until 2:46 p.m.)

9 Q (MR. BAGHDADY) So we went over your knowledge and
10 training and experience in -- in measuring -- in
11 physics, an MBA, and in measuring the qualities of
12 plastics when they're flowing through molds for use
13 in production.

14 Tell me a little bit about your experience in
15 the building process.

16 A In the building process. Now, that's a big part.
17 Basically if you study physics, you know a little
18 bit about everything that goes on in building a
19 structure. On top of which my company is involved
20 with companies that make a lot of building
21 supplies. For instance, we know too good -- how
22 good or bad these plastic panelings are that go on
23 houses, like this house has.

24 So we -- we are kind of hoping that what is
25 written in these covenants would apply to his house

1 too. And so that was one of the points that we had
2 brought up. But besides that, it has very little
3 to do with this case.

4 Q Right. So now -- what I really want to know about
5 is: What do you know about the actual building
6 process? What are the steps that a builder -- that
7 Mr. Azar had to go through with the City in order
8 to construct improvements on that lot?

9 MR. DLUZNESKI: Object to the form of the
10 question. You can answer if you know.

11 A I have no idea. I've never built a house here in
12 America. Always bought one that was already done.

13 MR. BAGHDADY: Okay. That's what I wanted
14 to establish. All right. Please answer any
15 questions that the other attorneys may have.

16 MR. D'AGOSTINO: I don't have any.

17 MR. DLUZNESKI: I don't have any either.

18 MR. BAGHDADY: Okay. That concludes --
19 adjourns today's deposition.

20 FURTHER DEPONENT SAITH NOT.

21 (Whereupon, there being no further questions, the
22 deposition was concluded at 2:49 p.m.)

23 (*This transcript may contain quoted material.

24 Such material is reproduced as read or quoted by
25 the speaker.)

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.

For details on reading and signing, please refer to the transcript.

In witness thereof, I have hereunto affixed my signature and title.

Darlene Pastel, CVR-CM

Date: 03/12/2025
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 Ebanazer Township, Tax District No. 3, York County, South Carolina, specifically shown on Plat of said property, prepared April 13, 1966 by R. H. Maretz, 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 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

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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, agree 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
Richard W. Ward

By *Alton G. Brown*
Alton G. Brown, President

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
COUNTY OF YORK) C.A. NO. 2024CP4601354

LATIF TAHERI AZAR	)
Plaintiff(s),	)
versus	)
	)
TIM HAAKE	)
Defendant(s).	)

H E A R I N G

Before The Honorable William A McKinnon

DATE: March 11, 2025
LOCATION: South Carolina Circuit Court
TRANSCRIBED BY: Jane Daniel

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14

15

16 ALSO PRESENT:

17 DANIEL D. D'AGOSTINO, Esquire

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20 York, SC 29745

21 Attorney for Defendant Justin Marlowe

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EXHIBITS

(None Marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 PROCEEDINGS

2 THE COURT: Azar v. Haake, I -- I misspoke there.

3 MR. DLUZNESKI: Yes, your Honor.

4 THE COURT: Okay. So we have two motions for summary
5 judgment filed by our defendants.

6 MR. DLUZNESKI: Thank you. And your Honor, I believe
7 that Mr. D'Agostino his arguments may be the same or similar
8 as mine. So if it pleases that the Court, it might make the
9 most sense for me to argue first.

10 THE COURT: That -- I trust -- go right ahead.

11 MR. DLUZNESKI: Okay.

12 MR. D'AGOSTINO: That's not a problem. I agree.

13 MR. DLUZNESKI: So your Honor, this case also similar
14 to the last one that -- that we heard argument on, started
15 with a home building project that the plaintiff was doing
16 inside a subdivision in which my client and Mr. D'Agostino's
17 client reside.

18 When all of this started, the plaintiff was the owner
19 of a lot with the address of 2124 Windermere Road in Rock
20 Hill. That property is situated within the Poplar Forest
21 subdivision.

22 So during the -- and - and I submitted a memorandum in
23 support of my motion to kind of boil down the, the details,
24 but essentially what happened was the plaintiff obtained this
25 piece of property initially. Told my client that he was

1 considering purchasing the property to live in. Builds the
2 house.

3 He submitted plans during the course of that project to
4 the city of Rock Hill. And -- and specifically the plans
5 that he submitted included specific square footage
6 requirements.

7 And that is important, your Honor, because there is a
8 -- a set of restrictive covenants for the Poplar Forest
9 subdivision that were actually recorded here in York County
10 back on April 30th, 1966.

11 And those restrictive covenants included a provision
12 that said that they would be automatically renewed every 10
13 years thereafter, unless they were modified or rescinded by
14 the subdivision.

15 So the plaintiff submitted plans to the City of Rock
16 Hill and -- and those plans complied with the square footage
17 requirements and all other requirements of the restrictive
18 covenants.

19 So those plans were ultimately approved, and the
20 plaintiff began building the new home at the property within
21 the Poplar Forest subdivision.

22 On February 22nd, 2024, the city issued a stop work
23 order for the plaintiff's construction of -- of the new home
24 at the property. And specifically during his deposition, the
25 plaintiff testified and I have cited this in the memorandum

1 that the -- that other than that letter.

2 Meaning the February 22nd, 2024 letter to Mr. Nugent at
3 the city, on February 28th, 2024, the six days after the City
4 of Rock Hill issued the stop work order he has quote, "No
5 other information," end quote about my client making any
6 false statements about the plaintiff or the plaintiff's
7 business, which -- which is of course a requirement for a
8 defamation claim.

9 And he also testified toward the end of his deposition,
10 and I have submitted his deposition as an exhibit that his
11 relationship with the City of Rock Hill actually got better
12 as a result of the work stoppage quote, "Because the more
13 they know my work, the more they trust my work," end quote.

14 And as I said, your Honor, the letter that the
15 plaintiff was referring to as the basis for his defamation
16 claim was (inaudible) of the city specifically Mike Nugent at
17 the City of Rock Hill on February 28th.

18 So if the stop work order was implemented on February
19 22nd, it could not have been implemented because of that
20 letter, because the letter came six days after the work
21 stoppage was issued.

22 So I go through in the memorandum essentially what
23 defamation is and what the plaintiff must prove in order to
24 maintain a claim for defamation.

25 And the first element is a false and defamatory

1 statement concerning the plaintiff. And here, your Honor, we
2 just don't have that, we don't have a false and defamatory
3 statement by my client about the plaintiff.

4 By the plaintiff's own sworn testimony during his
5 deposition, the whole matter, he, and those are his words,
6 not mine. The whole matter of his claims against my client
7 and Mr. Marlow, who is Mr. D'Agostino's client is because,
8 quote, "They represented they were on the HOA of the Poplar
9 Forest subdivision."

10 This is not a false and defamatory statement about the
11 plaintiff or the plaintiff's business making a representation
12 that you're part of some entity, whether or not it's false is
13 not defamatory.

14 And I will say, your Honor, and I have -- this isn't
15 before the Court because this just occurred last week, but
16 Mr. Baghdady actually deposed my client last week, and he
17 testified about how this HOA of the Poplar Forest subdivision
18 is run and carried out.

19 That's not before the Court in the record today, but I
20 -- I think having that context is helpful. But the
21 representation, if there was one by my client and Mr. Marlow,
22 that they were on this HOA for Poplar Forest subdivision has
23 absolutely nothing to do with the plaintiff or the
24 plaintiff's business.

25 And -- and as a side note Mister -- the -- the

1 plaintiff was unable to present any evidence during his
2 deposition that anything that my client or Mr. Marlow said to
3 the city of Rock Hill had any adverse effect on his
4 reputation.

5 Which is the harm that South Carolina jurisprudence has
6 commented and I cited the case in my memorandum, is the
7 central purpose of the tort of defamation. And in fact, with
8 regard to that, the plaintiff testified that quote, "It's
9 speculation."

10 When he was asked by Mr. Marlow's attorney whether any
11 of the statements or representations allegedly made by my
12 client and Mr. Marlow had any adverse effect upon the
13 plaintiff's reputation.

14 So -- and -- and the Court can go through the remainder
15 of -- of my discussion on that particular element, but -- but
16 suffice it to say there is -- there has been no false and
17 defamatory statement about the plaintiff or the plaintiff's
18 business.

19 It may have hurt the plaintiff's feelings that Mister
20 -- my client and Mr. Marlow made these statements or
21 expressed concerns to the city of Rock Hill. But that's not
22 defamation. A bruised ego does not rise to the level of
23 defamation.

24 The -- the second element of defamation is
25 actionability of the statement irrespective of special harm

1 or the existence of special harm caused by the publication.

2 And again, we get to this, if the Court finds that the
3 plaintiff is able to avoid summary judgment on the false and
4 defamatory statement element.

5 And again, all of this goes back to the work stoppage.
6 The plaintiff in his deposition is very clear that his
7 damages are related to the work stoppage that went into place
8 on February 22nd, 2024. And he says he blames the work
9 stoppage, of course, on this letter that was sent to the City
10 of Rock Hill on February 28th, 2024.

11 And again, as I mentioned earlier, that letter could
12 not have been the reason for the work stoppage because it was
13 sent six days after the work stoppage was implemented. So
14 for these reasons your Honor, I believe that the plaintiff
15 has met its burden at this stage with respect to the
16 defamation claim.

17 We would ask for summary judgment. And I believe Mr.
18 D'Agostino is going to argue exactly the same thing that I
19 have because the facts and circumstances are -- are the same
20 for both defendants.

21 But the additional piece is there's no additional
22 discovery that needs to be done on this particular issue.
23 The plaintiff's words by themselves and his admissions during
24 his deposition in this case are sufficient for the Court to
25 award summary judgment.

1 Now, the second claim that there was a first claim
2 against both defendants for tortious interference with
3 prospective contractual relations, that claim was dismissed
4 by Judge Hall back in January, I believe.

5 And there's a footnote -- oh, I apologize. June 25th,
6 2024, Judge Hall dismissed that action. So the only other
7 action against the defendants that remain at this point is
8 for a declaratory judgment.

9 Now I would say that since this case was filed the
10 plaintiff has sold this property and moved out of the
11 neighborhood. So at this point, you know, the plaintiff does
12 not have standing to maintain the action for declaratory
13 judgment.

14 Basically asking for the Court to declare that the
15 defendants are not members or officers of this Poplar Forest
16 subdivision HOA. Plaintiff no longer has standing to assert
17 that because he's no longer in the neighborhood.

18 But again as a secondary point to that and I've also
19 explained this in more detail in the memorandum, the
20 plaintiff has not brought forward any evidence to -- to
21 support his claim that there is no HOA and that my client and
22 Mr. Marlow are not members or officers of that HOA. And --
23 and in fact, you know, my client's deposition testimony last
24 week would further bolster that argument.

25 So for those reasons, lack of standing and -- and also,

1 you know, lack of affirmative evidence to support that. And
2 -- and the only evidence that we have on that point is
3 evidence directly to the contrary.

4 It -- it is my position that summary judgment and is
5 also appropriate with respect to the plaintiff's claim for
6 declaratory judgment. And if the Court grants summary
7 judgment on both of those claims, it would obviously resolve
8 the case. Thank you.

9 THE COURT: All right. Mister -- Mr. Baghdady, so what
10 is the defamation? What -- what is the defamatory statement?
11 You've been muted, Mr. Baghdady.

12 MR. BAGHDADY: Sorry. Yeah, I didn't want to have the
13 excess noise. Sorry. I was not muted. Yes. The defamatory
14 statement is that my client was building a house in a
15 subdivision that had an active HOA and was in violation of
16 the Rock Hill building requirements and had falsely
17 represented to Rock Hill that there was no HOA.

18 THE COURT: Okay. So the defamation was that he was --
19 that -- that the statement was made to Rock Hill, that he was
20 in violation of the HOA and that he had falsely claimed there
21 was -- there was no HOA.

22 MR. BAGHDADY: Exactly.

23 THE COURT: And how was that statement communicated?

24 MR. BAGHDADY: And what?

25 THE COURT: How was that -- was that a -- was it a

1 written statement? Was it an email or was it --

2 MR. BAGHDADY: No. It's an email. It's an email.

3 It's in writing. It exists in very -- it -- it's definitely
4 an email on the 2/28 email that is -- that reflects a 2/22
5 meeting.

6 There were discussions among people in the subdivision.
7 The problem here, and the reason that the -- the HOA, these
8 guys think they had an HOAs is they had an HOA social
9 organization. They did not actually have an HOA.

10 The -- the officers Directors Architectural Committee
11 that are referenced in the 1966 restrictive covenants was for
12 Poplar Forest Corp. And we filed with our brief, we did a --
13 a detailed brief back when this was on Judge McCutchen
14 calendar back in -- over a month ago going through about 24
15 pages in length.

16 We've attached from the Secretary of State of South
17 Carolina a statement. There is no there -- there is no
18 Poplar Forest Corporation. They treated it like an HOA, they
19 socialized, they had voluntary fee collections. They got
20 together and socialized. They -- they had meetings like they
21 were an HOA, but there actually was no HOA.

22 And by saying, telling the -- the City of Rock Hill
23 that there was an HOA. And they also said other things
24 they're in violation of which they were not.

25 But by saying there was an HOA that brought a stop work

1 order out of the city of Rock Hill very clearly. And for 45
2 days, the City of Rock Hill indicated it was going to its
3 counsel to investigate what's going on.

4 And at the conclusion of those 45 days, they decided
5 yep, absolutely no HOA. Even in the --in the deposition, Mr.
6 Haake admitted, well, we didn't have the ammunition. They
7 told us that. Well, that's right. because there was no HOA.

8 So the special damages to my client were 45 days of
9 stopped work because of the false statement that my client
10 was wrongfully building a home and claiming that there was no
11 HOA when in fact there was. But there is no HOA, my client
12 was telling the truth.

13 THE COURT: Mr. Baghdady, I mean, Mister -- Mr.
14 Dluzneski says it was some -- it seems -- well, he says that
15 -- that even if that statement was false, that there is an
16 HOA, that's not a statement about your client. I mean,
17 that's -- that's a fault. That may be -- that may be a
18 factually incorrect statement, but does that make it
19 defamatory.

20 MR. BAGHDADY: It's false because -- and it's about my
21 client, because he is saying, my client is building a -- a
22 home in a subdivision with an HOA in violation of the HOA
23 restrictions.

24 THE COURT: Every false statement of fact is not
25 defamation. Would you agree with me?

1 MR. BAGHDADY: Well, the -- every -- every false
2 statement of fact is definitely not defamation. No doubt.
3 Absolutely. No question.

4 THE COURT: So whole -- talk me through how that
5 statement is defamatory.

6 MR. BAGHDADY: It's defamatory because it is a false
7 statement about my client that harmed my client. The false
8 statement is that my client's building a house in a
9 subdivision that has an HOA when he said there is no HOA,
10 that was a false statement.

11 THE COURT: No. But -- but the -- your client was
12 building a house. The -- the part of it that's false is
13 there's an HOA and I'm just not sure that that's defamatory.

14 MR. BAGHDADY: Yeah, it's a defamatory because he is
15 saying, my client is building a house in an HOA where there
16 is an HOA and that he -- he's -- he lied about it being not
17 in an HOA, not subject to an HOA. And that therefore he was
18 not building it properly, that he was building it in
19 violation of the HOA restrictions.

20 So I think that the actual more particular area of the
21 law that that would fall under is innuendo. It's more than
22 just the fact of the fact that it was not an HOA, but it's
23 all the surrounding circumstances that -- that show that my
24 client is acting improperly, wrongfully and harming him.

25 MR. DLUZNESKI: Your Honor, if I may just briefly.

1 THE COURT: Yes, sir.

2 MR. DLUZNESKI: If I understand Mr. Baghdady's
3 argument, the -- the -- what he claims to be the -- the
4 defamation is a statement that there is in existence this
5 HOA. Whether or not that's true, as the Court pointed out,
6 that's not defamatory. Saying that you're on an HOA when in
7 fact --

8 THE COURT: Mr. Dluzneski, he's -- I think it's a
9 little bit different than that. Mr. Baghdady's saying that
10 the defamatory statement is your client allegedly saying that
11 Mr. Baghdady's client was building a home in violation of an
12 HOA, which did not exist.

13 MR. DLUZNESKI: No, your Honor. The City of Rock Hill
14 came out. They did an independent investigation. I don't
15 believe they even talked to my client during that time. I
16 believe his testimony last week was he was out of town. They
17 didn't even talk to my client.

18 And then based on their own independent investigation
19 on February 22nd, they implemented the, the stop work order.
20 And, you know, if the statements of the city was contained in
21 this February 28th letter, that letter --

22 THE COURT: Mr. Baghdady -- Mr. Baghdady says the
23 letter references a March 22nd meeting that your client had
24 with the City of Rock Hill.

25 MR. DLUZNESKI: The -- the Stop or work order was

1 implemented on February 22nd. That -- any meeting in March
2 would've happened after the stop work order.

3 THE COURT: Well, Mr. Baghdady, did I misunderstand
4 what you were saying. I -- I thought you were saying that
5 although the -- the letter was after the stop work order,
6 there was a meeting prior to the stop work order.

7 MR. BAGHDADY: If you're asking me that's absolutely
8 right. There's a meeting on 2/22 in the record.

9 THE COURT: That's what I -- that's what I thought you
10 said. Okay.

11 MR. DLUZNESKI: At -- at the property at which my
12 client was not in attendance. And -- and if we're looking at
13 it for -- as a statement about an exist -- an existent or
14 non-existent HOA.

15 THE COURT: Wait -- so wait -- wait. Slow down, slow
16 down. Okay. That's a -- so Mr. Baghdady, Mr. Dluzneski says
17 his client wasn't present for that meeting. So as far as his
18 client, what is the defamatory statement?

19 MR. BAGHDADY: Okay. Well, this -- it -- it continues
20 throughout the -- it's -- it's not just that one. They're --
21 they're trying to walk away and say, okay, well, the -- the
22 stop work order was 2/22.

23 We have writing about a written document showing that
24 they -- they were confirming their position on 2/28. That
25 doesn't mean that there weren't communications running the

1 entire period.

2 And even if it were the only -- his argument is only as
3 to the number of days of responsibility, because it took 45
4 days after -- after the communications and emails for the
5 City of Rock Hill to conclude there is no HOA, my client's
6 not in violation.

7 And the -- and the property could -- could continue.
8 So trying to argue that, you know, his client gets out
9 because the written evidence is 2/28 --

10 THE COURT: His argument is the only communication you
11 can reference is after the stop work order was already
12 implemented. So what -- so what is -- you believe that there
13 were -- there were communications between Mr. Dluzneski's
14 client and the City of Rock Hill prior to the stop work
15 order.

16 MR. BAGHDADY: Yeah. They were -- their communications
17 not only to the city of Rock Hill, but also to communications
18 to other members in the subdivision.

19 MR. DLUZNESKI: Mr. Baghdady had an opportunity to ask
20 my client about those communications during his deposition
21 last week. I -- I mean, the -- the only communication that
22 -- that we've got from the plaintiff's own mouth is this
23 February 28th letter to Mike Nugent at the City of Rock Hill.

24 And now, you know, now that the plaintiff is looking
25 down the barrel of a potential summary judgment order in this

1 case it seems as though there were purportedly additional
2 communications.

3 Again, none of these are defamatory statements about
4 the plaintiff or the plaintiff's business. That -- that's
5 what my client and -- and my co-defendant were sued for.

6 THE COURT: Well, isn't calling him a liar, isn't fact
7 defamatory?

8 MR. DLUZNESKI: I don't believe that my client ever
9 called him a liar.

10 MR. D'AGOSTINO: Nobody ever --

11 THE COURT: Well, Mr. Baghdady says that your client
12 said he -- that he was lying about the non-existence of the
13 HOA

14 MR. DLUZNESKI: No.

15 THE COURT: Mister -- what are you trying to say, Mr.
16 Baghdady -- tell me, in the record, what -- what is the
17 defamatory -- I agree with Mr. Dluzneski that the -- that the
18 email on the 28th can't be enough because the stop work order
19 is already in place. So the -- so something -- what -- what
20 was when is the defamatory statement?

21 MR. BAGHDADY: No question, the defamatory statement is
22 that my client is building a house in the subdivision that
23 has an HOA when my client that was not building a house, a
24 builder, a licensed builder, was not wrongfully building a
25 house, did not wrongfully lie to the City of Rock Hill and

1 say there was no HOA on his application, when in fact there
2 was no HOA.

3 No matter how you slice the cookie, the -- that is the
4 defamatory statement. It's -- it's -- it is -- it harmed my
5 client and the harmed my --

6 THE COURT: Mr. Baghdady, I -- I hate to be pedantic,
7 but we got to be -- got to be careful here. Did they
8 actually say, Mister -- your client is a liar or did they
9 just say there is an HOA?

10 MR. BAGHDADY: Okay. Well, what you have to do is look
11 at the entire document that's been attached here.

12 THE COURT: Okay.

13 MR. BAGHDADY: And it says -- and -- and he goes on
14 with all kinds of -- of false things in here. This is his --
15 here's a particular thing. First of all, he goes on, and
16 it's not just the HOA, it's also he claims to be in an -- in
17 an architectural committee. So, however, three days --

18 THE COURT: But again -- but -- but that's not -- that
19 may be false, but that's not about -- that's not a statement
20 directed to your client.

21 MR. BAGHDADY: It is. Of course, it's about my client.
22 My client -- client is falsely improperly building a house in
23 an HOA when there is no such HOA. He has made false
24 statements to the City of Rock Hill that there is -- there is
25 no HOA when they're saying there is an HOA, their statements

1 about him are false.

2 MR. D'AGOSTINO: My clerk --

3 MR. DLUZNESKI: He never said the plaintiff's name. He
4 -- he never -- he never directed any statements against the
5 plaintiff.

6 MR. BAGHDADY: Of course, it's against the plaintiff.
7 (Inaudible) his own word. "However, three days late," -- I
8 can read the record.

9 THE COURT: Yeah, go ahead.

10 MR. BAGHDADY: "However, three days later, Mr. Taheri
11 Azar did copy me on the recorded CCR covenants of
12 restrictions and judged himself to be in adherence to them.
13 As architectural committee chair of the HOA, along with the
14 HOA president, Mr. Harlow, and many members of the Poplar
15 Forest community, we formally disagree with this assessment.
16 Based on the available information, we take the four
17 following exceptions of which we here with formally notify
18 the city, and Mr. Latif Taheri Azar. Number one --"

19 THE COURT: Mr. Baghdady, is this the -- the email that
20 you're referring to, that you're reading from?

21 MR. BAGHDADY: Yes. This is the email I'm referring
22 to.

23 THE COURT: Where can I find that in the record? I'm
24 in the case file now.

25 MR. BAGHDADY: It's going to be -- it's going -- if

1 you'll flip down, it's -- it's attached to their memorandum
2 --

3 THE COURT: Okay.

4 MR. BAGHDADY: -- that they filed their memo in
5 support. And it's probably, I don't know -- it's -- it might
6 be three, four, five down. We don't have a good way in our
7 system to figure out which one --

8 THE COURT: Yeah, I agree. That's --

9 MR. DLUZNESKI: It -- now --

10 THE COURT: Okay. (Inaudible). I'm looking. Well,
11 give me a second.

12 MR. DLUZNESKI: It -- it appears to be the -- I think
13 it's the seventh attachment to my client's memo and support.
14 The seventh PDF document.

15 THE COURT: Okay.

16 MR. DLUZNESKI: Which was an exhibit to his -- it -- it
17 was the email from Justin Marlow to Mike Nugent. And my --
18 my client was copied on that, but it was from Justin Marlow.

19 THE COURT: Well for some reason, my computer is not
20 wanting to load that. Let me -- let me try again. Here --
21 here we go. Okay. Yeah. I've seen a lot of City of Rock
22 Hill documents. Doesn't look like that's the right one.
23 Okay. Okay. Let me try a different one.

24 MR. DLUZNESKI: If it helps your Honor. It -- it says,
25 2124 Windemere up at the top as the -- as the heading.

1 THE COURT: Okay. Yes, I've got it. Okay. Okay.
2 Review comments.

3 MR. BAGHDADY: I was actually looking at a different
4 one, but that -- that might work.

5 THE COURT: This is the one that says, "This is to
6 inform you that the HOA set -- this is from the HOA internal
7 --" Okay. Okay. Tell -- I'm still not sure I'm at the right
8 place. Okay.

9 MR. DLUZNESKI: It -- it's an 11-page PDF document.
10 The -- the February 28th from Mr. Marlow is the first page,
11 and then it goes into a document that says, up at the top "To
12 the homeowners of the Poplar Forest neighborhood." Starting
13 on page 2.

14 THE COURT: Okay. I'm there. I finally found it.
15 Okay. Thank you. Okay. So I'm there. Okay. "Hello,
16 neighbors." Okay. Okay. So Mr. Baghdady tell me -- tell me
17 what that should be -- I've read it.

18 MR. BAGHDADY: Well, we have all kinds of his -- all
19 kinds of false statements about Mr. Lazar -- Mr. Latif Taheri
20 Azar.

21 THE COURT: Okay. What about.

22 MR. BAGHDADY: Well, he says that he's -- hey -- that,
23 "Mr. Taheria Lazar copy beyond the recorded CCR covenants
24 restrictions and judging himself to be in adherence to them.
25 We disagree as architectural committee chair of the HOA,

1 along with the HOA president, Mister -- and many members of
2 the Poplar Forest community we formally disagree with this
3 assessment. The --"

4 THE COURT: How was that statement about -- about Mr.
5 Taheri Azar? I --

6 MR. BAGHDADY: Because he's the one that's building the
7 house in the neighborhood that he's claiming is in violation
8 of an HOA restriction, in violation of CCR, the covenants and
9 restrictions, violation of Rock Hill building permit.

10 THE COURT: I -- I just don't -- I don't think that's a
11 statement about your client. I mean, I -- I think Mr.
12 Dluzneski is right. I mean -- I mean, it -- it's an
13 incorrect factual statement. I mean, according to you, I
14 mean, is -- is there an HOA Mr. Dluzneski? I mean, it sounds
15 like there's not.

16 MR. DLUZNESKI: What -- what was the question, your
17 Honor? I'm sorry.

18 THE COURT: Is there an HOA that's still exists?

19 MR. DLUZNESKI: Is there a what?

20 THE COURT: Is there an HOA.

21 MR. D'AGOSTINO: Yes, there's an -- there's an HOA,
22 your Honor. It's not incorporated anymore or anything like
23 that. It's -- it's a very informal HOA. The members get
24 together. There's a set of restricted covenants that are of
25 record that do apply to this property regardless.

1 And this email that, and I'm -- I'm speaking up now.
2 This email, you'll notice the date on this email is February
3 28th, 2024. The attachment that they're referring to is
4 February 28th, was sent to the city on February 28th, 2024.

5 The stop work order issued was issued on February 22nd,
6 2024. So this email that Mr. Baghdady is referring to, the
7 allegations of it have nothing to do with the stop work
8 order.

9 Mr. Baghdady hasn't identified -- he hasn't identified
10 a single thing that he says that anyone said that was false
11 or defamatory about his client. Even if he's relying upon
12 this statement, which -- which I -- I don't believe in and of
13 itself is defamatory. Its not the basis for any stop work
14 order because a stop work order came earlier.

15 The other thing I want to point out, your Honor, is if
16 Mr. Baghdady's theory is correct, then nobody can ever file a
17 complaint, a question, or anything with a governmental entity
18 to ask them to investigate anything.

19 In this situation, the very first page that that email
20 is attached to you, it sets forth, "My name is Justin Marlow.
21 I'm writing on behalf of Poplar Forest HOA. You've
22 previously been contacted Mr. Haake.

23 Together, we put together a letter in supporting
24 documents to express our concerns of Mr. Haake and the Poplar
25 Forest with respect to the construction. We appreciate your