

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2014-UP-069 (S.C. Ct. App. filed Feb. 19, 2014)

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S.C. Supreme Court

Dr. Joseph G. Carew and Dr. Karen Carew,

Petitioners,

v.

RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank,
Clifton W. Hall, Hall Builders, LLC, Mid Carolina Appraisal Company, LLC, and
Teresa Addy Haltiwanger, Defendants,

Of Whom, RBC is the Respondent.

APPENDIX – VOLUME II

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Dr. Joseph G. Carew and Dr. Karen Carew, Appellants,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeal

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas for the Eleventh Judicial Circuit

The Honorable R. Knox McMahon, Circuit Court Judge

Case No. 2010-CP-32-00442

Dr. Joseph G. Carew and Dr. Karen Carew, ... Appellants,

v.

RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank, Clifton W. Hall,
Hall Builders, LLC, Mid Carolina Appraisal Company, LLC, and Teresa Addy-Haltiwanger,
Defendants,

Of Whom, RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank, are
..... Respondents.

**RECORD ON APPEAL
VOLUME II**

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1 STIPULATIONS

2 IT IS STIPULATED BY AND BETWEEN COUNSEL
3 FOR THE RESPECTIVE PARTIES THAT ALL OBJECTIONS
4 ARE RESERVED UNTIL THE TIME OF TRIAL, EXCEPT
5 AS TO THE FORM OF THE QUESTION.

6 THIS DEPOSITION IS BEING TAKEN PURSUANT
7 TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

8 - - - -

9 THE READING AND SIGNING OF THIS DEPOSITION IS
10 NOT WAIVED BY THE DEPONENT AND COUNSEL FOR THE
11 RESPECTIVE PARTIES.

12 WHEREUPON, DR. JOSEPH G. CAREW, BEING DULY
13 SWORN AND CAUTIONED TO SPEAK THE TRUTH, THE WHOLE
14 TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED
15 AS FOLLOWS:

16 EXAMINATION

17 BY MR. FLOYD:

18 Q Dr. Carew, my name is Joey Floyd, and we are here today
19 for your deposition in the case that you've filed
20 against a number of defendants, including my client,
21 Teresa Addy-Haltiwanger and The Appraisal Team of Mid
22 Carolina. This is your deposition, and there are a few
23 things I need to tell you as we progress during the
24 day. Now that your deposition has started, you need to
25 look to me for clarification of your questions. If we

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1 take a break, don't - I'm sure Eric won't do this, but
2 don't talk to your lawyer about the case while your
3 deposition is being taken. It's not an endurance
4 contest. I'm not going to try to sweat you out over
5 there, so if you need to take a break, go grab some
6 water, you know, take a break, that's fine. I may ask
7 you to answer the question that we're on and then we
8 can take a break and that sort of thing. During the
9 course of the deposition, also, I ask that you verbally
10 answer questions. During conversations, we get into a
11 habit of uh-huhs and uh-uhs. So, she has a hard time
12 with picking that up and it's always real confusing
13 whenever you read the record a little later. So, if
14 you will, try to do as best you can, because I don't do
15 well with it, either. But if I hear you say uh-uh, I
16 may ask you is that a yes or a no. So, bear with me
17 and be patient with me. Can you tell me your full
18 name, please?

19 A Joseph Carew.

20 Q Do you have a middle name?

21 A Gerald.

22 Q And are you on any medication today that would prevent
23 you from telling the truth?

24 A No.

25 Q Are you under the influence of alcohol?

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1 A No.

2 Q Are you under the influence of any other drugs ---

3 A No.

4 Q --- as you sit here today? Where do you currently
5 live?

6 A 34 Edens Point Road, Columbia, South Carolina, 29212.

7 Q And that actually is the subject property that we're
8 here about today?

9 A Yes.

10 Q When did you move into that house?

11 A July of 2009.

12 Q July 1? July ---

13 A I believe it was July 20th, but I can't say for sure.

14 Q Around just a little after the middle of the month?

15 A Yeah.

16 Q Where did you live prior to that?

17 A 109 Beckworth Lane.

18 Q Where is Beckworth?

19 A That is in Irmo, 29063.

20 Q And did you live, ever live at Derrick Drive?

21 A Yes, that was before that. It was 301 Derrick Drive,
22 and that was also Irmo, 29063.

23 Q All right. Tell me where you actually receive mail
24 these days. I know you get it at 34 Edens Point Road.

25 Do you also get it at your office?

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- 1 A PO Box 3709, Irmo, 29063.
- 2 Q Do you receive mail anywhere else?
- 3 A Professionally, I receive it at my office, 1811 Bull
- 4 Street. And I also receive it at PO Box 1771,
- 5 Columbia, 29202.
- 6 Q Is that pretty much it, that you can think of?
- 7 A For the most part, yes.
- 8 Q Where are you originally from?
- 9 A Dubuque, Iowa.
- 10 Q When did you come to South Carolina?
- 11 A Fifteen years ago, 1996.
- 12 Q What brought you to South Carolina?
- 13 A Weather.
- 14 Q Did you come to school here in 1996?
- 15 A I did not.
- 16 Q Were you already a working professional in 1996?
- 17 A I had just graduated and moved here.
- 18 Q Why don't we go through your education? Now, that
- 19 brings us to a good point to start that. If you will,
- 20 tell me kind of where you graduated from high school.
- 21 I'm going to let you talk, so once I shut up, I'm going
- 22 to let you talk. So, just you tell me where you
- 23 graduated high school and then tell me all of your
- 24 education and your degrees received and kind of bring
- 25 me up to present date. How about that?

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1 A Okay. I went to Wahlert High School, which is in
2 Dubuque, Iowa, and then attended Loras College, which
3 is in Dubuque, Iowa, for my undergraduate. And then,
4 attended Palmer College of Chiropractic, which is in
5 Davenport, Iowa, and I received my graduate degree from
6 Palmer.

7 Q What year did you graduate Loras?

8 A I did my undergraduate and finished that in 1992.

9 Q And what year did you finish Palmer?

10 A 1996.

11 Q I'm not sure I know how to ask this question, but I'm
12 going to do the best I can. Tell me about your
13 professional licenses that you currently hold. Can you
14 kind of tell me all those that you hold?

15 A Sure. I have a Doctor of Chiropractic degree from
16 Palmer College. I'm on the State Board of Chiropractic
17 Examiners for the State of South Carolina. I'm the
18 president of the - I'm the president-elect, excuse me,
19 of the South Carolina Chiropractic Association. So, I
20 will become the president of the South Carolina
21 Chiropractic Association next year.

22 Q Any other licenses or certifications?

23 A Well, I have - I'm certified to do impairment and
24 disability ratings.

25 Q Anything else that you know of?

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- 1 A That's all right off, that I can think of.
- 2 Q Have you ever had your deposition taken before?
- 3 A Professionally, yes.
- 4 Q How many times have you had your deposition taken?
- 5 A If I were to guess, I would guess probably at least 15
- 6 times.
- 7 Q Do you maintain copies of all your depositions?
- 8 A I do not.
- 9 Q Do you work primarily for a law firm?
- 10 A No.
- 11 Q Have you been hired by various lawyers and that sort of
- 12 stuff?
- 13 A Yes.
- 14 Q Is chiropractic, is the chiropractic profession the
- 15 only professional, profession that you've worked in?
- 16 A Yes, since 1996.
- 17 Q And did you open up your own business when you came to
- 18 South Carolina?
- 19 A No, I did not.
- 20 Q Who did you work for?
- 21 A Willis Chiro Med.
- 22 Q How long did you work for Willis?
- 23 A I believe I worked for Willis for approximately five
- 24 years.
- 25 Q Then, did you start your own business?

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1 A I did. I bought the practice that I was in at that
2 time, and I bought them out.

3 Q And is that when you started Carew, LLC?

4 A No. Carew, LLC, is my wife's business. That's her
5 chiropractic office.

6 Q Isabella, LLC, is yours?

7 A That's mine.

8 Q Okay.

9 A Yes.

10 Q Is that when you started Isabella, LLC?

11 A Yes.

12 Q That's about 2001? Does that sound right?

13 A Around there, yeah.

14 Q And is that, in 2001, when you started your business,
15 were you married at that time?

16 A Yes.

17 Q Did you and your wife jointly start your current
18 business?

19 A My business, yes. Well, no, because it's actually in
20 my name. I'm the sole owner of Isabella, LLC.

21 Q And did she start Carew, LLC, at about the same time?

22 A No. She did that approximately two to three years
23 before that. She bought her practice out before that.

24 Q Do you both practice in separate offices?

25 A Separate offices.

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- 1 Q Who practices on Bull Street?
- 2 A I do.
- 3 Q And your wife practices in Irmo?
- 4 A Yes.
- 5 Q At the Irmo office. How many homes have you owned?
- 6 A Let's see. This is the fourth home that we've lived
- 7 in.
- 8 Q As a married couple?
- 9 A Yes.
- 10 Q Did you own any homes before you got married?
- 11 A Yes.
- 12 Q How many homes did you own before you got married?
- 13 A That was one of the four that I was speaking of. We
- 14 bought that before we got married.
- 15 Q So, during your life, you've only owned four homes?
- 16 A Yes, I believe so.
- 17 Q We know you built the 34 Edens Point Road house.
- 18 A Yes.
- 19 Q Did you build any other houses?
- 20 A Not at - not a custom build. We bought one other house
- 21 that they were in the process of building and but all
- 22 the selections were pretty much made for us.
- 23 Q In other words, you kind of came upon the house during
- 24 mid-construction ---
- 25 A Yes.

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- 1 Q And you got to choose some of the things ---
- 2 A Right.
- 3 Q You got to choose flooring, cabinetry and that sort of
- 4 stuff, paint colors?
- 5 A Some of it. Some of it, yeah, because it - they only
- 6 allowed certain selections.
- 7 Q And which house was that?
- 8 A It was in Kingston Forest. I don't - I don't know the
- 9 address.
- 10 Q But it was in Irmo?
- 11 A Yes.
- 12 Q Was that your second house that you owned?
- 13 A That would have been - yes.
- 14 Q And the Derrick Drive home, did you do - when you came
- 15 across and bought that house, was it already completed?
- 16 A Yes.
- 17 Q It was move-in ready?
- 18 A Yes.
- 19 Q Did you do any renovations to it?
- 20 A No.
- 21 Q Did you do any other renovations to the other homes?
- 22 A No.
- 23 Q And I'll classify renovations as anything greater than
- 24 \$5,000.
- 25 A The only thing that I could say, and I don't know if it

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1 would be a renovation, we put a pool in at our Derrick
2 Drive house. But that really wasn't a renovation. It
3 was building a pool.

4 Q And pools are expensive, aren't they?

5 A They can be.

6 Q To me, they're expensive. They seem to be expensive.

7 And in Carew, LLC, I think you said you're the owner.

8 I'm assuming that you are the - are you the only

9 member?

10 A Carew, LLC, is my wife's.

11 Q Excuse me, Isabella. I want to get you confused.

12 A Isabella, yes. I'm the single owner of it.

13 Q Do you and your wife have separate businesses, or do
14 you combine the two businesses to be one umbrella for
15 you both to work under?

16 A No, they are two separate entities.

17 Q Okay. So, your business pays your salary. Her
18 business pays her salary?

19 A Yes.

20 Q Okay. What's your current income?

21 A That's a good question. It would ---

22 Q And I don't believe anybody from the IRS is in this
23 room, so ---

24 A Let's see. I am paid from my company - let's see.

25 Each month, I believe pre-tax, it's \$5,000 a month.

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1 Q And out of that, you pay your taxes and all that sort
2 of stuff. Does your company pay you dividends at the
3 end of the year?

4 A I do receive a dividend disbursement. That's usually
5 done on a monthly basis. So, yes.

6 Q What is your annual salary?

7 A Annual?

8 Q Annual, I guess, income. That may be a better -
9 instead of annual salary. Annual income, put it all
10 together.

11 A The actual - the actual - well, the actual annual
12 salary that I'm paid is approximately \$60,000.

13 Q Uh-huh. What about your combined total income after
14 you include dividends?

15 A It's probably a hundred and - a hundred and twenty
16 thousand, in that range.

17 Q Has that been about steady for the past five years?

18 A No.

19 Q Has it - have you had better years?

20 A I've had better years.

21 Q Okay. Why don't we go back to 2007?

22 A Uh-huh.

23 Q Was it - can you tell me kind of what it's been?

24 A I was making more money at that time. Specifically, I
25 don't recall exactly how much I was making. I was

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1 probably making, I'm going to say in the ballpark of
2 two hundred and some thousand.

3 Q Has the income kind of gone down progressively ---

4 A It has decreased.

5 Q --- from 2007 to the present date?

6 A Yeah, it probably occurred in two thousand, around late
7 2008, 2009.

8 Q Has the economy affected your industry, also?

9 A Some, but there has been a lot of other factors that
10 have affected my income, as well, too.

11 Q Can you tell me what those other factors would be?

12 A A house building.

13 Q Okay.

14 A Namely 34 Edens Point Road.

15 Q Okay. Any other factors?

16 A Personally, no. I mean, I attribute the majority of it
17 to that.

18 Q When did you finish your house?

19 A It was finished July of 2009, because we moved in
20 immediately as soon as it was finished.

21 Q So, as of July 2009, you were done with your house?

22 A Yes.

23 Q So, why hasn't your income picked back up since that
24 time?

25 A Because I'm still dealing with it, but I - obviously,

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1 I'm - this is not over. I'm still having to deal with
2 the house because I'm sitting here today, still dealing
3 with it.

4 Q Okay. Any other reason?

5 A I've had to make some business changes because I'm -
6 I've had to hire associates into my office to help to
7 run my practice.

8 Q Associates, chiropractors ---

9 A Other doctors, yeah.

10 Q --- to pick up the work, that sort of thing?

11 A Yeah.

12 Q Has your volume increased?

13 A It's fluctuated. It's been up, it's been down.
14 Obviously, when I was there all by myself, you know, we
15 still saw the same number of patients, or a similar
16 number of patients at that time. And now we ---

17 Q Are you seeing the same number of patients now?

18 A I would say close to.

19 Q So, the volume's about the same as it was in 2007 and
20 2008?

21 A I would say it's similar. It may be a little bit more,
22 but I wouldn't say it's drastically more.

23 Q Any particular reason why you couldn't let go, fire
24 your associates and pick back up?

25 A I could, but that would require me being there to see

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1 all the patients all the time.

2 Q What prevents you from being able to see your patients
3 these days?

4 A I mean, I could. I physically, I guess I could, but I
5 - I don't choose to because of obviously dealing with
6 other things. I have more commitments to my life, as
7 well, too, with the State Board of Examiners. So, some
8 of those things factor into it, as well.

9 Q When did you join the State Board of Examiners?

10 A I was appointed to the State Board, I believe, a year
11 ago.

12 Q Kind of a professional philanthropist? They don't pay
13 you anything for that, do they?

14 A They don't pay me anything for that, other than your
15 travel time. That's it.

16 Q Are you enjoying doing these other professional things,
17 such as the ---

18 A I enjoy it. It's - I think it's giving back to the
19 profession.

20 Q When did you - when did you decide - I guess I want to
21 go back in time whenever you were living at Derrick
22 Drive and you and your wife must have had this
23 conversation that went something to the effect of hey,
24 let's live on the lake. We'd like to move out there.
25 Can you take me back in time and kind of explain to me

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1 how it all evolved and how you found Edens Point Road
2 and came to the decision to purchase that?

3 A We lived on the lake at Derrick Drive, and at that
4 time, we decided that we were looking for, I guess, a
5 different home.

6 Q I didn't know Derrick Drive was on the lake. It is on
7 the lake?

8 A It is on the lake.

9 Q Okay.

10 A And so, we decided to look for a different home just to
11 make the move to, I guess to live somewhere different.
12 We came across Edens Point. We had friends that live
13 next door to Edens Point. We liked the lot, and so we
14 looked at trying to, trying to purchase that lot at
15 that time.

16 Q Would this have been in the late 2008 timeframe? Does
17 that sound about right?

18 A I would - yeah, I mean, I don't remember exactly, but I
19 would say it was somewhere in that ---

20 Q I've got some documents. I mean, I'm not going to hold
21 you to it. We'll go through some documents and I'll
22 try to figure out exactly when.

23 A Okay.

24 Q I'm just trying to get general timelines and ---

25 A I know it was somewhere in '08, if I remember

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1 correctly.

2 Q How far away is Derrick Drive to Edens Point?

3 A I would say it's maybe ten miles, max.

4 Q Is it a different school district or anything like
5 that?

6 A It is a different school district, yes.

7 Q Were there any other driving factors, such as school
8 districts, that made you want to move, or was it just
9 you wanted to be close to friends, different change of
10 scenery?

11 A Close to friends, change of scenery, and it's closer
12 for me to go to my office downtown.

13 Q Is it bigger water?

14 A Yes, I mean, it's bigger water, yes.

15 Q That is, Edens Point is bigger water than Derrick
16 Drive?

17 A Yes.

18 Q And at that same time, did you decide that you wanted
19 to build a house instead of finding a current already-
20 built house?

21 A We, to a certain degree, didn't want to build a house,
22 but we didn't find anything that was already built that
23 we would move for. So, it ultimately came down that
24 that lot was available, and so it required us to build
25 a house.

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1 Q Did you have a realtor that helped you find Edens Point
2 or did your friend turn you on to Edens Point?

3 A No, it was - well, we knew that it was available
4 because our friends live next-door. So, pretty much,
5 that's how we came across it, was because of them
6 living there.

7 Q When you say next-door, are you talking about the
8 adjacent lot, just literally right next-door, your
9 neighbor?

10 A Yes.

11 Q How did you find Cliff Hall?

12 A Let's see. Cliff Hall, I'm trying to recall how we
13 actually came across Cliff.

14 Q Or Hall Builders, I mean, that's what I'm talking
15 about.

16 A I don't recall exactly how we came across Cliff. My
17 wife probably knows better, but in the process of I
18 know we were looking at that lot. Rick Mitchell owned
19 that lot. I want to say that Cliff owned something
20 that we had looked at and we had talked to him about
21 it. I think if I remember correctly, it was Brody
22 Point. He owned that. We had talked to him about that
23 piece of property, and we weren't interested in buying
24 that one, and he, and through conversation, basically
25 had said that, you know, he was a builder and so forth.

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- 1 And so, we stayed in contact that way.
- 2 Q He put the sale on you at that point in time. He
- 3 basically told you, hey, I'm a builder and that sort of
- 4 stuff?
- 5 A Yes.
- 6 Q Keep me in mind if you ever go to build a house, that
- 7 sort of thing?
- 8 A Yes.
- 9 Q Had you ever met Cliff Hall prior ---
- 10 A No.
- 11 Q --- to that?
- 12 A Not that I'm aware of.
- 13 Q And that would have been in the late 2008 timeframe,
- 14 roughly?
- 15 A Somewhere in that timeframe, yeah.
- 16 Q How did you choose RBC Bank?
- 17 A We had some - we did some refinancing with them on some
- 18 other properties that we had, and so when I talked to
- 19 them about - I guess it was natural to talk to them
- 20 about building a house and getting a loan.
- 21 Q Who was your point of contact at RBC?
- 22 A Originally, it was Jamie Barfield.
- 23 Q Now, were they here in Columbia?
- 24 A Yes.
- 25 Q Their office there on Gervais?

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- 1 A Gervais.
- 2 Q Do they still have an office here?
- 3 A Yes.
- 4 Q And is Jamie Barfield still there?
- 5 A No.
- 6 Q Is it a he or a she?
- 7 A He.
- 8 Q He? Where is Jamie Barfield these days?
- 9 A Last I knew, he was in Myrtle Beach.
- 10 Q Different bank or ---
- 11 A I don't even know.
- 12 Q Was he a friend of yours?
- 13 A No.
- 14 Q He was just a professional acquaintance?
- 15 A I know him through the bank.
- 16 Q And you mentioned other houses. Are you talking about
- 17 - or other properties. Are you talking about other
- 18 rental properties or are you talking about business
- 19 property?
- 20 A It was business and personal.
- 21 Q Isabella, LLC, it owned - does it own the Bull Street
- 22 property?
- 23 A Yes.
- 24 Q And I presume Carew, LLC, owns the Irmo property?
- 25 A Actually, Carew Property owns - Carew Properties, LLC,

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1 owns both.

2 Q Is there any other business properties besides those
3 two?

4 A Let's see. Carew Properties owns 109 Beckworth Lane.

5 Q And that would have been one of your former residences
6 that you talked about living in?

7 A Yes.

8 Q Is that a house that you still own and rent these days?

9 A Yes.

10 Q Do you have any other rental properties?

11 A We have a place at - in the Isle of Palms that is a
12 rental.

13 Q Is it exclusively a rental? You don't - you guys, do
14 you ---

15 A We use it occasionally, but it's mainly a rental.

16 Q Any other houses that y'all own? Any other properties?

17 A Let's see. We own - I believe that's it.

18 Q Do you have a mountain house?

19 A No.

20 Q Do you presently own three houses?

21 A Yes.

22 Q 34 Edens Point, 109 Beckworth, and the Isle of Palms
23 house?

24 A Yes.

25 Q And Carew Properties owns two properties. Your office.

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1 It owns - excuse me. 109 Beckworth.

2 A It owns 109 Beckworth. It owns Isle of Palms. It owns
3 my building and my wife's building.

4 Q Okay. I've kind of blended them in my head, but as far
5 as houses go, you or some entity that you own, there's
6 only three houses, right?

7 A Yes.

8 Q And RBC, did RBC finance some part of the business for
9 you and your wife, businesses?

10 A They have the loan on my building and they have the
11 loan on Beckworth Lane, and they have the loan on Isle
12 of Palms.

13 Q Maybe this will help me. RBC has the loan on Bull
14 Street property?

15 A Yes.

16 Q The Beckworth property and the Isle of Palms property?

17 A Yes, and 34 Edens Point.

18 Q Was Jamie Barfield your point of contact for all those
19 loans?

20 A No.

21 Q Who else at RBC did you ---

22 A Terry Kirvan.

23 MR. FOSMIRE: What was that?

24 THE WITNESS: Terry Kirvan.

25 BY MR. FLOYD:

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- 1 Q C-u-r-v-i-n?
- 2 A It's K-i-r-v-a-n.
- 3 Q Glad I asked.
- 4 A Yeah.
- 5 Q I messed that one all up. Anybody else at RBC?
- 6 A At that time, no.
- 7 Q Up to - I'm talking about up to ---
- 8 A Presently?
- 9 Q Prior to - prior to Edens Point. I know that you dealt
- 10 with a number of different folks whenever you were
- 11 building your house, but as far as up to that.
- 12 A I don't think so. I think those were my two main
- 13 contacts over there.
- 14 Q Did you or have you ever met Teresa Addy-Haltiwanger?
- 15 A No. No, I did not.
- 16 Q Would you know her if she walked in this room?
- 17 A I would not.
- 18 Q Had you ever heard of her company's name? I think it's
- 19 Appraisal Team of Mid Carolina ---
- 20 A I have not.
- 21 Q --- LLC. Do you know anybody else who's affiliated
- 22 with Appraisal Team?
- 23 A I do not.
- 24 Q I've got a number of documents over here. It may seem
- 25 overwhelming, but some of these, I will ask you

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1 questions about and some of them, I will not. So,
2 don't be intimidated by this small book I have over
3 here.

4 MR. FOSMIRE: I object to you trying to intimidate
5 my client.

6 MR. FLOYD: I understand. I absolutely understand.

7 BY MR. FLOYD:

8 Q Your current loan that you have now, is it a - I don't
9 want to say unusual or exotic type loan. Is it a
10 three-year balloon type note, or is it a 30-year
11 amortized mortgage?

12 A Honestly, I don't know right off the top - it's not a
13 30-year am loan, but it's - it was originally a
14 construction loan that was a fixed rate for the period
15 of construction.

16 Q And have you converted that now to a permanent loan?

17 A No.

18 Q It is still a construction loan?

19 A It is.

20 Q Do you know what you applied for at the time you
21 applied for a loan?

22 A A construction loan with a fixed rate for the period of
23 the building loan, or the build.

24 Q What did you plan to have after construction was over
25 with?

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1 A Some type of fixed or I guess a five-year float, seven-
2 year, 30-year am, 15. I, at that point, didn't know.
3 We had talked about multiple different things with
4 Jamie Barfield at that time, of what the loan could be
5 when we finished, but it would be determined at that
6 time.

7 Q In other words, you discussed multiple options for the
8 conversion of the construction loan to the permanent
9 loan?

10 A Yes.

11 Q And you had no firm fixed plan about what you would do
12 once construction was over?

13 A They couldn't guarantee anything. I mean, obviously
14 rates change and times change, and so there was nothing
15 that was going to be fixed. Our goal, ultimately, was
16 to have a 30-year fixed loan.

17 Q Did you ask them to lock you into something for the
18 conversion? Did you ever ask them to lock you in, or
19 did you take a wait and see approach?

20 A I don't know if I asked them. I'm sure I asked them to
21 try and lock it in, but I don't recall specifically
22 what I asked for, at that time.

23 Q Did you go see any other banks or any other financial
24 institutions to check into financing the construction
25 and building of this house?

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1 A Not that I recall.

2 Q Did you have an idea of how long it would take Cliff
3 Hall, Hall Builders - as we go through this deposition,
4 just to make it easier on both of us, when I refer to
5 Cliff Hall or Hall Builders, I may refer to them
6 interchangeably. I'm going to be meaning Hall Builders
7 and Cliff Hall, so ---

8 A Okay.

9 Q If the answer applies to either one of those, and if
10 you feel the need to clarify it, you do that.

11 A Okay.

12 Q Okay. Did you expect - did you have a time limit where
13 you would - let me start over. How long did you expect
14 Cliff Hall to take to build your house?

15 A I believe that completion was to be done in June of
16 2009.

17 Q And how many months would that have been?

18 A I want to say it was 15 months.

19 Q So, you expected to be done in June of 2009 with Cliff
20 Hall?

21 A Yes.

22 Q And even with - do you say that Cliff Hall - you tell
23 me what you say Cliff Hall did. Did he quit or did you
24 fire him or ---

25 A He quit.

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1 Q He quit, okay. So, even with Cliff Hall quitting, you
2 finished the house about 30 days late?

3 A Approximately.

4 Q Was Cliff Hall an approved builder with RBC?

5 A Yes, from what RBC has told me.

6 Q Was there any sort of examination period that you're
7 aware of that RBC ---

8 A From my understanding, they checked him and I don't
9 know that he was an approved builder at the time that
10 we chose him, but from my knowledge, at that point,
11 they looked at his financials. He had to turn in
12 information to them and provide them with certain
13 things to make sure that he was a qualified builder.

14 Q Do you have any specific knowledge about what they
15 might have done, or are you just - is all this what
16 you've heard?

17 A That's what I've heard.

18 Q Okay. Help me with understanding the financials, the
19 money, the loan, and incorporating the sale of Derrick
20 Drive and buying the lot. This is obviously your house
21 and all that sort of stuff. Can you tell me your plan
22 for the purchase of the house and how you intended to
23 take that money, apply it, and what you intended to get
24 a loan for? Do you understand?

25 A No.

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1 Q Okay. You planned to sell the Derrick Drive house, and
2 you planned, I think, to invest that money into the new
3 house, right?

4 A Yes.

5 Q Can you tell me how the numbers worked out? Do you
6 have those in your head, or do you need to see the HUDs
7 and that sort of stuff?

8 A I'd have to see the HUD to give you exact details of
9 what those numbers were.

10 Q Okay. How did you come up with a number for a loan
11 value that you wanted for this 34 Edens Point of
12 \$1,112,000?

13 A That was done off of - we had gotten a plan. Cliff
14 Hall had estimated the cost to build, or gave us a
15 contract of what it would be to build that house. And
16 then, RBC had, I believe it's an appraiser look at that
17 and make sure that it was within, that it could be
18 built for that price or in the range of that price.
19 And then, they approved that amount.

20 Q So, you added up what you thought you would need and
21 you told RBC this is how much I think I need, or did
22 they come up with the \$1,112,000?

23 A It was both. I mean, we - I had to get them the plan
24 and get it from Cliff and then get that to RBC to have
25 it approved.

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1 Q So, did you expect or plan for your total loan to be
2 \$1,112,000?

3 A I knew it would be in that range.

4 Q Did you think it could be a little more?

5 A I didn't plan on it being more, no, because our goal
6 was to be dead on, as far as cost.

7 Q Dead on, as far as \$1,112,000?

8 A As close to that as possible.

9 Q Okay. So, the answer is yes, you had planned on
10 borrowing that much money? Is that ---

11 A Yes.

12 Q Okay. You've already answered some of those questions.

13 A We're rolling now.

14 Q You are. I'll let you and your attorney look at that,
15 and whenever you finish reading it, if you will, the
16 way I like to do it is whenever I hand you a document,
17 you take a look at it and whenever you look back at me,
18 that's going to be my cue for me to, that you're ready
19 for me to ask you questions.

20 MR. MCGEE: Can we go off the record for one
21 second?

22

(MARKED FOR IDENTIFICATION, DEFENDANT'S
23 EXHIBIT NUMBER 1, HUD-1, ATTACHED.)

24 (OFF THE RECORD)

25 MR. FLOYD: I also wanted to put on the record, as

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1 we're reviewing Exhibit 1 here, Jim Swick was provided
2 with a copy of this notice of deposition. I have not
3 heard one thing from him, one way or the other,
4 regarding his attendance at this deposition. But he
5 was provided notice of this deposition, and I don't
6 know if you guys have heard anything from him or not.

7 MR. MCGEE: I haven't heard anything from him
8 during this case at all.

9 MR. FOSMIRE: I have not, and for other
10 depositions, he indicated that he would not attend.

11 BY MR. FLOYD:

12 Q And we'll move along to Exhibit 1. Dr. Carew, this
13 appears to be what I hope to be the HUD for the sale of
14 the property at Derrick Lane, Derrick Drive. Is that
15 true?

16 A It appears to be, yes.

17 Q Are those your signatures, your signature on the second
18 page?

19 A Looks to be.

20 Q And do you recognize that as your wife's signature
21 below your signature?

22 A Looks to be.

23 Q Did this property at Derrick Drive close on February
24 29, 2008?

25 A It's dated that, yes.

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- 1 Q Do you recall that number or that date being
2 inaccurate, or do you think that's about when you
3 closed?
4 A It's about when we closed.
5 Q Any reason to know that wouldn't be true?
6 A Not right off the top of my head.
7 Q Okay. It looks like you were able to sell your house
8 for \$691,605, right?
9 A Correct.
10 Q And as a result of that sale, you netted \$325,924.41.
11 That's the cash they tendered to you at closing. Is
12 that correct?
13 A Correct.
14 Q All right. So, this is one piece of my puzzle that I
15 have been trying to put together. This is the money
16 from your sale. Did you anticipate or plan on taking
17 this money and investing it into your new house?
18 A I did.
19 Q The entire amount?
20 A Yes.
21 Q Have you ever seen the appraisal of the real property
22 that Teresa Addy-Haltiwanger performed of your property
23 for a, what's called a subject to completion appraisal?
24 Have you ever seen that?
25 A I don't know. I don't recall if I have. I probably

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1 have, but right off the top of my head, I don't know.

2 Q Do you know what the appraised value of your property
3 is?

4 A I don't.

5

(MARKED FOR IDENTIFICATION, DEFENDANT'S

6 EXHIBIT NUMBER 2, HUD-1, ATTACHED.)

7 BY MR. FLOYD:

8 Q I'm handing you what's been marked as Exhibit Number 2.

9 A Okay.

10 Q This appears to be the HUD for your closing of the
11 property at 34 Edens Point Road. Is that true?

12 A Yes.

13 Q And it looks like you closed this loan on the same day?

14 A Yes.

15 Q Do you know who closed the loan on the Derrick Drive
16 house, who the lawyer was?

17 A I forget his name. I know it was Harvey, Casterline
18 and Vallini, but it was one of their - I believe it was
19 one of their associates, and I don't - I don't remember
20 his name.

21 Q Was it Dana Hall?

22 A No, that is Cliff Hall's wife.

23 Q Can you tell me why Dana Hall signed the HUD for
24 Exhibit Number 1?

25 A She did not sign it. It was signed by Ashley Hopper,

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- 1 attorney in something.
- 2 Q Attorney-in-fact?
- 3 A Yes, but that was not the closing attorney, because it
- 4 was - I cannot think of that guy's name. Do you know
- 5 his name?
- 6 Q Don't worry about it. Dana Hall, did she buy your
- 7 house?
- 8 A That's Cliff Hall's wife, and they put it in her name.
- 9 Q Do you know who APM Realty Group is?
- 10 A I think that's Cliff Hall's realty company.
- 11 Q Did you object to Cliff Hall's realty company getting
- 12 \$41,496.30 as commission on the sale of your Derrick
- 13 Drive house?
- 14 A No.
- 15 Q How did Dana Hall come to purchase your Derrick Drive
- 16 house?
- 17 A They, to my knowledge, they wanted to put it in her
- 18 name for whatever reasoning.
- 19 Q Did you relay to Cliff Hall that you wanted to sell the
- 20 Derrick Drive house?
- 21 A Excuse me?
- 22 Q Did you relay to Cliff Hall the fact that you all were
- 23 selling the Derrick Drive house and ---
- 24 A I don't understand the question.
- 25 Q Did you tell Cliff Hall that you were selling your

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1 Derrick Drive house and then did he express an interest
2 in purchasing it?

3 A Yes.

4 Q Did you have any sort of deal with Cliff Hall such that
5 he agreed to purchase your house if you would allow him
6 to be the builder on your house?

7 A Yes.

8 Q Was that sort of an unwritten contingency? I haven't
9 seen anything in writing that says that.

10 A I mean, it was pretty much agreed that he would
11 purchase our house as long as he was able to build on
12 our 34 Edens Point Road lot.

13 Q Do you know if Dana Hall still owns the Derrick Drive
14 property?

15 A To the best of my knowledge, yes.

16 Q So, you were basically obligated to use Cliff Hall as a
17 builder once he purchased your Derrick Drive house?

18 A Yes.

19 Q Did you and Cliff Hall sign any sort of contract or any
20 agreement, or was it basically a handshake, gentlemen's
21 agreement?

22 A We had a contract for the build of our house.

23 Q As far as this contingency where you agreed, he agreed
24 to buy your house if you would use him as a builder.

25 A Yes.

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- 1 Q I'm not familiar with that being in any sort of
2 contract. Do you know if it was written anywhere?
3 A No, but we had a contract for him to build the house.
4 Q Yeah. Right. But as far as this specific term, and
5 that being I will buy your house if you use me as a
6 builder to build your house at 34 Edens Point?
7 A It was not written, but we had a contract that said
8 that he would build the house.
9 Q Right.
10 A Then, we had that contract and he was going to purchase
11 the house.
12 Q Did you know Richard A. Mitchell?
13 A No more than when I met him to buy the lot.
14 Q Is that the first time you met him?
15 A Yes.
16 Q At the closing or ---
17 A No, he didn't come to the closing. I met him prior to
18 that about the purchase of the lot.
19 Q To negotiate the purchase, that sort of thing?
20 A Talk to him about the purchase of it, yes.
21 Q What was his asking price for the lot?
22 A 650.
23 Q Did you have some verbal kind of exchanges with him, as
24 far as I want this or, you know, no, I want to pay this
25 and then you finally put it in writing?

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1 A No. I think we just put it in writing.

2

(MARKED FOR IDENTIFICATION, DEFENDANT'S

3 EXHIBIT NUMBER 3, CONTRACT OF SALE, ATTACHED.)

4 BY MR. FLOYD:

5 Q I'm handing you what's been marked as Exhibit Number 3.

6 A Okay.

7 Q What is this document?

8 A It's a contract of sale.

9 Q And what was it a contract of sale for?

10 A Lot 25, Edens Point, Irmo, South Carolina.

11 Q And who does it list as the seller?

12 A Between Hall Builders, LLC, and Joseph and Karen Carew.

13 Q And based on what we just looked at on the HUD, I
14 believe Mr. Mitchell was the owner of this particular
15 lot, Lot 25, Edens Point, right?

16 A Yes.

17 Q Why did you have this contract with Hall Builders to
18 purchase Lot 25?

19 A I think originally the way we had talked about it with
20 Cliff was that - and I don't remember exactly, but I
21 believe it was that he possibly was going to purchase
22 the lot and then do the build all in one. But then, it
23 came around where we would just buy the lot ourselves
24 and then hire him to build the house.

25 Q And this looks like it happened on November 28, 2007.

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- 1 Is that right? I think I may have said 2008 earlier,
2 and I'm sorry. I meant to say '07. Up at the top,
3 it's dated ---
4 A Yes.
5 Q --- the 28th day of November, 2007.
6 A Yes.
7 Q What happened as far as Cliff Hall being able to
8 purchase this lot? Was he not able to get financing or
9 ---
10 A I don't know. To be honest with you, I don't recall
11 what happened with that situation.
12 Q And Cliff Hall, or at this time, you were willing to
13 pay \$560,000 for this lot?
14 A At that time, we had a contract price of 560 for it,
15 \$560,000, yes.
16 Q Between you and Hall Builders?
17 A Yes.
18 Q But Hall Builders didn't own this property at that
19 time, right?
20 A Right.
21 Q You actually ended up paying \$540,000, right?
22 A Correct.
23 Q Did you negotiate a lower price with the owner or how
24 did that price drop?
25 A All I know is that we gave him a contract for that

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1 amount, which was lower than obviously this price.

2 Q And can you remember anything else about why it came to
3 be such that Cliff Hall, Hall Builders didn't purchase
4 that lot and then sell it to you?

5 A I don't, right off the top of my head.

6 Q Is there anything that would help you remember?

7 A Not right off the top of my head.

8 Q Okay.

9

(MARKED FOR IDENTIFICATION, DEFENDANT'S

10 EXHIBIT NUMBER 4, CONTRACT OF SALE, ATTACHED.)

11 BY MR. FLOYD:

12 Q I'm handing you what's been marked as Exhibit Number 4.

13 A Okay.

14 Q I'm going to spread these out side by side.

15 A All right.

16 Q So that you can look at them. The first contract,
17 Exhibit 3, appears to be dated November 28, 2007. This
18 Exhibit Number 4 appears also to be a contract of sale,
19 right?

20 A Yes.

21 Q The name of the seller in this contract is left blank.
22 Do you see that?

23 A Yes.

24 Q Did you know who the owner was at the time of this
25 contract?

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1 A I'm assuming we knew that it was Rick Mitchell because
2 we knew that all the way along.

3 Q This looks like it's about two months later, about two
4 months later.

5 A Approximately, yeah.

6 Q And in that interim time period, how did you - this is
7 where I was asking you about the price, as far as
8 getting it from 560 to 540. How did that change
9 happen?

10 A Again, as I stated before, I don't know exactly what
11 happened from that time. I know that Cliff obviously
12 was trying to make the purchase, or to do the build and
13 own the lot. And then, we ended up buying the lot
14 ourselves at that time. So, obviously, we negotiated a
15 lower price and bought it for less.

16 Q So, as of what appears to be November - excuse me.
17 January 24, 2008, you are gearing up to purchase just
18 the lot for 540, right?

19 A Yes.

20 Q Did you have house plans drawn at that time?

21 A I know we had looked at them. I don't know if we had
22 house plans drawn or not, at that point.

23 Q Do you recall who you used to draw your house plan?

24 A We had gotten them from Weber Design, and then they
25 were altered by David - I don't remember. David Peek.

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1 Q Where is Weber Design out of?

2 A Florida, to the best of my knowledge.

3 Q Is that kind of like one of these Southern Living
4 plans, where you just get the plans and then you can
5 modify them, that sort of thing?

6 A Yes.

7 Q To suit your specific likings and that sort of stuff.
8 Now, where is David Peek from?

9 A He's in, I think, Irmo, Columbia.

10 Q Were you satisfied with his modifications to the plans
11 and that sort of stuff?

12 A For the most part, yeah.

13 Q Did you have any problems or disputes with the
14 designer?

15 A No.

16 Q I'm going to make this a little easier for you here.
17 How do you know, or do you know a fellow by the name of
18 Bobby Alexander?

19 A I do.

20 Q How long have you known Bobby Alexander?

21 A Approximately nine years.

22 Q How did you meet him?

23 A I met him on the lake, at Lighthouse Marina.

24 Q Are you a boat man?

25 A I like to boat.

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- 1 Q Do you own a couple of boats?
- 2 A I own one boat.
- 3 Q Is it true that a man's happiest day is when he buys a
- 4 boat and sells the boat?
- 5 A I've been happy when I've sold one before, so ---
- 6 Q And is Mr. Bobby Alexander a boater, also?
- 7 A Yes.
- 8 Q When did you realize or find out that he was also a
- 9 contractor or builder?
- 10 A I'd say probably he owned a painting company that he
- 11 owned, as well, while he opened his contracting
- 12 company.
- 13 Q Had you ever used Bobby Alexander for prior work?
- 14 A Yes.
- 15 Q What had he done for you?
- 16 A He built my ---
- 17 Q No, I'm talking about before 34 Edens Point, obviously.
- 18 That's kind of prior in time. I'm kind of using that
- 19 as my benchmark. So, prior to you building 34 Edens
- 20 Point, had you used Bobby Alexander?
- 21 A I have.
- 22 Q Okay. Tell me what you used him for.
- 23 A He built our building on Irmo Drive.
- 24 Q Is he a commercial contractor and a residential
- 25 builder, or do you know what his licensing status ---

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1 A I don't know what his licensing status is, but I know
2 he mainly does commercial.

3 Q And when did he build the Irmo Drive office?

4 A I'm guessing 2006, somewhere around there.

5 Q Did you have a good experience with him?

6 A Yes.

7 Q Did he do any other work for you?

8 A Not that I recollect.

9 Q You said he also owned a painting company?

10 A He did. He did some painting at our 301 Derrick Drive
11 house.

12 Q When you first bought that house or ---

13 A No, it needed just to be painted. It needed some
14 general painting done on it. His company did that, as
15 well.

16 Q Did you list your Derrick Drive house for sale?

17 A Yes.

18 Q And did you get any offers to purchase?

19 A Yes.

20 Q Beyond the Dana Hall offer?

21 A Yes.

22 Q How many other offers did you get?

23 A We had, I believe, one.

24 Q Was it a contingency offer that somebody had to sell
25 their house to ---

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- 1 A It was contingent, it was low price, or lower price.
- 2 So, the contract didn't work.
- 3 Q How much lower were they trying to ---
- 4 A I don't recall exactly.
- 5 Q Was it low enough that you never really even considered
- 6 it?
- 7 A No. It was more the fact that they had more
- 8 contingencies on that contract.
- 9 Q So, the price was in range. It was just there were too
- 10 many other little ways for them to not buy your house?
- 11 A Yes.
- 12 Q How long did you leave it on the market? How long was
- 13 it on the market?
- 14 A I don't - I don't recall.
- 15 Q Three months, six months?
- 16 A I'd be totally guessing if I told you.
- 17 Q Who did you list it with?
- 18 A Let's see. I know it was listed with Chuck Holden at
- 19 one time.
- 20 Q I see here on this, it shows that all of the commission
- 21 went to APM Realty Group. Did they end up listing your
- 22 house, also?
- 23 A They did not list it, no.
- 24 Q They never listed your house?
- 25 A They - well, no, because that's his realty, that's

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1 Cliff Hall's realty company that he put it under to

2 list it to, I guess, have himself buy it.

3 Q So, I don't - typically, you see on HUD, or typically,
4 I have seen on HUD statements where commission is split
5 between two realtors.

6 A Uh-huh.

7 Q And this appears to be a one-realtor kind of deal. Did
8 you have it listed at the time of this sale with some
9 realtor, or did Cliff Hall ---

10 A He - Cliff Hall had it. I did not have it listed with
11 anyone else at that time, but they listed and obviously
12 took the commission off of it.

13 Q And again, you had no objection to them taking all that
14 commission out of the sale?

15 A No.

16 Q Okay. Mark this one.

17 A Okay.

18

(MARKED FOR IDENTIFICATION, DEFENDANT'S

19 EXHIBIT NUMBER 5, BID, ATTACHED.)

20 BY MR. FLOYD:

21 Q Did Cliff Hall give you and your wife a written
22 contract to purchase the Derrick Drive house?

23 A Did he - repeat the question.

24 Q Did Cliff Hall or Hall Builders or Dana Hall give you a
25 written contract to purchase your Derrick Drive house?

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1 A I believe so.

2 Q Do you ---

3 A That was - well, I don't - yeah, I don't know. I guess
4 I'm assuming that they did, but I'm not sure. We would
5 have had to have something, I would have thought.

6 Q I would have thought so, also, but I haven't been able
7 to find it. Can you look through your documents to see
8 if you have ---

9 A Everything that I ---

10 Q --- that?

11 A --- believe that I have is ---

12 Q Okay.

13 A --- out there.

14 Q If you wouldn't mind, would you just look to see if
15 you've got a written contract ---

16 A I will look.

17 Q --- between Dana Hall or Cliff Hall or somebody ---

18 A Sure.

19 Q --- regarding the purchase of your Derrick Drive house?
20 Can we go off the record for one second?

21 (OFF THE RECORD)

22 BY MR. FLOYD:

23 Q Just going back on the record, if you will, just check
24 your documents to see if you've got any sort of
25 contract between Dana Hall, Cliff Hall, Hall Builders,

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1 and you to purchase the Derrick Drive house. And I
2 believe you testified earlier that once Dana Hall,
3 Cliff Hall, Hall Builders, once they agreed to purchase
4 your Derrick Drive house, you were obligated to use
5 them as your builder to build the Edens Point house,
6 right?

7 A Correct.

8 Q This appears to me to be a bid, Exhibit Number 5 in
9 front of you there appears to be a bid from Pyramid
10 Contracting. Is that what that is?

11 A Yes.

12 Q Can you tell me why you've got a bid from Pyramid if
13 you were obligated to use Cliff Hall?

14 A It was to make sure that Cliff Hall's numbers were in
15 budget.

16 Q Did you tell Pyramid at the time he bid it, that he was
17 not going to build it?

18 A I believe I did.

19 Q How did - how did you or what sort of assignment did
20 you give to Bobby Alexander with Pyramid in preparing
21 this?

22 A I asked him to look at what it would cost to build the
23 house that we wanted to build.

24 Q And did you provide him with the plans?

25 A Yes.

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- 1 Q And asked him to give you a bid?
- 2 A Yes.
- 3 Q And do you specifically recall telling him that he
- 4 would not be building it, that you were already
- 5 obligated, or did you leave out that last part, about
- 6 him not being able to build it?
- 7 A I'm sure that I told him that, at that point, I had
- 8 Cliff Hall that was going to build it.
- 9 Q And in fact, Pyramid - Pyramid's bid was 814,765?
- 10 A No.
- 11 Q What was ---
- 12 A That was for the main house, but then, obviously, you
- 13 see the additions that were there.
- 14 Q I do see the additional stuff.
- 15 A Which has a pool ---
- 16 Q So, we have to add all that stuff in to figure out what
- 17 his main or what his bid would be? You had to take
- 18 814,765 and you add items one through four?
- 19 A Yes.
- 20 Q And items one through four as shown on page Pyramid
- 21 669, right? Bottom right corner?
- 22 A Yes.
- 23 Q I'm going to put this one right there, Dr. Carew, and
- 24 let you look at that one right there.
- 25 A Okay.

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1

(MARKED FOR IDENTIFICATION, DEFENDANT'S

2 EXHIBIT NUMBER 6, CONSTRUCTION CONTRACT, ATTACHED.)

3 BY MR. FLOYD:

4 Q I've handed you what's been marked as Exhibit 6. Can
5 you tell me what that is?

6 A It's a construction contract.

7 Q And who is it between?

8 A It is between Hall Builders and Joseph and Karen Carew.

9 Q And can you tell me what day it was signed on?

10 A It looks like it was signed on 3-14 of '08.

11 Q And how do you know that that was the day that it was
12 signed?

13 A It has a notation on it out to the side where our
14 signatures are made.

15 Q Does that square up with your memory, as you recall,
16 about the time it was entered into?

17 A As best as I can recollect, yeah.

18 Q Do you have any reason to believe that it wasn't signed
19 on 3-14-08?

20 A No.

21 Q And it appears here right beside those initials, it
22 shows that the time of substantial completion would be
23 June 14, 2009, front page, middle of the page?

24 A Yes.

25 Q And just below that number, it shows a contract sum or

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1 amount? Do you see that?

2 A Yes.

3 Q And what was the contract sum?

4 A 850,000.

5 Q Was this a negotiated number?

6 A Yes, somewhat, but if you go to the back of the

7 contract, there is a ---

8 Q Can you tell me what page you're on?

9 A Yes.

10 Q It should have a Bates stamp down there.

11 A It's - well, this is ---

12 MR. FOSMIRE: Refer to the Pyramid.

13 BY MR. FLOYD:

14 Q Pyramid.

15 A Okay.

16 MR. FOSMIRE: 559.

17 THE WITNESS: 559.

18 BY MR. FLOYD:

19 Q Okay.

20 A It has 3-14 of '08, price per specification, plans and

21 allowances is \$899,600. Then, it also lists down below

22 credit options.

23 Q Did you choose to exercise those credit options?

24 A Yes.

25 Q So, you, in effect, lowered the price by \$31,900?

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1 A Approximately, yeah.

2 Q I also saw on page, on Pyramid 553 ---

3 A Okay.

4 Q Is that how you arrived at the contract for \$850,000?

5 A To the best of my knowledge, yeah.

6 Q So, Hall Builders says \$850,000, it will build this
7 house for you according to the plans and specifications
8 that you provided, right?

9 A Yes.

10 Q Now, Exhibit Number 5 beside you, the Pyramid
11 Contracting bid, shows us a little bit of a different
12 story, doesn't it?

13 A When you add all that up, yes.

14 Q So, Pyramid's bid was substantially higher, right?

15 A No, these are not - they're not apples to apples.

16 Q Okay. Tell me why they're not apples to apples.

17 A Well, because, number one, you're looking at the credit
18 option one was to remove the porch. There's nowhere in
19 here where Pyramid Contractors has a removal of the
20 porch. Number two, the credit option number two is
21 removal of a hundred square feet all the way around the
22 perimeter, or a hundred square feet that they took off,
23 and then the \$19,000 discount ---

24 Q Was simply negotiating?

25 A Just negotiating. And then, \$1,300 appliance allowance

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1 increase was a change. So, all those were changes off
2 of that contract, as opposed to this one, which I'm
3 assuming doesn't have these in there.

4 Q Do you know whether or not those credit options were
5 shown ---

6 A Not to the best of my knowledge.

7 Q In the - excuse me. Do you know whether or not - did
8 you ever ask Pyramid to give you credits for that?

9 A I don't recall, but I don't believe specifically, no.

10 Q And any sort of credits that are issued, as far as the
11 porch go, that is a sort of subjective thing for the
12 contractor, right?

13 A Can you repeat the question?

14 Q Sure. In other words, Cliff Hall elected to provide
15 you with these credits. Those numbers were derived by
16 him. There's no real back up as to how he arrived at
17 those numbers, is there, beyond a lump sum credit?

18 A I mean, he lists out what, all the way through the
19 contract, I guess, if that's what you're asking, what
20 was going to be done.

21 Q Let me back up on you. I'm talking specifically on
22 Pyramid 553.

23 A Okay.

24 Q You there?

25 A Yes.

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1 Q He shows two credit options.

2 A Uh-huh.

3 Q And he gives you these lump sum credits. What I'm
4 getting at here is there is no methodology or formula
5 or list of materials and labor that we can understand
6 exactly how he arrived at that credit, is there?

7 A I do know how he came up with the removal of a hundred
8 square feet, because he took, I believe it was a foot
9 all the way off the entire perimeter of the house. So,
10 that's his methodology of how he came up with the
11 hundred square feet removal, and I'm assuming he
12 calculated that off of how much it would cost per
13 square foot, and that came up with 16,500. The removal
14 of the porch was, it was to be built a certain way, and
15 it was pulled back into a different fashion. And
16 again, he's probably taking the square footage of that
17 and coming up with that credit there.

18 Q Do you know that for a fact, or are you just guessing
19 on both of those?

20 A I - well, it wouldn't be a guess, first off, but I
21 can't say that to a fact.

22 Q So, you don't know for sure that ---

23 A I have discussed it with - I mean, obviously, I
24 discussed it with Cliff to get to these credit options,
25 but I - for sure, hundred percent, no, I can't say

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1 that.

2 Q Okay. And again, these are subjective to the
3 contractor, right? Bobby Alexander - in other words,
4 Bobby Alexander may not give you the same amount of
5 credit. He may give you more of a credit. He may give
6 you less of a credit, if he were to look at the same
7 credits.

8 A Yeah, I couldn't tell you.

9 Q And Bobby Alexander's bid was actually a fair amount
10 higher than Cliff Hall's bid, right? Even if you were
11 to compare the apples to apples, as you say, given the
12 credit options?

13 A Well, we can go off the record and I'll add it up, if
14 you want me to. Have you got a calculator?

15 Q Sure.

16 A I think I've got one on my phone here.

17 MR. FOSMIRE: Why don't we take a break?

18 MR. FLOYD: Sure.

19 MR. FOSMIRE: We've been at it for about an hour
20 and a half.

21 MR. FLOYD: Sounds fine.

22 (OFF THE RECORD)

23 BY MR. FLOYD:

24 Q I believe we were comparing the Pyramid Contracting bid
25 and the Cliff Hall contract when we went off the

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1 record. Is that your recollection?

2 A Yes.

3 Q And during the break, did you have a chance to add up
4 all the additional items?

5 A I did. When you add it all up, Pyramid's bid came out
6 at \$935,695.

7 Q 935,695?

8 A Yes.

9 Q Did you compare the Cliff Hall Construction contract to
10 the Pyramid Contracting bid?

11 A I'm sure that ---

12 Q I guess this is a bid. Isn't this a bid? The Pyramid,
13 is this a bid, basically?

14 A Yeah. I mean, it's an estimate, yeah.

15 Q An estimate.

16 A But I did, because I know on the original bid that
17 Cliff Hall had given me for \$899,600, I compared it to
18 the \$935,695 from Pyramid.

19 Q Was there a separate bid for 899?

20 A Yes, that's in document 559, Pyramid 559.

21 Q Okay. So, Pyramid 555, it appears that that would be
22 the general specification sheet that Hall Builders
23 would have provided for you?

24 A What's the number on it?

25 Q 555.

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1 A Okay. Yeah, there is a specification sheet on there,
2 yes.

3 Q Did he give you any more details - and when I say he, I
4 mean Cliff Hall or Hall Builders - beyond this
5 itemization or this listing of items with no pricing?
6 It just kind of, at the end, it just has a price per
7 specification, plans and allowances.

8 A He had the actual plans all laid, the actual
9 specifications of the plans. So, but to break it down
10 further than that, I don't recall if he did or not.

11 Q Okay. So, this would have been as itemized as you
12 recall seeing?

13 A No, because he had - yeah, because he has right here,
14 there's allowances that are in here, where it gives
15 allowances. So, there was more to it than that. And
16 then, it talks about upgrades, interior paint.

17 Q And I'm - did he give you an allowance for the 2-8-08
18 ---

19 A I believe the allowances were still the same. This is
20 just an add-on to that other part of the contract that
21 was updated as of 3-14-08.

22 Q What is your understanding about allowances? What does
23 that mean?

24 A It's a range. I mean, they're trying to give you this
25 amount that you can spend, or that they're estimating

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1 in this price.

2 Q Take, for example, appliances. What does that mean,
3 the first allowance on 554?

4 A Appliances, he allowed \$9,650. So, if you went above
5 that with appliances, then it would - it would be at
6 our expense.

7 Q All depends on kind of your taste and your choice,
8 right? Isn't that kind of what that means?

9 A Yes and no, because in certain circumstances, an
10 appliance may not fit in that specific area, so you
11 wouldn't have the opportunity to choose certain
12 appliances. Obviously, he's guesstimating that that's
13 what it would cost.

14 Q And when he says appliances, he means like all the
15 appliances, right, in the kitchen and all that sort of
16 stuff?

17 A I'm assuming that's what it was, yes.

18 Q Okay. Did you get anybody else to bid on it?

19 A On specifically ---

20 Q The construction of the house, prior to construction?

21 A Not that I recollect.

22 Q And did Pyramid require, or did they suggest in their
23 bid that they would require a down payment of anything?

24 A I don't believe that was discussed.

25 Q Back to the Cliff Hall front page, we - do you see

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1 there where it has your initials on the right-hand side
2 of the page, just to kind of focus you in, and then it
3 shows the contract sum or amount to be \$850,000. Do
4 you see that?

5 A Yes.

6 Q And then, one line below that, it calls for a down
7 payment of \$125,655.

8 A Yes.

9 Q Did you actually give Cliff Hall \$125,655?

10 A Yes, at closing, I believe is when it was done.

11 Q Would that help you, the HUD statement?

12 A Yes, if you look at initial builder payment was
13 \$127,500, Exhibit Number 2.

14 Q And what line are you on?

15 A 110.

16 Q How did it change from 125 to 127,500?

17 A I don't know.

18 Q All right. This may be a good time for me to go
19 through the financials. I think you - do you think you
20 could help me now with the loan amount and exactly
21 figuring out what it's composed of, as far as the sales
22 price, the sale of the Derrick Drive house, down
23 payment and that sort of stuff. So, if you will, let's
24 go through that. We know that the loan amount was
25 \$1,112,000, the anticipated loan amount, right?

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1 A Yes.

2 Q And tell me, the lot price was 540. Is that right?

3 A That was the contract sales price, yes.

4 Q And we also know that the Cliff Hall building contract
5 was for \$850,000, right?

6 A Yes, correct.

7 Q Do you still have your calculator, by chance?

8 A I do.

9 Q My math, based on the lot and the building contract,
10 540 and 850, comes up to 1.39 million. \$1,390,000.
11 Does that sound, does that look right?

12 A Sounds close, yes.

13 Q All right. So, there is a deficiency there between the
14 anticipated loan amount and the two costs put together.
15 Do you understand what I'm talking about?

16 A Yes.

17 Q Can you tell me how you planned on allocating the
18 proceeds from the sale and that sort of stuff, now that
19 you have this stuff in front of you?

20 A I had the money that was left over from the sale of our
21 Derrick Drive house that would have brought that down
22 to approximately the - after all of the costs and
23 everything, approximately 1.12 million dollars.

24 Q And it looks like cash to seller on Exhibit 1 would
25 have been 325,924?

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- 1 A Yes.
- 2 Q All right. So, would we take one - if we take 139 and
- 3 we subtract that \$325,000, that's going to be - do you
- 4 know? Can you help me?
- 5 A It's 325 - it's \$1,064,075.59.
- 6 Q All right. That was kind of the starting point now.
- 7 Where does the other \$60,000, do you know where the
- 8 other 60 would come into play, as far as this loan
- 9 amount?
- 10 A I can't specifically say. I know we had closing costs,
- 11 loan origination. I would have to guess that that's
- 12 where some of that money went to.
- 13 Q The various costs and expenses?
- 14 A Yes.
- 15 Q Do you believe, after going through the building
- 16 process with Cliff Hall, that his allowances were
- 17 sufficient?
- 18 A No.
- 19 Q Do you think he underestimated a lot of the allowances?
- 20 A Yes.
- 21 Q Is there anything that sticks out in your head that he
- 22 underestimated or underbid for allowances for you to
- 23 incorporate into your house?
- 24 A Nothing specific. I mean, that I can say right off the
- 25 top of my head.

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1 Q Do you feel as though you had overruns on every one of
2 the allowances?

3 A Not on every one, but I would say on some, yes.

4 Q Would it be most of them that you had overruns?

5 A I would say quite a few.

6 Q More than half?

7 A I'm going to say in that vicinity, yes.

8 Q Okay. If you will, flip to Pyramid 551, Exhibit Number
9 - is that Exhibit Number 6 or 5? I'm sorry. I want to
10 make sure I identify it correctly.

11 MR. FOSMIRE: Six.

12 THE WITNESS: Six.

13 BY MR. FLOYD:

14 Q Exhibit Number 6. And in article 29, do you see
15 article 29 on that page?

16 A Yes.

17 Q And what's that section titled?

18 A Contractor's representations.

19 Q And then, after that, it says - can you read that next
20 sentence?

21 A Contractor does hereby represent the following.

22 Q And who's the contractor?

23 A That would be Cliff Hall.

24 Q Hall Builders?

25 A Yes.

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1 Q And A, could you read that for me?

2 A That it is financially solvent, able to pay its debts
3 as they mature, and possessed of sufficient working
4 capital to complete this contract.

5 Q As we sit here today, was that a true statement and a
6 true representation on the part of Cliff Hall?

7 A I don't know.

8 Q Was he able to pay all of his debts as they matured?

9 A That, I can't - I couldn't tell you.

10 Q Didn't he fail to pay some of your contractors,
11 subcontractors?

12 A He did.

13 Q Okay. So ---

14 A Why he did that, I don't know.

15 Q But he apparently wasn't able to pay them, right?

16 A I, again, I don't know what his financial status is.
17 He could have money that I don't know of. I mean, I
18 don't know.

19 Q Did you ever tell anybody or represent to anybody that
20 the contractor went belly up?

21 A I told them that he was no longer able to complete our
22 project, and that he possibly could be filing
23 bankruptcy.

24 Q Okay. Go off the record for a second.

25 (OFF THE RECORD)

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1 BY MR. FLOYD:

2 Q So, you did tell - who did you tell that Cliff Hall,
3 Hall Builders could be filing for bankruptcy?

4 A Kathy Patterson, I believe, at RBC.

5 Q If somebody is contemplating or could be filing for
6 bankruptcy, doesn't that mean that they are no longer
7 financially solvent?

8 A I don't - again, I'm - I couldn't say. They could have
9 a multitude of reasons for why they're doing that.

10 Q Tell me why people file for bankruptcy.

11 A They may think that they can't pay their debts. They
12 could be financially broke. They may see that they
13 can't make their payments. They could see that they
14 owe too much and if they continue to make the payments,
15 that it wouldn't make any sense. They may have a
16 mother that's sick. They could have a father that's
17 sick. They could have a grandmother that's sick. They
18 could owe an attorney money. They could owe a
19 chiropractor money. I mean, I don't know what those
20 reasonings are. I can't tell you why Cliff Hall did
21 what he did.

22 Q Okay. Maybe I'm not being clear in my question. I'll
23 try to be a little more clear. If somebody's got all
24 the money in the world, they're financially solvent,
25 right? If they don't have money to pay all of their

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1 bills, at that point in time, they are no longer
2 financially solvent, right?
3 A I disagree, because if that was true, Donald Trump
4 would not be where he is today.
5 Q Okay. In this case, Cliff Hall should have paid all of
6 the subcontractors on your house, right?
7 A I think he should have.
8 Q And he quit your project, right? He quit building your
9 house?
10 A Yes.
11 Q And he represented to you, or somehow you got wind -
12 did he tell you he was going to be filing for
13 bankruptcy?
14 A He alluded to the fact that he may.
15 Q And he told you that he was out of money, right?
16 A He said that he was - I don't know if he specifically
17 said I'm out of money, in all honesty. I can't ---
18 Q Well, what did he tell you he was going to file for
19 bankruptcy for?
20 A He just said that I may have to file bankruptcy, to the
21 best of my recollection.
22 Q And that was the extent of the whole conversation?
23 A I'm sure there was more to it than that, but I
24 specifically remember him telling me that he may have
25 to file for bankruptcy.

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1 Q And he told you he couldn't pay your subs, right?

2 A I'm sure that he said that he owed subs. Whether he
3 could pay them or not, I don't know that he went into
4 that detail.

5 Q So, you believe, as you sit here today, that Hall
6 Builders was financially solvent while it was, when it
7 walked off your job?

8 A I have - I don't know.

9 Q Okay. Did you procure any sort of builder's risk
10 policy on your house?

11 A We had insurance that was, I believe, with Allstate
12 while we were building.

13 Q Did you procure that insurance yourself?

14 A I don't recall.

15 Q Do you have copies of the policy or copies of the
16 declaration page?

17 A I do not.

18 Q Well, how do you know you had it with Allstate?

19 A I know that I had talked to Allstate about the whole
20 building process and when, you know, we would have to
21 have insurance. I don't know if we had builder's risk
22 insurance at that time or not.

23 Q Flip over to Pyramid 548.

24 A Okay.

25 Q Article 12. Give it a read and look up at me.

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- 1 A Okay.
- 2 Q Under the terms of your contract, you were supposed to
- 3 carry fire and builder's risk insurance. Is that
- 4 right?
- 5 A It says in there, yes.
- 6 Q Okay. And if you had that, that would have been with
- 7 Allstate, you said?
- 8 A Yes.
- 9 Q And who's your agent?
- 10 A Giles.
- 11 Q First name?
- 12 A Brad Giles.
- 13 Q Where is his office?
- 14 A He's in Columbia. It's 798-4600.
- 15 Q And is he in the downtown area? Is he in Irmo?
- 16 A No, he's in St. Andrews.
- 17 Q St. Andrews Road?
- 18 A He's off of St. Andrews Road.
- 19 Q Do you know the name of the road he's on?
- 20 A I don't.
- 21 Q At the time of the closing, Cliff Hall was able to get
- 22 \$127,000 of your money, and he had done no work. Is
- 23 that correct?
- 24 A Correct.
- 25 Q Did you find that a little bit unusual? Did you think

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1 it was a little odd? Did you have any objection to him
2 getting that much money?

3 A Not necessarily. I didn't, I guess, find it unusual or
4 odd.

5 Q Knowing what you know today, would you give a
6 contractor at a closing to build your house, \$127,500?

7 A Yes.

8 Q You would give them that much money to start building
9 your house?

10 A If I trusted them, yes.

11 Q Did you trust Cliff Hall?

12 A For the most part.

13 Q Did he let you down?

14 A Yeah.

15 Q Do you think he stole from you?

16 A Yes.

17

(MARKED FOR IDENTIFICATION, DEFENDANT'S

18 EXHIBIT NUMBER 7, BUILDER'S REQUEST FOR DRAW,
19 ATTACHED.)

20 THE WITNESS: Okay.

21 BY MR. FLOYD:

22 Q Did you review any of Hall Builders' draw requests
23 while he was building your house?

24 A Yes.

25 Q Did you review all of his draw requests?

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- 1 A No.
- 2 Q When did you start reviewing his draw requests?
- 3 A I initially looked at them when he turned in one of his
- 4 initial draws, and then after that, I don't believe
- 5 that I - I don't recollect reviewing them.
- 6 Q Did he provide a copy to you or did he ---
- 7 A He did not provide a copy to me, that I recall.
- 8 Q How did you get a copy of the draw request form?
- 9 A I believe through RBC.
- 10 Q Tell me how that process worked for Cliff Hall to get
- 11 money. How did you - what is your understanding of how
- 12 Cliff Hall, Hall Builders gets money?
- 13 A He had to turn in a request to the, to RBC for whatever
- 14 certain amount. Then, the inspector had to go out to
- 15 the, or I don't know if it was always or some of the
- 16 time or how that worked, exactly. They had to go out
- 17 and make sure that the project was proceeding properly
- 18 and that there were percentages that were based on
- 19 that. They would release a certain amount of funds and
- 20 then if those criteria were met, then they released the
- 21 funds to him.
- 22 Q Is that it? That was your understanding?
- 23 A To the best of my knowledge, yeah.
- 24 Q Did you talk about other options with RBC Bank? When I
- 25 say RBC, I'm going to be referring to RBC-Centura, RBC

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1 Bank, your bank.

2 A Yes.

3 Q Okay, when I say RBC. Did you discuss other options
4 with RBC about how the money could get to your
5 contractor?

6 A I don't specifically recall.

7 Q Such as you approving each draw as it comes in?

8 A I know that there was a conversation with whoever it
9 was, I don't recall. Well, it started with Cliff Hall
10 and Cliff Hall had told me that RBC took so long for
11 him to get his request for money because, initially, I
12 would have to sign for those. And he said that he
13 couldn't keep working that way, that it was taking too
14 long. It was slowing the process down and he was
15 unable to work like that. And he said most other
16 people just let the bank handle it because the bank is
17 going to require certain inspections to release the
18 funds and they're going to make sure that it's done
19 properly. At that time, I believe - I don't recall
20 specifically, but I think I talked to, I want to say
21 Brittney Martin at RBC, that I asked her would that be
22 appropriate to go ahead and sign to just release so
23 that Cliff could send it in, they inspect, and then
24 they would turn the funds over. Was there an issue,
25 and to the best of my knowledge, she had said there is

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1 no issue. That's fine. It's been done in the past.

2 It's not an issue. And yes, it would speed the process

3 up. So, I went ahead and did that.

4 Q So, when it started off, you were kind of the

5 gatekeeper. You had to sign off for him to get his

6 money. But then, you withdrew yourself from the

7 process because Cliff Hall said it's slowing everything

8 down. I need my money faster?

9 A I believe I - yeah, I believe I did maybe one or two

10 that way, and then it clogged the system or process.

11 Q Do you see any delay? I mean, did you delay in turning

12 it around, the approval process?

13 A I'm sure by the time it got to me, you know, by the

14 time RBC got it to me, and then I actually got that

15 back to them, I'm sure there was probably some lag

16 there, so.

17 Q What, a day, maybe, at best?

18 A I don't know. It could have been - I mean, if they

19 were sending it by mail, I mean, let's say it takes two

20 to three days. I send it back to them by mail, two to

21 three more days. So, now, it's five, six days that go

22 by, and if it's a business day, then the bank still has

23 to do their part. So, I mean, legitimately, there

24 could be a delay in that of, say, a week or more.

25 Q Based on the documents I reviewed, I've seen where you

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1 have been - you had the email address of pretty much
2 everybody at RBC and you exchanged emails with them
3 quite frequently.

4 A Yes.

5 Q And in fact, they sent you attachments to emails,
6 right?

7 A Yes.

8 Q Didn't they send that first pay request to you by
9 email?

10 A I don't know. I mean, if they did, I don't recollect,
11 but they may have, yes.

12 Q And if they sent it to you by email, then it's a pretty
13 quick turnaround for you to open it, review it, and
14 send it back to them?

15 A For the most part.

16 Q Most likely in less than a day, unless you're on
17 vacation, obviously?

18 A Yes.

19 Q And so, you think you only reviewed one of those pay
20 requests?

21 A I don't ---

22 Q The first one?

23 A I couldn't tell you exactly how many. I, again, I'm
24 thinking it was a couple, maybe one, maybe three. I
25 don't recall.

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- 1 Q Typically, when people are building a house, they are
2 very interested in the progress and they go visit the
3 site fairly often. Most people are not absentee owners
4 and especially when you're building one relatively
5 close to your current house. How often did you visit
6 the home under construction?
- 7 A I, again, I don't know specifically how many times.
- 8 Q Let me ask you this question. I'm not asking you how
9 many times. I'm just asking how often. Once a week,
10 twice a week?
- 11 A I'm sure that we were there at least more than, more
12 than once a week.
- 13 Q And did you have weekly status meetings with Cliff
14 Hall?
- 15 A We had, after they had gotten going, then we would have
16 meetings with their superintendent, who initially was
17 Mike Kelly and then became someone else. I don't
18 recollect.
- 19 Q Was his name Matt Gilpin?
- 20 A It was Matt Gilpin, yes, and Matt Barr was there on
21 occasions.
- 22 Q And you would have weekly meetings with these various
23 superintendents?
- 24 A After a while, once the project got rolling, then yes,
25 we would start to have meetings with them. It wasn't

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1 every week, but it was quite, quite regularly.

2 Q Well, at least once every two weeks?

3 A Yes, for the most part.

4 Q How often did you see Cliff Hall there?

5 A Rarely.

6 Q Did that frustrate you?

7 A No.

8 Q What number is this? Number 7?

9

(MARKED FOR IDENTIFICATION, DEFENDANT'S

10 EXHIBIT NUMBER 8, CHANGE ORDERS, ATTACHED.)

11 BY MR. FLOYD:

12 Q You can just hang on to that right now. I'm going to
13 ask you a few other questions before we get to that,
14 but my first question that I wanted to ask you is kind
15 of when did your relationship with Hall Builders or
16 Cliff Hall, when do you recall its first kind of
17 starting to sour?

18 A It would have been in February of 2009.

19 Q Is that the first time you recall it starting to get
20 kind of rocky with them?

21 A I mean, obviously, there were issues that we had along
22 the way, but it was never - it obviously intensified
23 when we found out that he had pulled off the project.

24 Q Go ahead and flip through those documents, and I'll ---

25 A Okay.

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1 Q Now, based on what I've seen in your documents, it
2 appears to me as if the relationship didn't start to
3 sour in February of 2009. It seems to me as though it
4 ended in February of 2009, for the most part.

5 A For the most part, yeah.

6 Q Now, there had to have been some sort of build-up kind
7 of leading up to this, Cliff Hall quitting, Hall
8 Builders quitting your project. Isn't that what you
9 said, they quit your project?

10 A Yes.

11 Q So, do you recall when it started getting kind of,
12 where things started kind of ruffling your feathers?

13 A I don't know that it really - I mean, he was good at
14 putting it off, putting it off, putting it off. And
15 obviously, so, to a certain degree, I mean, there was
16 no souring, for the most part, until we found out that,
17 all of a sudden, he was, pulled everything off and some
18 of these subcontractors started calling and saying
19 that, you know, they weren't there.

20 Q Subcontractors started calling and telling you they
21 weren't getting paid, too, right?

22 A Right, yeah, they weren't getting paid and they weren't
23 coming back, and they were owed money.

24 Q Did you expect any change orders from Cliff Hall?

25 A Did I expect any? It wouldn't be a change order if I

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1 expected them, I guess.

2 Q These change orders that you have sitting there in
3 front of you marked as Exhibit Number 8 ---

4 A Yes.

5 Q Did you agree to all these change orders?

6 A Yes.

7 Q Did you originally not have power running out to the
8 boat lift, or did you expect to have power out there?
9 Did you expect Cliff Hall to do that?

10 A I - we did not have power out there, and I don't know
11 if I knew that Cliff Hall was going to do that or not,
12 but it had - I guess it needed to be done.

13 Q So, all this stuff was fine by you, all these change
14 orders?

15 A I was - I approved these, yes, of which if you look at
16 most of them, as far as the grading and so forth, these
17 are things that we didn't expect that they came to us
18 and said that they had to add these things. As with
19 the false chimney, the plan had on it with a chimney
20 and so those were things that had to be changed.

21 Q Were these the only change orders that you can
22 remember? These are the only ones I could find, and I
23 don't know. I was kind of curious if you were aware of
24 any other change orders.

25 A I don't recollect if there were.

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1 Q Were there any other verbal change orders that you had
2 with Hall Builders or Cliff Hall that aren't
3 memorialized by way of a formal change order?

4 A I don't know if there were or not.

5 Q Is there anything that you could look at that would
6 help you tell me one way or the other?

7 A No, not that I know of.

8

(MARKED FOR IDENTIFICATION, DEFENDANT'S

9 EXHIBIT NUMBER 9, CONSTRUCTION LOAN AGREEMENT,
10 ATTACHED.)

11 BY MR. FLOYD:

12 Q I've handed you what's been marked now as Exhibit
13 Number 9.

14 A Okay.

15 Q Do you recognize this document?

16 A It's a construction loan agreement from RBC.

17 Q Do you recognize your initials at the bottom of these
18 pages?

19 A Yes.

20 Q Do you recognize your signatures, your signature at the
21 back of this document?

22 A The last page just has my initials.

23 Q Page 267, RBC 267.

24 A Yes.

25 Q Does that appear to be your signature?

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- 1 A Yes.
- 2 Q And does that appear to be your wife's signature?
- 3 A Yes.
- 4 Q Paragraph G on the first page.
- 5 A Yes.
- 6 Q Do you see that?
- 7 A Yes.
- 8 Q And does that match up with what you believe to be the
- 9 maximum loan amount would be?
- 10 A Yes.
- 11 Q It appears to be \$1,112,000?
- 12 A Yes.
- 13 Q Have you hired any real estate appraisers to look at
- 14 your property?
- 15 A I don't believe so.
- 16 Q Have you ever hired any construction inspectors to look
- 17 at your property or inspect the property?
- 18 A Construction inspectors?
- 19 Q We know you hired Pyramid, right?
- 20 A Yes.
- 21 Q And I'm not referring to Pyramid. I'm talking about
- 22 separate construction inspectors who simply prepare an
- 23 inspection.
- 24 A Duraclean has looked at it for damages.
- 25 Q Any others besides Duraclean?

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- 1 A Not that I know of.
- 2 Q That you hired. Are you aware of hiring anybody?
- 3 A Not that I know of.
- 4 Q Do you know if you could have hired a construction
- 5 inspector yourself to monitor inspection, monitor the
- 6 construction?
- 7 A I didn't - no, I didn't know that.
- 8 Q Do you know now that you could have?
- 9 A Yes, to a certain degree.
- 10 Q Tell me why you're qualifying your answer.
- 11 A It's dependent upon what the bank wants to do. When
- 12 you have a loan, the bank makes you do it their way.
- 13 Q Do you believe that these, this construction loan
- 14 agreement prevented you from hiring somebody yourself
- 15 to do construction inspections exclusively for your
- 16 benefit?
- 17 A I don't know.
- 18 Q Have you ever read this construction loan agreement?
- 19 A No.
- 20 Q As you sit here today, have you ever read it?
- 21 A No.
- 22 Q But you signed it, right?
- 23 A I did.
- 24 Q What is your understanding of Teresa Addy-Haltiwanger
- 25 and Appraisal Team - excuse me - and her company,

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1 Appraisal Team of Mid Carolina, LLC's responsibility?

2 Do you know? On the project, I'm talking about her
3 role.

4 A I don't know specifically. My understanding is that
5 she's supposed to go out and inspect the property to
6 evaluate the progress and to make sure that it's done
7 appropriately in a timely fashion.

8 Q And she was hired by RBC, right?

9 A To the best of my knowledge, yes.

10 Q If you will, flip over to page 268.

11 A Okay.

12 Q Hold your finger on RBC 268. Do you - are you at RBC
13 268?

14 A Yes.

15 Q Put your finger there and flip back to the front page.
16 Just kind of hold it so you can come back to that
17 quickly. Paragraph B on the front page refers to
18 borrower ---

19 A Yes.

20 Q --- as I, me, or my, right?

21 A Yes.

22 Q Lender is referred to as you or your, right?

23 A Yes.

24 Q All right. Flip back over to 268. Midway of the way,
25 right-hand side, it refers to construction monitor. Do

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- 1 you see that?
- 2 A Yes.
- 3 Q And it says - well, you can read it. You know, will
- 4 you read it and look up at me whenever you finish
- 5 reading it?
- 6 A Okay.
- 7 Q It says that RBC, when it says you, it means RBC,
- 8 right? When it refers to you, based on the front page?
- 9 A Okay.
- 10 Q Construction monitor means a construction inspector or
- 11 monitor or the person designated by you, and you, based
- 12 on the front page, means RBC, right?
- 13 A I'm assuming so.
- 14 Q Okay. Why would you assume any other way?
- 15 A I mean, I could read that a number of different ways,
- 16 to be honest with you.
- 17 Q All right. Look at the front page.
- 18 A I see that, but they don't have it in quotations.
- 19 Where they have lender, they put quotations and it says
- 20 you or your. So, here it does not have quotations
- 21 around it.
- 22 Q Okay.
- 23 A If that means that they're talking about the lender, I
- 24 - again, I'm assuming that that is the situation.
- 25 Q If it refers to you on the front page, do you know of

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1 any reason why it wouldn't be referring to RBC when it
2 talks about construction monitor?

3 A I don't know. I am not versed in contracts.

4 Q Okay. Do you have an opinion one way or the other
5 whether or not Teresa Addy-Haltiwanger and her company
6 were hired as the construction monitor on this project?
7 Do you know?

8 A I'm assuming they were, because RBC, to my knowledge,
9 hired them to do that.

10 Q And did you hire anybody else to do any inspections?
11 Did you tell me the answer to that question?

12 A Not during the building process, no.

13 Q Just you and your wife were going and checking out
14 stuff, and if you found problems, did you bring them up
15 to Cliff Hall's attention, or the superintendent?

16 A Yeah, I'm sure we discussed things if we thought there
17 were issues.

18 Q Whenever you first started out with the construction
19 draws, did your bankers suggest alternatives or options
20 to you for paying your contractor, such as you
21 approving the draws or simply allowing him to submit
22 the draws? Do you remember?

23 A I don't remember.

24 Q In hindsight, what do you believe to be a better
25 practice?

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- 1 A I think, in all honesty, it could go either way.
- 2 Q But you checked every pay request for Pyramid, right?
- 3 A I'm sure I looked at them, yes.
- 4 Q And in fact, Pyramid faxed their pay requests to you at
- 5 the same time they faxed it to the bank, right?
- 6 A I don't know that for sure, but I believe so, yes.
- 7 Q And you saw every pay request that Pyramid put in?
- 8 A I believe so, yes.
- 9 Q And did you have to give your approval for that money
- 10 to the bank?
- 11 A I don't know if I did or not.
- 12 Q Do you remember ever approving or disapproving or ---
- 13 A I don't remember disapproving.
- 14 Q You've always approved his pay requests?
- 15 A I don't know that I had to send them an email to say go
- 16 ahead and pay it or not. If I did, I may have.
- 17

(MARKED FOR IDENTIFICATION, DEFENDANT'S

18 EXHIBIT NUMBER 10, EMAIL, ATTACHED.)

19 BY MR. FLOYD:

- 20 Q I'm handing you what's been marked as Exhibit 10.
- 21 A Okay.
- 22 Q Do you recall about when Cliff Hall started doing work
- 23 on your house?
- 24 A I don't specifically ---
- 25 Q When the first shovel hit the dirt kind of thing?

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1 A I don't recall. It was shortly after closing sometime.

2 Q March 2008?

3 A I guess, yes, somewhere in that vicinity.

4 Q So, the date on this email appears to be October 20,

5 2008.

6 A Yes.

7 Q From Cliff Hall. Do you recognize that as being Cliff

8 Hall's email address?

9 A Yes.

10 Q Cliffhall11@bellsouth.net?

11 A Yes.

12 Q And he is what appears to be framing the roof, at this

13 point?

14 A Yes.

15 Q And he's telling you basically that the framers he's

16 got aren't capable, right?

17 A That's what it says, yes.

18 Q How was this causing a major budget issue? Do you see

19 that? This is going to cause a major budget issue.

20 A I'm assuming it was going to increase the cost of

21 putting the roof on, or something associated with that.

22 Q Then, this next sentence says please call me to

23 discuss.

24 A Yes.

25 Q The builder's responsible for putting the roof on,

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1 right? Putting the frame, framing the roof.

2 A Ultimately. I mean, they've got to put a roof on, yes.

3 Q It's part of his job?

4 A Yes, as the contractor.

5 Q And he's budgeted to frame the roof. So, my question
6 to you is how can his problem with a subcontractor
7 cause a major budget issue?

8 A Obviously, he couldn't get it done for that price.

9 Q Did you actually call him to discuss?

10 A I - I'm assuming I did. I'm sure that I did, if he
11 asked me to call him.

12 Q What do you recall from that conversation?

13 A I don't.

14 Q Do you recall it being a major budget issue?

15 A I do remember that he said that it was going to cost
16 more to get someone to come in and to build that type
17 of roof.

18 Q Did he ask you for more money?

19 A I don't recall, at that time. I do remember him saying
20 along the lines, and I don't know if it was this
21 conversation, that he would have to try and get more
22 estimates and find out what the cost would be.

23 Q The roof didn't change from the time he bid, put in, or
24 he put the price to build your house to this time, did
25 it? Same roof, right?

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1 A Same roof.

2 Q No change in plans?

3 A Not that I'm aware of.

4 Q So, that was his responsibility, right?

5 A To - it would appear to be, yes.

6 Q Shouldn't be any extra money from you, right?

7 A Well, I mean, obviously if things don't go as planned,

8 I mean, ultimately, you know, it's - it's someone's

9 issue, his or mine, to keep the project moving.

10 Q You bring up a good point there. Under the terms of
11 your contract that you had with him, he was supposed to
12 provide you with all those things for \$850,000, right?

13 A Yes.

14 Q Including this roof?

15 A Yes.

16 Q Any budget issues that he comes up with that were in
17 the plans were his problem, right?

18 A They should be.

19 Q Okay.

20

(MARKED FOR IDENTIFICATION, DEFENDANT'S

21 EXHIBIT NUMBER 11, EMAIL, ATTACHED.)

22 BY MR. FLOYD:

23 Q I'll hand you Exhibit Number 11.

24 A Okay.

25 Q Do you recall this email exchange?

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- 1 A Vaguely.
- 2 Q It appears as though you were copied on it. Do you see
- 3 that?
- 4 A Yes.
- 5 Q Is it fair to classify the roof as a fairly large
- 6 issue, as it relates to this case?
- 7 A I would say it's a major part of it, yes.
- 8 Q That was one of the major parts of your problems. Is
- 9 that right?
- 10 A It was an issue, yeah.
- 11 Q A source that led to additional problems?
- 12 A Yes, yeah.
- 13 Q Looking in your wife's email, because you're both Dr.
- 14 Carew, so I'll refer to her as your wife, this bottom
- 15 part of this message appears to be from your wife. Is
- 16 that ---
- 17 A Yes.
- 18 Q --- what it appears to be to you? About six lines
- 19 down, it starts also. Do you see that, on your wife's
- 20 email?
- 21 A Okay.
- 22 Q It says also, comma, Joe and I are seriously concerned
- 23 about the timeline. We thought we would be farther
- 24 along ten months into construction. Do you see that?
- 25 A Yes.

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1 Q This email appears to be sometime around January 7,
2 2009. Is that ---

3 A Yes.

4 Q There is no time on your wife's email down below, but
5 it appears to be around about that time.

6 A Yes.

7 Q Were you also concerned about the timeline in January
8 of 2009?

9 A Yes.

10 Q And tell me your concerns in January of 2009.

11 A I wanted to finish the house.

12 Q And did you, in fact, think that you would be further
13 along ten months into the project?

14 A Yes.

15 Q Did you believe, at that point in time, that you could
16 finish on time?

17 A I mean, sure.

18 Q And in fact, a couple of lines down, she specifically
19 talks about the roof, right? If the roof can't go on
20 until that's done, then why haven't they been out there
21 installing them? Do you see that?

22 A Yes.

23 Q And then, up above, paragraph two, in what appears to
24 be Cliff Hall's email back to you both, he tells you
25 and your wife that the roof is scheduled to start this

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- 1 week. Do you see that?
- 2 A Yes.
- 3 Q And this is January 7, Wednesday January 7th. So, it
- 4 would have had to have started January 8th or 9th if he
- 5 were to hold true to his promise, right?
- 6 A Hold true to what promise? Are we ---
- 7 Q He's saying the roof is scheduled to start this week.
- 8 A Okay.
- 9 Q And it appears to be Wednesday, January 7th ---
- 10 A Yes.
- 11 Q --- that he sent this at 12:30. So, he would have, if
- 12 he would have held true to his promise, he would have
- 13 started the work on the roof that afternoon, Wednesday,
- 14 that Thursday, or Friday, right?
- 15 A Yes.
- 16 Q And he also tells you in that next sentence that
- 17 they've had a little water damage, minor water damage.
- 18 He's telling you that's getting resolved right away.
- 19 Were you aware of any minor water damage in your house
- 20 at this point in time?
- 21 A I wouldn't say it was minor.
- 22 Q As of January 7, 2009?
- 23 A It was significant.
- 24 Q Okay. So, you already had significant water damage as
- 25 of January 7, 2009?

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1 A That's my - my knowledge of - that's the difference
2 between what you think is significant and what I think
3 is significant.

4 Q Okay. Tell me about the water damage that you recall.

5 A There was water spots on the floor and there was, I
6 know there were spots on, in different places in the
7 house.

8 Q Okay. Your wife didn't mention, I didn't see anything
9 in this email about her concerns about water damage.
10 Do you - are you sure, as of January 7th, there was
11 water damage in the house?

12 A I - I'm fairly confident that there was water damage at
13 that time, yes.

14 Q Okay. And in fact, your wife appears to be
15 complimentary. She says we love the work being done,
16 but it is excessively slow.

17 A That's her being nice.

18 Q Nice, okay.

19 MR. FOSMIRE: Joey, I know you're in the middle of
20 this, but can we go ahead and break?

21 MR. FLOYD: Oh, yeah.

22 MR. FOSMIRE: Since it's 11:00.

23 MR. FLOYD: You got it.

24 (OFF THE RECORD 11:03 a.m. - 12:52 p.m.)

25 BY MR. FLOYD:

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1 Q Dr. Carew, I think we were talking about Exhibit Number
2 11 whenever we left off, and the last thing I recall
3 talking about was about the minor water damage as Hall,
4 Mr. Hall refers to it as being minor water damage from
5 not having the roof, but that's getting resolved and I
6 think I asked you, but I want to ask you this question
7 again. That would be your builder's responsibility,
8 right?

9 A The actual water damage?

10 Q Right.

11 A Yes.

12 Q And in this email, he also says trim material is
13 getting dropped tomorrow and install begins Friday.
14 What was he talking about with trim material? Do you
15 know?

16 A I'm - I'm not sure. I'm going to guess, like, maybe
17 soffit, something like that. I don't know, fascia.

18 Q Paragraph three of Cliff Hall's email refers to
19 decisions have been made on flat work. What was he
20 talking about?

21 A I think, if I remember correctly, it had to do with how
22 the actual driveway was going to lay out, and I know
23 there was a discussion about how the actual decking
24 would be on the back porch and on the patio.

25 Q Were you and your wife a little indecisive about

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1 exactly what you wanted in terms of concrete?

2 A I don't think indecisive. I think it was a matter of
3 some decisions had to be made on site once it was
4 actually done, or some parts of it were finished. We
5 had to make decisions on that.

6 Q Do you know if the installation of the trim material
7 did begin shortly after this email?

8 A I don't know.

9 Q Did you keep any notes or pictures of the house while
10 it was in progress of construction?

11 A I'm sure that I probably have some, yes.

12 Q Where would those pictures be?

13 A I'm sure they're probably on a, on a computer or a hard
14 drive that I have.

15 Q Do you think you could locate them for us?

16 A Possibly.

17 Q Okay. I'd like to ask you to see if you could find
18 those pictures. Whenever you take those pictures, are
19 they date stamped, the time that you take, the date of
20 the picture?

21 A I don't know if the date stamp comes out on the actual
22 picture, but it bundles them by the month that it was
23 taken. And I suspect that it could even, you know, if
24 you went in and clicked on that, it maybe actually date
25 it, you know, in there.

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1 Q Instead of printing them all out, could you, if you
2 find them, could you give them to me on a CD, give them
3 to your lawyer, obviously and then I'll ask, Eric, that
4 y'all provide those to us by way of the CD.

5

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

6 NUMBER 12, EMAIL, ATTACHED.)

7 BY MR. FLOYD:

8 Q I'll hand you what I've marked as Exhibit Number 12.

9 A Okay.

10 Q This appears to be an email from Jack Hanrahan at RBC
11 to you. Is that what it appears to be to you?

12 A Yes.

13 Q And this also appears to be the week in February where
14 your builder quit. Is that also true?

15 A Yes.

16 Q Did you or what prompted this email from Mr. Hanrahan?
17 Do you know?

18 A I suspect that I emailed him something and was asking
19 questions because I couldn't get any - I couldn't get
20 all the answers that I wanted from RBC, so I was asking
21 multiple different people.

22 Q What were you asking him about, at this point in time?

23 A About, I suspect about when the last draw was, what the
24 inspection showed was complete, and how much money was
25 left over, and then also the rate, and if and when we

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1 ever converted, what would the rate be.

2 Q Do you think Hall Builders, Cliff Hall, I mean, do you
3 think they ran out of money?

4 A I have no idea.

5 Q Okay. You just know they quit?

6 A I just know they quit.

7 Q And since your builder signed your contract with you,
8 he was ultimately responsible for finishing your house,
9 right?

10 A We had a contract.

11 Q Which means ---

12 A He should finish the house.

13 Q Now, what I have also been trying to figure out here is
14 do you know the amount of money that you started
15 drawing off of? Do you know how much the construction
16 loan portion of your loan was?

17 A What's the question again?

18 Q This email here says there is \$124,665.40 remaining.

19 Do you see that?

20 A Uh-huh.

21 Q What was the starting point for how much did you have
22 allocated for actual construction?

23 A I believe it was \$1,112,000.

24 Q Was that amount actually set aside for the land
25 purchase and ---

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1 A Some of it was, yes.

2 Q So, some of that was land ---

3 A Land and build.

4 Q --- and construction?

5 A Yes.

6 Q So, my question is how much - did you set aside 850 for
7 construction, or how much did you set aside for the
8 construction portion with the loan?

9 A I believe 850 was set aside for the construction
10 because that's what the contract was.

11 Q Do you know for sure, or are you ---

12 A I'm pretty, pretty sure. I can't say that a hundred
13 percent, though.

14 Q Did you have any further conversations with Jack
15 Hanrahan about the hold back of ten percent until a
16 certificate of occupancy is issued?

17 A I don't believe so.

18 Q Do you know what that means, what he's telling you
19 there?

20 A That they were going to hold ten percent back until we
21 got a certificate of occupancy. Until we could move
22 into the house, then they would hold back ten percent.

23 Q And did you understand that as to be incentive for your
24 builder to finish your house?

25 A No. I mean, I just knew that they were holding back a

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1 certain amount of it until the home was completed,
2 obviously, to make sure that they - that they hold
3 something over them, I guess.

4

 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT
5 NUMBER 13, EMAIL, ATTACHED.)

6 BY MR. FLOYD:

7 Q I'll hand you what's been marked as Exhibit Number 13.

8 A Okay.

9 Q What's - what was Cliff Hall referring to there in the
10 first sentence when he says there are several payment
11 issues that Joe and I are trying to work through on
12 this project?

13 A I'm not sure what he was talking about at that point,
14 because at that point, he had all the money and I was
15 basically sitting there with a house that was getting
16 soaking wet with roofing material that was in the
17 driveway that was not enough roofing material to finish
18 it. All I know was that Cliff was trying to help me to
19 somewhat get the roof on it, but he wasn't willing to
20 do anything about it. He just knew that I needed to
21 get a roof on it, and there was no roof on it.

22 Q At this point in time?

23 A There was no roof on it. It was pouring water into the
24 inside of it.

25 Q Did you have the financial wherewithal at this point in

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1 time to put a roof on it yourself?

2 A That's an interesting question, because did I want to
3 spend that money? No. Could I? If I had to, yes.

4 Q So, you had the money in a checking account or a
5 savings account that you could have put the roof on?

6 A I could have, but I'd be taking it from something else.

7 Q From another bank account?

8 A From - yeah, from - it's - I'd love to tell you that I
9 have, like, you know, millions of dollars just sitting
10 around, but I don't, so I had to take it from other
11 things.

12 Q And did you ultimately find out how much it was going
13 to cost you to put that roof on?

14 A Yes.

15 Q How much did it end up costing?

16 A That, I don't recall. I believe I had to deal with the
17 roofer myself, because RBC wouldn't help me and nor
18 would Cliff Hall help me. So, I called the roofer
19 myself. I believe he said that he was owed a certain
20 amount of money already and he wanted that money and he
21 told me what it would cost to finish it. At that time,
22 he told me that he felt sorry for me because he knew I
23 got screwed by everybody involved, and he reduced his
24 price, I want to say to like, I think \$8,500 to install
25 the roof, but I can't say for sure on that amount.

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1 MR. FOSMIRE: How much was that? I'm sorry.

2 THE WITNESS: I believe it was \$8,500, eight
3 thousand five hundred.

4 BY MR. FLOYD:

5 Q Was Turn-Key Construction the company that put it on?

6 A It was Bill Craig, and I - I don't know if that's the
7 name of his company or not.

8 Q If you will, go back to number 11. Just hold that one
9 to the side, and go back to Exhibit Number 11. All
10 right. In this email from Cliff Hall, paragraph two,
11 he says the roof is scheduled to start this week. Is
12 that right?

13 A Yes.

14 Q And that was in January?

15 A Yes.

16 Q Okay. So, we're a little better than a month later,
17 right?

18 A Uh-huh.

19 Q All right. Any closer to getting the roof on the
20 house?

21 A The thing is, is, A, Cliff is a good liar. B, they
22 would go out, start to do work, and come up with an
23 excuse. It was always the tar paper had ripped off.
24 We didn't have this material. The roofing crew
25 couldn't come this week. There was a multitude of

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1 different things that he would come up with and keep
2 telling us that this is why it couldn't be done, as he
3 did from prior months. So, he was good at lying.

4 Q So, Cliff told you a lot of lies, huh?

5 A I mean, I have to assume that because the thing is, is
6 you know, there was no roof on it and it remained to
7 have no roof on it. Whether his intention was to put a
8 roof on it or not, I don't know what his intentions
9 were.

10 Q Well, he told you he was going to start January 7th,
11 right, that week?

12 A Things change. I mean, I, obviously, if it poured down
13 rain for a solid week or it was windy, you know, was
14 one of the excuses, that they couldn't put workers up
15 there, which I can fully appreciate. If it's slippery
16 and windy, I can understand that. So, obviously, you
17 know, there could be issues there. There could have
18 been equipment that wasn't there. So, to say it was
19 all because he was lying, no. He may have had
20 reasonable explanations, but I suspect there was some
21 part of it was lying, as well, too.

22 Q So, my question is one month later, as of the date of
23 this email, no roof. Do you believe it was a lie, at
24 that point?

25 A I think there was a part of it that was a lie, yes.

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1 Q Okay.

2

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

3 NUMBER 14, EMAIL, ATTACHED.)

4 BY MR. FLOYD:

5 Q I'll hand you what's been marked as Exhibit Number 14.

6 A Okay.

7 Q This appears to be an email that he sent to you just
8 minutes after his email to the bank. Do you see that?

9 A Uh-huh.

10 Q And he copied you, as I recall, yes, he did. He copied
11 you on his email to the bank.

12 A Yes.

13 Q What is he talking about, this two percent, this
14 \$10,000 shortage from the two percent on the bank's
15 draw schedule?

16 A I have no clue.

17 Q Did he ever tell you that he was shorted from the bank?

18 A No.

19 Q Okay. So, he's not ---

20 A I don't think he's talking about - to me, it doesn't
21 sound like he was shorted on anything from the bank,
22 and it definitely would appear that he was never
23 shorted on anything from the bank since he got way more
24 money than what he should have got.

25 Q Okay. Why is he telling you he's got to pull together

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1 this \$10,000? I've seen that ---

2 A I don't know.

3 Q Do you know what he's talking about?

4 A I don't.

5 Q Okay. So, at this point in time, had you gotten calls
6 from any subcontractors about payment?

7 A Yes.

8 Q Okay. And what were those subcontractors telling you?

9 A That we might want to check into what's going on,
10 because they hadn't been paid and that they knew there
11 were issues.

12 Q Did Cliff Hall ever tell you he was out of money?

13 A I don't know if he told me that or not.

14 Q What is Cliff Hall talking about or referring to in the
15 first line of this paragraph when he says so that
16 there's no chance of me causing a delay?

17 A I think he was basically trying to get out of the way
18 because he had already screwed it up so bad that he was
19 trying to get out of the way so we could get a roof on
20 it.

21 Q Do you think he was a bad builder?

22 A I've seen work that he's done and he can do good work.

23 Q Do you think he just did a bad job on your house?

24 A He did a poor job on our house. He did some things
25 good on our house. He did some things that were very

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1 poor on our house.

2 Q What were the ultimately reasons that he gave for
3 quitting?

4 A My recollection was basically that he was - he was
5 quitting it because he financially had issues, was
6 unable to finish the job, and at that point said, you
7 know, to the effect that he may have to file
8 bankruptcy.

9 Q What did he mean by financial issues? Did you ask?

10 A I didn't ask him, specifically.

11 Q Did you know what he meant when he said financial
12 issues?

13 A I don't know exactly, but I suspected that he - he may
14 have issues with money, obviously, if he's talking
15 about financial issues.

16 Q Did you infer that he was out of money?

17 A No. I mean, not necessarily because one thing is, is
18 Cliff had multiple properties, places at the beach,
19 rental homes. He owned lots. He owned multiple
20 different things. To my knowledge, he had four some
21 million dollars' worth of equity at some point that I
22 was told. So, whether he's just not allocating it to
23 us or he's obviously making the payment on something
24 else, I don't know. So, when he's referring to
25 anything financial, I don't know what Cliff was

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1 thinking or doing.

2 Q Did you ever ask him what he did with that \$127,000
3 that you gave him at closing?

4 A No.

5

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

6 NUMBER 15, EMAIL, ATTACHED.)

7 BY MR. FLOYD:

8 Q I'll hand you Exhibit Number 15.

9 A Okay.

10 Q This appears to be an email from you to several folks
11 maybe at RBC. Jack Hanrahan, he's with RBC, right?

12 A Yes.

13 Q Terry Kirven, he's with RBC?

14 A Yes.

15 Q And Brittney Martin?

16 A Yes.

17 Q Is that a she?

18 A Yes.

19 Q And she's with RBC?

20 A Yes.

21 Q Why did you tell these folks at RBC to stop all
22 payments?

23 A Because Cliff had called me and said he was not going
24 to finish the job.

25 Q All right. There's a note here. This was produced by

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1 RBC, and then I see a note here that says thinks
2 builder is belly up. Would that have been something
3 that you said?

4 A I doubt I would say that, but I may have.

5 Q Okay.

6 A That's not usually one of my terms.

7 Q What does belly up mean?

8 A Broke, out of money, upside down.

9 MR. FOSMIRE: Those terms would be anterior or
10 posterior in your terms. Belly up doesn't relate to
11 his lexicon.

12 THE WITNESS: Yeah. I use - yeah.

13 KAREN CAREW: Supine.

14 MR. FOSMIRE: Supine.

15

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

16 NUMBER 16, EMAIL, ATTACHED.)

17 BY MR. FLOYD:

18 Q I'll hand you what I've marked as Exhibit 16.

19 A Okay.

20 Q This all appears to be an email exchange between
21 several folks, what appear to be Randy McKay, Bobby
22 Alexander, and yourself.

23 A Yes.

24 Q When did you establish or reestablish contact with
25 Bobby Alexander to get him involved with taking over?

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1 A I would say probably the minute that I knew that Cliff
2 was not going to finish the job.

3 Q Flip over to the second page, the email from Mr.
4 Alexander to Randy McKay.

5 A Uh-huh.

6 Q Have you ever seen that email before?

7 A I probably did. I'm suspecting I have seen it.

8 Q The last paragraph, second sentence, the builder has
9 admitted, do you see that?

10 A Okay.

11 Q Deep and then there's a bad word.

12 A Yep.

13 Q That I'm not going to repeat. Builder has admitted
14 that he's in deep. Did he tell you he was in deep?

15 A He said he had issues.

16 Q I mean, did Cliff Hall tell you that specific language,
17 he was in deep blank?

18 A I don't - I don't think he did. I've never heard
19 honestly Cliff Hall curse, so I highly doubt that he
20 said that.

21 Q Okay. Did you go out and get any other bids or try to
22 get other contractors to take a look at your house?

23 A No.

24 Q Why did you call Bobby?

25 A Because I knew him. I knew he had done work for us in

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1 the past and that, to the best that I knew, I could
2 trust him, at that point.

3 Q Did you do anything else to secure and protect your
4 property at this point in time?

5 A I got Bobby out there right away, immediately to help
6 me because I knew I was in way over my head.

7 Q Did you sign a contract with Pyramid?

8 A Yes, at some point.

9 Q Can we go off the record for a second?

10 (OFF THE RECORD)

11 BY MR. FLOYD:

12 Q It seems to me as though there is a seamless transition
13 between Cliff Hall leaving and Bobby Alexander stepping
14 on.

15 A It was not seamless. I promise you that.

16 Q Well, in terms of him stepping in and getting involved,
17 in less than 12 hours, he was involved. Is that ---

18 A Yeah, because I called him and told him he had to meet
19 me out there or I would beat him with a baseball bat.

20 Q Because you needed help, right?

21 A I needed help. And thank God he stepped in.

22 Q Your last sentence that you typed here in your email
23 says just as a side, do you see that, where that starts
24 on the top on the first page, just as a side ---

25 A Okay.

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1 Q He is supposed to close on a property on Friday. If he
2 does, he will give us 10k to help cover costs. So,
3 again, did he tell you at this time that he was out of
4 money and is that why he had to close on something, to
5 get you money?

6 A I don't know if he did or not. I just know that at
7 that time, he said that I think at that point, we were
8 negotiating to get the roof on it and I think he knew
9 that it was ten thousand and something, and he said
10 that he would - obviously, he was going to sell
11 something and give us \$10,000.

12 Q Okay. But I mean, what I read into that is he doesn't
13 have any cash and that's why I'm asking you this
14 question. Why is he having to sell stuff to give you
15 money, the inference?

16 A I don't - that's, again, that's your reading into it.
17 I don't read that, because the thing is, is I may have
18 money. You stated earlier that I had whatever money to
19 put in, the wherewithal to put the roof on it and so
20 forth. But that money has to come from somewhere.
21 Now, whether I want to give that money or not, that's
22 two different things. He may not have - he could have
23 \$1.2 million or \$5 million in the bank and not want to
24 give me \$10,000.

25 Q Okay.

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1 A That's his decision.

2 Q All right.

3

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

4 NUMBER 17, PROPOSAL, ATTACHED.)

5 BY MR. FLOYD:

6 Q I'll hand you what's been marked as Exhibit 17.

7 A Okay.

8 Q What is this?

9 A It's a contract with Turn-Key Construction.

10 Q Is it actually a proposal?

11 A I don't know if it's a proposal - yeah, I guess it is a
12 proposal, yes.

13 Q And it appears as though you got this on 2-11-09?

14 A Yes.

15 Q So, you had a proposal in your hand on February 11th to
16 put a roof on your house, right?

17 A Yes.

18 Q Did you tell these folks to proceed?

19 A I know it was some point after that, yes.

20 Q Did you give them the go-ahead that day?

21 A I don't know.

22 Q Does that number look familiar, \$13,000? Is that what
23 you paid them?

24 A I don't know. I don't remember exactly. Obviously, I
25 quoted numbers before that was 11,500 to 8,500, and

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1 that may not be accurate. It may have been \$13,000. I
2 don't know exactly what I paid him.

3

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

4 NUMBER 18, EMAIL, ATTACHED.)

5 BY MR. FLOYD:

6 Q I'm handing you what's been marked as Exhibit 18.

7 A Okay.

8 Q Last, on the second page of that email, it appears to
9 be an email who you believe, you said was Cliff Hall.

10 A Yes.

11 Q And the email says please let this email serve as a
12 release on the Edens Point contract between you and
13 Hall Builders. Did you ask him for this email?

14 A I was advised by a couple of people that I needed to
15 get him to release us from that, or he, otherwise,
16 could come back and lien the property.

17 Q So, you asked him to send you an email to that effect?

18 A I believe I asked him to put it in writing.

19 Q Okay. And then, on the bottom of the first page, that
20 appears to be the morning after he released. Do you
21 see that?

22 A Yes.

23 Q You're telling the bank on the morning after your
24 former contractor has essentially released you, that
25 you've got a new contractor on board, right?

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1 A Essentially, yeah.

2 Q And in your last sentence there, can you read that to
3 me?

4 A Pyramid is - Pyramid will also be helping us determine
5 how much money Cliff Hall and Hall Builders stole from
6 us.

7 Q So, again, I think you've testified earlier that you
8 still do believe that Cliff Hall stole from you, right?

9 A Yes.

10 Q How much money have you determined that Hall Builders
11 stole from you?

12 A Well, he's part of, at least part of a significant
13 amount of it.

14 Q How much money have you determined that Cliff Hall,
15 Hall Builders stole from you?

16 A I don't know the exact number, because there were -
17 there is multiple issues there. To answer that one
18 specific number, I don't have that, because Cliff Hall
19 obviously took draws and did things out of sequence.
20 RBC Bank allowed that to occur. They loaned more money
21 than what should have been. The appraiser was out
22 there looking at the same build, construction, all that
23 kind of stuff and inspecting, and allowed that to
24 occur, as well, too.

25 Q As you sit here today, can you tell me how much money

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1 Cliff Hall and Hall Builders stole from you?

2 A Specifically right now, no.

3 Q But you still believe and maintain that he stole from
4 you, right?

5 A Yes.

6 Q All right. In this email on February 12th that you
7 sent to Anderson Griffin at RBC, I don't see any
8 mention of any water damage. Was there water damage at
9 this time?

10 A Well, obviously, it's not in my email on any of these,
11 but I also don't go into the fact that there was
12 drywall up. I don't go into the fact that there is, I
13 mean, what's there is there. Just because I didn't
14 state that there was water damages doesn't mean that
15 there was not water damages.

16 Q Do you remember when you saw drywall in your house?

17 A Specifically the date, no.

18 Q The month?

19 A Right off of my head, I don't recollect that.

20 Q Did you ask your builder or tell them that they needed
21 to get the roof on?

22 A Yes, because in the email that my wife had sent,
23 obviously there was a concern that a roof needed to be
24 on it.

25 Q Okay. And that email was early January, as I recall.

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1 A Yes, uh-huh.

2 Q And you were meeting with the superintendent on a
3 weekly or bi-weekly basis at least, right?

4 A I don't know at that time if we were still meeting or
5 not.

6 Q Okay. So, you quit meeting at some point?

7 A It got sporadic at times, and then, because when things
8 weren't happening, they would say there was no reason
9 to meet. We'll meet you next week. Now, when those
10 exact times were, I don't recall.

11 Q All right. I think you testified earlier, and I could
12 be wrong, but I thought I heard you say that you went
13 out there at least on a weekly, or at least a bi-weekly
14 basis.

15 A Myself, personally?

16 Q Right.

17 A Not for meetings, though.

18 Q Sometimes - okay. You're right. So, you went out
19 there on at least a bi-weekly basis and you would meet
20 with them sometimes weekly, sometimes bi-weekly, and
21 now you're saying if there was nothing going on, you
22 wouldn't meet with them at all?

23 A On those weekly meetings, yes.

24 Q But you were still visiting the property, even though
25 there was nothing going on?

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1 A Yes.

2 Q At least on a bi-weekly basis?

3 A I don't know if it was bi-weekly. It may have - it may

4 have been. We went out there weekly, but we were out

5 there, yes.

6 Q Do you think there was any stretch over two weeks that

7 you didn't go out there and at least look at it?

8 A I highly doubt that.

9 Q So, within every two weeks, you would have been out

10 there at least once?

11 A Yes.

12 Q Regardless of what construction had taken place?

13 A Yes.

14 Q And that would have been because you wanted to make

15 sure everything was secured and nobody has vandalized

16 your property and that sort of stuff?

17 A I don't know if it was just to make sure no one

18 vandalized it, but you always - I wanted to see what

19 was going on, on the house ---

20 Q What's happened?

21 A Yeah.

22 Q Okay. Are you continuing to tell Cliff Hall to get the

23 roof on between January and February, that entire

24 month?

25 A I don't know. I'm sure that we talked to Matt Gilpin

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1 about when the roof was going to go on. So, I'm sure
2 that - I don't know if I talked to Cliff specifically
3 or not.

4 Q But you talked to Hall Builders?

5 A Yes.

6 Q And did you talk to them on several occasions, trying
7 to give you some direction on when they would get the
8 roof on?

9 A Yes.

10 Q And did you ever tell RBC that there's no roof on this
11 house?

12 A I don't know if I did or not.

13 Q And you could have, in fact, sent them an email that
14 said don't pay them any more money until they get the
15 roof on the house, right?

16 A Could I have? I could have, yes.

17 Q And whenever you sent that email that we just looked
18 at, instructing them to stop all payments, if you would
19 have sent that email, do you believe they would have
20 abided by your instruction to not send any more money?

21 A I would think that they would, yes.

22

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

23 NUMBER 19, EMAIL, ATTACHED.)

24 BY MR. FLOYD:

25 Q I'm handing you what's been marked as Exhibit 19.

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- 1 A Okay.
- 2 Q Before we talk about that, let me ask you this
- 3 question. Do you believe you made a mistake in hiring
- 4 Hall Builders and Cliff Hall to build your house?
- 5 A Hindsight, I mean, I mean, at the time, no.
- 6 Q As you sit here today, do you believe you made a
- 7 mistake?
- 8 A I don't look back and question that.
- 9 Q Okay.
- 10 A It was a decision I made and that was the decision.
- 11 Q What sort of responsibility do you feel is yours as a
- 12 result of hiring Cliff Hall and Cliff Hall quitting
- 13 building your house?
- 14 A I don't think I can answer that question. I don't have
- 15 - I don't have a specific answer for that.
- 16 Q Do you feel any responsibility?
- 17 A I feel some responsibility, yes. I think no one's
- 18 suffered more than me.
- 19 Q So, you do feel that you are somewhat responsible for
- 20 bringing this situation ---
- 21 A Yes.
- 22 Q --- to where we are?
- 23 A Yes.
- 24 Q Okay. In this middle of the page in the email, you
- 25 mention that the house is at 67 percent finished.

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- 1 A Yes.
- 2 Q Do you see that?
- 3 A Yes.
- 4 Q Or as reported by the inspector?
- 5 A That's what I was told.
- 6 Q Do you believe that to be a true statement?
- 7 A No.
- 8 Q Inaccurate?
- 9 A Inaccurate.
- 10 Q And how do you know that?
- 11 A Because of the - when we had Pyramid look at it and
- 12 they had told us what it was going to cost to finish
- 13 and what their estimate was of it being finished, that
- 14 was not accurate.
- 15 Q Okay. Well, what was - what do you think? Do you have
- 16 an opinion as to the percentage of completion at that
- 17 time?
- 18 A I don't, because then I would be speculating on that.
- 19 Q Okay. Do you believe that Pyramid charged you a
- 20 premium to come in and fix somebody else's problem?
- 21 A Absolutely not.
- 22 Q Okay. Do you feel like Pyramid gave you a deal?
- 23 A I don't feel like they gave me a deal.
- 24 Q Okay.
- 25 A They did good work, quality work, got it done as

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1 quickly as possible, were on the job when I asked them,
2 how I asked them. They picked up a mess that someone
3 else had left and were - how do I want to say it? Were
4 responsible. They did what they said they were going
5 to do.

6 Q Do you believe, as you sit here today, that there were
7 no - do you think there were any lost efficiencies as a
8 result of the turnover?

9 A Yes, I believe that there were.

10 Q And do you - are you saying that there is no monetary
11 value associated with those lost efficiencies?

12 A I've never said that.

13 Q Do you believe that it cost you more money as a result
14 of the lost efficiencies?

15 A I - yes.

16 Q And do you have a way of quantifying that amount of
17 lost efficiencies?

18 A I'm sure there could be some type of number put to
19 that. What that number is, I don't know specifically
20 right, sitting here right now.

21 Q How would you figure it out?

22 A I would have to sit down and look at what was extra
23 paid on a lot of different things, as far as multiple
24 different reasons, such as they had to get a new
25 dumpster out there. They had to get a new Port-a-John

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1 out there. The electrical bill had to be, I believe
2 paid, brought up to speed so they could keep
3 electricity out there.

4 Q In other words, there was a duplication, lost
5 efficiencies, right?

6 A They had to do it.

7 Q So, my question earlier was something to the effect of
8 - and I'll just ask you this again. As a result of
9 the, your contractor quitting, as you've said, Hall
10 Builders, Cliff Hall quitting, that, in and of itself,
11 resulted in an additional cost to the house to you,
12 right?

13 A Some, yes.

14 Q And are you telling me that you could calculate that
15 additional cost?

16 A I'm sure - the problem is there are certain things that
17 are unquantifiable because, again, what happened went
18 this way, in one direction. I don't have a mirror
19 image to say if it went this way, this is exactly what
20 it cost. If it went this way, this is what it cost. I
21 only know the path that it went, and that's what I'm
22 left with now.

23 Q So, are you saying it is impossible for you to do that?

24 A Impossible is not - I mean, there's nothing, I guess -
25 well, there are certain things in life that are

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1 impossible. But could I get to a number? Potentially,
2 yes, and that's what we've tried to do, is come up with
3 a number that is our best feasible estimate.

4 Q And are you referring to your damages?

5 A We've - no.

6 Q What are you referring to, we, whenever you say we've
7 tried to come up with ---

8 A I've quantified numbers, as far as what we went over
9 with Pyramid Contracting, what my costs have been for a
10 loss of rental income ---

11 Q Okay. Those are the answers to the interrogatories?
12 Is that what you're talking about, the damages?

13 A Yes.

14 Q We'll get to that in a little while, but ---

15 A Okay.

16 Q But you don't have any way of, sitting here now, do you
17 think you could quantify, is my question, quantify this
18 lost efficiency since Hall Builders quit you?

19 A I can't answer that. I mean, I don't know.

20 Q Okay. This is my shot at being able to ask you
21 questions, so that's why I'm trying to get answers to
22 my questions. And I don't mean to frustrate you and
23 all that. I'm trying to get the answers to these
24 questions. Have you ever admitted to RBC or anybody
25 else that you made a bad decision in hiring Cliff Hall?

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1 A I may have.

2 Q Does that sound like something that you would say?

3 A I could have, sure.

4 Q Stock building Supply, are you familiar with them?

5 A Yes.

6 Q Have you resolved your issues with Stock?

7 A I don't know. I don't - I don't think so, but I don't
8 know that for sure.

9 Q Did you ever pay them?

10 A Me personally, no. Let me rephrase that answer,
11 because - yes, because I paid Cliff Hall.

12 Q Because Cliff Hall was supposed to pay it?

13 A Yes.

14 Q And would that be part of the money that Cliff Hall
15 stole from you?

16 A It's part of the money that someone has.

17 Q Sometimes even the best-laid plans don't go quite as
18 planned. My copies are all goofed up.

19

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

20 NUMBER 20, EMAIL, ATTACHED.)

21 BY MR. FLOYD:

22 Q Exhibit 20.

23 A Okay.

24 Q Are you familiar with this?

25 A Yes.

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- 1 Q Did you ask the folks at Hall Builders to put this
2 together for you?
- 3 A Yeah. Yes, and they also, I guess, said that they
4 would do it.
- 5 Q Did you have a better relationship with Matt than Cliff
6 Hall?
- 7 A I wouldn't say that.
- 8 Q Okay. Whose handwriting is that at the top?
- 9 A I don't know.
- 10 Q Is it yours?
- 11 A It looks like mine, but I don't remember ever writing
12 that.
- 13 Q What does that say?
- 14 A This is buyer and coordinates projects for Hall.
- 15 Q Okay. Would that Matt be Matt Gilpin? Is that ---
- 16 A No, that's Matt Hall, or Matt Barr.
- 17 Q What did this document tell us, or what does it tell
18 us?
- 19 A Basically who they were using for the job and anything
20 that they had negotiated and their phone numbers.
- 21 Q Did you not have any contact information for your
22 subcontractors at that point in time?
- 23 A I don't believe so.
- 24 Q Or for your builder's subcontractors?
- 25 A I don't believe so.

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1

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2 NUMBER 21, EMAIL, ATTACHED.)

3 BY MR. FLOYD:

4 Q I'm handing you what's been marked as Exhibit 21.

5 A Okay.

6 Q All right. This appears to be an email from Pyramid,
7 Bobby Alexander, to you, right?

8 A Yes.

9 Q And it appears as though the roof is a major subject of
10 this email, right?

11 A Yes.

12 Q Along with the flooring, right?

13 A Yes.

14 Q Do you think the flooring contractor should have
15 installed the flooring the way he did, or with no roof
16 on?

17 A I'm not a flooring expert, and so, I really - I don't
18 know.

19 Q And is that because you're not a builder also?

20 A Yeah, I mean, I'm not a builder.

21 Q And you don't make decisions about sequencing work, do
22 you?

23 A No, not necessarily.

24 Q And in fact, sequencing of the work is up to the
25 builder, right?

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1 A I would guess that they would be the person to do that,
2 yes.

3 Q Okay. Who else would sequence the work if you're
4 guessing?

5 A The bank.

6 Q Okay. You think the bank's responsible for sequencing
7 the work?

8 A I would think the bank would not lend money if the
9 sequence was out of order.

10 Q Well, let me ask you this question. Who's responsible
11 for building the house?

12 A The builder.

13 Q Okay. And the builder has the relationship with the
14 subcontractors, right?

15 A Yes.

16 Q So, the builder makes the decisions about when to put
17 the foundation in, when to put the walls up, when to
18 put everything else in the house, right?

19 A They make those decisions, but from all that I've ever
20 seen now, with the bank and so forth, there are certain
21 things that are supposed to happen to allot that money
22 to be disbursed, so they have an order that they're
23 supposed to follow.

24 Q But who makes those decisions? The bank doesn't make
25 the decisions, do they? It's the builder that makes

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1 the decisions.

2 A I disagree, because the bank gets to make the decision.

3 If they don't get the money, that builder ain't

4 building.

5 Q Okay. So, you think, in fact, the bank is coordinating

6 with the builder and the builder's subs for what goes

7 in the house and when?

8 A I think ---

9 Q Is that what you're telling me?

10 A I think that they have a part of that, because if they

11 don't give them the money, if they say that this is out

12 of order and we're not giving you \$24,000, I bet you

13 they don't show up.

14 Q Well, it's an interesting point that you've made to me.

15 You think that it is the bank's responsibility to

16 decide when the flooring should go into your house?

17 A I didn't say that.

18 Q Okay. Well, that's my question. Who makes the

19 decision about when to put the flooring in the house?

20 A The builder would ultimately do that, but if that bank

21 said you don't have a roof on that building and you're

22 putting in floors. We will not release you \$12,000 or

23 \$24,000 to put those floors in. That, to me, says that

24 the bank controls that situation.

25 Q Now, it seems to me that you're telling me your

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- 1 expectations, right?
- 2 A That's not my expectation. I'm just telling you what
3 my opinion is. You asked my opinion and I'm giving you
4 my opinion.
- 5 Q Well, no, I asked you who was in charge of sequencing
6 and you've given me a lot of opinions.
- 7 A Exactly. You asked - the way you're asking me is an
8 opinion. What is my opinion of how this should occur.
9 That's my opinion.
- 10 Q Okay. In a real world setting, it is the builder who
11 makes these decisions, right?
- 12 A They make the decisions.
- 13 Q Okay. And what you're actually talking about is you're
14 talking about a way, if the bank elected to hold money,
15 then they could make something happen differently, is
16 kind of what you're saying?
- 17 A Absolutely, yes.
- 18 Q But as far as actually deciding when to tell the
19 flooring contractor, when to tell the sheetrock
20 contractor when to do their work, that's the builder,
21 right?
- 22 A Yes.
- 23 Q He's telling them when to go do their work?
- 24 A Absolutely.
- 25 Q Okay. So, as of this date, February 13th, Bobby

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1 Alexander and Pyramid are on the job, right?

2 A Essentially, yes.

3 Q Okay. Why do you qualify it by saying essentially?

4 A Because at that point, we were still trying to figure
5 out exactly what needed to be done. He was helping me
6 through the process. He told me not to go ahead and
7 hire the roofing person because then obviously I would
8 be making decisions that could ultimately get me in a
9 bad position.

10 Q But on February 12th, the day before, you sent RBC Bank
11 an email that said Bobby Alexander will be taking over
12 our project, right?

13 A I did, and that was the process that he, at that point,
14 was still working through with us.

15 Q So, he's taken over the project at this point?

16 A He was in the process of taking it over, yes.

17 Q And he gave you the advice to not pay the roofer to get
18 the roof put on?

19 A That is not what he did.

20 Q Okay. What - he told you not to pay the roofer
21 directly?

22 A He told me to, at that point, if he was going to handle
23 the job, that I should go through him, to let him
24 handle the process of getting the roof done.

25 Q Okay. And the last line here, he says he thinks it's

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1 imperative to get the roof installed ASAP, right?

2 A Yes.

3 Q February 13th, still no roof, right?

4 A To the best of my knowledge, yes.

5 Q Did you all ever consider putting tarps or something to
6 weatherproof the roof, at this point in time?

7 A No.

8 Q Did Bobby ever suggest that, that maybe we need to do
9 something to weatherproof it?

10 A There was tar paper on there, or some type of paper
11 that was on there. The roofers did come out, I know
12 when they started roofing, and they put some tarps on
13 there.

14 Q But we know no roof as of that date, right?

15 A To the best of my knowledge.

16

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

17 NUMBER 22, EMAIL, ATTACHED.)

18 BY MR. FLOYD:

19 Q Exhibit 22.

20 A Okay.

21 Q The middle of the page, an email from Mark, excuse me,
22 from Wade Bozeman to Mark.

23 A Yes.

24 Q And the middle sentence, he says the Hall Custom
25 Builders' original permit was pulled by Hall Custom

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1 Builders, but they have told the Carews that they
2 cannot finish the job due to financial problems. Is
3 that an accurate statement on his part?

4 A From - that's his statement, so sure.

5 Q Did Hall Custom Builders tell you, that's one of the
6 things they told you, financial problems?

7 A I think earlier that I had stated that they had
8 financial issues.

9 Q Okay. Earlier, we talked about builder's risk
10 insurance and all that other sort of stuff. I have not
11 seen in your documents, weren't you paid some money for
12 insurance claims as a result of the moisture and water?

13 A I was - yes.

14 Q Excuse me?

15 A Yes.

16 Q Okay. How much were you paid?

17 A I don't know.

18 Q Do you have documents from the insurance company or did
19 your lawyers handle that dealing with the insurance
20 company?

21 A I don't know if I have documents or not, but I know I
22 had some dealing with them and I'm not sure actually
23 how that all transpired.

24 Q But you were paid some money by the insurance company?

25 A Yes.

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1 Q And were you compensated for the moisture and the
2 water?

3 A I wasn't compensated. I had to pay someone else to fix
4 all the problems, so I didn't receive - the money that
5 I received was basically paid to someone else for
6 fixing the damages.

7 Q So, the damages that did occur, you were paid by the
8 insurance company, but you had to pay ---

9 A Some of the damages that did occur were torn out and
10 were fixed and were paid for.

11 Q Go off the record for one minute.

12 (OFF THE RECORD 1:52 p.m. - 2:01 p.m.)

13 BY MR. FLOYD:

14 Q Dr. Carew, I think there has been a subsequent flooring
15 quote and maybe a painting quote that I have not
16 received yet, and I don't think Billy's gotten it yet
17 either. But I think that you maintain, based on my
18 conversation with your lawyer, that you maintain that
19 there is this ongoing flooring problem. Is that ---

20 A Yes.

21 Q --- basically what you contend?

22 A Yes.

23 Q And I don't have all of the documents relating to your
24 insurance claim, so what I'm going to have to do is I
25 want to see the flooring quote. I know you may be a

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1 little better prepared to testify for it, but honestly,
2 I'm not really - I am somewhat ready and I may have
3 some questions related to it, but as far as some of
4 this stuff, I'm going to have to come back and we can
5 talk about it at the end of the deposition between
6 Eric, myself and Billy. What I suspect we'll end up
7 doing is closing the deposition and reopening as to
8 those issues.

9 A Okay.

10 Q So, we can revisit those questions at that time, but I
11 believe we were talking about your insurance. You
12 think you got paid some money. It was paid either
13 directly to Duraclean or to you, and then it was
14 ultimately paid to Duraclean somehow for fixing some
15 problems, right?

16 A Yes.

17 Q And did Bobby Alexander get compensated any additional
18 money for cleaning up or fixing this moisture problem?
19 Was there an additional amount on top of what Duraclean
20 charged? This may be a better question. Did Bobby
21 Alexander from Pyramid deal with this water problem, or
22 was that all Duraclean's problem?

23 A I know that Duraclean had said there were things that
24 needed to be torn out, so forth and so on. And there
25 was some agreement, because Duraclean wanted to just

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1 rip everything out. I mean, just take out all the
2 cabinets because it would be just easier for them to
3 come in and rip it out. We - and that's where Bobby
4 Alexander was there, and we said well, is there any way
5 that we can save the cabinets and still use those to
6 try and obviously control the loss there. So, it was
7 agreed upon at that time, yes, that could be done. So,
8 I know that there was, the cabinet guys took that stuff
9 out so that it would not be destroyed so that they
10 could tear some of that out. That was not - I know
11 that was dealt with separately. That was a separate
12 issue.

13 MR. FOSMIRE: Do you mind clarifying, I'm sorry to
14 interrupt. Which cabinetry? Where?

15 THE WITNESS: The part that I remember was in the
16 kitchen.

17 BY MR. FLOYD:

18 Q Okay.

19 A Because that's where a major amount of water had come
20 in, in the kitchen.

21 Q And would the carrier or the insurance company have
22 paid for the demolition of the cabinets and rebuilding
23 of the cabinets at that point in time?

24 A I don't know. I mean, I guess we were trying to do it
25 as smart as possible and save time so that we didn't

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1 have to go back in and rebuild it. They may have paid
2 for it, sure. I mean, but I guess ---

3 Q Were you focused on moving the ball and trying to get
4 this house finished?

5 A I was focused on that, but also, you know, cost was an
6 issue even though it was someone else's, quote,
7 unquote, money.

8 Q Have you ever heard of a company called Paradigm?

9 A Yes.

10 Q What did Paradigm do for you?

11 A They did, I believe it was like - I don't even know
12 what they call it. Like dirt work, earth work. I know
13 they put in some drains, that kind of stuff.

14 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT
15 NUMBER 23, AFFIDAVIT, RELEASE AND PARTIAL WAIVER OF
16 LIENS AND CLAIMS, ATTACHED.)

17 BY MR. FLOYD:

18 Q I'm handing you what's been marked as Exhibit Number
19 23. I also want you to look at that handwriting up at
20 the top, also, along with just the document itself.

21 A Yes.

22 Q And tell me when you're ready.

23 A I'm ready.

24 Q All right. That appears to say this was negotiated
25 from six thousand to two thousand. Does that - am I

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1 reading that correctly?

2 A Yes.

3 Q Did you negotiate that yourself?

4 A Yes. I had to.

5 Q Okay. Why did you negotiate that?

6 A Because they told me that they were going to put a lien
7 on it if I didn't pay them.

8 Q Okay. At this point in time, did you believe that you
9 had paid Hall Builders everything that was owed to
10 them?

11 A I didn't know, honestly, at that point, where this was
12 left. All I knew is that they were going to put a lien
13 on it and they threatened that they would put a lien on
14 it. At that point, I'm not sure that I even knew how
15 many liens were out there, so.

16 Q Is that your handwriting up at the top?

17 A It looks like it, yes.

18 Q Okay. And this was really Cliff Hall's bill, right?

19 A It was owed, yes, so ---

20 Q Cliff Hall contracted with these folks, Paradigm? I
21 mean, at this point in time, you had not - did you
22 contract with Paradigm?

23 A I had not.

24 Q Your only contract, at this point in time, was between
25 you and Cliff Hall, and you were transitioning to

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1 Bobby, right? To Pyramid?

2 A Yeah, I didn't have a contract with Cliff Hall, I
3 think, as of February 16th.

4 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT
5 NUMBER 24, OUTLINE SPECIFICATION OF WORK, ATTACHED.)

6 BY MR. FLOYD:

7 Q I'm handing you what's been marked as Number 24.

8 A Okay.

9 Q Based on those previous emails, it seems to me that
10 Pyramid came on board - and you can look back at the
11 emails - somewhere around February 10th or 11th.
12 February 11th, does that sound right?

13 A 11th, 12th, somewhere in - yeah, somewhere in that
14 vicinity.

15 Q Okay. So, this document is dated March 12, 2009. Is
16 that when you would have received this document?

17 A It appears that way, yes.

18 Q And I notice on the second page as of March 12th, item
19 M on the second page, says complete roof and make
20 repairs. He's listed an allowance of \$15,700. Do you
21 see that?

22 A Yes.

23 Q So, at this point in time, there's still no roof,
24 right?

25 A I don't know.

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1 Q If he's got his estimate to complete the roof and make
2 repairs, do you ---

3 A I know some of this was done backhanded because we had
4 to do that because we were trying to get them on site,
5 get them going and he didn't have all the documentation
6 prepared because it took some time to get that done.

7 Q So, you don't know if the roof was on at this point in
8 time or not, right?

9 A I don't know.

10 Q And again, you think you may have signed a contract
11 with Pyramid?

12 A I thought I did, but I don't know that for sure. I
13 mean ---

14 Q Okay. I'm going to look, too. If you will, will you
15 please look for me, also?

16 A Yeah, yeah.

17 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT
18 NUMBER 25, MEMO, ATTACHED.)

19 BY MR. FLOYD:

20 Q I'm handing you Exhibit Number 25.

21 A Okay.

22 Q The first line there, after the date 4-14-09, it says
23 spoke to Dr. Carew. This is a document that appears to
24 have come from RBC's file. I'll represent that to you.

25 A Okay.

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1 Q It says he said he had weekly site meetings with
2 builder job superintendent. Is that true?

3 A I'm not sure who they're referring to. Are they
4 referring to Bobby Alexander and Pyramid, or are they
5 referring to ---

6 Q No, this says spoke to Dr. Carew. He said he had
7 weekly site meetings with builder and job, builder/job
8 superintendent. So, let's answer it both ways. Is it
9 true for Cliff Hall, Hall Builders?

10 A Did we have weekly meetings? I already said we did not
11 always have weekly meetings. There were some occasions
12 where it was cancelled or it wasn't happening. Did I
13 have a weekly meeting with Pyramid and Bobby Alexander?
14 I'm pretty sure we had weekly meetings, but I can't say
15 that a hundred percent. There may have been a week
16 where we missed or it didn't happen or whatever.

17 Q All right. It says he asked about the roof not being
18 complete and was told the materials were on back order.
19 And was that from Hall telling you that?

20 A I have no clue. I mean, I'm commenting on something
21 that she's written down to me makes zero sense.

22 Q Okay. Do you ever remember being told that the
23 materials were on back order?

24 A I know there were issues with some parts because Hall
25 didn't order enough and didn't order some specific

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1 pieces. And those pieces didn't come in. I do know
2 that Cliff Hall told us way back that the roof was on
3 back order or something along that line. So, there
4 were multiple different issues with that.

5 Q So, the answer to my question was yes, you were told
6 that the materials were on back order?

7 A By two different people at some point, yes.

8 Q Okay. Drywall bill dated 12-17-08. Do you remember
9 seeing drywall in the house before Christmas of that
10 year?

11 A I don't recall.

12 Q And again, this builder's insured admitted builder's
13 fault and will settle to repair damage. That's kind of
14 related to the water issues and Duraclean stuff that
15 we'll get into. Do you remember seeing the drywall in
16 the house and no roof on the house?

17 A Yes.

18 Q And do you remember seeing the trim? What do you -
19 what does that mean, trim, to you?

20 A I don't know what they're talking about with trim, but
21 I do know that the hardwood floors were down. I know
22 there were some cabinetry that was in. There was some
23 baseboards, I believe, that were in. There was some
24 crown molding that was in. That's what I recollect.

25 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

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1 NUMBER 26, LETTER, ATTACHED.)

2 BY MR. FLOYD:

3 Q I'm handing you what's been marked as Exhibit Number
4 26.

5 A Okay.

6 Q The first line of this letter says that he inspected
7 the home on March 16, 2009. Do you recall that?

8 A I know he was there, yes.

9 Q Were you there on site for the inspection, also?

10 A I was there at some point. I don't know if it was
11 exactly that time, but I know I was there, yes.

12 Q Were you there during the inspection by Duraclean?

13 A I think so, but I don't recall, because I know he was
14 out there on a couple of different occasions.

15 Q Okay. The third sentence in that first paragraph, the
16 roof had not been completed. Do you see that?

17 A Yes.

18 Q So, as of March 16, 2009, no roof, right?

19 A That's not the way that I read that.

20 Q Okay. How do you read that?

21 A I read it as - well, I mean, I could read it one of two
22 ways. One, the roof had not been completed as of March
23 16th, or he's recounting that the roof had not been
24 completed and now there's water. Because he's saying
25 up above there I inspected the home, and he's stating a

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1 date of March 16th. He's, in my opinion, I don't know
2 that he's saying that the roof had not been completed
3 at that time. He may have been commenting on the fact
4 of what happened prior that led to the moisture.
5 Q Okay. Do you know one way or the other whether the
6 roof was on the house at that point in time?
7 A I do not.
8 Q Okay. Third paragraph, first sentence.
9 A Third paragraph, second sentence.
10 Q First sentence.
11 A First sentence. Okay.
12 Q Do you see that, moisture was also dripping from the
13 ceiling in the kitchen?
14 A Yes.
15 Q All right. After the roof was on the house, did you
16 have moisture dripping from the ceiling in the kitchen?
17 A After the roof was completely done?
18 Q Right.
19 A Yes.
20 Q So, you had - you continued to have leaks where water
21 was dripping from the ceiling in the kitchen after the
22 roof was completed?
23 A Yes.
24 Q All right. What was the problem?
25 A I know there was some flashing that wasn't done

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1 properly. There was a boot at the top that was not
2 done properly. And again, this is making the
3 assumption that he's commenting on that at that time,
4 and not commenting on some other time period.

5 Q Well, actually, he says moisture was also dripping from
6 the ceiling in the kitchen, right?

7 A And again, I'm assuming that you're saying that he
8 literally was standing there watching it drip down.

9 Q Well, that's why I asked you if you were out there.
10 That's what I wanted to know.

11 A I was there with him on occasions. Now, whether there
12 was water dripping down at that moment, I don't recall.
13 But again, that's an assumption that I'm assuming
14 you're making here, and I'm not assuming that.

15 Q Okay. So, you don't know if the roof was done or not
16 at this point?

17 A I - again, I don't know.

18 Q You didn't hire these people, did you?

19 A Duraclean? I don't believe so.

20 Q The insurance company, somebody - the insurance company
21 did?

22 A I think they had contacted them and had them go out.

23 Q His recommendations or his suggestions down at the
24 bottom of the page ---

25 A Uh-huh.

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1 Q He says remove hardwood flooring and moisture barrier.

2 Did you have any conversations with the Duraclean guy?

3 A About this?

4 Q Right.

5 A That statement?

6 Q Is he meaning remove all of the hardwood flooring, or

7 is he simply talking about removing some areas of the

8 hardwood flooring?

9 A I don't know.

10 Q Okay. When Pyramid Contracting would have its job

11 meetings, progress meetings, would they take notes?

12 A I believe so.

13 Q And did they distribute minutes, meeting minutes from

14 ---

15 A I know sometimes they did, yeah.

16 Q Did they have any reasons for sometimes doing minutes,

17 sometimes not doing minutes? Do you know?

18 A I don't know.

19 Q Do you recall when Pyramid took its first draw?

20 A I don't.

21 Q Would it have been sometime in May of 2009? Does that

22 sound about right?

23 A I would have guessed that it would have been earlier

24 than that, but I don't know.

25 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

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1 NUMBER 27, EMAIL, ATTACHED.)

2 BY MR. FLOYD:

3 Q I'm handing you what's been marked as Exhibit 27.

4 A Okay.

5 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

6 NUMBER 28, FAX COVER SHEET, ATTACHED.)

7 BY MR. FLOYD:

8 Q And this may help you put it a little more in
9 perspective, Exhibit Number 28. It's Pyramid document
10 179.

11 A Okay.

12 Q Looking at Exhibit Number 28 in conjunction with Number
13 27, do you believe that this was in connection with the
14 first pay application?

15 A This email?

16 Q Uh-huh.

17 A I don't know.

18 Q Do you remember any talks about change orders and that
19 sort of stuff?

20 A I - yes.

21 Q As discussed in this email?

22 A Yeah, I mean, I remember talking about ---

23 Q What do you remember about it?

24 A I just remember that they had some change orders like
25 the roofing was changed because there was not, some of

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1 the pieces weren't on site. So, they needed more.

2 There were additional drains because of the house was
3 not draining properly. Cabinet change order was for
4 the water damages. I mean, so ---

5 Q So, were you paid for those kitchen cabinets through
6 the insurance company or did you have to pay Pyramid
7 for that?

8 A I know Pyramid had to do some of it because, again,
9 Duraclean was going to do a certain part of it and then
10 Pyramid was going to put it back. And some of that was
11 - well, it was paid for by the insurance company.

12 Q For the removal of the kitchen cabinets and all that?

13 A Yes, because Duraclean - Duraclean basically said
14 they'll tear it all out and someone's got to put it all
15 back. So, I know Pyramid gave them an estimate or a
16 price of what it would cost to do all of that, and they
17 agreed. The insurance company agreed to that, and so
18 arrangements were made with Duraclean to pay for, or
19 the insurance company with Duraclean to pay for their
20 part and also to Pyramid to pay for their part of this,
21 the fixes to be done.

22 Q Go back, if you will, to the Duraclean letter.

23 A Uh-huh.

24 Q Front page, last line, do you see that? Right about
25 the suggestions?

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1 A Yes.

2 Q He recommends or he suggests that to install
3 dehumidifiers to dry the house after the roof has been
4 completed.

5 A Uh-huh.

6 Q Based on his suggestion, do you still maintain that you
7 don't know whether or not the roof was completed on
8 that day or do you believe that the roof was still not
9 completed as of this date? And that date being March
10 16th.

11 A I don't know if the roof was done.

12 Q Okay. If this suggestion is to dry the house after the
13 roof has been completed, does that indicate to you that
14 the roof is still not complete?

15 A There might be one tile that's off. That would mean
16 incomplete. It could be 99.9 percent done, or it could
17 be .1 percent done. I don't know.

18 Q Either way, the roof's not complete, right?

19 A If it's 99 percent, 99.9 percent, it's not complete.

20 Q Okay.

21 A Until it is 100 percent done, it's not complete. So, I
22 don't know the level that he's talking about that it
23 was completed.

24 Q We just know it's not complete March 16, 2009?

25 A At some, at some level, it was not complete, yes.

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1 Q Okay. Why is Pyramid including cabinet change order
2 for water damage here in its pay apps?

3 A I don't think they knew where the pay was coming from,
4 at that point.

5 Q Did you pay them for this cabinet work, or did the bank
6 pay them for the cabinet work?

7 A I don't believe the bank paid them. I think that the
8 insurance company paid. Now, whether it went through
9 me and I paid them, or the insurance company paid them
10 direct, I don't recall.

11 Q Some of those questions will be answered, I guess, when
12 we peel back the onion on some more of those documents.

13 MR. FOSMIRE: Joey?

14 MR. FLOYD: Yes?

15 MR. FOSMIRE: Exhibit 28, are you going to put in
16 the whole document? Because it's a four-page ---

17 MR. FLOYD: I don't have the whole four pages, and
18 we can just - the front page is fine with me.

19 MR. FOSMIRE: It's just this, this predates this.

20 MR. FLOYD: Yeah, I wasn't going to put it in, but
21 I was trying to ---

22 MR. FOSMIRE: Okay.

23 MR. FLOYD: --- understand when the first payment
24 application was, and that has the date on the front.

25 That's all.

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1 MR. FOSMIRE: Okay.

2 BY MR. FLOYD:

3 Q Did the money slow down once you fired, or excuse me,
4 once Cliff Hall quit the job, did it take longer to get
5 money from RBC?

6 A Yes.

7 Q And do you know why?

8 A I have no clue. They basically left me hanging for a
9 lengthy period of time without knowing what to do. And
10 then, when I did ask them for money, I literally had to
11 beg for it.

12 Q What kind of drainage problems did you have?

13 A There was ---

14 (OFF THE RECORD)

15 BY MR. FLOYD:

16 Q What sort of drainage problems did you have on your
17 driveway?

18 A There was - it was water sitting out in the front of
19 the house, standing water.

20 Q And that's what you asked - did you ask Bobby to fix
21 that? Do you remember?

22 A I believe so. I mean, there was some discussion that
23 that water had to get out of there.

24 Q How quickly did you expect RBC to turn around your pay
25 requests?

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- 1 A Quickly.
- 2 Q Can you give me a number of hours, days?
- 3 A Well, as quick as, if not quicker than what they had
- 4 done before.
- 5 Q But you were approving these payment application, also,
- 6 right?
- 7 A I believe so, yes.
- 8 Q So, that delay we talked about earlier initially kind
- 9 of came back into the picture, as far as you having to
- 10 approve and then ---
- 11 A That's part of it, yes.
- 12 Q Okay. Did you have the money to finish your house
- 13 without the help of RBC?
- 14 A Did I have the money to finish my house? I guess I
- 15 probably, I may have been able to do it.
- 16 Q In other words, you would have had to have taken money
- 17 from somewhere else ---
- 18 A Yeah.
- 19 Q --- and used it to finish your house?
- 20 A Yes.
- 21 Q And did you have the financial strength and
- 22 capabilities of doing that if you needed to?
- 23 A I guess I may have been able to, yes.
- 24 Q Why do you qualify that?
- 25 A Again, I don't have money just sitting around doing

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1 nothing. I would be taking it, stripping it from
2 something else. So, if I had to take it away from
3 other things, I guess I could have.

4 Q That kind of goes back to you've got to pull from bank
5 account or pull it from one investment account or put
6 it somewhere?

7 A Maybe not even that, but may have to cut back on
8 certain things and pull out of my business and do those
9 things.

10 Q Okay.

11 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT
12 NUMBER 29, EMAIL, ATTACHED.)

13 BY MR. FLOYD:

14 Q I'm handing you what's been marked as Exhibit Number
15 29.

16 A Okay.

17 Q At this point in time, August 30, 2009, I see the
18 exchanges between you and Bobby Alexander with Pyramid
19 Contracting. For all intents and purposes, Pyramid was
20 engaged at this point, right?

21 A Yeah, they ---

22 Q And it was - they were now your builder?

23 A Yes.

24 Q And the roof must have been installed by this point,
25 right?

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1 A Yes.

2 Q And Bobby, it was installed during Bobby's watch,
3 right, or during his tenure as the builder?

4 A Yes.

5 Q And so, you sent the email to Pyramid on it looks like
6 Sunday night at about 8:30.

7 A Uh-huh.

8 Q And by 10:00 the next morning, your builder had the
9 problem fixed, right?

10 A Yes, it appears that ---

11 Q Because this was the builder's problem, right?

12 A It was - I mean, it was an issue, I guess. I mean,
13 because he didn't put the roof specifically on. The
14 roofer did.

15 Q But it was put on during his watch, right?

16 A Yes.

17 Q And he was responsible, the builder was responsible?

18 A Yes.

19 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT
20 NUMBER 30, EMAIL, ATTACHED.)

21 BY MR. FLOYD:

22 Q I'm handing you what's been marked as Exhibit 30.

23 A Okay.

24 Q Your email down at the bottom of the first page,
25 September 30, 2009.

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1 A Yes.

2 Q What sort of problems were you having with paying on
3 your account?

4 A When we would go there to actually - because we
5 continued to pay on the loan that we had. Every time
6 we would go in there, they wouldn't know anything about
7 a loan that we actually had with them.

8 Q And were you going to this local branch right here ---

9 A Yes.

10 Q --- in town?

11 A Uh-huh.

12 Q What were you speaking with the elected officials
13 about, your second paragraph there?

14 A I believe it was in reference to them not willing to do
15 anything for us, basically, leaving us in the position
16 that we were left in.

17 Q What did you tell them?

18 A Who?

19 Q All the elected officials that you spoke with?

20 A I told them the situation that we had with RBC Bank.

21 Q How did you explain it to them?

22 A I explained to them that we had a building situation in
23 which RBC, to my knowledge, lent too much money to a
24 builder that didn't complete the same amount of work
25 that was, that they had estimated and what was funded.

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1 Q What's your understanding of how much work was
2 completed? You said you didn't know, didn't you?
3 You've already answered that question. How about that?
4 Haven't you already answered that question? I think
5 you have.

6 A I think so.

7 Q Asked and answered, right, Eric?

8 MR. FOSMIRE: When the lawyer's saying you already
9 answered that question, you just say yes.

10 MR. FLOYD: I objected for you.

11 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT
12 NUMBER 31, LIST, ATTACHED.)

13 BY MR. FLOYD:

14 Q I'm handing you what's been marked as Exhibit 31.

15 A Okay.

16 Q Is this your handwriting?

17 A Yes.

18 Q And what was this list?

19 A I believe it was the same list that you handed me
20 earlier, or something similar to this, and the people
21 who had done work and then also what - an estimate of
22 what they may have been owed.

23 Q Who wrote the little notation on the side, a friend of
24 Cliff Hall? Do you see that?

25 A I don't know.

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1 Q Is that your handwriting?

2 A Doesn't look like it.

3 Q Do you know when this document was created?

4 A No.

5 Q Did you give this to Bobby with Pyramid for him to use?

6 A I don't believe so.

7 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT
8 NUMBER 32, CAREW ALLOWANCE ITEMS, ATTACHED.)

9 BY MR. FLOYD:

10 Q I'm handing you what's been marked as Exhibit 32.

11 A Okay.

12 Q What is this document?

13 A It says Carew Allowance Items.

14 Q Did you prepare this?

15 A No.

16 Q Do you know who prepared it?

17 A I don't know.

18 Q It was produced amongst your documents and I'm trying
19 to understand why you would have a document such as
20 this?

21 A I don't know who prepared this, but I did not.

22 Q Have you ever seen it before?

23 A I don't recall.

24 Q Is that your handwriting on top?

25 A It looks like it, yes.

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1 Q Do you know what it's telling me? Do you understand
2 the spreadsheet, what appears to be a spreadsheet?

3 A I believe so.

4 Q Tell me what it is.

5 A I have written on there that this is actually what we
6 paid on top of the draws.

7 Q Do you know what you meant by that?

8 A This was over and above, things that were over and
9 above what the total allowance was.

10 Q Did you - have you tracked - have you continued to
11 track these, or have you ever tracked what your
12 allowances were versus what you spent?

13 A I've tried to watch what our allowance was and to try
14 and keep us in budget. Have I done a spreadsheet, no.

15 Q Just based on what you've monitored and all that, you
16 know that you've gone over on most of them?

17 A Yes.

18 Q Okay.

19

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

20 NUMBER 33, SPREADSHEET, ATTACHED.)

21 BY MR. FLOYD:

22 Q I'll hand you what's been marked as Exhibit Number 33.

23 A Okay.

24 Q Do you recognize this document?

25 A Not really.

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1 Q Okay. This was produced by you. Do you see that? Do
2 you recognize the Bates stamp at the bottom,
3 Plaintiff's?

4 A Okay.

5 Q This was what your lawyers provided to us, and do you
6 know what this is?

7 A I don't.

8 Q Have you ever seen it?

9 A I'm sure I've looked at it, but I don't recall it
10 specifically, no.

11 Q Do you recognize the handwriting on the bottom?

12 A I don't.

13 Q Do you recall ever seeing it before today?

14 A I believe this is from Bobby Alexander, but I don't
15 know that for sure, to be honest with you.

16 Q But do you recall seeing it before today?

17 A I don't specifically, no.

18

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

19 NUMBER 34, SUBCONTRACTOR INFORMATION, ATTACHED.)

20 BY MR. FLOYD:

21 Q I'm handing you what's been marked as Exhibit 34.

22 A Okay.

23

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

24 NUMBER 35, EDENS POINT PAYABLES, ATTACHED.)

25 BY MR. FLOYD:

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1 Q I'm also going to hand you Exhibit 35 at the same time,
2 because I think they may go together, but I'm not sure.

3 A Okay.

4 Q My first question is do these two documents go
5 together?

6 A I don't believe so.

7 Q Okay. I'm going to walk you through why I think they
8 do. If you will, look at Exhibit 35 and look at the
9 back page.

10 A Okay.

11 Q This appears to be an email from you to your wife,
12 Karen Carew.

13 A The very last page?

14 Q Uh-huh.

15 A Okay.

16 Q And it shows Edens payables.

17 A So, this here is, I'm assuming that you're saying this
18 is the Edens payables? This? Or no?

19 Q I'm trying to figure that out.

20 A Okay.

21 Q What is the spreadsheet that shows the Edens payables?

22 A I don't know, but this, to the best of my knowledge, I
23 did not produce this.

24 Q Let's look at 35.

25 A Okay. This was created by Cliff Hall.

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1 Q Okay. Now, is that the email on the back page, and it
2 appears to be an email from Cliff Hall dated 2-13-09.

3 A Yes.

4 Q And he says he's highlighted certain things, and it
5 appears as though on 452 on the front of that, that I
6 can see certain entries or certain subs or certain
7 names and amounts and dates that are highlighted?

8 A Yes.

9 Q And would that be the Edens payables spreadsheet?

10 A I believe it is.

11 Q Okay. Now, on Exhibit 34, the second sentence, or the
12 first sentence there, this information is from an email
13 from Matt at Hall Builders and from the Edens payable
14 Excel document provided by Dr. Joseph Carew. Do you
15 see that?

16 A I do.

17 Q Now, my question is this. Did you prepare Exhibit 34?

18 A I don't - I don't - if I did, I do not recall that
19 because I don't even use Excel. I don't know that I've
20 ever produced an Excel document.

21 Q I try not to, but I can't get away from it.

22 A I'm with you.

23 Q All right. So, this - is this an accurate, or have you
24 gone back and checked to see if these amounts are
25 accurate or ---

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- 1 A I know that they were somewhat accurate because -
2 obviously, I have written out to the side, and there
3 were liens that came from these.
- 4 Q And 34 appears to be a list that somebody compiled.
- 5 A Yes.
- 6 Q But you don't know who prepared this? Did you prepare
7 it?
- 8 A I don't - I don't believe I did.
- 9 Q Okay. Were you monitoring lien rights of contractors
10 during this timeframe?
- 11 A No, because Cliff Hall had sent me this document, or
12 Matt Barr. I don't know which one of them, but
13 somebody from Hall had sent this to me, and he advised
14 me of the situation with the liens. At that point, I
15 was not aware of that process.
- 16 Q You got a real quick education in mechanic's liens,
17 huh?
- 18 A Yes.
- 19 Q Have you ever seen any of the forms that Appraisal Team
20 and Teresa Addy-Haltiwanger prepared and submitted to
21 RBC?
- 22 A I believe I have seen some of them.
- 23 Q Did you see them after this litigation started?
- 24 A I don't recall when exactly I saw them.
- 25 Q Did you see those forms - do you recall seeing any of

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1 these forms during the construction of your house?

2 A I don't know.

3 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT

4 NUMBER 36, CONSTRUCTION LOAN INSPECTION, ATTACHED.)

5 BY MR. FLOYD:

6 Q I'm handing you what's been marked as Exhibit 36.

7 A Okay.

8 Q Now that you have seen this document, do you recall
9 ever seeing this document while your house was under
10 construction?

11 A I still don't recall.

12 Q All right. Do you see up at the, where it says date on
13 the left-hand side?

14 A Yes.

15 Q And you go across there and it's got the various dates,
16 and in that upper column, it shows the date and then if
17 you follow that column all the way down to the bottom,
18 it shows a certain percentage of completion?

19 A Yes.

20 Q Have you done the math to figure out where or what
21 percentage of completion Teresa Addy-Haltiwanger or
22 Appraisal Team put for February 2nd?

23 A No.

24 Q Are you familiar now with these sheets?

25 A Not really.

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1 Q Okay. Do you have any special training or education on
2 how to fill these out?

3 A No.

4 Q So, you don't have any opinion - do you have any
5 opinions - let me ask you this question. Do you have
6 any opinions about whether or not it was filled out
7 correctly, incorrectly?

8 A Sure. I can have an opinion on it.

9 Q Do you have any basis to have an opinion?

10 A Yeah, I mean ---

11 Q Education?

12 A I am right - I am entitled to have an opinion.

13 Q Yes, you are. Do you have any training or expertise to
14 give you an education on how to analyze these things?

15 A I have no training or no education to that fact, but
16 I'm an educated person that can look at something and
17 try to figure it out and work through it if someone is
18 to explain it to me.

19 Q Okay. Tell me your opinion.

20 A In my opinion, it looks like a bunch of numbers.
21 That's my opinion.

22 Q Oh, that's the extent of your opinion?

23 A That's - you asked an open-ended question and i gave
24 you an open-ended answer. It's - my opinion is it
25 looks like a bunch of numbers. Now, if you want to ask

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1 me something specific to it, then I'll try and answer
2 it.

3 Q I'm just asking you if you have any other opinions
4 about it. Do you have any other opinions?

5 A I can sit here for four hours and go through my opinion
6 on this sheet if you want me to. I don't think we need
7 to go through that. I can go through any opinion that,
8 on this sheet. So, yes, I can have opinions all day
9 long. They're just opinions.

10 Q Uh-huh. I've got plenty of time.

11 A Me, too.

12 Q So, if you've got any opinions about it, you tell me.

13 A I have lots of opinions of which, if you want to ask me
14 a specific question, I'll be happy to answer it.

15 Q Okay. Well, this is my opportunity to ask you this
16 question, so I'm here and I'm willing to listen to any
17 opinions that you have about this particular document.

18 A I don't have an opinion right now until you ask me a
19 question.

20 Q Well, my question is do you have an opinion about this
21 ---

22 A I don't have an opinion.

23 MR. FOSMIRE: I mean, ask him a specific question
24 if you've got a specific question for him.

25 MR. FLOYD: Is he going to give opinion testimony

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1 about this document at trial?

2 MR. FOSMIRE: Well, if you ask him, we might,
3 depending on ---

4 MR. FLOYD: Well ---

5 MR. FOSMIRE: We may want to send Joe out of the
6 room.

7 MR. FLOYD: We can go off the record.

8 (OFF THE RECORD)

9 BY MR. FLOYD:

10 Q We're back on Exhibit Number 36, Dr. Carew. My earlier
11 question was do you have any opinions, and I - to be
12 more specific, do you have any opinions about the
13 accuracy of Ms. Haltiwanger and Appraisal Team's
14 assessments?

15 A At this point, no.

16 Q Okay. I would like to know what you think you could
17 give opinions on, if you could tell me now.

18 A Any question that you want to ask me, I can give you an
19 opinion.

20 Q Okay. But as you sit here today, you don't have any
21 opinions that you can tell me voluntarily, of your free
22 will?

23 A No, not unless you ask me a specific question.

24 Q Okay. Do you know the percentage of completion that -
25 can you pull out your calculator for me?

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- 1 A Sure. And what's the question?
- 2 Q As of 2-2, do you see that date?
- 3 A Yes.
- 4 Q And do you think that is 2-2-09, or do you know?
- 5 A It's not dated on here.
- 6 Q Right. You started your house on 6-18, right? Would
- 7 that be about the first time the first draw went out to
- 8 your first builder?
- 9 A To the first builder?
- 10 Q To Cliff Hall?
- 11 A No, because I think the first draw was taken the day
- 12 that we closed the loan.
- 13 Q The day of closing, okay. When would the RBC first
- 14 draw have happened?
- 15 A I don't know.
- 16 Q I'll represent to you that I believe it was around 6-
- 17 18. Do you see that? Somewhere, a few days after
- 18 that? Do you see up at the top, the date, it shows
- 19 first 6-18? Do you see that?
- 20 A Yes.
- 21 Q And then, there are subsequent dates, 7-10, 7-24, 8-18,
- 22 and so forth. Do you see that?
- 23 A Yes.
- 24 Q I'll represent to you I believe 2-2 to be 2-2-09, okay?
- 25 A Okay.

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1 Q Do you know when the last draw that Cliff Hall took?

2 A I know it was on or about that time.

3 Q Okay. Now, down at the bottom, do you understand how
4 the sheet works as far as percentages? Do you see
5 where that category says total this draw? Do you see
6 that?

7 A I see that.

8 Q And do you see there are percentages running from left
9 to right?

10 A Yes.

11 Q Do you understand that the number in a particular block
12 is the summary of the percentages in the above blocks?
13 Do you see that?

14 A Yes.

15 Q So, what I want you to do is to add up all those
16 percentages across the bottom through 2-2.

17 A Okay.

18 Q Starting ---

19 MR. FOSMIRE: Do you see how far you're going?

20 THE WITNESS: Yeah.

21 MR. FOSMIRE: Do you want him to include 2-2,
22 inclusive?

23 MR. FLOYD: Uh-huh.

24 MR. FOSMIRE: Can I read these figures out so we
25 can ---

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1 MR. FLOYD: We can go off the record. That's fine.

2 (OFF THE RECORD)

3 BY MR. FLOYD:

4 Q Dr. Carew, now that you've added up the percentages on
5 the bottom of this sheet, what did you come up with as
6 a percentage?

7 A Sixty-five percent.

8 Q Do you agree or disagree with that percentage?

9 A The - I agree with the numbers that I added up, that
10 they add up to 65 percent.

11 Q Okay. You agree with me that the summary of those
12 percentages equals 65, right?

13 A Yes.

14 Q Okay. I believe you testified that you don't know
15 percentages of completion. Is that what you said
16 earlier?

17 A I believe I stated something along that line.

18 Q Okay. And is there anything different? Do you believe
19 that the house was 65 percent complete or less or more
20 as of 2-2-09?

21 A I think I stated earlier that I didn't believe that it
22 was 65 percent completed. But that was my opinion.

23 Q All right. Is that your only opinion about her
24 calculations?

25 A That's it, as of right now.

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- 1 Q Okay. Tell me about Stock Building Supply,
2 Incorporated. Do you have a case pending against you
3 by Stock?
- 4 A I don't know.
- 5 Q Who would know?
- 6 A I'm sure Eric Fosmire would.
- 7 Q Would your wife know?
- 8 A No.
- 9 Q Did The Tile Center file a lawsuit against you?
- 10 A I believe they did.
- 11 Q Do you know the status of that?
- 12 A I don't.
- 13 Q How about Palmetto Builders Concrete, LLC?
- 14 A Did they file a lien?
- 15 Q Did they file a lawsuit against you?
- 16 A I don't know if they filed a lawsuit. I believe they
17 filed a lien, and I don't ---
- 18 Q Do you know the status of any litigation against you?
- 19 A Not presently.
- 20 Q When was the last time you did know about the status of
21 these lawsuits against you?
- 22 A A few months ago.
- 23 Q Have you settled any lawsuits against you?
- 24 A I have not, personally, no.
- 25 Q Has your lawyer settled them on your behalf?

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1 A I do not believe so.

2 Q Is the ABC, American Builders and Contractors Supply,
3 case still pending against you?

4 A I do not believe so.

5 Q Do you know how it was resolved?

6 A I believe that Cliff Hall resolved it.

7 Q When did you say you moved into your house, again?

8 A I believe it was July.

9 Q 2010?

10 A Yes. '09.

11 Q '09? I noticed that the certificate of occupancy that
12 was produced didn't have a date on it until January 27,
13 2010. Are you familiar with that?

14 A Yeah, I believe there was an error that it, the CO
15 didn't get signed on or something along that line, and
16 it had to be redone. It had been issued, but it - I
17 think there was an error in the signature or something
18 along that line.

19 Q Do you know how much you currently owe RBC Centura
20 Bank?

21 A Not specifically, no.

22 Q How can you find out how much you currently owe RBC-
23 Centura?

24 A I'm sure I could call them and they would tell me.

25 MR. FOSMIRE: Your question, do you mean just on

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1 Edens Point or ---

2 MR. FLOYD: Yeah.

3 MR. FOSMIRE: Okay.

4 BY MR. FLOYD:

5 Q Okay. Do you know how much you owe them on Edens
6 Point?

7 A I do not.

8 Q Have you made any inquiries with RBC to figure out how
9 much you owe them?

10 A I don't believe so recently. I know I've asked them, I
11 think by email, how much was owed.

12 Q So, you did check with them, but you have not checked
13 with them recently?

14 A No.

15 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT
16 NUMBER 37, NOTE, ATTACHED.)

17 BY MR. FLOYD:

18 Q I'm handing you what's been marked as Exhibit 37.

19 A Okay.

20 Q Do you recognize this document?

21 A Not really.

22 Q Do you ever remember signing a note?

23 A I believe so, yeah.

24 Q Okay. Did you read the note?

25 A I'm sure I looked at it. I don't know if I read every

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1 detail of it.

2 Q How much are you currently paying to RBC on a monthly
3 basis?

4 A I believe it's - what do I pay? I pay them \$5,200 a
5 month.

6 Q And that's just for the Edens Point property? That's
7 what I'm asking you about.

8 A Yes.

9 Q Is that what you're paying them on a monthly basis?

10 A Yes.

11 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT
12 NUMBER 38, MORTGAGE, ATTACHED.)

13 BY MR. FLOYD:

14 Q I'm handing you what's been marked as Exhibit 38.

15 A Okay.

16 Q Do you recognize this document?

17 A Not really.

18 Q Do you know what it is?

19 A It says mortgage on it.

20 Q Do you know what a mortgage is?

21 A Yes.

22 Q Have you executed any additional mortgages with RBC, or
23 are you aware of only one?

24 A On Edens Point?

25 Q On Edens Point.

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1 A I believe there's only one.

2 Q Does this document appear to have your signature ---

3 A Yes.

4 Q --- on page RBC 429?

5 A Yes.

6 Q Does that look like your wife's signature, also?

7 A Yes.

8 Q I don't know if I'm going to make this an exhibit or
9 not. Well, yeah, go ahead.

10 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT
11 NUMBER 39, RANGE INFORMATION, ATTACHED.)

12 BY MR. FLOYD:

13 Q I'm handing you what's been marked as Exhibit 39.

14 A Okay.

15 Q Did you put this gas range in your house?

16 A No.

17 Q Okay. Did you plan on putting it in your house?

18 A No.

19 Q Is there any reason why these documents would have
20 been, or this particular document would have been in
21 Pyramid?

22 A I think we looked at appliances. I don't know
23 specifically why it would be in there.

24 Q Okay. Did you shop around for this?

25 A We looked at appliances, yes.

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- 1 Q Did you look at this specific one?
- 2 A We looked at every type, I believe.
- 3 Q Is this your handwriting on this page?
- 4 A No.
- 5 Q Is this your wife's handwriting on this page?
- 6 A No.
- 7 Q Can you tell me what those Post-It notes are on this,
8 what appear to be copies of Post-It notes on here?
- 9 A I don't know what they are.
- 10 Q It says builder's risk. Do you see that?
- 11 A Yeah.
- 12 Q And it has a dollar amount?
- 13 A Yeah.
- 14 Q Do you have any idea what that's about?
- 15 A No.
- 16 Q Did you buy your appliances from Display Center?
- 17 A No.
- 18 Q Did Bobby or did the appliances come from your - did
19 somebody buy these appliances, some appliances from
20 Display Center to put in your house?
- 21 A No.
- 22 Q Where did you get your appliances?
- 23 A I believe we got them from Direct Buy.
- 24 Q Who installed the windows in your house?
- 25 A I don't - I believe the builder did.

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1 Q Cliff Hall?

2 A Him or some subcontractor.

3 Q I mean, here's my question. Cliff Hall was the builder
4 when the windows were installed, right?

5 A I'm not sure. I believe that he was, yes.

6 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT
7 NUMBER 40, APPRAISAL, ATTACHED.)

8 BY MR. FLOYD:

9 Q I'll hand you what's been marked as Exhibit 40.

10 A Okay.

11 Q Have you ever seen this document?

12 A I don't know that I have.

13 Q Do you have an opinion about the value of your property
14 with the improvements on it?

15 A Again, yes, I have an opinion.

16 Q What is your opinion of value of your property with the
17 improvements on it?

18 A I'm going to pretty much say the same thing that I've
19 said before. If you want to ask me a specific question
20 of an opinion, I'll give you any opinion. But
21 specifically, that's it.

22 Q How much do you believe your property is worth?

23 A Me, personally?

24 Q Yeah.

25 A Again, that would be my opinion, and my opinion, I'd

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1 have to sit down and actually calculate what I have
2 into it, what today's market, I think, would bring, and
3 what we could get for it. So, to give you an answer
4 right now, I can't do that.

5 Q Would you sell it today for 1.4?

6 A No.

7 Q Do you think it's worth more than \$1.4 million?

8 A Yes.

9 Q Do you think it's worth more than \$1.5 million?

10 A I don't know. That's my opinion.

11 Q That's okay. That's what I'm asking for.

12 A Okay.

13 Q Have you ever seen, I think it's Zillow.com? Have you
14 ever heard of that?

15 A Uh-uh.

16 Q It's something where you can put in this make me move
17 price. Have you ever heard of that?

18 A Uh-uh.

19 Q What would somebody have to offer you today to make you
20 move?

21 A That's a good question. I'm sure she has an opinion.

22 I don't know. Again, I'd have to sit down and
23 calculate exactly what we have into it and what I could
24 get out of it, and right now, I couldn't give you a
25 straight answer.

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1 Q Okay. This is my time for me to ask you questions. If
2 you have an opinion about that, I want to know the
3 answer to that question.

4 A Again, I mean, I don't have a specific answer I can
5 give you right now, because again, I'd have to sit down
6 and actually figure out what's owed and what we have in
7 the house and where we would move and all of those
8 different things.

9 Q But you definitely believe it's worth \$1.4 million?

10 A My opinion, sure.

11 Q All right. Are you familiar with interrogatories? Do
12 you know what they are?

13 A I've heard of the term, but I don't know exactly what
14 it is.

15 Q Your lawyer, I did not bring enough for everybody, so
16 I'll let you kind of take a look at that. I'm not
17 going to make it an exhibit right now, but I'll let you
18 just briefly flip through that.

19 A Okay.

20 Q Are you familiar with those now?

21 A I've seen it, yes.

22 Q Yeah. Tell me what it is exactly that you want from my
23 clients.

24 A I think it's stated in our, I don't know if it's
25 exactly in there, but I think we've stated it already

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1 what we want.

2 Q This is my opportunity to ask you questions, again.

3 A Okay.

4 Q Okay. So, if this will help you, I'll be glad to share
5 this with you.

6 A I mean, if you want me to read through the exact what
7 we're requesting, I'll read through it if you want me
8 to.

9 Q This is - if this is your answers to interrogatories
10 and if you want to read number three, but I'm asking
11 you to tell me in your words what you want from my
12 clients.

13 A This is what we've set forth, listed right here.
14 There's an itemized statement of all damages claimed to
15 have been sustained in this case, albeit this is not a
16 complete and total because we still have ongoing
17 damages that are still occurring. So, do you want me
18 to keep ---

19 Q Absolutely.

20 A Okay.

21 Q I want you to tell me what you want from my clients.

22 A All right. \$360,775.32 for a total of house to be
23 completed by Pyramid Contracting. \$1,800 cash to
24 drywall workers to work weekend and fix water damage
25 repair. \$2,000 for Pyramid, or Paradigm Excavation to

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1 help drainage in yard. \$2,400 for two months leasing
2 home at 109 Beckworth Lane paid to RBC Bank. \$2,400
3 loss of income for rental house and \$500 for utilities
4 in rental house. There's an additional that remains
5 the potential obligation to certain subcontractors
6 performed, who worked for Hall Builders on the project.
7 At the time Hall quit, the project and exposure,
8 approximately \$115,000. And then, the other damages
9 are still ongoing and occurring.

10 Q What are the other damages?

11 A That's the flooring, the paint that would need to, that
12 still needs, the caulking that needs to be repaired,
13 attorney costs, my time, my wife's time, the quote,
14 unquote, pain and suffering of having to deal with all
15 this on our own, being basically left out there. I
16 think that pretty much sums it up.

17 Q Okay. Have you been to the doctor about your pain and
18 suffering?

19 A No.

20 Q Have you had any therapy or anything like that?

21 A Not specifically.

22 Q Okay. What are you asking for, in terms of your time?

23 A I haven't - I don't know that we've specifically
24 quantified because that's an ongoing process. I'm
25 sitting here today for, since 8:30 until 11:00, and

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1 then from 12:45 until whatever time it is now, and this
2 will be ongoing.

3 Q Okay. Prior to today, though, what were your - what
4 are you claiming?

5 A I don't know what those numbers were, exactly.

6 Q How do you calculate them?

7 A The number of times that I've been out of my office to
8 run out to the site, in addition to my wife having to
9 go out there on multiple occasions to resolve issues
10 that had been ongoing, dealing with Cliff Hall, dealing
11 with RBC, dealing with attorneys, all the ---

12 Q Do you have a formula, as you sit here today, about how
13 you're going to calculate your lost time?

14 A I mean, not specifically, no.

15 Q Have you kept a log of any time that you've missed?

16 A Not specifically, no.

17 Q I mean, do you have a log of your time that you've
18 missed?

19 A Not specifically, no.

20 Q What is not specifically? I mean, that seems to be yes
21 or no. Do you have a log of the time that you've
22 missed?

23 A I could have a guess, so ---

24 Q It would be a guess?

25 A It would be a guess.

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1 Q How did you arrive at \$360,000 for you to finish or
2 complete this house?

3 A I believe that that's money that was paid to Pyramid
4 Contracting.

5 Q Okay. Didn't you - wasn't there some money left on the
6 contract that you owed Cliff Hall at the time of his
7 quitting or departing you?

8 A That was still owed to him?

9 Q That was still left on your loan.

10 A Yeah, there was like a hundred and twenty-four thousand
11 something dollars that was left.

12 Q Have you accounted for that in your damages anywhere?

13 A I would have to look back at how the actual number that
14 we had come up with, how we came up with that. I don't
15 know if it was accounted for right off the top of my
16 head.

17 Q Because you were going to have to pay Cliff Hall that
18 money if he would have finished your house, right?

19 A I'd have had to - I'd have had to pay the contract sum,
20 yes.

21 Q So, it's actually not 360,000?

22 A I can't say that for sure.

23 Q Okay. Did you use any other money besides money from
24 RBC to finish your house?

25 A Yes.

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1 Q What sort of - did you come out of pocket or ---

2 A Yes.

3 Q Where - do you have a list or checks to show me where
4 you wrote other checks?

5 A I don't know that I have - I mean, I don't know that -
6 I don't have the checks. I suspect I could look back
7 at my bank account where that had come from.

8 Q How much money did you spend in addition to the RBC
9 loan?

10 A I can't tell you that specifically right now because I
11 don't have that number in front of me.

12 Q Do you have a range? Can you even tell me a range?

13 A I know it was \$200,000 plus.

14 Q Outside of the RBC loan?

15 A Yes.

16 Q Okay. Did you draw that money from some bank account
17 somewhere else, a savings account of some sort?

18 A Yes.

19 Q Okay. I'm going to need copies of those documents. I
20 don't think those have been produced to date. Go off
21 the record for a second.

22 (OFF THE RECORD)

23 BY MR. FLOYD:

24 Q All right. So, if you will, can you get those
25 documents together for me? I'd like to see and as

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1 itemized as you can to show me what that was for and
2 that sort of - did you keep records of what that was
3 for and what you were spending money on?

4 A It's in the - in Pyramid's stuff, where it's listed out
5 what was paid to them and what it was for.

6 Q Okay. You were paying them directly?

7 A Yes.

8 Q What's the \$1,800 cash to the drywall workers, when was
9 that?

10 A I don't know specifically when that was, but it was
11 essentially there was some poor drywall work that was
12 done before the painter was going to paint and the
13 painter said that he would not paint the house until
14 that drywall was fixed. He had come on site and said
15 that it was such poor work that he wouldn't do it and
16 he said if you can't get it fixed, then he wasn't going
17 to paint it and he wanted to start painting it. So, we
18 had to find someone that would fix it and repair it as
19 quickly as possible so he would keep the process
20 moving.

21 Q Was Bobby Alexander on the project at that point in
22 time?

23 A I believe so.

24 Q Now, the way you just described it was a workmanship
25 issue. When I say workmanship issue, I mean that the

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1 drywall contractor before did a shoddy job.

2 A Uh-huh.

3 Q Is that what you're saying?

4 A Essentially, yeah.

5 Q Now, you've listed here, or your lawyer has listed to
6 work weekend and fix water damage repair. Was it - was
7 it a workmanship issue or was it a water damage issue?

8 A I believe it was a workmanship issue.

9 Q And was it just a rough finish or ---

10 A I believe it was rough finish.

11 Q And he told you that the paint would not have a good
12 finish unless this was smoothed out?

13 A Smoothed, yes.

14 Q And Paradigm Excavation, you said \$2,000 to Paradigm to
15 help drainage in the yard. What was - what was that
16 for? The front yard, is that what we talked about
17 earlier?

18 A Yeah, there were - there was water standing in the
19 front so they had to put in drains to be able to move
20 that water.

21 Q Was that the change order that you're referring to?

22 A No, I don't believe so.

23 Q Was Bobby Alexander on the job at this point in time?

24 A No, because the \$2,000 that was paid to them was as
25 Cliff stopped, they called and threatened me, that they

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DIRECT EXAM - MR. FLOYD

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- 1 were going to put a lien on it and that was in between
2 Bobby and I getting everything arranged.
- 3 Q So, this is two different \$2,000, or is this the same
4 \$2,000?
- 5 A I'm not sure exactly where you're referring to it from.
- 6 Q You paid them - you paid Paradigm \$2,000?
- 7 A Yes.
- 8 Q As Cliff Hall was exiting and Bobby Alexander was
9 coming on the scene, right?
- 10 A Right.
- 11 Q And is that what this \$2,000 here ---
- 12 A I know there was other work that Paradigm had to come
13 back and do because they had to put in more drainage
14 because on the - on the decking, they had never put in
15 any type of drain system for it. So, they had to come
16 back on different occasions and do more work.
- 17 Q Okay. I'm just trying to pinpoint and understand your
18 damages here, and I'm trying to figure out what the
19 \$2,000 to Paradigm Excavation helped the drainage in
20 the yard. I think you've - front yard, is that what
21 you're talking about?
- 22 A Yes.
- 23 Q And do you remember when it was, exactly?
- 24 A That was in February, right as - February 9th, 10th,
25 11th or 12th, in that vicinity.

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1 Q Okay. So, both of those issues were, the drywall and
2 the excavation were Cliff Hall's responsibilities,
3 right? He should have fixed those, but he obviously
4 left you?

5 A Yes.

6 Q Now, you've got \$2,400 for two months leasing home at
7 109 Beckworth Lane, and then you've got \$2,400 loss of
8 income for rental house.

9 A Uh-huh.

10 Q Beckworth Lane is the rental house, right?

11 A Yes.

12 Q Okay. It seems to me that you're double dipping there.
13 Can you explain to me how ---

14 A We had to live there an extra period of time past when
15 the house was supposed to be finished when we could
16 have had renters in there.

17 Q Okay. But what's the monthly rental?

18 A \$1,200.

19 Q And that money was going to be paid to RBC Bank, right?

20 A That's what the note is on it.

21 Q So, your rent would have gone straight to RBC Bank?

22 A My rent ---

23 Q The rent that you were paying ---

24 A --- to make the payment on it.

25 Q So, if you would have had a renter in there, they would

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1 have paid you and that would have gone straight to RBC?

2 A Yes, to make the payment instead of us having to make

3 the payment.

4 Q Okay. And that's what you're talking about, about

5 those two entries, the \$2,400?

6 A Yes.

7 Q Okay. So, in actuality, it should be one entry that

8 you're trying to claim?

9 A Let's see.

10 Q Because had you had it rented, you would have been paid

11 \$1,200 a month?

12 A Uh-huh.

13 Q Right?

14 A Right.

15 Q And that would have gone straight to the bank to pay

16 the note. So, you've got two months, so those two

17 months of payments would have gone straight to the

18 bank?

19 A Yes.

20 Q Did you have it rented immediately after you got out?

21 A Yes.

22 Q Okay. Did you have it rented for the time period that

23 you lived there?

24 A I couldn't rent it while I was living there, we were

25 living there.

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- 1 Q How long was it unrented?
- 2 A I don't believe it was ever unrented. It's always been
- 3 rented.
- 4 Q So, you ---
- 5 A I believe the day we moved out, someone moved in very
- 6 close in behind us.
- 7 Q When did your former tenant move out?
- 8 A It wasn't long before we moved in.
- 9 Q Do you have lease agreements to show me when the leases
- 10 ended and all that sort of stuff?
- 11 A I don't know if I do or not.
- 12 Q And payments and that sort of stuff?
- 13 A I mean, we have the payment history from RBC.
- 14 Q Well, I'm talking about your renters that you would
- 15 have had.
- 16 A I'm trying to think of who - afterwards, yes. Before,
- 17 I think we handled that, and I don't know what kind of
- 18 records we have on that.
- 19 Q Did you hire a property manager? Do y'all have a
- 20 property manager doing it, or do you do it yourself?
- 21 A Afterwards, we did.
- 22 Q After you got out?
- 23 A After we moved out, yes.
- 24 Q Then, you hired a property manager?
- 25 A Yes.

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1 Q Did you do it yourself before then?

2 A Yes.

3 Q Who's your property manager now?

4 A Susan Crosby with Property Consultants.

5 Q And where are they located?

6 A Irmo.

7 Q Do you have bills supporting this \$500 for utilities in
8 the rental house, or is that an estimate?

9 A That's an estimate.

10 Q Do you have the bills and you can get those?

11 A I'm sure there were checks that were written out that
12 possibly we can find.

13 Q Your next entry says there remains a potential
14 obligation to certain subcontractors who performed, it
15 says who performed who for Hall Builders, I think it
16 said, the intention was who performed work for Hall
17 Builders. And the exposure was approximately \$115,000.
18 And based on your testimony today, or maybe I should
19 ask this question. Is it your testimony today that you
20 paid more for your house than you originally
21 anticipated on paying?

22 A Yes.

23 Q And you exceeded the contract balance?

24 A Yes.

25 Q When are we going to know about this exposure of

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1 \$115,000? Do you - have you settled some of these
2 cases? Are you paying these people money or ---

3 A I'm not paying them money, and I don't know where the
4 cases stand.

5 Q It's all in litigation, as far as you know?

6 A I guess.

7 Q Okay. Go off the record.

8 (OFF THE RECORD)

9 MR. FLOYD: Okay. Just to try to make sure I've
10 got this right, Eric, I'm going to try to say this
11 agreement, and you tell me if I goof it up.

12 MR. FOSMIRE: Okay, sure.

13 MR. FLOYD: I'm fine with, I'm going to finish my
14 examination. I haven't quite finished, but I'm pretty
15 close, so I wanted to make sure I get this on the
16 record. The Duraclean documents and the subsequent
17 estimates, the painting and the flooring, I think you
18 said there are additional estimates, and I think
19 there's also some documents relating to the insurance
20 money that the Carews were paid, or either Duraclean
21 were paid. There are also some issues about the
22 damages that are still kind of out there and some
23 supporting documents that I would like to have the
24 opportunity to revisit the entire issue of damages as
25 you may update it. You may or may not update it. You

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1 may just say that's the way it is, but I want to
2 reserve the right to come back and ask some additional
3 questions on that, and also any subsequently produced
4 documents that may be produced after the date of this
5 deposition. And I think ---

6 MR. MCGEE: This is Billy McGee. On behalf of RBC,
7 I agree with that. I think there are some computer
8 pictures or some photographs that may be out there, as
9 well, that were mentioned, as well as anything else
10 that was discussed on the record. And we've got a
11 pending motion to compel that we would also reserve the
12 right to question on upon reopening.

13 MR. FLOYD: But I'm fine, like I say, with closing
14 the deposition. I'm simply reserving the right to
15 reopen so that it doesn't hamstring you to speak with
16 your client about anything.

17 MR. FOSMIRE: No, I agree with that, and there is
18 some supplemental information regarding that, as you
19 noted, that \$115,000 and exposure on the liens. So,
20 we'll do our best to clarify that for you ---
21

 MR. FLOYD: Okay.

22 MR. FOSMIRE: --- so the - so you get a more
23 defined picture as far as damages go.

24 MR. FLOYD: Good.

25 MR. FOSMIRE: And then, you also want rental

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1 records to the extent that we have them, for Beckworth,
2 and utility bills, any additional documentation we have
3 regarding the payments for utility bills for Beckworth.

4 MR. FLOYD: And any other documents that may be
5 supporting to the damages.

6 MR. FOSMIRE: Sure, okay.

7 MR. FLOYD: I'm just about done, believe it or not.

8 THE WITNESS: All right.

9 BY MR. FLOYD:

10 Q Just to be clear, you didn't hire Teresa Addy-
11 Haltiwanger or Appraisal Team, right?

12 A Did not.

13 Q You didn't have a contract with them?

14 A Did not.

15 Q In fact, you never saw her?

16 A I did not see her.

17 Q Did you ever see her do any inspections?

18 A I don't think so.

19 Q And to the best of your knowledge, she was hired by
20 RBC-Centura, right?

21 A To the best of my knowledge, yes.

22 Q Answer any questions Mr. McGee may have.

23 A Okay.

24 MR. MCGEE: I mean, I can start, but I'm probably
25 not going to get that much done.

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1 MR. FOSMIRE: Let's break.

2 MR. MCGEE: Let's just go ahead and break then.

3 MR. FOSMIRE: Unless you've got 20 minutes' worth
4 of questions, which I wouldn't suspect you do.

5 MR. MCGEE: No, I've got more than that, and I'm
6 probably going to run into some of the same issues. It
7 may just be more efficient to do that. If these guys
8 want to get back at 4:00 and get out of town at least
9 until traffic, but I'm happy to plug away. It's just I
10 think that we'd get to a similar stopping point.

11 MR. FOSMIRE: As long as y'all understand I have
12 the right to talk with Joe about the damage issues and
13 other supplementation that we're going to get into.
14 There's not going to be any corrective conversation
15 regarding his deposition. As long as we have that
16 agreement ---

17 MR. FLOYD: As long as he doesn't go on the record
18 and correct some portion of his testimony or attempt to
19 correct some portion of his testimony ---

20 MR. FOSMIRE: He may think of something on his own
21 ---

22 MR. FLOYD: That's fine.

23 MR. FOSMIRE: You know. All right.

24 MR. FLOYD: Well, I may have to inquire about that
25 if he ---

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1 MR. FOSMIRE: You're welcome to.

2 MR. FLOYD: Okay.

3 MR. MCGEE: I'm with that.

4 MR. FLOYD: That's fine.

5 MR. FOSMIRE: Okay. So we have it on the record,
6 just to show where we are, it is a little unusual to
7 break in the middle of your testimony. But just given
8 the timing and the fact that they are entitled to some
9 additional information, you have to consider that
10 you're still under oath in the middle of the
11 deposition. We have agreed that we can talk about
12 ongoing damages issues and the supplemental information
13 that we have.

14 THE WITNESS: Uh-huh.

15 MR. FOSMIRE: But neither you nor I nor Karen can
16 talk to you in the context of your existing deposition
17 or say you should tell this or tell that, okay?

18 THE WITNESS: Okay.

19 MR. FOSMIRE: We'll talk about the sublimitation of
20 the damages and some other issues surrounding that, but
21 because RBC has not gone yet, we're still technically
22 in the middle of your deposition.

23 THE WITNESS: Okay.

24 MR. FOSMIRE: We're adjourning, not concluding it.

25 THE WITNESS: Okay.

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1 MR. FOSMIRE: And then, they will have the right
2 to, not invade the attorney/client privilege, but to
3 ask you if you've had conversations about the substance
4 about what you've already testified to.

5 THE WITNESS: Okay.

6 MR. FOSMIRE: And you need to be prepared to answer
7 that question.

8 THE WITNESS: Okay.

9 MR. FOSMIRE: Understood?

10 THE WITNESS: Yes.

11 MR. FOSMIRE: Okay. Are y'all good?

12 MR. FLOYD: Yes.

13 MR. MCGEE: Yes.

14 MR. FOSMIRE: All right.

15 (WHEREUPON, THE DEPOSITION ADJOURNED AT 3:43 P.M.)

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Loan No. 213-10017776

RBC Centura Bank

Construction Loan Agreement
(Residential)

THIS CONSTRUCTION LOAN AGREEMENT ("Agreement") is entered into as of the Effective Date and by the parties identified in the following recitals:

A. Effective Date: February 29, 2008

B. Borrower (whether one or more, "I", "me", "my"): Joseph G Carew & Karen Carew

with a mailing address of: 301 Derrick Dr, Irmo, SC 29063

PO Box 6709
Irmo, SC 29063

C. Lender ("you" or "your"): RBC Centura Bank

with a mailing address of: 133 S. Franklin Street, Rocky Mount, NC 27804

D. You have committed to make to me the following type loan ("Loan"):

☐ construction loan.

☒ construction to permanent loan.

E. I will use the proceeds of the Loan for the following purpose (Check all that apply):

☐ to acquire the Land.

☒ construct and furnish improvements on the Land on or before the Last Completion Date.

☒ for long-term financing of the Premises.

F. The Last Completion Date is: 02/28/2009

G. The Loan will be in an amount up to ("Loan Amount"): \$1,112,000.00

NOW, THEREFORE, you and I agree as follows:

Section 1. Definitions. Capitalized terms used in this Agreement and not defined in the specific sections or parts in which they are used will have the meanings assigned to such terms in Attachment 1. In this Agreement (1) words in the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular numbered meaning include the plural number, and vice versa, (2) words importing "persons" will include individuals as well as organizations, (3) the use of the terms "including" or "included in", or the use of examples generally, are not intended to be limiting, but will mean, without limitation, (4) the phrase "costs and expenses" will include the reasonable fees of attorneys and other service providers, and will include intangible personal property taxes, documentary stamp taxes, excise taxes and other similar taxes and (5) reference to the parties to this Agreement includes their permitted successors and assigns.

Section 2. Loan. Subject to the terms and conditions of this Agreement, you will lend and I will borrow up to the Loan Amount, such borrowing to be evidenced by the Note. The Loan consists of a Construction Phase and if so marked and designated in the recitals to this Agreement, a Permanent Phase. All disbursements under the Loan will be made within the Construction Phase, unless you, in your sole discretion, determine that disbursements may or should be made after the end of the Construction Phase. If there is a Permanent Phase, the Loan will extend into or convert to the Permanent Phase only if, before the end of the Construction Phase, (1) the Improvements have been Completed by me in accordance with the terms and conditions of this Agreement, (2) all construction costs and expenses have been paid by me in full and evidence satisfactory to you of such full payment has been delivered to, and reviewed and approved by you, (3) all of the conditions set forth in Sections 4, 5 and 6 have been satisfied and remain satisfied as required in such Sections, (4) the conditions, if any, for conversion of the Loan from a construction loan to a permanent loan as set forth in the Commitment, if there is one, have been fully satisfied, including establishment of the rate at which interest will accrue during the Permanent Phase, and (5) no Event of Default exists. If all of the conditions set forth in (1) through (5) have been fully satisfied on or before the end of the Construction Phase, then, on the date all of such conditions are deemed by you to be satisfied or such other date selected by you, the Construction Phase will extend into or convert to the Permanent Phase ("Conversion Date"). On or about the Conversion Date, if requested by you, I will enter into a loan

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modification agreement or other agreement reflecting the extension or conversion, including an agreement modifying the Note and the other Loan Documents if you so require. If, however, all such conditions have not been fully satisfied before the end of the Construction Phase, then, on the first Business Day following the last day of the Construction Phase (the "Maturity Date" under the Note), the entire balance of principal, interest, fees, premiums, charges and costs and expenses then outstanding under the Note, this Agreement and the other Loan Documents will be due and payable in full.

Section 3. Collateral. Subject to the Permitted Encumbrances, the Loan will be secured by and I do hereby grant and assign to you a lien and security interest in the Collateral.

Section 4. Disbursement of Loan Proceeds - Initial Funding. All of the conditions in the following paragraphs of this Section must be satisfied and completed, or the satisfaction and completion thereof waived by you, prior to the Initial Funding.

4.1 Loan Documentation. I must grant to you such liens and security interests and you must receive from me all agreements, information, documents and other items which you deem necessary or appropriate to ensure (1) the proper and complete documentation of the Loan, (2) the perfection of continuing, first priority liens and security interests in the Collateral in favor of you and (3) compliance with all of your loan underwriting criteria and all applicable laws and regulations relative to the Loan and you and me. The liens and security interests and the agreements, information, documents and other items which will be required include all of the items listed on Attachment 1 as Initial Funding Conditions, unless you notify me in writing that some of them are not needed.

4.2 Draw Request. You must receive and approve my first Draw request.

4.3 Default. I must not be in Default under this Agreement.

Section 5. Disbursement of Loan Proceeds - Interim Disbursements. All of the conditions in the following paragraphs of this Section must be satisfied and completed to your satisfaction before you are obligated to make any disbursements after the Initial Funding, and each of the conditions must be and remain satisfied at the time of each disbursement subsequent to the Initial Funding.

5.1 Existing Conditions. I must have satisfied to your satisfaction all of the conditions in Section 4 and they each must remain satisfied at the time of the disbursement, or their satisfaction waived by you.

5.2 Subsequent Liens. Except ad valorem property taxes for the then current year, there must not be any liens or security interests which have attached to the Collateral.

5.3 Title Insurance. If you received a marked up Title Insurance Commitment at or before the Initial Funding, you must have received the Title Policy which conforms in all respects with the marked up Title Insurance Commitment. Also, the Title Insurance Company must have issued to you an endorsement to the Title Policy updating the effective date of the Title Policy to insure, or the Title Insurance Company must have otherwise insured under the Title Policy that since the last preceding disbursement (1) there has been no change in the status of the title to the Premises or your lien and security interest therein, (2) there are no intervening liens and there are no intervening claims of liens which may or will take priority over the disbursement to be made, and (3) there are no survey exceptions which have not been approved by you in writing.

5.4 Foundation Survey. If the foundations have been completed, the survey provided to you as a condition to the Initial Funding must have been updated to show the foundations; and such updated survey must have been delivered to you and the survey and all information shown thereon must be in all respects satisfactory to you.

5.5 Progress of Construction. In your opinion, (1) construction of the Improvements must have been proceeding and will continue to proceed in accordance with the Construction Documents and this Agreement, and (2) I must have satisfied all equity requirements established by you relative to construction of the Improvements and I will be able to continue to satisfy additional equity requirements established by you.

5.6 Draw Request. You must receive and approve my Draw Request.

Section 6. Disbursement of Loan Proceeds - Final Disbursement. All of the conditions in the following paragraphs of this Section must be satisfied and completed to your satisfaction before you are obligated to make the final disbursement of the Loan proceeds.

6.1 Existing Conditions. I must have satisfied to your satisfaction all of the conditions in Section 4 and Section 5 and they each must remain satisfied at the time of the disbursement, or their satisfaction waived by you.

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6.2 Completion of Improvements. The improvements must be Completed and you must have received final lien waivers/releases from the General Contractor, if there is one, and from any contractors, subcontractors or other persons designated by you, all in a form and containing content satisfactory to you.

6.3 As-Built Surveys/ Insurance. You must have received four (4) copies of an "as-built" survey prepared by a registered land surveyor approved by you, which survey meets in all respects your survey requirements. The Title Insurance Company which issued the Title Policy must have issued to you an endorsement to the Title Policy updating the effective date of the Title Policy through the date of the final disbursement, and such endorsement must be in all respects satisfactory to you. You must have received written evidence of insurance replacing the builder's risk insurance, as and on the terms required in a subsequent Section of this Agreement.

Section 7. Disbursement and Draw Request Procedures. You agree that you will, from time to time during the Construction Phase, but not more frequently than once a month, disburse Loan proceeds to me in accordance with the terms and provisions set forth in the following paragraphs of this Section, provided I am not in Default under this Agreement. Loan disbursements may be made by depositing the disbursements in my account with you, or by depositing them in a depository with another person designated by me and approved by you, or by disbursing them as provided in the last paragraph of this Section.

7.1 Draw Requests. Except as otherwise provided in this Agreement, a Loan disbursement may only be made to me on the basis of a Draw Request from me. I must submit each Draw Request for a disbursement at least five (5) Business Days prior to the date on which I would like to receive the disbursement. All Draw Requests submitted to you by me must be approved in advance of submittal by the Construction Monitor, unless you agree otherwise in writing.

7.2 Disbursement Amounts. You will determine the amount to be disbursed under each Draw Request based on the information and documentation contained in, or supplied to you with each Draw Request, as supplemented by any additional information and documentation which you may gather in the course of reviewing each Draw Request, including information from the Construction Monitor. In reviewing each Draw Request, you will be guided by the criteria, standards, processes and procedures set forth in the following subparagraphs of this paragraph, and such other commercially reasonable criteria, standards, processes and procedures as may be necessary or appropriate under the circumstances existing at the time. Once you determine the amount to disburse, if the amount is less than the amount requested in a Draw Request, the Draw Request will be amended to reflect the adjustments and I agree to execute the amended Draw Request to reflect the adjustments.

7.2.1. Review Period. You will use reasonable efforts to review and approve or disapprove each Draw Request within five (5) Business Days of its receipt. If you cannot complete your review in such five (5) Business Day period, you will try to notify me and provide me the reason for the delay and a good faith estimate of the date by which you will complete your review. Your notice to me may be given either in writing or orally. You will not have any liability to me or any other person for your failure to make a disbursement on the date requested by me or to complete your review of a Draw Request within any specified period of time.

7.2.2. Inspections. Before you make a disbursement on the basis of a Draw Request, either or both you and the Construction Monitor may perform an on-site inspection of the Premises. If you request, the General Contractor, if there is one, and I will be present when such inspections are undertaken. You will not be under any obligation to make inspections and you will not be under any obligation to instruct the Construction Monitor to conduct inspections. All inspections made by you and all inspections made by the Construction Monitor will be for your sole and exclusive benefit and they may not be relied upon in whole or in part by me or any other person.

7.2.3. Development Cost Analysis. Each disbursement of Loan proceeds will be made in accordance with the Development Cost Analysis. Unless you deem it necessary or advisable, the individual amounts in a Draw Request representing payments for separate items or categories will not exceed corresponding amounts budgeted for such items or categories in the Development Cost Analysis, and they will not be paid before the time scheduled for their payment in the Development Cost Analysis. If the cost of any item or category listed in a Draw Request exceeds the budgeted amount as shown in the Development Cost Analysis, I will, unless you otherwise agree based on necessity or advisability, pay such excess from my own funds.

7.2.4. Value of Work. Unless you deem it necessary or advisable to do otherwise, disbursements will be made only for completed phases or units of construction reflected on each Draw Request. You will determine whether phases or units of construction work reflected on a Draw Request have been completed from (1) on-site inspections of the Premises by either or both you or the Construction Monitor, (2) meetings with me, the General Contractor, if there is

one, and some or all of the subcontractors, and (3) the Construction Documents and the other items submitted to you pursuant to this Agreement. Your determination of whether work has been completed, together with the disbursements resulting therefrom, shall be binding on me.

7.2.5. Stored Materials; Deposits; Retainages. Unless you deem it necessary or advisable to do otherwise, (1) no disbursements will be made for equipment, materials or supplies stored on-site or stored off-site, (2) no disbursements will be made for deposits and prepayments required by manufacturers, suppliers or other persons, and (3) disbursements for non-construction items (i.e., so-called "soft-costs") will not exceed the amounts of the invoices for such items, and even then, they will not be in addition to or exceed amounts for such items as itemized in the Development Cost Analysis. If retainages are required under the Commitment, if there is one, or otherwise by you, then until the final disbursement under the Loan, all disbursements will be net of the retainage so required.

7.3 Equity Requirements. If, as a condition to the Initial Funding, I am required to pay to you equity in \$US to be used toward payment of the costs of the Improvements, those equity funds will be held by you, will be and become a part of the Collateral and will be advanced as construction progresses in the same manner and under the same terms and conditions as proceeds of the Loan are disbursed; and, until such equity funds are depleted through construction progress payments no additional disbursements will be made under the Loan. If you, at any time, determine in your reasonable discretion that the Loan proceeds to which I will likely be entitled to receive, plus the amount of all equity investments made by me, are not sufficient to fully complete the Improvements in accordance with the Construction Documents, to pay all interest accrued and which will accrue prior to maturity of the Note and to pay all other sums due under the Loan Documents, you will have the option of requiring me to deposit with you additional equity funds in amounts sufficient to cover the resulting deficit before any additional disbursements are made under the Loan. Additional equity funds will be held by you, they will be and become a part of the Collateral and they will be advanced as construction progresses in the same manner and under the same terms and conditions as proceeds of the Loan are disbursed; and, until such additional equity funds are depleted through construction progress payments you will not be under any obligation to make any additional disbursements shall be made under the Loan.

7.4. Option to Pay Contractors. Unless prohibited by any applicable requirements of law, you may, without my prior approval and without prior notice to me, make Loan disbursements directly to the General Contractor, if there is one, or any contractor, subcontractor, laborer, material supplier or other person providing labor, services, materials, supplies, fixtures, parts, products or equipment in connection with the Improvements, or to any combination of such persons and me jointly.

Section 8. Additional Covenants.

8.1. Payment/Performance. I agree to pay when due all sums owing to you under each of the Loan Documents, and I agree to promptly perform all of my other obligations under each of the Loan Documents. At your request, I agree to do any act, and execute any additional documents consistent with the Commitment, if there is one, the Loan Documents or your customary requirements for loans similar to the Loan.

8.2. Construction. I agree to immediately begin construction of the Improvements and I will thereafter conscientiously continue the construction of the Improvements to their Completion in accordance with the Construction Documents and this Agreement. I will not discontinue or permit the discontinuance of work on the Improvements for a period of more than three (3) consecutive Business Days, except for matters of *Force Majeure*. In the event of matters of *Force Majeure* which cause a discontinuance of work, such discontinuance will not be a breach or default under this Agreement provided the discontinuance does not extend longer than ten (10) consecutive Business Days from the beginning of the first day of the occurrence of the matter of *Force Majeure*. I agree that under no event will Completion extend past the date of completion set forth in the Construction Documents, or as otherwise set forth in the construction schedule approved by you prior to the making of this Loan, plus a total of twenty (20) Business Days for matters of *Force Majeure*.

8.3. Payment of Contractors. I agree to pay and I agree to cause others acting under or on the account of me to pay, the General Contractor, if there is one, and any other persons required to be paid for labor, services, materials, supplies, fixtures, parts, products or equipment furnished to or in connection with construction of the Improvements as and when such persons are required to be so paid under the Construction Documents, or otherwise, I agree to advise you in writing within five (5) calendar days after receipt of notice from any person who claims to have not been paid for any labor, services, materials, supplies, fixtures, parts, products or equipment furnished to or in the Premises. Also, at your request, I agree to provide to you evidence satisfactory to you that I have paid for all labor, services, materials, supplies, fixtures, parts, products and equipment which have been used in constructing the Improvements up to the date

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specified by you in your request; and if payment has not been made, I agree to provide evidence establishing that such nonpayment is within applicable contractual payment terms.

8.4. Inspection of Construction. You and the Construction Monitor, either together or separately, may enter upon the Premises at any time either you or the Construction Monitor desire for the purpose of inspecting the construction of the Improvements. I agree that your failure or the Construction Monitor's failure (1) to discover defects in the Improvements, including errors or omissions in design, workmanship, materials, supplies, fixtures, parts, products or equipment, or (2) to otherwise reject design, workmanship, materials, supplies, fixtures, parts, products or equipment due to non-compliance with the Construction Documents, or due to defects in any of the foregoing, will not make either you or the Construction Monitor liable to me and will not make either you or the Construction Monitor liable to any other person on account of such deficiency; and I agree that any prior failure will not constitute a waiver of your right to subsequently reject any such design, workmanship, materials, supplies, fixtures, parts, products and equipment. I agree that all inspections conducted by you or the Construction Monitor are for your sole and exclusive benefit, and I may not, nor may any other person, rely upon such inspections and I am not nor is any other person a third party beneficiary of such inspections. I agree, for myself and for all other persons other than you, to waive and I do hereby waive any present or future rights, if any, I or any of such other persons may have relating to or arising out of inspections made by you or the Construction Monitor - it being understood and agreed that such waiver is material to you and a material inducement to you entering into this Agreement with me and making the Loan to me on the terms and conditions set forth herein and in the other Loan Documents.

8.5. Preservation of Contracts and Use of Funds. I agree that I will not, without your prior written approval, enter into or agree to Change Orders, or otherwise enter into a significant modification or amendment of any material contract or agreement I have entered into with respect to the construction of the Improvements, and I agree that I will not terminate or cancel any such material contract without your prior written approval. I agree to use all Loan proceeds disbursed to me solely in payment of costs associated with the Improvements, as itemized in the Development Cost Analysis or as otherwise specifically permitted in this Agreement and the other Loan Documents, unless agreed to in writing otherwise by you.

8.6. Taxes and Insurance. I agree to pay, when due, all taxes, assessments, levies and charges upon and against the Collateral which are now due and which may hereafter become due. I agree to maintain the following insurance and such other insurance as you may reasonably require: (1) from the Initial Funding until Completion, all-risk replacement cost insurance with agreed amount endorsement, written in builder's risk form; (2) at all times from and after Completion, all-risk replacement cost insurance with agreed amount endorsement and such other casualty insurance as you may require; (3) at all times from and after the Initial Funding, general liability insurance covering risks customarily carried in similar properties having a use or uses similar to that being made of the Premises from time to time; and (4) if the Premises is located in an area designated as a flood zone or an area which you deem to be prone to flooding, a flood insurance policy as soon as one can be secured under applicable requirements of law. All insurance will be with insurance carriers approved by you, the insurance must be in amounts acceptable to you and the form and terms of the insurance policies and certificates evidencing the insurance policies, including the cancellation notice provisions and the manner in which your interest is designated in such policies, must be satisfactory to you, in your sole discretion. All insurance is hereby assigned to you and it is and will be a part of the Collateral.

Section 9. Default. I will be in default under this Agreement and the other Loan Documents upon the occurrence of any one or more of the following events ("Default" or "Event of Default"): (1) the occurrence of any event of default under the Note; (2) I default under, breach, or fail to perform any of the terms or conditions contained in this Agreement, or I default or any other person obligated for payment of the Loan defaults under any of the other Loan Documents; (3) the failure of the Improvements to be constructed in accordance with the Construction Documents, including the Plans, or I default in performing or observing any term or condition in the Construction Documents; (4) the actual or threatened demolition, injury or waste to the Collateral, or any material part thereof, which, in your sole opinion, may impair its value; (5) the filing or attachment of a lien, security interest or other claim against the Collateral or any part thereof or interest therein, except ad valorem property taxes for the then current year and a lien or security interest in your favor, or any of my other assets, or any material part or portion thereof, are attached, seized, subjected to a writ or distress warrant, or are levied upon; (6) my insolvency or bankruptcy or the insolvency or bankruptcy of any person obligated for payment of the Loan, or the appointment of a receiver for me or any person obligated for payment of the Loan; (7) a misrepresentation by me in any loan application or other information provided by me to you in connection with the Loan; (8) I default under any other indebtedness or other obligation I now owe you or which I may hereafter owe to you; (9) if I am an individual, I die or I become physically disabled or mentally incompetent, and if I am not an individual, I dissolve, terminate my existence, merge with or into another person or a change in control occurs within me; or (10) a



determination by you that the prospect of payment or performance by me or any other person under all or any of the Loan Documents is insecure.

Section 10. Rights and Remedies. If an Event of Default occurs under this Agreement, in addition to any other right and remedy available to you, which rights and remedies are fully exercisable by you, you will have the rights and remedies set forth below in the following paragraphs of this Section, any and all of which you may exercise at your election, without notice of such election and without demand - subject to any applicable notice or grace periods.

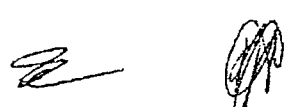
10.1. Acceleration of Maturity. You may, at your option, accelerate and declare immediately due and payable the Note, as well as any of and all of the other indebtedness and obligations owing by me or others under this Agreement or any of the other Loan Documents.

10.2. Power of Enforcement. You may do, seek to be done and have done by yourself, or others on your behalf, any one or more, or all of the following: (1) limit, declare a moratorium on or terminate your obligation to make disbursement of Loan proceeds under this Agreement; (2) foreclose or authorize the foreclosure of all and any part or parts of the Collateral, or interests therein, under any powers of sale granted in the Loan Documents or through a judgment or decree of a court or courts of competent jurisdiction; (3) take possession and control of all, or such part or parts of the Collateral, or interests therein, as you may direct, through your own actions or those of your agents, or through appropriate legal or equitable proceedings; (4) obtain the appointment of a receiver or other similar official to enter upon and take possession of, and control and management over any and all of the Collateral or interest therein; or (5) pursue any other rights and remedies available to you under the Loan Documents, at law or in equity.

10.3. Management of Collateral. You will have the right, but not the obligation, by yourself or through your agents, a receiver or other similar official, or any other person, to take possession of, hold, store, use, operate, construct, install, complete, repair, restore, preserve, protect, manage and control all and any part or parts of, and interests in the Collateral, and conduct the business related thereto. In furtherance of the foregoing, from time to time and at any time, you may do and you may have done or direct the doing of any one or more of the following: complete the construction and upfitting of the Improvements in your name or my name; make all necessary or appropriate maintenance, repairs, renewals, replacements, additions, betterments and improvements to the Premises and parts thereof, and in connection therewith, purchase and otherwise acquire fixtures, personal property and other types of property; insure and keep the Collateral and parts thereof insured; manage and operate the Collateral and parts thereof; enter into agreements with other persons relative to the management and operation of the Collateral and parts thereof; and collect and receive all the rents, income, proceeds and other benefits arising out of the Collateral and each and all parts thereof and interests therein. You also may do any one or more of (1) use any of my funds, including any funds which may remain undistributed on the Loan, for the purpose of completing the Improvements in the manner called for by the Plans and for completing any other construction connected with or associated with the Improvements, (2) make such additions, changes and corrections in the Plans as may be necessary or desirable to complete the Improvements, (3) employ such contractors, subcontractors, laborers, suppliers, materialmen, agents, engineers, architects and inspectors as may be required or appropriate for said purposes in your opinion, (4) pay, settle and compromise all existing bills and claims which may be liens against the Improvements, or as may be necessary or desirable, in your sole discretion, for the completion of the Improvements or for clearance of title, (5) take over and use all and any part of the design, labor, materials, supplies, fixtures, parts, products and equipment contracted for, owned by, or under my control, whether or not previously incorporated into the Improvements, (6) execute all applications and certificates in my name or your name which may be required by any of the Construction Documents or otherwise, (7) prosecute and defend all actions and proceedings in connection with the Premises or the construction of the Improvements, and to take such action and require such performance as you deem necessary or appropriate under any guaranty of completion, and (8) do any and every act with respect to construction of the Improvements which I might do on my own behalf, including execution, acknowledgment and delivery of all instruments, agreements and other documents in my name or your name as may be necessary or desirable in your sole discretion.

Section 11. Payment of Expenses and Indemnification. At your request, I will pay you and otherwise indemnify and save you harmless for all liabilities, damages and costs and expenses you incur in connection with the Loan, any of the Loan Documents or the enforcement of your rights and remedies under any of the Loan Documents, excepting any of the foregoing resulting from your gross negligence or willful misconduct, or that of your agents. All of the foregoing liabilities, damages and costs and expenses will be paid by me with interest thereon at the highest contract rate prescribed in the Note from the date paid by you until paid by me. All amounts so paid by you and the interest thereon will be added to and be secured by your lien and security interests in the Collateral.

Section 12. General Terms. The following additional terms apply under this Agreement: (1) the recitals and



rights and remedies under this Agreement shall operate as a waiver of such rights and remedies; (3) wherever possible each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision shall be prohibited or invalid, such provision will be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement, or the application thereof will be in a manner permissible under applicable law; (4) you do not intend to and will not knowingly charge or collect under any of the Loan Documents interest, fees or charges in excess of the maximum rates or amounts permitted by applicable law and if you do, it shall be construed as a mutual mistake, appropriate adjustments shall be made by you and to the extent paid, the excess shall be returned to the person making such a payment; (5) this Agreement may not be amended, except by an agreement in writing signed by you and me; (6) I will not assign this Agreement, or any of my rights or obligations hereunder, but you may assign this Agreement and any of your rights and obligations hereunder; (7) this Agreement is for the sole protection and benefit of you and me; (8) this Agreement shall be governed by and construed in accordance with the substantive laws of the State in which the Land is located, excluding, however, the conflict of law and choice of law provisions thereof; (9) I acknowledge and agree that you are authorized to maintain, store and otherwise retain the Loan Documents in their original, inscribed tangible form or a record thereof in an electronic medium or other non-tangible medium which permits such record to be retrieved in a perceivable form; (10) you may place upon the Premises a sign or signs advertising the fact that financing is being provided by you, and you may also advertise such fact through the newspapers and other media; (11) this Agreement may be executed in two or more counterparts; (12) except as provided herein to the contrary, all notices hereunder shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth above, provided, you and I may, by written notice, designate a different address where communications should be sent and you may require that all communications sent to you be sent electronically or in some other non-tangible medium; (13) I irrevocably constitute and appoint you as my true and lawful attorney to undertake such acts as you deem necessary or advisable to effect the terms and conditions of this Agreement, and the foregoing appointment is and the same shall be coupled with an interest in your favor; (14) this Agreement shall continue in full force and effect until (i) payment in full of the Loan and all other amounts now owing and which may in the future be owing to you under the Loan Documents, and (ii) performance of all other obligations required to be performed by me under the Loan Documents, provided, if the Loan has a Permanent Phase as set forth hereinabove, then this Agreement shall terminate effective the first (1st) Business Day following the Conversion Date; and (15) time is of the essence relative to my performance under this Agreement.

The parties have caused this Agreement to be executed as of the Effective Date.

Notice And Disclaimer. All risk of loss relative to construction of the Improvements will be borne by me. You will have no liability or responsibility to me or any other person relative to construction of the Improvements, including any of the following, even if you approved or your approval is or will be a condition to disbursement of Loan proceeds: (1) my selection of the General Contractor or any other person, or my election to proceed without a General Contractor; (2) the interim or final cost of the Improvements or any analysis relating thereto; or (3) the quality or sufficiency of any design, labor, work, services, materials, supplies, fixtures, parts, products or equipment related to the Improvements.

BORROWER:

Print Name: Joseph G. Carew

Print Name: Karen Carew

LENDER:

RBC CENTURA BANK

By:

Print Name: Jodi H. Cockrell

Title: Bank Officer

ATTACHMENT 1 to Construction Loan Agreement

DEFINITIONS. The meanings assigned to the terms listed below shall apply to this Agreement and all of the other Loan Documents, and if a term is not defined in this Agreement but is defined in the UCC, it will be assigned the meaning used in the UCC. "I", "me", "my" refers to Borrower; "you", "your" refers to Lender.

"Business Day" means any day that is not a Saturday, Sunday or other day on which banks in the jurisdiction whose laws govern this Agreement are authorized or required to close.

"Change Order" means any material change in or other alteration of the Improvements as shown or depicted in the Construction Documents. A change or alteration will not be deemed material which (1) individually does not cause the cost of the Improvements as reflected in the Development Cost Analysis to be increased or decreased by more than \$1,000 and, when added to all previous change orders, does not cause such costs to be increased or decreased by more than \$5,000 in the aggregate, (2) does not result in a material change to the design or affect the structural components of the Improvements, and (3) has been approved in writing by relevant governmental authorities, if the approval of such authorities is required.

"Closing Date" means the Effective Date.

"Collateral" means the following property and property rights, both now existing and hereafter arising: (1) the Land; (2) the Improvements; (3) the Personality; (4) all rents, issues and profits arising out of or related to any one or more of the Land, Improvements and Personality; (5) the Construction Documents and all other contracts, contract rights, agreements and documents relating to construction of the Improvements or furnishing the Improvements; (6) all insurance and insurance policies relating to any one or more of the Land, Improvements and Personality, including insurance and insurance policies pertaining to the construction of the Improvements or furnishing the Improvements; (7) all funds deposited with or held by you as my equity infusion for construction of the Improvements or furnishing the Improvements; (8) all other property and property rights described in any one or more of the Loan Documents; and (9) all proceeds, products, accessions, additions, replacements and substitutions of or to the foregoing property and property rights.

"Commitment" means your commitment letter or other written agreement with me for the Loan, if there is one; and if there is one, the Commitment shall survive the Closing Date and all disbursements of Loan proceeds.

"Completion" or "Completed" means (1) completion of the Improvements in accordance with the Plans and the other Construction Documents, free and clear of all claims of liens, liens and other encumbrances (except Permitted Encumbrances and the liens and security interests of Lender), (2) issuance of all necessary certificates of completion or occupancy by applicable

governmental authorities, if such certificates are necessary in your opinion under applicable requirements of law, and (3) receipt of all approvals from Private Associations, if any are required.

"Construction Contract" means the final, executed contract between me and the General Contractor, if there is one, for construction and furnishing of the Improvements.

"Construction Documents" means the Construction Contract, the Development Cost Analysis, the Plans, an architect's contract, if there is one, all other contracts, agreements, plans and documents concerning construction and furnishing of the Improvements and all licenses, permits, authorizations, usage rights and development rights relating to any one or more of the Land, Improvements and Personality, including building permits and certificates of occupancy or completion.

"Construction Monitor" means a construction inspector or monitor, or other person designated by you to monitor and otherwise inspect the construction of the Improvements, including reviewing and approving all Draw Requests and performance of on-site inspections. The Construction Monitor will be an independent contractor, and I will pay the costs and expenses associated with the Construction Monitor.

"Construction Phase" means (1) if the Loan consists only of a Construction Phase, then the period of the Loan extending from the Effective Date of this Agreement to the earlier of (i) the Last Completion Date or (ii) the tenth (10th) Business Day following Completion, and (2) if the Loan consists of a Construction Phase and a Permanent Phase, then the period of the Loan extending from the Effective Date of this Agreement to the earlier of (i) the Conversion Date or (ii) the Last Completion Date.

"Development Cost Analysis" means, at your option, either (1) a construction budget that contains a detailed breakdown of the cost of constructing the Improvements, including a detailed construction ledger with hard costs and the cost of acquiring the related Land and Personality, on AIA form G703 or other form acceptable to you, and an itemization of non-construction costs in a form and substance acceptable to you, together with such periodic updates as you may from time to time require, or (2) your internally generated analysis of the costs of the Improvements and related Land and Personality, as applicable, or (3) such other cost analysis or progress payment analysis as you may designate in writing as being the Development Cost Analysis.

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"Draw Request" means a written request for a disbursement which is (1) on a form approved by you, (2) dated no earlier than two Business Days before it is submitted to you, (3) current, complete and accurate as of its date, (4) executed by me and (5) includes or is accompanied by the following: (i) a statement of the amount being requested, (ii) a complete list of invoices to be paid from the Loan disbursement, (iii) if the Draw Request includes an application for payment of amounts to be paid to the General Contractor, originals of AIA Document G702 and AIA Document G703 (or equivalents approved by you), together with a report on the status of any stored materials, if requested by you, and (iv) such other information and documentation as may be reasonably required by you.

"Force Majeure" means strikes, lock-outs, riots or other labor troubles, unavailability of materials, a national emergency, any rule, order or regulation of governmental authorities enacted after the Closing Date, tornadoes, floods, hurricanes or other natural disasters, or other similar causes not within my control, but excluding my negligence.

"General Contractor" means the person with whom I enter into the Construction Contract, if there is one.

"Improvements" means the improvements to be made, installed, constructed, placed in service or otherwise undertaken under and pursuant to the Construction Documents, and includes furnishings, fixtures, equipment and other items of Personality provided for under the Construction Documents. In this Agreement, the phrase "construction of the improvements" and "construction and furnishing of the improvements", or variations thereof, shall have the same meaning unless the context clearly indicates otherwise.

"Initial Funding" means the time of the first disbursement of Loan proceeds under this Loan Agreement, which may occur on a date and at a time different than the Closing Date.

"Land" means the real property described in the Mortgage and all buildings and other improvements located thereon and all rights appurtenant thereto.

"Last Completion Date" means the day by which Completion must occur.

"Loan Documents" means this Agreement, the Note, the Mortgage, the Security Agreement and related financing statements, and any of the following which you require me or other persons to execute and deliver to you in connection with the Loan: collateral assignments, guaranty agreements and any other instruments, documents, statements and agreements evidencing or securing the Loan.

"Mortgage" means the deed of trust, mortgage, deed to secure debt, security deed or trust deed covering the

Premises and securing the Loan, executed and delivered by me or some other person for your benefit.

"Note" means the promissory note I execute and deliver to you which evidences the Loan, and includes all amendments, modifications, extensions, substitutions and replacements thereto and therefor.

"Permanent Phase" means the period of time extending from and after the Conversion Date.

"Permitted Encumbrances" means liens, encumbrances, easements and other matters listed as exceptions to the Title Policy and which are approved in writing by you.

"Personality" means all furnishings, fixtures, equipment, inventory and other articles of tangible personal property now owned and all of the foregoing which may be hereafter acquired by me, attached to, located on, contained in, or used exclusively in connection with the Land or Improvements, or any portion thereof, and all replacements thereof, all articles in substitution therefor and all accessions thereto, whether or not the same are or shall be attached to the Land or Improvements in any manner, together with all accounts, promissory notes and other instruments, chattel paper (both tangible and electronic), contracts and contract rights, documents, deposit accounts, monies, investment property, financial assets and general intangibles of every nature and kind arising out of or in connection with the Collateral, both now owned and all of the foregoing which may be hereafter acquired by me, and all property described in any collateral assignments to the extent the same constitutes personal property, together with all proceeds and products thereof.

"Plans" means the plans, drawings, designs and specifications for the Improvements, including the construction of the Improvements and the furnishing of the Improvements with the Personality, which have been prepared by me, or prepared by an architect or other person for me who is acceptable to you, and which have been approved in writing by you.

"Premises" is a term sometimes used in this Agreement to refer to the Land, Improvements and Personality.

"Private Association" means a property owners' association or similar association under any covenants and restrictions referenced in the Permitted Encumbrances.

"Security Agreement" means the agreement which grants to you a UCC security interest in the Collateral, and which supplements the security interest granted in the Collateral by this Agreement, the Mortgage and any of the other Loan Documents.

"Title Insurance Commitment" means a legally binding commitment by the Title Insurance Company to issue the

Title Policy and "Title Policy" means the mortgagee title policy meeting the requirements of this Agreement.

"Title Insurance Company" means the organization issuing the Title Policy, which organization must be a recognized national title insurance company, licensed to do business in the jurisdiction in which the Premises are

located and otherwise acceptable to you, acting reasonably.

"UCC" means the Uniform Commercial Code in effect from time to time in the jurisdiction whose laws govern this Agreement.

INITIAL FUNDING CONDITIONS. The following is a list of the liens and security interests, and the information, certificates, authorizations, insurance policies, agreements and documents that I must deliver to you or which you otherwise require before the Initial Funding. Additional items may be required because of special circumstances relating to the Loan, and if so, you will let me know prior to the Initial Funding what additional items are needed. I will pay the costs and expenses associated with all of the items listed below, and any others I must provide to you in connection with the Loan.

Loan Documents. You must receive fully executed and, if necessary, recorded or filed, originals of all Loan Documents required by you or your attorney, including those required by the Commitment, if there is one. Also, all of the conditions listed in the Commitment, if there is one, and elsewhere in this Agreement must have been completed and satisfied.

Perfection of Liens. I must grant, convey and assign to you liens and security interests in the Collateral which are perfected and you must be assured to your satisfaction that you have and will retain throughout the term of this Agreement first priority liens and security interests in the Collateral, subject only to the Permitted Encumbrances. In connection with the foregoing, but not in limitation thereof, (1) I must provide to you current UCC-1 search results from such local and state filing offices as you may designate, each showing no liens and security interests against any of the Collateral and (2) I must deliver to you the Title Policy, or the Title Insurance Commitment, with respect to the Land issued by the Title Insurance Company, and such Title Policy, or Title Insurance Commitment, (i) must have deleted, or it must have been marked to delete, all exceptions other than Permitted Encumbrances, (ii) must meet or have satisfied all requirements requested by you and (iii) must contain such endorsements as you deem appropriate.

Survey. I must deliver to you four (4) copies of a recent survey of the Land by a registered land surveyor, together with a surveyor's certificate with respect to such survey which runs in your favor and in favor of the Title Insurance Company and me.

Soil and Environmental Reports. If requested by you, I must deliver to you the following: (1) written geotechnical subsurface tests of the Land from a geotechnical firm satisfactory to you; (2) written environmental reports and mold/fungi reports from an environmental testing firm satisfactory to you; (3) written termite report or certification from a licensed termite inspector; and (4) written certification or inspection report from the appropriate governmental authority with respect to any private wells or septic facilities. All of the reports, certifications and the results of such tests must be satisfactory to you.

Appraisal. You must receive an appraisal of the Premises (i.e., assuming "as-built", after Completion) performed in accordance with all applicable requirements of law by a state certified/licensed independent appraiser selected by you and commissioned by and addressed to you, which reflects an appraised value satisfactory to you.

Taxes and Assessments. I must deliver to you evidence that ad valorem taxes and all general and special assessments on the Premises have been paid through the most recent calendar year and are otherwise current in their payment under applicable requirements of law, and information as to tax parcel identification numbers, tax rates, estimated tax values, assessments and the identities of the taxing authorities.

Utilities. I must deliver to you evidence satisfactory to you of the suitability and availability, at normal and customary rates, of all utilities needed to properly service the Premises in its intended use.

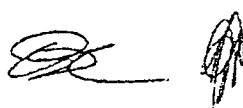
Licenses and Permits. I must deliver to you copies of all necessary licenses and permits for the construction of the Improvements, including a copy of a valid current building permit for the Improvements which has been issued by the appropriate governmental authority.

Flood Certification. I must deliver to you evidence that the Improvements are not located within an area identified as having "special flood hazards" as such term is used in the federal Flood Disaster Protection Act of 1973, or if in such an area, I must deliver to you evidence of insurability followed by insurance as soon as it can be secured.

Insurance. I must deliver to you evidence that I have obtained each of the insurance policies required under the Mortgage and this Agreement, together with satisfactory evidence of premium payments.

Plans. I must deliver to you two (2) complete sets of the Plans in final form.

Construction Contract. I must deliver to you a certified copy of the Construction Contract executed by the General Contractor and me, and copies of all other executed contracts as may be reasonably required by you;



or you must have otherwise approved in writing my decision to construct the Improvements without use of a General Contractor. If requested by you, I must deliver to you the Development Cost Analysis, certified as being accurate by me, and the General Contractor if one is used.

General Contractor. You must approve the General Contractor, unless I elect to construct the Improvements without use of a General Contractor and such election is approved in writing by you.

Collateral Assignments. To the extent I use a General Contractor, I must deliver to you written consents from the General Contractor, and all prime subcontractors if you request, to my assignment to you of my interest in contracts with each of them. You also must receive copies of other consents and approvals required in order for me to construct, occupy and utilize the Improvements for its intended purpose and to comply with all of the terms of the Loan Documents, including consents and approvals from any Private Association.

Permitted Uses. I must deliver to you a valid and current building permit for the Improvements which has been issued by the appropriate governmental authority. I must also deliver to you any other evidence you deem necessary or appropriate showing that the Premises, and the intended uses of the Premises are in compliance with all applicable requirements of law (e.g., zoning) and other restrictions and requirements applicable to the Premises, including those of any Private Association.

Lien Waivers. I must deliver to you such lien waivers and lien affidavits as you deem necessary or appropriate from mechanics, materialmen, contractors and other persons who may be performing work on the Premises or who may supply materials, supplies, fixtures, parts, products or equipment thereto.

Compliance with Laws. I must provide you verifiable evidence that I have, for my account and yours: (1) timely posted, mailed, delivered or otherwise sent all notices of commencement of construction, notices of responsibility, notices of liens, notices of disbursement of funds or other notices which may be necessary under applicable construction lien or mechanic's or materialmen's lien laws for you to have a perfected first lien priority in the Collateral over contractors, materialmen, mechanics, suppliers, laborers and any other persons; and (2) taken such other steps as may be necessary or appropriate in your opinion to ensure, under all applicable requirements of law, that you have and will have until the Loan is paid in full, a perfected, first priority lien and security interest in the Collateral and that you will not have any corporate liability to any contractor, materialmen, mechanic, supplier, laborer or any other person.

Fees. I must have paid all fees and costs and expenses required to be paid by me under the Commitment, if there is one, or as you may otherwise require me to pay as a condition to the Loan.

Equity. At your direction, I must provide you either satisfactory evidence that I have invested equity in the Land as of the Initial Funding in an amount not less than the amount specified in the Commitment, if there is one, or as otherwise required by you; or I must have paid such equity to you in \$US to be held and disbursed by you toward payment of the costs of the Improvements, in the manner provided in this Agreement.

Borrower/Client	Joseph & Karen Carew				
Property Address	34 Edens Point Road				
City	Columbia	County	Lexington	State	SC
Lender	RBC Centura			Zip Code	29212

[illegible]

I gave 2%
on misc
cleanup.
funded
\$14,450.00
12-19-08
BDC 70% ✓

CAREW DAMAGES

AMOUNT	DESCRIPTION
\$360,776.32	Total for house to complete by Pyramid
\$1,800.00	Cash to drywall men to work weekend and fix water damage repair
\$2,000.00	to Paradigm Excavation to help drainage in yard. Paid due to
	to potential lean on property
\$2,400.00	for 2 months to live in rental house, 109 Beckworth Lane. Paid to RBC Bank
\$500.00	for utilities in rental house
\$2,400.00	lost income on rental house
\$826.99	Total Overages paid by Carews
\$13,289.70	Total Change Orders
\$4,074.00	Palmetto Builder's Lien
\$15,257.94	Stock Building Supply Lien
\$28,997.61	American Builders Lien
\$8,820.00	Burgess Painting Service
\$21,684.50	Mike Howell Flooring
\$850.00	Columbia Commerical Cleaners
\$40,800.00	Innovative Woodworks
\$1,400.00	Miller Pools (re-do cool deck & sealants)
\$1,265.60	The Tile Center Lien
	\$507,142.66
\$6,715.00	Owed to George Wood
\$161.80	Owed to Grand Rental Station
\$1,563.00	Owed to Phillip Coombs Plumbing
\$350.00	Owed to Sandy Run Exterminating
\$6,137.50	Owed to Paradime
\$7,687.50	Owed to A-1 Exteriors
\$220.00	Owed to Jani King
\$11,760.00	Owed to Qunitero
\$2,050.00	Owed to Snelgrove
\$17,725.00	Owed to Brian Cannon
\$10,225.00	Owed to Turnkey
\$64,594.80	OWED TO SUBS
\$571,737.46	GRAND TOTAL

2011 Checks

\$8,096.00	Ram Jack for 8 Helix Piers	3/31/2011
\$3,848.47	Ashmore concrete for drain system	4/26/2011
\$11,944.47	TOTAL	

\$583,681.93 GRAND TOTAL

XL12 04/19/10 COMMERCIAL LOANS 11.24.09
NOTE/MAINTENANCE HISTORY INQUIRY

CTL2 001 CTL3 000 CUST 0003135993 NOTE 00000101 DRAW 001 PART 99

CD	Q	F	POST	EFFECTIVE	DESCRIPTION	TRAN	AMOUNT	PRIN
BALANCE								
72	0		04/15/10	04/14/10	REG.PR+INT PAY PRIN	2600.00		1136572.06
84	0		04/15/10	04/15/10	INTEREST ADJUSTMENT	0.35-		1139172.06
72	0		04/06/10	04/06/10	REG.PR+INT PAY PRIN	2600.00		1139172.06
72	0		03/17/10	03/17/10	REG.PR+INT PAY PRIN	2600.00		1141772.06
72	0		03/03/10	03/03/10	REG.PR+INT PAY PRIN	5200.00		1144372.06
72	0		02/03/10	02/03/10	REG.PR+INT PAY PRIN	5200.00		1149572.06
72	0		12/29/09	12/29/09	REG.PR+INT PAY PRIN	5200.00		1154772.06
72	0		11/30/09	11/30/09	REG.PR+INT PAY PRIN	5200.00		1159972.06
84	0		11/24/09	11/24/09	INTEREST ADJUSTMENT	13957.10-		1165172.06
72	0		11/02/09	11/02/09	REG.PR+INT PAY PRIN	5200.00		1165172.06
72	0		10/01/09	10/01/09	REG.PR+INT PAY PRIN	5200.00		1170372.06
72	0		09/09/09	09/09/09	REG.PR+INT PAY INT	4141.18		1175572.06
72	0		09/09/09	09/09/09	REG.PR+INT PAY PRIN	1058.82		1175572.06
61	0	U	08/12/09	02/27/09	PRIN.PYMT.REV.	164.32		1176630.88
84	0		08/12/09	08/12/09	INTEREST ADJUSTMENT	3.69		1176466.56
58	0		08/12/09	02/27/09	MISC.INT.PYMT. INT	164.32		1176466.56
72	0		08/03/09	08/03/09	REG.PR+INT PAY INT	5043.40		1176466.56
60	0		07/06/09	07/06/09	ADVANCE	15068.90		1176466.56
72	0		07/02/09	07/02/09	REG.PR+INT PAY INT	4524.93		1161397.66
60	0		06/18/09	06/18/09	ADVANCE	65265.17		1161397.66
72	0		05/28/09	05/28/09	REG.PR+INT PAY INT	4394.58		1096132.49
60	0		05/22/09	05/22/09	ADVANCE	53087.35		1096132.49
60	0		05/01/09	05/01/09	ADVANCE	2000.00		1043045.14
72	0		04/29/09	04/29/09	REG.PR+INT PAY INT	3989.72		1041045.14
60	0		04/29/09	04/29/09	ADVANCE	58957.97		1041045.14
72	0		04/01/09	04/01/09	REG.PR+INT PAY INT	4122.68		982087.17
72	0		02/27/09	02/27/09	REG.PR+INT PAY INT	2835.68		982087.17
72	0		02/27/09	02/27/09	REG.PR+INT PAY PRIN	164.32		982087.17
60	0		02/13/09	02/13/09	ADVANCE	6500.00		982251.49
60	0		02/13/09	02/13/09	ADVANCE	2000.00		975751.49
60	0		02/02/09	02/02/09	ADVANCE	86700.00		973751.49
61	0	U	02/02/09	12/31/08	PRIN.PYMT.REV.	866.89		887051.49

RBC-620

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas for the Eleventh Judicial Circuit

The Honorable R. Knox McMahon, Circuit Court Judge

Case No. 2010-CP-32-00442

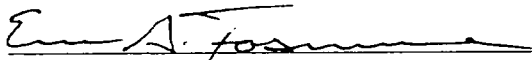
RBS Centura Bank; RBC Bank as successor
in interest of RBC Centura Bank, ... Respondents,

v.

Dr. Joseph G. Carew and Dr. Karen Carew.....Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material, pursuant to Rule 210(g) of the South Carolina Appellate Court Rules.



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June 4, 2013

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

Case No. 2010-CP-32-00442

Dr. Joseph G. Carew and Dr. Karen Carew, ... Appellants,

v.

RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank, Clifton W. Hall,
Hall Builders, LLC, Appraisal Team of Mid Carolina, LLC, and Teresa Addy-Haltiwanger,
Defendants,

Of Whom, RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank, are
..... Respondents.

FINAL BRIEF OF APPELLANTS

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Attorneys for Appellant

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JUN 27 2010
SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in granting summary judgment by finding RBC Bank owed no duty to the Carews when the Carews were paying for appraisal services through the Construction Loan Agreement?
- II. Did the trial court err in granting summary judgment based on waiver language buried in the Construction Loan Agreement?
- III. Did the trial court err by finding the Carews did not have a right to rely on the acts and disbursement decisions of RBC Bank when RBC admitted it made a mistake when disbursing loan proceeds?
- IV. Did the trial court err by finding that RBC Bank did not breach the Construction Lending Agreement when it authorized construction draws in excess of the actual construction progress of the Carews home?
- V. Did the trial court err by finding that RBC did not breach its obligations in the Construction Loan Agreement?

STATEMENT OF THE CASE

Drs. Joseph and Karen Carew commenced this action by filing their original Complaint on January 29, 2010. (R. pp. 25-44) The suit arises from the construction of the Carews' home at 34 Edens Point Road, Irmo, South Carolina. *Id.* The Carews named as defendants RBC Centura Bank, the construction lender; Appraisal Team of Mid Carolina and Teresa Addy-Haltiwanger, the appraiser; and Clifton Hall and Hall Builders, LLC, the construction contractor. As to Respondent, RBC, the Carews allege negligence and breach of the Construction Lending Agreement. *Id.* The Carews filed a First Amended Complaint on February 25, 2010. (R. pp. 25-44)

All of the Defendants answered, however, during the course of discovery Hall Builders, LLC's Answer was struck and the Court entered judgment in favor of the Carews against Hall Builders, LLC. Defendant Appraisal Team of Mid Carolina, LLC and Teresa Addy-Haltiwanger were granted summary judgment on August 1, 2011. There was no appeal from the entry of summary judgment in favor of the appraiser. On January 6, 2012, RBC Bank moved for summary judgment. Oral argument on RBC's Motion was heard by the Honorable R. Knox McMahon on April 9, 2012. An Order granting summary judgment was signed by the Honorable R. Knox McMahon on May 15, 2012. Appellants received written notice of entry of Judge McMahon's Order on May 23, 2012 and filed and served this appeal on June 21, 2012.

FACTS

The Carews hired Defendant Clifton W. Hall and Hall Builders, LLC to construct a residence at 34 Edens Point, Irmo, South Carolina. (R. pp. 25-44) The financing for the purchase of the property and the construction of the Carews home was provided by Co-Defendant, RBC Bank. (R. pp. 527-537) The Carews entered into a Construction Loan Agreement on February 28, 2008 with RBC Bank financing the lot purchase (\$540,000) and construction contract (\$850,000). *Id.* RBC Bank, not the Carews, hired Appraisal Team of Mid Carolina, LLC and its appraiser, Teresa Addy-Haltiwanger to inspect the home at various stages of construction before RBC would release funds to Clifton W. Hall and Hall Builders, LLC. (R. pp. 25-44)

On April 29, 2008, Clif Hall and Hall Builders obtained a building permit and began construction of the home. (R. p. 27) During the term of the construction, the roof for the home was not complete yet the builder continued to undertake interior finishing work including installing drywall, installing wood flooring, and installing wood trim and cabinets. (R. pp. 27-29 and R. pp. 538-539) During the construction, interior components of the home became wet and damaged. *Id.* On January 7, 2009 Clif Hall of Hall Builders advised the Carews the home suffered water damage because the roof was not yet complete. (R. p. 28 and R. pp. 538-539)

During the course of the construction, RBC Bank would send Teresa Addy-Haltiwanger of the Appraisal Team out to inspect the home at various stages before releasing funds to Hall Builders. (R. p. 201, line 2 – p. 203, line 4 and R. p. 205, line 24 – p. 206, line 6) The inspections were completed on RBC Centura Construction Loan Inspection, Residential Forms. (R. pp. 538-539) As a result of the completion of the forms, RBC disbursed funds, pursuant to Hall Builders' draw request as follows:

- a. \$40,000 on 6/23/08;
- b. \$45,000 on 6/30/08;
- c. \$37,800 on 7/3/08;
- d. \$38,000 on 7/14/08;
- e. \$15,000 on 7/18/08;
- f. \$45,000 on 7/29/08;
- g. \$10,000 on 7/31/08;
- h. \$83,000 on 8/22/08;
- i. \$36,601 on 9/8/08;
- j. \$21,675 on 9/22/08;
- k. \$72,250 on 9/30/08;
- l. \$14,450 on 12/23/08;
- m. \$39,950 on 12/24/08; and
- n. \$86,700 on 2/2/09.

(R. p. 541)

Through early February of 2009, Clif Hall of Hall Builders continued to advise the Carews that construction was proceeding as normal. (R. pp. 27-28) Hall Builders made a draw request on February 2, 2009, and was paid \$86,700.00 by RBC Centura. (R. p. 28 and R. p. 541) On Monday, February 9, 2009, a representative of RBC told the Carews that RBC funded the February 2, 2009 draw of \$86,700.00, that the house was 67% complete and that \$124,665.40 remained on the loan. (R. p. 28)

In mid-February 2009, builder Hall Builders ran into financial difficulty. Hall Builders' problems were so severe that Hall told the Carews he would not be able to complete the home. (R. p. 29) On February 11, 2009, Hall Builders abandoned the job. *Id.* Hall Builders took money

from construction draws and failed to pay the subcontractors. On February 12, 2009, the Carews advised RBC Centura that Hall Builders had released the Carews from the construction contract and that the Carews had retained Pyramid Contracting to take over the project. (R. p. 30) However, because of Hall Builders taking construction draws and failing to pay subcontractors who worked on the house, the Carews were faced with liens from the subcontractors. (R. pp. 30 – 32) As a result of defects relating to staging of construction, Hall Builders abandoning the job; Hall Builders' failure to pay subcontractors; and the requirements to complete the home, the Carews incurred losses of \$583,681.93 above and beyond the loan. (R. p. 540)

ARGUMENTS

I. THE TRIAL COURT ERRED BY HOLDING RBC BANK OWED NO DUTY TO THE CAREWS FOR APPRAISAL SERVICES WHEN THE CAREWS WERE PAYING FOR THOSE SERVICES THROUGH THE CONSTRUCTION LOAN AGREEMENT.

The Carews and RBC entered a written contract by signing the Construction Lending Agreement. As a result each party owed the other the duty to act in good faith. The Carews contend RBC failed in one or more of the following particulars:

- a. By failing to retain a competent inspector;
- b. By issuing funds to the general contractor when those funds were not due;
- c. By paying for the same construction draws twice;
- d. By allowing the general contractor to complete interior portions of the home when the roof and shell of the home were not complete;
- e. By failing to monitor its inspector and the general contractor so as to avoid water intrusion damage to the home;
- f. By issuing funds in an amount greater than the actual completion percentage of the home;
- g. By failing to timely assist Plaintiffs when advised that the asset was in peril of not being completed; and
- h. By failing to timely respond to Plaintiffs which resulted in liens being placed against the property in question, imperiling the asset.

Appraisal Team of Mid Carolina and Teresa Addy-Haltiwanger fall within the definition of "construction monitor", as defined within the construction loan agreement. The services of the construction monitor were paid for by the Carews through the RBC loan agreement. RBC Bank 30(b)(6) representative, Kathy Patterson stated:

- Q. Alright. RBC is relying on the inspector for the information at the site; is that correct?
- A. That is correct; to monitor the progress of construction.
- Q. Okay. And based on what the inspector tells you, you either disburse or don't disburse for a particular draw?
- A. That is correct.

(R. p. 205, line 24 – p. 206, line 6)

The construction monitor was neither selected by the Carews nor were the terms of the provisions relating to the construction monitor negotiated in the RBC contract. The language is boilerplate language within the contract yet the Carews are the ones who paid for the services of the construction monitor.

It is unfair and unconscionable for the Carews to pay for the services of the construction monitor with no corresponding duty in return from the monitor. There was an absence of meaningful choice on the Carews' part; and, absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process and the contract at issue. *Carlson v. General Motors Corp.*, 883 F.2d 287 (4th Cir. 1989). A determination as to whether a contract is unconscionable depends on all the facts and circumstances of the particular case. *Holler v. Holler*, 612 S.E.2d 469 (Ct. App. 2005) and 17A Am. Jur. 2d Contracts § 279 (2004). The RBC construction contract is essentially a take it or leave it contract with only the amount, interest rate, and length of term negotiable. The remaining terms are boilerplate language drawn in favor of RBC. An adhesion contract is a standard form contract offered on a take it or leave it basis with non-negotiable terms. *Munoz v. Green Tree Financial Corp.*, 542 S.E.2d 360 (2001).

The general rule is that courts will not enforce a contract which is violative of public policy, statutory law or provisions of the South Carolina Constitution. *Carolina Care Plan Inc. v. United Healthcare Services, Inc.*, 606 S.E.2d 752 (2004). In this case it is unconscionable and violative of public policy for the Carews to be charged for a service and then have no corresponding duty provided in return by that service provider, the Appraisal Team of Mid

Carolina, Inc. and RBC Bank. The terms are adhesion contract provisions and are violative public policy.

II. THE WAIVER LANGUAGE IN THE CONSTRUCTION LOAN AGREEMENT IS INCONSPICUOUS BOILERPLATE LANGUAGE WHICH WAS NOT SPECIFICALLY BARGAINED FOR.

The trial court granted RBC Bank summary judgment as a result of a waiver in Section 8.4 of the Construction Loan Agreement. Section 8.4 provides in part as follows:

I [the Carews] agree that your [RBC's] failure or the construction monitor's failure (1) to discover defects in the Improvements, including errors or omissions in design, workmanship, materials, supplies, fixtures, parts, products or equipment due to noncompliance with the construction documents, or due to the defects in any of the foregoing will not make either you or the construction monitor liable to me

The waiver is boilerplate language which is buried within the Construction Loan Agreement. The waiver is neither conspicuous nor specifically bargained for. The only terms really subject to negotiation within the boilerplate language of the Construction Loan Agreement are the name of the borrower, whether the loan is acquire land or construct an improvement and the amount of the loan or the interest rate. (R. pp. 527-537) Everything else is boilerplate language. When dealing with a lender's waiver language in a lending agreement, this court has previously stated that the disclaimer "must be (1) conspicuous, (2) known to the buyer, and (3) specifically bargained for." *Kirkman v. Parex, Inc.*, 632 S.E.2d 854 at 858 (2006), citing *Burbo v. Harley C. Douglass, Inc.*, 106 P.3d 258 (Wash. Ct. App. 2005). RBC's disclaiming language in this case violates the protections for borrowers set forth in *Kirkman v. Parex*.

III. RBC'S OWN REPRESENTATIVE ADMITTED IT MADE A MISTAKE IN DISBURSING LOAN PROCEEDS AND THEREFORE SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED.

In this case, RBC Bank failed to properly monitor the level of completion of the home and disbursed funds above and beyond the percentage of completion. Doing so allowed Hall

Builders to take money away from the Carew project, not pay subcontractors and abandon the project leaving the Carews with liens to satisfy and a partially constructed home to complete. RBC made unilateral decisions as to whether to disburse. The inspections for the critical time period are identified as follows:

- The December 18, 2008 inspection. (R. p. 538)
- The February 2, 2009 inspection. (R. p. 539)

Both inspection documents reflect that interior components of the home were being completed without the roof having been completed. Moving along with the other elements of construction allowed Clif Hall to draw more funds off of the construction loan. In fact for the December 18, 2008 draw RBC loan coordinator, Gail Chaffin, gave an additional 2% on the loan simply at the request of Clif Hall. Regarding the transaction Kathy Patterson testified as follows:

- Q. She was basically doing him a favor, right? (Objection by RBC's counsel).
- A. I guess you could say that. I guess you could say that.
- Q. Alright. I mean, well, the appraiser had given the completion percentage at 6% --
- A. At 6; correct.
- Q. And she was adding a little extra money to the pot, so to speak, in giving him an additional amount for the draw by making an independent judgment on her part, adding 2% on miscellaneous cleanup, correct?
- A. Correct.

(R. p. 227, line 14 – p. 228, line 2)

Ms. Chaffin essentially decided to give Hall a little more money during the holiday season. (R. p. 226, line 14 – p. 227, line 13) The decision was wholly RBC's discretionary decision.

In addition, RBC Bank admitted that the February 2, 2009 draw, which was a draw of \$86,700.00, was given and the funding decision made prior to the inspection occurring. Kathy Patterson testified that the decision is documented wherein the loan representative told Cliff Hall

\$86,700.00 will post on Monday, February 2nd but the inspection did not occur until February 2nd. (R. p. 275, line 8 – p. 276, line 13) RBC 30(b)(6) representative Kathy Patterson acknowledges the sequence, admitted that is what had occurred, and admitted RBC made a mistake. *Id.*

IV. RBC BANK WAS NEGLIGENT BY AUTHORIZING CONSTRUCTION DRAWS IN EXCESS OF THE ACTUAL CONSTRUCTION PROGRESS OF THE CAREWS' HOME AND, THEREFORE, SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED.

RBC contends that the Construction Loan Agreement gives it the unfettered right to disburse funds to either the Carews to pay Hall Builders, or to tender the funds directly to Hall Builders itself. In addition, RBC reserves the right to disburse the funds in an amount it sees fit. Taking RBC's position to its fullest extent means that RBC could disburse the entire amount of the construction loan proceeds directly to the contractor, without ever having the improvement constructed, and then hold the Carews responsible for the full amount of the construction loan. The extension of RBC's position leads to an absurd result which should not be allowed to stand.

RBC Bank retains the right to make the decision of when to release construction proceeds.

- Q. It's RBC's decision as to whether or not to release construction loan proceeds?
A. Yes sir.

(R. p. 296, lines 7-9)

- Q. Okay. Because you have to watch the progress of house, meaning you, RBC, has to monitor the progress of the home?
A. Well, that has been a decision that RBC makes, but it is not in the construction loan agreement.
Q. But you're -- RBC is not going to release the funds if the level of percentage of completion of the house is not appropriate, correct?
A. Correct.

(R. p. 296, line 22-p. 297, line 5)

Ms. Patterson attempts to explain RBC Bank's use of construction report completion percentages as one piece of the RBC disbursal decision. (R. p. 227, line 14 – p. 233, line 21) Ms. Patterson further acknowledges that at the time of the handling of the Carews' loan, monitoring the percentage of loan disbursed, as opposed to the percentage of construction, was done manually. (R. p. 238, line 15 – p. 101, line 11) RBC Bank now has an automated system that allows the percentages to be compared at the time of each draw. *Id.* This safeguard was not in place at the time of the construction of Carews' home. Notwithstanding the RBC process, it is undisputed that RBC disbursed 85% of the loan proceeds when, at best, the house was only 67% complete. RBC should not be entitled to summary judgment in light of their questionable decision making.

As a result of RBC Bank's failure to properly monitor construction, the Carews suffered damages above and beyond owing the balance of the loan. The Carews have incurred \$583,681.93 in additional expenses as a result of these failures. (R. p. 540)

V. THE TRIAL COURT ERRED BY HOLDING THAT RBC DID NOT BREACH ITS OBLIGATIONS IN THE CONSTRUCTION LOAN AGREEMENT, SINCE RBC WAS NOT A MERE LENDER BUT WAS AWARE OF DEFECTS

Generally a mere lender is not liable in tort for construction defects caused by a builder's work. *Roundtree Villas Association, Inc. v. 4701 Kings Corp.*, 321 S.E.2d 46 (1984). In the Carew case, RBC is more than a mere lender since it is aware of defects relating to the home. Both the construction loan form for December 18, 2008 (R. p. 538) and for the February 2, 2009 inspection (R. p. 539) show that the permanent roof was not yet complete. Notwithstanding the fact that the permanent roof was not yet complete, both forms indicate that substantial interior finish work was being completed. RBC's notice that there was no permanent roof, and failure to

take action to remedy it, should render them liable to the Carews. Although a mere lender is not liable for construction defects under *Roundtree Villas*, if the lender is aware of the defects it may be liable. *Kennedy v. Columbia Lumber and Manufacturing Company*, 384 S.E.2d 730, at 734 (1989). See also *Lane v. Trenholm Building Company*, 229 S.E.2d 728 (1976) and *Kirkman v. Parex, Inc.*, 632 S.E.2d 854 (2006).

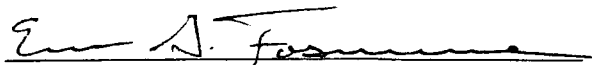
RBC Bank contends that there is no liability under the Construction Loan Agreement for negligence for the appraiser pursuant to *Robertson v. First Union National Bank*, 565 S.E.2d 309 (Ct. App. 2002). In *Robertson* the Plaintiff contended that a building he purchased was negligently appraised at the principal loan amount of \$160,000.00 in order for the bank to let the loan. The *Robertson* Plaintiff contends that in a subsequent appraisal five years later the fair market value of the property was only \$80,000.00. *Robertson* is distinguished because the issue in the Carew case is not the reliance on the appraiser's valuation, but rather the conduct of RBC itself in improperly releasing construction loan proceeds. The *Robertson* court found that the appraiser was employed by the Bank and acting as an agent of the Bank and had no independent duty to the purchaser. If that is the law, then RBC Bank in this case cannot turn around and say that there is no duty owed to the Carews because the appraiser is independent of RBC Bank. RBC Bank attempts to contractually distance itself from the appraiser upon which it relies, whom it selects, and whom it pays, by subsequently claiming there is no duty owed to anyone as a result thereof. At a minimum, the duty running from RBC Bank to the Carews requires that RBC Bank prudently retain and supervise its appraiser and disburse proceeds of the construction loan. In this case, by RBC Bank's 30(b)(6) representative's own testimony, RBC Bank failed to do so.

CONCLUSION

Viewing the evidence in a light most favorable to the Carews, the Trial Court erred in granting summary judgment to RBC. RBC owed duties under the contract to act reasonably and in good faith toward the Carews. The waiver claimed by RBC is not enforceable against the Carews under the fact of this case. Questions of fact regarding RBC's disbursal decisions and RBC's own conduct preclude summary judgment. The order of the trial court should be reversed.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read "Eric G. Fosmire", is written over a horizontal line.

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June 21, 2013

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

Case No. 2010-CP-32-00442

RECEIVED
JUN 21 2013
SC Court of Appeals

Dr. Joseph G. Carew and Dr. Karen Carew,..... Appellants,

v.

RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank, Clifton W. Hall, Hall Builders, LLC, Appraisal Team of Mid Carolina, LLC, and Teresa Addy-Haltiwanger, Defendants,

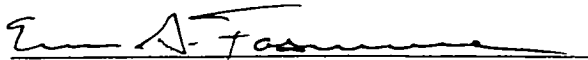
Of Whom, RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank, are Respondents.

PROOF OF SERVICE

I certify that I have served the Final Brief of Appellants on RBC Centura Bank; RBC Bank as successor in interest of RBC Centura Bank, by hand delivery, on the ___th day of June, 2013 addressed to their attorney of record,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

Case No. 2010-CP-32-00442

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RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank, Clifton W. Hall,
Hall Builders, LLC, Appraisal Team of Mid Carolina, LLC, and Teresa Addy-Haltiwanger,
Defendants,

Of Whom, RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank, are
..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellants complies with Rule 211(b),
SCACR.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge, Circuit Court Judge

Case No. 2012-212283

Dr. Joseph G. Carew and Dr. Karen Carew

Appellants,

RBC Centura Bank, RBC Bank as successor in interest
of RBC Centura Bank, Clifton W. Hall, Hall Builders,
LLC, Mid-Carolina Appraisal Company, LLC, and
Teresa Addy Haltiwanger,

Defendants

Of Whom, RBC Centura Bank, RBC Bank as successor
in interest of RBC Centura Bank are

Respondents.

Final Brief of Respondents

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Statement of Issues on Appeal

- I. The law of the case doctrine bars several of the Carews' arguments on appeal.
- II. The trial court correctly granted summary judgment to RBC on the Carews' claims related to construction progress inspections because RBC owed no them no duty as a matter of law.
- III. The trial court properly found summary judgment was proper because the Carews released RBC from liability related to construction progress inspections.
- IV. The trial court correctly granted summary judgment to RBC on the Carews' claims of negligent disbursement of loan proceeds.
- V. The trial court properly granted summary judgment as to the Carews' claims that RBC negligently authorized construction draws.
- VI. The trial court properly granted summary judgment as to the Carews' breach of contract claims because the Carews failed to establish the requisite elements.

Statement of the Case

This lawsuit arises from the construction of a \$1.4 million lake house and the loan obtained to finance same. {Complaint; R. 25-44}. Appellants Dr. Joseph and Dr. Karen Carew (hereinafter collectively “the Carews” or individually by name) initiated this action by filing their Complaint on January 29, 2010. {Id.}. The Complaint named the following parties as defendants: (1) RBC Bank (USA),¹ the bank that provided a loan to fund construction (hereinafter “RBC”); (2) Mid-Carolina Appraisal Co., LLC and Teresa Addy Haltiwanger (collectively referred to herein as “Appraiser”), the parties that conducted progress inspection reports; and (3) Clifton W. Hall and Hall Builders, LLC, the builder retained by the Carews (collectively “Hall Builders”). {Id.}. In their Complaint and subsequent Amended Complaint, the Carews alleged that RBC breached a contract with them and acted negligently in servicing the loan while the home was being constructed. {Id.; Amended Complaint; R. 25-44}. RBC timely answered and denied all allegations of wrongdoing. {Answer; R. 45-58}.²

Appraiser filed a Motion for Summary Judgment. {Order granting Appraiser’s Motion for Summary Judgment; R. 2-12}. In its motion, Appraiser argued summary judgment was proper on the Carews’ claims because the Construction Loan Agreement did not create any duty owed to the Carews. {Id.}.

On July 27, 2011, the trial court issued an order granting the Appraiser’s motion for summary judgment (hereinafter the “July 27 Order”). {Order Granting

¹ RBC Bank (USA) is incorrectly identified in the pleadings as “RBC Centura Bank” and “RBC Bank as successor in interest to RBC Centura Bank.” Moreover, as of March 2, 2012, the current name for RBC Bank (USA) became “PNC Bank, National Association, successor to RBC Bank (USA).”

² During the course of discovery, the trial court struck Hall Builders’ Answer and entered default judgment against Hall Builders.

Appraiser's Motion for Summary Judgment; R. 2-12}. The Carews failed to appeal from the July 27 Order and, therefore, the July 27 Order constitutes the law of the case in this matter.

RBC filed its Motion for Summary Judgment on January 6, 2012. {Motion for Summary Judgment of January 6, 2012; R. 59-60; 61-130} The trial court heard RBC's Motion for Summary Judgment on April 9, 2012. {Transcript; R. 298-338}. The trial court granted RBC's Motion as to each of the Carews' claims on May 17, 2012 (the "May 17 Order"). The trial court held that RBC was entitled to judgment as a matter of law on each of the Carews' claims for negligence and breach of contract because the Construction Loan Agreement did not create any duty owed to the Carews. {Order Granting RBC's Motion for Summary Judgment dated May 17, 2012; R. 13-24}. The Carews timely filed and served their notice of appeal of this Order. {Notice of Appeal dated June 21, 2012}.

Statement of Facts

On January 23, 2008, the Carews purchased a residential lot located at 34 Edens Point Road in Lexington County. {Amended Complaint; R. 25-44}. The Carews then entered into a contract with Hall Builders on January 30, 2008. {Id.}. In that contract, Hall Builders agreed to build the Carews a home on the Lexington County property. {Id.}.

On February 29, 2008, the Carews entered into a construction loan agreement with RBC ("the Construction Loan Agreement"). {Id.; Construction Loan Agreement dated February 29, 2008; R. 527-37}. Under the terms of the Construction Loan Agreement, RBC would provide a loan to the Carews, and the Carews would use the

proceeds of the loan to purchase and build a house on the Lexington County property. {Construction Loan Agreement dated February 29, 2008; R. 527-37}. The Carews admitted they signed and initialed each page of the Loan Agreement. {The Carews' Responses to Appraiser's First Requests for Admission; Transcript of J. Carew Depo. p.79, line 8 – p.80, line 3; R. 412-13}. However, Joseph Carew testified that he did not read the Loan Agreement before signing it. {Trans. of J. Carew Depo. p.81, lines 18-23; R. 414}.

The Construction Loan Agreement set forth the contract terms in an eleven page agreement, and included, among other things, the duties and responsibilities of RBC as the construction lender. The references to “you” or “your” in the Loan Agreement referred to RBC, and the references to “I,” “me” or “my” referred to the Carews. {Construction Loan Agreement dated February 29, 2008; R. 527-37}. Section 7.2.2 of the Loan Agreement, entitled “Inspection” stated:

Before you make a disbursement on the basis of a Draw Request, either or both you and the Construction Monitor may perform an on-site inspection of the Premises. If you request, the General Contractor, if there is one, and I will be present when such inspections are undertaken. **You (RBC) will not be under any obligation to make inspections and you will not be under any obligation to instruct the Construction Monitor to conduct inspections. All inspections made by you (RBC) and all inspections made by the Construction Monitor will be for your (RBC) sole and exclusive benefit and they may not be relied upon in whole or in part by me (Carews) or any other person.**

{Construction Loan Agreement dated February 29, 2008; R. 529 (emphasis in original)}.

Section 8.4 of the Construction Loan Agreement, entitled "Inspection of Construction" provided as follows:

You (RBC) and the Construction Monitor, either together or separately, may enter upon the Premises at any time either you or the Construction Monitor desire for the purposes of inspecting the construction of the Improvements. I agree that your failure or the Construction Monitor's failure (1) to discover defects in the Improvements, including errors or omissions in design, workmanship, materials, supplies, fixtures, parts, products or equipment, or (2) to otherwise reject design, workmanship, materials, supplies, fixtures, parts, products or equipment due to non-compliance with the Construction Documents, or due to defects in any of the foregoing, will not make either you or the Construction Monitor liable to me and will not make either you or the Construction Monitor liable to any other person on account of such deficiency; and I agree that any prior failure will not constitute a waiver of your right to subsequently reject any such design, workmanship, materials, supplies, fixtures, parts, products and equipment. **I agree that all inspections conducted by you (RBC) or the Construction Monitor are for your (RBC's) sole and exclusive benefit, and I may not, nor may any other person, rely upon such inspections and I am not nor is any other person a third party beneficiary of such inspections. I agree, for myself and for all other persons other than you, to waive and I do hereby waive any present or future rights, if any, I or any of such other persons may have relating to or arising out of inspections made by you (RBC) or the Construction Monitor – it being understood and agreed that such waiver is material to you (RBC) and a material inducement to you (RBC) entering into this Agreement with me and making the Loan to me on the terms and conditions set forth herein and in the other Loan Documents.**

{Construction Loan Agreement dated February 29, 2008; R. 531} (emphasis in original).

RBC retained the Appraiser to (1) perform a “subject-to” completion appraisal and (2) conduct periodic appraisal inspections during construction for RBC. {Construction Loan Agreement dated February 29, 2008; R. 527-37}. The Construction Loan Agreement defined the term “Construction Monitor” to encompass the Appraiser as follows:

“Construction Monitor” means a Construction inspector or monitor, or other persons designated by you to monitor and otherwise inspect the construction of the improvements, including reviewing and approving all Draw Requests and performance of on-site inspections. The Construction Monitor will be an independent contractor, and I will pay the costs and expenses associated with the Construction Monitor.

{Construction Loan Agreement dated February 29, 2008; R. 534}.

The Appraiser prepared the subject-to completion appraisal and performed a number of construction progress inspections in its role as the Construction Monitor during the construction of the Carews’ home between June 18, 2008 and June 12, 2009. {Amended Complaint; R. 27 }.

In February 2009, Hall Builders encountered financial troubles. {Amended Complaint; R. 29}. Hall Builders’ financial problems were so severe that, on February 11, 2009, the principal of Hall Builders advised the Carews that it would not be able to complete the construction of the home. {Amended Complaint; R. 29}. Hall Builders released the Carews from the construction contract that same day. {Id.}.

Because of the inability of Hall Builders to complete the construction, several complications arose in the construction of the home. First, the Carews retained a new builder to complete the construction of their home. {Id.}. Second, Hall Builders had

failed to pay certain subcontractors for work performed. {Id.}. Therefore, some mechanics liens were filed. {Id.}. Third, because Hall Builders had not used all of the funds it received from the Carews to complete the project, the percentage of completion was less than the percentage of loan proceeds disbursed. {Id.}. Accordingly, the Construction Loan Agreement required the Carews to use their own funds to bring the level of completion up to the level of funds disbursed. {Construction Loan Agreement dated February 29, 2008; R. 527-37}. Once the mechanics liens were satisfied and the requisite level of construction completion was achieved, RBC released additional loan proceeds and the home was completed. {Id.}.

Scope of Review

Summary judgment is appropriate where it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Hamiter v. Retirement Division of the South Carolina Budget and Control Board, 326 S.C. 93, 484 S.E.2d 586 (1997). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Id.

Argument

I. The law of the case doctrine bars several of the Carews' arguments on appeal.

Before the hearing on RBC's motion for summary judgment, the trial court had issued the July 27 Order granting summary judgment to the Appraiser. The July 27 Order contained rulings on several issues identical to those raised by RBC in its Motion for Summary Judgment. Specifically, the July 27 Order expressly rejected the Carews'

claims that RBC owed them a contractual or other duty. The July 27 Order specifically held RBC owed **no** duty, contractual or otherwise, to the Carews. The Carews have admitted that they did not appeal the July 27 Order. See Appellant's Initial Brief p. 2. Accordingly, the law of the case doctrine bars the Carews from arguing that such a duty exists in the present appeal. This Court should, therefore, affirm the trial court's grant of summary judgment on this issue.

The law of the case doctrine applies where a party does not challenge an issue on appeal when there has been an opportunity to do so. Bone v. U.S. Food Serv., 399 S.C. 566, 576, 733 S.E.2d 200, 205 (2012). A party may not seek relief from an unappealed, prior order because that order becomes law of the case. Judy v. Martin, 381 S.C. 455, 458, 674, S.E.2d 151, 153 (2009). An unappealed order, right or wrong, is the law of the case. Ables v. Gladden, 378 S.C. 558, 569, 664 S.E.2d 442, 448 (2008); Charleston Lumber Co. v. Miller Hous. Corp., 338 S.C. 171, 525 S.E.2d 869, 871 (2000); Resolution Trust Corp. v. Eagle Lake & Golf Condominiums, 310 S.C. 473, 427 S.E.2d 646, 648 (1993) (holding that the trial judge's unappealed ruling is the law of the case).

First, the Carews claim the trial court improperly granted RBC summary judgment on the issue of whether RBC owed the Carews any duty regarding construction progress reports. See Appellants' Initial Brief at p. 6-7. Importantly, the trial court ruled on this exact issue the trial court's July 27 Order. The trial court held:

Without question, the language in the Construction Loan Agreement makes it absolutely clear that RBC had **no duty** to even conduct inspections during the construction of the Plaintiffs' home. In fact, RBC could have, if it so desired, relied entirely on the payment applications

submitted by the builder, Hall Builders, LLC, for purposes of disbursing the construction loan proceeds. The inspections were for the “sole and exclusive benefit” of RBC.

The rights and responsibilities of RBC regarding the inspections are clearly defined and conspicuous in the Construction Loan Agreement. In particular, as shown in the Findings of Fact, certain portions of these terms in the Construction Loan Agreement are in bold, thereby highlighting certain terms in the Construction Loan Agreement.

Section 8.4 of the Construction Loan Agreement reiterates that the inspections are exclusively for the benefit of RBC and are not to be relied upon by the Plaintiffs.

{July 27, 2011 Order p. 5-6; R. 6-7} (emphasis in Construction Loan Agreement).

Thus, the July 27 Order expressly held that RBC did not have a contractual or other duty to the Carews regarding construction progress. The Carews did not appeal the July 27 Order and are now barred from challenging this issue in this appeal. As a result, this Court should affirm the trial court’s grant of summary judgment on this issue.

Second, the Carews argue on appeal that RBC “failed to properly monitor the level of completion of the home and disbursed funds above and beyond the percentage of completion.” See Appellants’ Initial Brief p. 8. This argument is also barred by the law of the case doctrine. The trial court’s unappealed July 27 Order specifically held that RBC did **not** owe the Appellants any duty with regard to progress inspection reports or the loan disbursements that resulted from the reports. More specifically, the trial court held that:

Without question, the language in the Construction Loan Agreement makes it absolutely clear that RBC had no

duty to even conduct inspections during the construction of the Plaintiffs' home. In fact, RBC could have, if it so desired, relied entirely on the payment applications submitted by the builder, Hall Builders, LLC, for purposes of disbursing the construction loan proceeds. The inspections were for the "sole and exclusive benefit" of RBC.

{Construction Loan Agreement Section 7.2.2; R. 529} (emphasis in original).

The Carews failed to appeal this finding from the July 27 Order. Because the Carews failed to appeal the trial court's previous ruling that no contractual or other duty exists, the law of the case doctrine now bars the Carews from challenging the trial court's grant of summary judgment to RBC on their claims of negligent disbursement of loan proceeds. This Court should affirm the trial court's grant of summary judgment on this issue.

Third, the Carews argue on appeal that RBC negligently authorized construction draws. See Appellants' Initial Brief p. 10. This argument is also barred by the law of the case doctrine. The Carews failed to appeal from the trial court's July 27 Order (1) specifically holding that RBC did not owe the Carews any duty with regard to progress inspection reports or the loan disbursements that resulted from the reports, and (2) holding that "RBC could have, if it so desired, relied entirely on the payment applications submitted by the builder, Hall Builders, LLC, for purposes of disbursing the construction proceeds." {July 27 Order; R. 2-12}. The Carews did not appeal either of these rulings from the July 27 Order, and the law of the case doctrine now bars the Carews from challenging the trial court's grant of summary judgment to RBC on this basis. This Court should also affirm the trial court's grant of summary judgment on this issue.

II. The trial court correctly granted summary judgment to RBC on the Carews' claims related to construction progress inspections because RBC owed them no duty.

The Carews' argument that the trial court improperly granted summary judgment to RBC on this issue is without merit for several reasons. First, the law of the case doctrine bars the Carews' argument. Second, the two-issue rule likewise precludes the Carews' argument. Third, even assuming the Carews properly presented this issue to this Court, the trial court correctly applied settled South Carolina Supreme Court precedent to find RBC owed the Carews no duty as to construction progress inspections. As a result, this Court should affirm the trial court's grant of summary judgment to RBC.

a. The law of the case doctrine bars the Carews' claims related to construction progress inspections.

As noted in Section I, supra, the Carews failed to appeal the trial court's July 27 Order that RBC did not owe the Carews any duty regarding construction progress reports. Accordingly, the Carews are barred from arguing that such a duty exists in the present appeal. This Court should, therefore, affirm the trial court's grant of summary judgment on this issue.

b. The two-issue rule bars the Carews' argument that the Construction Loan Agreement was a contract of adhesion and/or unconscionable.

This Court should also affirm the trial court's grant of summary judgment on this ground based on the two-issue rule. The trial court granted summary judgment to RBC on the Carews' negligence cause of action on two independent grounds. {Order Granting RBC's Motion for Summary Judgment dated May 17, 2012 at p. 7; R. 19}. The trial court held that (1) the Construction Loan Agreement did not constitute an

unenforceable contract of adhesion and (2) the terms of the Construction Loan Agreement were not unconscionable so as to render it unenforceable. {Id.}. The Carews failed to appeal the second ground that formed the basis of the grant of summary judgment. Thus, this Court must affirm pursuant to the two-issue rule.

Under the two issue rule, “when a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case.” Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). The two-issue rule applies to grants of summary judgment. Jones, 387 S.C. at 346, 692 S.E.2d at 903 (affirming the grant of summary judgment when appellant failed to appeal both grounds set forth by the trial court). In Jones, the trial court granted summary judgment based on two independent grounds. The Supreme Court applied the two-issue rule to affirm when appellant failed to appeal both grounds. The court reasoned that:

It should be noted that although cases generally have discussed the “two issue” rule in the context of the appellate treatment of general jury verdicts, the rule is applicable under other circumstances on appeal, including affirmance of orders of trial courts . . . the order would be affirmed under the “two issue” rule if the plaintiff failed to appeal both grounds or if one of the grounds required affirmance.

Id.

Here, the Carews failed to appeal one of the grounds that the trial court based the grant of summary judgment. Specifically, the Carews failed to appeal the trial court’s ruling that the terms of the Construction Loan Agreement were not unconscionable so as to render it unenforceable. That ruling is now the law of the case,

and summary judgment must be affirmed. See, e.g., First Union Nat'l Bank v. Soden, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) (holding an “unchallenged ruling, right or wrong, is law of the case and requires affirmance”).

c. The trial court correctly granted summary judgment because RBC owed the Carews no duty as to construction progress inspections.

In addition to the plain language of the Construction Loan Agreement and the law of the case cited above, South Carolina case law also supports the finding that RBC owed Appellants no duty in regard to progress inspection reports. Because RBC did not owe any duty to the Carews, the trial court properly granted RBC summary judgment as a matter of law. This Court should affirm.

In order to prevail in a negligence action, a plaintiff must prove the following requisite elements: “(1) defendant owed a duty of care to the plaintiff (2) defendant breached the duty by a negligent act or omission (3) defendant’s breach was the actual and proximate cause of the plaintiff’s injury and (4) the plaintiff suffered injury or damages.” Jackson v. Swordfish Investments, L.L.C., 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005); Dorrell v. South Carolina Dept. of Trans., 361 S.C. 312, 318, 605 S.E.2d 12, 15 (2004). Thus, before a negligence cause of action can be pursued, a plaintiff must establish the essential element that there was a duty owed to him by the defendant. Rogers v. South Carolina Dept. of Parole & Cmty. Corr., 320 S.C. 253, 255, 464 S.E.2d 330, 332 (1995); Wyatt v. Fowler, 326 S.C. 97, 101, 484 S.E.2d 590, 592 (1997). Notably, if such a duty is absent, then “there can be no actionable negligence.” Id. at 255, 464 S.E.2d at 332.

The determination of a whether there was a duty is a matter of law for the court, not an issue of fact for the jury, because our Supreme Court has established that “[w]hether the law recognizes a particular duty is an issue of law to be determined by the court.” Ellis v. Niles, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996). If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law. Id.; Byerly v. Conner, 307 S.C. 441, 415 S.E.2d 796 (1992).

The Supreme Court has addressed the Carews’ negligence claims in an analogous context and held:

The builder of a house [i.e. the Carews] is entitled to make his own contract with the construction company. In like fashion, a lending institution [i.e RBC] is entitled to make its own contract with one who is building a house. Traditionally, lenders, in making a construction loan, make periodic inspections to assure that the construction loan advancements are being applied appropriately. **This is fundamentally for the protection of the lending institution and does not impose upon the lending institution a duty to see that [the borrower] is getting a job free of defects.** Both the lender and the borrower have a common interest in seeing that the construction company builds a building free of defects but, absent a contract, the builder has no common law duty to protect the lender and the lender has no common law [duty] to protect the builder.

Roundtree Villas Association, Inc. v. 4701 Kings Corp. , 282 S.C. 415, 422, 321 S.E.2d 46, 50 (1984) (emphasis and bracket language added). Therefore, the Supreme Court has definitively held that construction loan agreements, such as the one at issue in this matter, do not impose a duty on the lender, such as RBC, to ensure there are no defects in the construction. The trial court correctly applied this precedent to find that

RBC owed no duty to the Carews regarding progress inspections during construction. Accordingly, this Court should affirm the grant of summary judgment to RBC.

III. The trial court correctly granted summary judgment to RBC because the Carews released RBC from liability related to construction progress inspections.

The Carews also expressly released any claims against RBC related to the construction progress inspections. Therefore, the trial court properly granted summary judgment to RBC on this issue. This Court should affirm.

Section 8.4 of the Construction Loan Agreement states, in pertinent part, as follows:

I [the Carews] agree that your [RBC's] failure or the Construction Monitor's [Appraiser's] failure (1) to discover defects in the Improvements, including errors or omissions in design, workmanship, materials, supplies, fixtures, parts, products or equipment due to non-compliance with the Construction Documents, or due to defects in any of the foregoing, will not make either you or the Construction Monitor liable to me. . . .

{Construction Loan Agreement; R. 531}. The plain and unambiguous language of this provision establishes that, by signing the Construction Loan Agreement, the Carews expressly agreed to release RBC from any liability related to construction defects or defects in the construction progress inspections.³ Accordingly, the trial court's grant of summary judgment based on release must be affirmed.

IV. The trial court properly granted summary judgment to RBC on the Carews' claims of negligent disbursement of loan proceeds.

³ The Carews' admission that Mr. Carew failed to read the Loan Agreement does not affect the enforceability of the release provision. See Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) ("a person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it").

The Carews' argument that summary judgment was improper on this issue fails for two primary reasons. First, the law of the case doctrine bars their arguments. Second, even assuming the Carews properly presented this issue to this Court, the Construction Loan Agreement establishes that RBC owed no duty to the Carews. Therefore, the trial court properly granted RBC summary judgment on this issue. This Court should affirm.

a. The law of the case doctrine bars the Carews' appellate arguments regarding their negligent disbursement claims.

As noted in Section I, supra, the Carews failed to appeal the trial court's July 27 Order that held RBC did **not** owe the Appellants any duty with regard to progress inspection reports or the loan disbursements that resulted from the reports. Accordingly, the Carews are barred from arguing that such a duty exists in the present appeal. This Court should, therefore, affirm the trial court's grant of summary judgment on this issue.

b. The trial court correctly granted summary judgment to RBC on the Carews' claims regarding the negligent disbursement issue.

In addition to the law of the case, the express language of the Construction Loan Agreement firmly supports the trial court's grant of summary judgment as it relates to the Carews' negligent disbursement claims. As more fully set forth in Section II(c), supra, the Construction Loan Agreement makes it clear that although RBC could consider the inspection reports in determining the disbursement process, neither the Carews nor any other person could rely on those reports:

Before you make a disbursement on the basis of a Draw Request, either or both you and the Construction Monitor

may perform an on-site inspection of the Premises. If you request, the General Contractor, if there is one, and I will be present when such inspections are undertaken. **You [RBC] will not be under any obligation to make inspections and you will not be under any obligation to instruct the Construction Monitor to conduct inspections. All inspections made by you [RBC] and all inspections made by the Construction Monitor will be for your [RBC] sole and exclusive benefit and they may not be relied upon in whole or in part by me [Carews] or any other person.**

{Construction Loan Agreement; R. 529} (emphasis in original but language in brackets added).

Moreover, the only evidence in the record regarding the way disbursements were made undercuts the Carews' position. The undisputed evidence presented to the trial court established that RBC released the funds for disbursement directly to the Carews, who in turn chose what to pay their builder, as was the case for each construction disbursement or draw in this case. {Deposition of Kathy Robertson; R. 287-88; 291-93}. Additionally, the "double disbursement" claimed by the Carews fails to advance their position. More specifically, the Carews claim that RBC paid the same draw request twice, thereby causing them harm.⁴ However, as noted above, the Carews—not RBC—paid their builder twice for the same work. {Deposition of Kathy Robertson; R. 287-88; 291-93}. Moreover, the only evidence before the trial court was that RBC restored the funds the Carews paid the second time so the Carews would be able to draw against the full amount for future disbursements, and, as a result, the Carews suffered no loss at all. {Id.}.

⁴ See Appellants' Initial Brief p. 9-10.

V. The trial court properly granted summary judgment on the Carews' claims that RBC negligently authorized construction draws.

The Carews argue that the unappealed July 27 Order, the express language of the Loan Agreement, and RBC's testimony that it has sole discretion over disbursement of loan proceeds "lead[s] to an absurd result which should not be allowed to stand." (Initial Brief of Appellants p.10). This argument fails for three reasons.

First, as discussed in Section I, supra, this argument is not properly before this Court. The July 27 Order held that that RBC did not owe the Carews any duty with regard to progress inspection reports or the loan disbursements that resulted from the reports. Thus, the law of the case doctrine now bars the Carews from challenging the trial court's grant of summary judgment to RBC on this basis.

Second, the Carews failed to properly preserve this argument for appeal. "Preserving issues for appellate review is a fundamental component of appellate practice." Kennedy v. South Carolina Retirement Sys., 349 S.C. 531, 532-33, 564 S.E.2d 322, 323 (2001). "The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments. Id.; Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995) (holding the appellate court will not address an issue unless the issue was raised to and ruled upon by the trial court). The first step in preserving an issue for appellate review is to

actually raise it to the trial court. Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). The trial court must also rule upon the issue for it to be preserved for review. Id.; see also Holy Loch Distributors, Inc. v. Hitchcock, 340 S.C. 20, 531 S.E.2d 282 (2000).

Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. Roche v. South Carolina Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975). “The requirement also serves as a keen incentive for a party to prepare a case thoroughly.” I’On, 338 S.C. at 422, 526 S.E.2d at 724. Importantly, “[i]t prevents a party from keeping an ace card up his sleeve-intentionally or by chance-in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.” Id.

Here, the Carews neither raised this issue (i.e., whether the express language of the Loan Agreement, and RBC’s testimony that it has sole discretion over disbursement of loan proceeds, leads to an absurd result which should not be allowed to stand), to the trial court in their opposition to RBC’s Motion for Summary Judgment, nor did they raise this claim at argument on the Motion. Moreover, the trial court’s Order granting RBC summary judgment does not address or rule on the Carews’ argument that “[t]he extension of RBC’s position leads to an absurd result which should not be allowed to stand.” Thus, the issue was neither raised to, nor ruled upon, by the trial court. Therefore, the issue is not preserved for appellate review by this Court.

Lastly, as fully discussed in Section II above, the Carews released RBC from all claims and liability related to the progress inspection reports. The Carews contractually

agreed that RBC could rely on the inspection reports. {Construction Loan Agreement; R. 527-37}. RBC made loan disbursements based upon the Appraiser's progress inspection reports. Despite the Carews' allegation that disbursements were improperly made due to defects with the construction, the release provision in the Construction Loan Agreement bars any recovery from RBC because RBC disbursed the funds as a result of the reports. {Construction Loan Agreement Section 8.4; R. 531}. Accordingly, the trial court's grant of summary judgment on the issue of negligent authorization of construction draws should be affirmed.

VI. The trial court properly granted summary judgment on the Carews' breach of contract claims.

The Carews lastly claim the trial court improperly granted summary judgment because RBC breached Sections 5, 6.2, 7, and 10.3 of the Construction Loan Agreement. See Appellants' Initial Brief p. 11-13. This argument is without merit for two reasons. First, the argument is not preserved for review by this Court. Second, the trial court properly found that RBC did not breach any contractual provision. This Court should affirm the grant of summary judgment to RBC.

First, the Carews' argument is not preserved for appellate review. In their brief, the Carews assert—for the first time—that the trial court improperly granted summary judgment because RBC was “more than a mere lender since it [was] aware of defects related to the home.” See Appellants' Initial Brief p. 11. Consequently, the Carews argue that RBC is liable for the construction defects caused by Hall Builders. {Id.}. However, the Carews failed to raise this argument to the trial court. Also, the trial court did not rule on this argument. Thus, it is not preserved for review. See,

e.g., Phillips, 318 S.C. at 456 458 S.E.2d at 430 (holding the appellate court will not address an issue unless the issue was raised to and ruled upon by the trial court).

Second, the trial court properly found RBC adhered to the terms of the Construction Loan Agreement. The Carews alleged that RBC Bank breached Section 6.2 of the Construction Loan Agreement, which governs the completion of improvements to the property. That provision states that the improvements “must be Completed” and that RBC Bank is entitled to receive “final lien waivers/releases from the General Contractor.” This provision does not place any obligations on RBC Bank and, therefore, cannot support a claim for breach of contract. Thus, the trial court properly rejected the Carews’ argument as a matter of law.

The Carews also claim that RBC breached Section 10.3 of the Construction Loan Agreement, which gives RBC Bank “the right, **but not the obligation**,” to take possession, use, operate, construct, complete, preserve, or control any of the collateral for the loan. {Construction Loan Agreement; R. 532} (emphasis added). As the plain language of this provision established, Section 10.3 outlines RBC’s **rights** with relation to the collateral for the loan, and does not impose upon RBC Bank any **obligations** in that respect. Therefore, this provision cannot support a claim for breach of contract, and the trial court properly granted summary judgment to RBC.

The Carews next allege that RBC breached Sections 5 and 7 of the Construction Loan Agreement, which govern the disbursement of loan proceeds. Section 5 did not obligate RBC to perform any actions before disbursing loan proceeds, but instead gave RBC the right to disburse loan proceeds when it is satisfied with the progress of construction. Similarly, Section 7.2 of the Construction Loan Agreement gave RBC

the right to determine the amount of loan proceeds to be disbursed. Section 7.4 expressly gave RBC the right to disburse loan proceeds to the contractor without the Carews' prior approval and without prior notice.

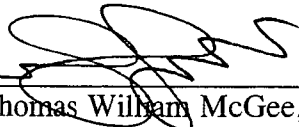
These provisions are for the benefit of RBC alone and do not impose upon it any duties or obligations to the Carews regarding the distribution of loan proceeds. Indeed, as discussed above and in the July 27, 2011 Order, "RBC could have, if it so desired, relied entirely on the payment applications submitted by the builder, Hall Builders, LLC, for purposes of disbursing the construction proceeds." {July 27 Order at p. 5; R. 6}. Accordingly, Sections 5 and 7 cannot support a claim for breach of contract. The trial court properly granted summary judgment on these claims.

Finally, the Carews allege that RBC breached Section 8 of the Loan Agreement, which related to the performance of construction progress inspections. As discussed herein, the law of the case is that under the Construction Loan Agreement expressly provided that (1) RBC had no obligation to conduct any inspections; (2) all inspections were for RBC's sole benefit; and (3) the Carews had no right to rely on any such inspections. Accordingly, Section 8 cannot support a claim for breach of contract, and the trial court properly rejected this argument.

Conclusion

Based on the foregoing, this Court should affirm the trial court's grant of summary judgment in favor of RBC.

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June 25, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

Case No. 2010-CP-32-00442
Appellate Case No. 2012-212283

Dr. Joseph G. Carew and Dr. Karen Carew, ... Appellants,

v.

RBC Centura Bank, RBC Bank as successor in interest
of RBC Centura Bank, Clifton W. Hall, Hall Builders,
LLC, Mid Carolina Appraisal Company, LLC, and
Teresa Addy Haltiwanger, ... Defendants

Of Whom, RBC Centura Bank, RBC Bank as successor
in interest of RBC Centura Bank are Respondents.

Certificate of Compliance

The undersigned certifies that this Final Respondent's Brief complies with Rule 211(b),
SCACR.

{Signature Page Follows}

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June 25, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge, Circuit Court Judge

Case No. 2012-212283

Dr. Joseph G. Carew and Dr. Karen Carew, ... Appellants,

v.

RBC Centura Bank, RBC Bank as successor in interest
of RBC Centura Bank, Clifton W. Hall, Hall Builders,
LLC, Mid Carolina Appraisal Company, LLC, and
Teresa Addy Haltiwanger, ... Defendants

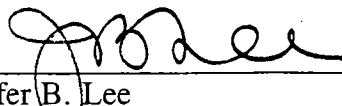
Of Whom, RBC Centura Bank, RBC Bank as successor
in interest of RBC Centura Bank are Respondents.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for RBC Centura Bank, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **Final Brief of Respondents**

Served: Eric G. Fosmire, Esquire
McAngus Goudelock and Courie
1320 Main Street, 10th Floor
P. O. Box 12519
Columbia, SC 29211


Jennifer B. Lee

June 25, 2013

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Dr. Joseph G. Carew and Dr. Karen Carew, Appellants,

v.

RBC Centura Bank, RBC Bank as successor in interest of
RBC Centura Bank, Clifton W. Hall, Hall Builders, LLC,
Mid Carolina Appraisal Company, LLC, and Teresa
Addy Haltiwanger, Defendants,

Of Whom RBC Bank is the Respondent.

Appellate Case No. 2012-212283

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2014-UP-069
Heard December 10, 2013 – Filed February 19, 2014

AFFIRMED

Eric G. Fosmire, The Fosmire Law Firm, LLC, of
Columbia, for Appellants.

Thomas W. McGee, III and Michael J. Anzelmo, Nelson
Mullins Riley & Scarborough, LLP, both of Columbia,
for Respondent.

PER CURIAM: Joseph and Karen Carew filed negligence and breach of contract claims against RBC Bank, the lender that financed the construction of the Carews' home. We affirm the circuit court's granting of summary judgment on both claims.

The Carews allege RBC acted negligently in monitoring the construction of their home, which resulted in disbursal of loan proceeds in an amount greater than the completion percentage of the home, and construction defects. We find their negligence claim fails as a matter of law because the Carews cannot establish RBC owed them a legal duty of care. *See Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007) (stating summary judgment is warranted when the non-moving party "fails to . . . establish the existence of an element essential to the party's case"); *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006) (providing that "[i]n a negligence action, a plaintiff must show . . . the defendant owes a duty of care to the plaintiff"); *Roundtree Villas Ass'n v. 4701 Kings Corp.*, 282 S.C. 415, 422, 321 S.E.2d 46, 50 (1984) (holding periodic inspections during construction are "fundamentally for the protection of the lending institution and do[] not impose upon the lending institution a duty to see that the builder is getting a job free of defects"); *Regions Bank v. Schmauch*, 354 S.C. 648, 669-70, 582 S.E.2d 432, 443-44 (Ct. App. 2003) (holding a lender did not owe a borrower a duty of care "in the regular course of its business").

Regarding the Carews' assertion that RBC was negligent for "paying for the same construction draws twice," RBC later reimbursed the Carews in full, and thus we find the Carews' claim fails as a matter of law because they presented no evidence to prove they suffered any injury from this conduct. *See Hansson*, 374 S.C. at 357, 650 S.E.2d at 71; *Madison*, 371 S.C. at 135, 638 S.E.2d at 656 (stating "[i]n a negligence action, a plaintiff must show . . . [he or she] suffered an injury or damages").

Turning to the provisions of the contract, we initially find the record supports that the agreement was not an adhesion contract, nor were its terms unconscionable. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 26-27, 644 S.E.2d 663, 669 (2007) (defining an adhesion contract as "a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable"); *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004) (defining unconscionability "as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest

person would accept them"). The loan agreement in this case is typical of those used by other lenders, and the Carews presented no evidence and cite no case law to prove the terms of the agreement were unconscionable. *See Simpson*, 373 S.C. at 27, 644 S.E.2d at 669 (stating an adhesion contract is not "per se unconscionable"). The Carews expressly agreed to pay for the services of the appraisal company, and we find it is a reasonable fee to incur in exchange for RBC extending the construction loan to them. Thus, we find the contract is enforceable.

We further find the record supports that the agreement created no obligation on RBC in regard to construction inspections. Specifically, we find sections 7.2.2 and 8.4 of the agreement establish that (1) RBC had no obligation to conduct inspections, (2) all inspections were for RBC's sole benefit, and (3) the Carews had no right to rely on any such inspections. The Carews argue section 8.4 is unenforceable because it is "inconspicuous boilerplate language" that "was not specifically bargained for." We find this argument unpersuasive because (1) section 8.4 is not, in fact, a waiver provision because the Carews had no existing right to rely on the inspections; (2) the Carews cite *no applicable* case law to support their argument; and (3) we do not see how the Carews can argue the provision was not known to them or non-negotiable when Joseph Carew admitted he did not read the agreement. *See Wachovia Bank v. Blackburn*, 394 S.C. 579, 585, 716 S.E.2d 454, 458 (Ct. App. 2011) ("A person signing a document is responsible for reading the document and making sure of its contents." (citation omitted)).

In regard to the Carews' breach of contract claim, we affirm the court's finding that sections 7.2.2 and 8.4 of the agreement placed no obligations on RBC, "and, therefore, cannot support a claim for breach of contract." We do not address the court's specific findings regarding other provisions of the agreement, as the Carews do not assert on appeal that the trial court erred in making these findings. *See Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 557, 684 S.E.2d 779, 783 (Ct. App. 2009) ("Because [the appellant] does not argue these issues on appeal, they are considered abandoned."). Although the Carews argue RBC is liable because "its role was more than that of a mere lender," we find this argument unpreserved, as the Carews did not assert this argument to the trial court. *See B & A Dev., Inc. v. Georgetown Cnty.*, 372 S.C. 261, 271, 641 S.E.2d 888, 894 (2007) (stating an issue not raised to and ruled upon by the trial court is unpreserved).

For the reasons stated above, we **AFFIRM** the circuit court's granting of summary judgment as to the Carews' negligence and breach of contract claims.

FEW, C.J., PIEPER and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON
COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2012-212283

Dr. Joseph G. Carew and Dr. Karen Carew, Appellants,

v.

RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank,
Clifton W. Hall, Hall Builders, LLC, Mid Carolina Appraisal Company, LLC, and
Teresa Addy Haltiwanger, Defendants,

Of Whom, RBC is the Respondent.

PETITION FOR REHEARING PURSUANT TO RULE 221, SCACR

Petitioner hereby moves to the court to rehear this appeal pursuant to Rule 221, SCACR, on the grounds that the court in Unpublished Opinion No. 2014-UP-069 overlooked or misapprehended the following:

- I. The court failed to recognize that there was evidence in the record that RBC Bank was aware of defects yet continued to disburse loan proceeds to the builder. The court further failed to recognize the issue was preserved in arguments below because Appellants extensively argued RBC Bank's knowledge of

defects due to RBC's inspections.

- II. The court failed to recognize that evidence in the record demonstrated that RBC Bank admitted to making mistakes in disbursement of the loan proceeds, which evidence should, at a minimum, have precluded summary judgment on the grounds it demonstrates RBC Bank violated its duty of good faith and fair dealing under the construction loan agreement
- III. The court failed to recognize evidence in the record that RBC Bank negligently disbursed loan proceeds in excess of the percentage of completion of the home, which should have precluded summary judgment.
- IV. The court failed to recognize that the Appellants were damaged by RBC Bank's disbursal decisions since those decisions allowed the builder to take funds, abandon the job, and cause Appellants to find a substitute builder to repair damage and complete the project at a cost of \$583,681.93.

ARGUMENTS AND AUTHORITIES

- I. **The court failed to recognize that there was evidence in the record that RBC Bank was aware of defects yet continued to disburse loan proceeds to the builder. The court further failed to recognize the issue was preserved in arguments below because Appellants extensively argued RBC Bank's knowledge of defects due to RBC's inspections.**

In the record below, Appellants provided evidence that RBC Bank acted as more than a mere lender. Evidence in the form of the inspection records (R. 538-539) established that RBC Bank had knowledge of defects yet continued to disburse construction loan proceeds. By arguing that RBC made decisions to disburse funds for the benefit of the

builder at Christmas time (R. 136-137, 318-320 and 334-335) despite the level of completion of the home, Appellants established evidence that RBC conducted itself as more than a mere lender, which should have precluded summary judgment. If a lender is aware of defects it may be liable under *Kennedy v. Columbia Lumber and Manufacturing Company*, 384 S.E. 2d 730, at 734 (1989), *Lane v. Trenholm Building Company*, 229 S.E. 2d 728 (1976), and *Kirkman v. Parex, Inc.*, 632 S.E. 2d 854 (2006). The argument that RBC Bank acted as more than a mere lender is preserved in the underlying record.

II. The court failed to recognize that evidence in the record demonstrated that RBC Bank admitted to making mistakes in disbursement of the loan proceeds, which evidence should, at a minimum, have precluded summary judgment on the grounds it demonstrates RBC Bank violated its duty of good faith and fair dealing under the construction loan agreement.

RBC Bank admitted to making mistakes in disbursing loan proceeds. (R. 226-227, 275-276 and 278-279). The evidence of RBC Bank's mistakes, and its admission that it made mistakes, should have been viewed in a light most favorable to the Appellants. At a minimum, the evidence demonstrates a breach of RBC Bank's implied covenant of good faith and fair dealing under the construction loan agreement. At the maximum, the court overlooked that even if it is presumed that RBC had no duty, once RBC undertook to act and make discretionary decisions, then such acts must be reasonable. *Madison v. Babcock Ctr., Inc.*, 638 S.E. 2d 650, at 657 and *Restatement (Second) of Torts* §§324 -325 (1965). The evidence of mistaken disbursements and RBC's admission of mistakes was overlooked by the court in considering the reasonableness of RBC Bank's acts.

III. The court failed to recognize evidence in the record that RBC Bank negligently disbursed loan proceeds in excess of the percentage of completion of the home, which should have precluded summary judgment.

The record demonstrates that RBC disbursed loan proceeds in excess of the percentage of completion of the home (R. 296 and 538-539). RBC Bank explained that monitoring the percentage of completion was a piece of the disbursal decision (R. 227- 233).

When RBC chose to act, the court should have considered the reasonableness of those actions. Even where one has no duty to act, if they choose to act, they must do so with due care, *Russell v. City of Columbia*, 406 S.E. 2d 338 (1991). Evidence of the improper disbursements should have been viewed most favorably for the Appellants and precluded summary judgment on the negligence claim when the court considered the reasonableness of RBC Bank's actions.

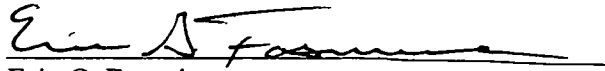
IV. The court failed to recognize that the Appellants were damaged by RBC Bank's disbursal decisions since those decisions allowed the builder to take funds, abandon the job, and cause Appellants to find a substitute builder to repair damage and complete the project at a cost of \$583,681.93.

The evidence in the record establishes that the Appellants incurred \$583,681.93 in additional expenses once the builder received funds from RBC Bank and then abandoned the job (R. 540). In the court's decision, it states that the Appellants "...presented no evidence to prove they suffered any injury from this conduct." While it is true that RBC Bank restored the improperly disbursed funds, the opinion overlooks that it was the fact of RBC's failure to properly disburse that allowed the builder to take the funds and leave the project.

CONCLUSION

For the foregoing reasons, the Appellants request that the court rehear this appeal and consider the evidence it overlooked in rendering its opinion. If the court does not rehear this appeal and reconsider its opinion, then this case stands for the position that a construction lender can mistakenly disburse all the funds available under the loan agreement, without the defective building being completed, and then hold the borrower liable for the entire loan amount without any borrower recourse.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric G. Fosmire", written over a horizontal line.

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ATTORNEYS FOR APPELLANTS

March 5, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

Case No. 2010-CP-32-00442

Dr. Joseph G. Carew and Dr. Karen Carew, ... Appellants,

v.

RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank, Clifton W. Hall, Hall Builders, LLC, Appraisal Team of Mid Carolina, LLC, and Teresa Addy-Haltiwanger, Defendants,

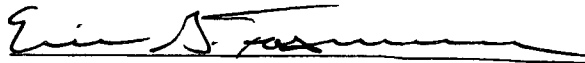
Of Whom, RBC Bank, is the Respondent.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing of the Appeal Pursuant to Rule 260, SCACR by hand-delivering a copy of it on the 5th day of March, 2014 addressed to Respondents attorney of record,

Thomas William McGee, III
Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201
Attorney for Respondents

March 5, 2014


Eric G. Fosmire
Post Office Box 153
Columbia, South Carolina 29202
(803) 764-4405
Attorneys for Appellants

The South Carolina Court of Appeals

Dr. Joseph G. Carew and Dr. Karen Carew, Appellants,

v.

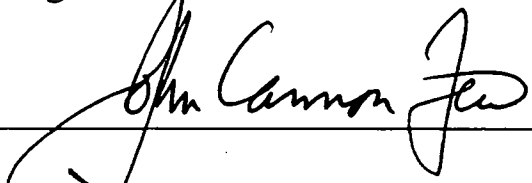
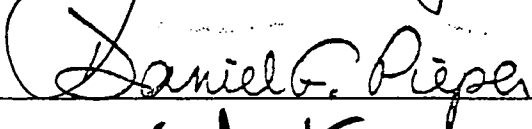
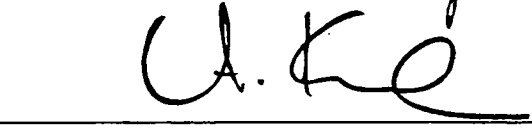
RBC Centura Bank, RBC Bank as successor in interest of
RBC Centura Bank, Clifton W. Hall, Hall Builders, LLC,
Mid Carolina Appraisal Company, LLC, and Teresa
Addy Haltiwanger, Defendants,

Of whom RBC Bank is the Respondent.

Appellate Case No. 2012-212283

ORDER

After careful consideration of the Appellants' petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	C.J.
	J.
	J.

Columbia, South Carolina

FILED

March 21, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2014-UP-069 (S.C. Ct. App. filed Feb. 19, 2014)

Dr. Joseph G. Carew and Dr. Karen Carew,

Appellants,

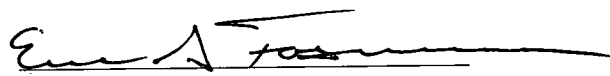
v.

RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank,
Clifton W. Hall, Hall Builders, LLC, Mid Carolina Appraisal Company, LLC, and
Teresa Addy Haltiwanger, Defendants,

Of Whom, RBC is the Respondent.

PROOF OF SERVICE

I certify that I have served the Appendix for the Petition for Certiorari upon the Respondent by delivering a copy to its attorney Thomas Wm. McGee, III, at his office at Nelson Mullins Riley & Scarborough, 1320 Main Street, 17th Floor, Columbia, South Carolina 29201, on April 21st, 2014.


Eric G. Fosmire
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Attorney for Petitioners

April 21st, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2014-UP-069 (S.C. Ct. App. filed Feb. 19, 2014)

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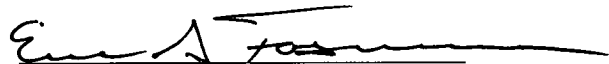
v.

RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank,
Clifton W. Hall, Hall Builders, LLC, Mid Carolina Appraisal Company, LLC, and
Teresa Addy Haltiwanger, Defendants,

Of Whom, RBC is the Respondent.

PROOF OF SERVICE

I certify that I have served the Appendix for the Petition for Certiorari upon the Respondent by delivering a copy to its attorney Thomas Wm. McGee, III, at his office at Nelson Mullins Riley & Scarborough, 1320 Main Street, 17th Floor, Columbia, South Carolina 29201, on April 21st, 2014.



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Attorney for Petitioners

April 21st, 2014