

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Case No 2008-CP-10-00069

Charles L Measter and Barbara P Measter, Appellants/Respondents

v

Dudley N Carpenter and Jane G Carpenter, Respondents/Appellants

RECORD ON APPEAL

D Ryan McCabe (SC Bar 16977)
Brian C Gambrell (SC Bar 68253)
Rogers Townsend & Thomas, PC
P O Box 100200
Columbia, South Carolina 29202-3200
Telephone (803) 771-7900
Fax (803) 343-7017
Email Ryan.McCabe@rtt-law.com/
Brian.Gambrell@rtt-law.com
Attorneys for Appellants/Respondents
Charles L Measter and Barbara P Measter

Thomas C Hildebrand, Jr
Haynsworth Sinkler Boyd, P A
P O Box 340
Charleston, SC 29402
Telephone (843) 720-4437
Fax (803) 722-2266
Email thildebrand@hsblawfirm.com
Attorneys for Respondents/Appellants
Dudley N Carpenter and Jane G Carpenter

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COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Case No 2008-CP-10-0069

versus

Dudley N Carpenter and Jane G Carpenter
PLAINTIFF(S)

Charles L Measter and Barbara P Measter
DEFENDANT(S)

CHECK ONE

- JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and the verdict has been rendered
- DECISION BY COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered
- ACTION DISMISSED (CHECK REASON)** Rule 12(b), SCRCP, Rule 41(a), SCRCP (Vol nonsuit)
 Rule 43(k), SCRCP(Settled), Other -
- ACTION STRICKEN (CHECK REASON)** Rule 40(j), SCRCP, Bankruptcy, Binding Arbitration,
subject to right to restore to confirm, vacate or modify arbitration award, Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
 Affirmed, Reversed, Remanded, Other
NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING THE LOWER COURT, TRIBUNAL
ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

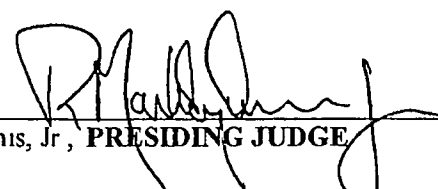
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 JULIA A. ROHIG
 CLERK OF COURT

IT IS ORDERED AND ADJUDGED See attached order (Formal order to follow)
 Statement of Judgment by the Court

Defendant's Motion for Summary Judgment is GRANTED as to the causes of action for Fraud and Negligent Misrepresentation

Defendant's Motion for Summary Judgment is DENIED as to the cause of action for Unfair Trade Practices

Dated at Charleston, South Carolina, this 3rd day of SEPTEMBER 2009


 R Markley Dennis, Jr, PRESIDING JUDGE

This judgment was entered on the _____ Day of _____, 20____, and a copy mailed first class this _____ Day
 of _____, 20____, to attorneys of record or to parties (when appearing pro-se) as follows

ATTORNEY(S) FOR THE PLAINTIFF(S)
 Thomas C Hildebrand, Jr

ATTORNEY(S) FOR THE DEFENDANT(S)
 James A Stuckey, Jr

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO 2008-CP-10-0069

Dudley N Carpenter and Jane G Carpenter,

Charles L Measter and Barbara P Measter,

PLAINTIFFS,

DEFENDANTS

CHECK ONE

- JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and a verdict rendered
- DECISION BY THE COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered
- ACTION DISMISSED (CHECK REASON)** Rule 12(b), SCRPC, Rule 41(a), SCRPC (Vol Nonsuit), Rule 43(k), SCRPC (Settled), Other
- ACTION STRICKEN (CHECK REASON)** Rule 40(j), SCRPC, Bankruptcy, Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
 Affirmed, Reversed, Remanded, Other
 NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

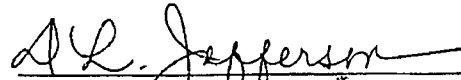
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 JULIENNE H. STRONG
 CLERK OF COURT

IT IS ORDERED AND ADJUDGED

- See attached order (Formal order to follow)
- Statement of Judgment by the Court

This case was called to trial by jury on November 2 2009 On November 4, 2009 Plaintiff advised the Court that it was withdrawing its remaining cause of action pursuant to the Unfair Trade Practices Act Defendant s Motion for Summary Judgment had previously been GRANTED as to the causes of action for Fraud and Negligent Misrepresentation pursuant to an order by the Honorable R Markley Dennis on September 3, 2009 The parties are unclear as to the interpretation of Judge Dennis's Order The Court sought Judge Dennis's guidance on the issue and he advised that all causes of action save the Unfair Trade Practices Act were dismissed however, in the interests of justice and for clarity of the record for appellate purposes Mr Hildebrand will file a Motion to Clarify Judge Dennis' order After Judge Dennis's consideration of the motion if there is remaining any cause of action the matter will be restored to the jury trial roster for trial and if none remains the matter will be ended with prejudice so that the parties may avail themselves of the appellate process

Dated at Charleston, South Carolina, this 4th day of November, 2009



 PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20, and a copy mailed first class this

Thomas C Hildebrand, Jr , Esq
ATTORNEY(S) FOR THE PLAINTIFF(S)

James A Stuckey, Jr , Esq
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Dudley N Carpenter and Jane G
Carpenter,

Plaintiffs,

vs

Charles L Measter and Barbara P
Measter,

Defendants

Case No 2008-CP-10-0069

ORDER

FILED
2010 FEB 26 AM 8 50
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

Defendants previously filed a motion for summary judgment seeking dismissal of all of Plaintiffs' causes of action. Plaintiffs' complaint states causes of action for breach of contract, breach of contract accompanied by fraudulent act, breach of South Carolina Code §27-50-10, et seq, fraud, negligent misrepresentation and violation of South Carolina's Unfair Trade Practices Act.

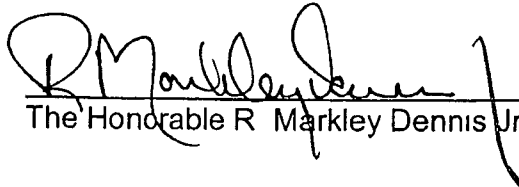
After a hearing on the Defendants' motion for summary judgment, this Court issued an Order dated September 3, 2009, which granted the Defendants' motion for fraud and negligent misrepresentation and denied Defendants' motion as to the Unfair Trade Practices claim. The Order did not expressly address or mention Plaintiffs' claims for breach of contract, breach of contract accompanied by fraudulent act, or breach of South Carolina Code §27-50-10, et seq.

My ruling on Defendants' motion for summary judgment was based on the Economic Loss Rule. As such, I dismissed the Plaintiffs' tort causes of action (for fraud and negligence misrepresentation), but did not dismiss the Plaintiffs' contract-based or

RMDJ/1

statutory causes of action. Therefore, it was my intention not to dismiss Plaintiffs' claims for breach of contract, breach of contract accompanied by fraudulent act, or breach of South Carolina Code §27-50-10, et seq.

In order to clarify this Court's Order of September 3, 2009, I hereby, pursuant to SCRPC 54(b), revise that Order nunc pro tunc and rule that the Defendants' motion for summary judgment is GRANTED only as to the Plaintiffs' causes of action for fraud and negligent misrepresentation. Defendants' motion for summary judgment is DENIED as to the Plaintiffs' causes of action for breach of South Carolina's Unfair Trade Practices Act, breach of contract, breach of contract accompanied by fraudulent act, and breach of South Carolina Code §27-50-10, et seq.


The Honorable R. Markley Dennis Jr.

February 23, 2010
Charleston, South Carolina

RMDJ/2

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON)
) CASE NO 08-CP-10-0069
 DUDLEY N CARPENTER and JANE)
 G CARPENTER,)
)
)
 PLAINTIFFS,)
)
 VS)
)
 CHARLES L MEASTER and BARBARA)
 P MEASTER,)
)
)
 DEFENDANTS)

ORDER DENYING MOTIONS
 ALTER OR AMEND

2010 APR -5 AM 9 51
 JUDGE J ARMSTRONG
 CLERK OF COURT
 FILED

Presiding Judge
 Plaintiff's Attorney
 Defendant's Attorney
 Date of Trial
 Court Reporter

Deadra L Jefferson
 Thomas C Hildebrand, Jr , Esq
 James A Stuckey, Esq
 November 2, 2009
 Anne Meyer

THIS MATTER came before the Court by way of the Defendant's Motion to Alter or Amend pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, dated November 20, 2009 and Plaintiff's Motion to Alter or Amend dated November 30, 2009¹ Both motions ask the Court to alter or amend its Order filed November 9, 2009 This Court held a hearing on these motions on February 2, 2010 Thomas C Hildebrand, Jr , Esquire and James A Stuckey, Esquire were both present at the hearing

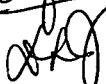
¹ Both motions were timely filed Defendant s Motion was timely filed on November 20 2009 and Defendant mailed a copy to this Court on November 23 2009 Plaintiff's Motion indicated that Plaintiff received the notice of entry of judgment on November 17 2009 The ten day filing period for the Motion to Alter or Amend would have expired on November 27 2009 but for the fact that November 27 2009 was a State holiday See S C R CIV P 6 As such the period expired on Monday, November 30 2009 and Plaintiff's Motion was timely filed on this day However this Court notes that it did not receive a copy of Plaintiff's Motion as required by Rule 59(g) of the South Carolina Rules of Civil Procedure Rule 59(g) is intended to insure that the judge is promptly notified of the filing of motions under this Rule Despite failure to comply with this Rule, the Court can still consider the matters presented in the motions and memoranda and chooses to do so See generally Gallagher v Evert 577 S E 2d 217 353 S C 59 (Ct App 2002)

STANDARD OF REVIEW

“The purpose of Rule 59, SCRCP, to alter or amend the judgment is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits ’” Pye v Estate of Fox, 369 S C 555, 565, 633 S E 2d 505, 510 (2006) (quoting Arnold v State, 309 S C 157, 172, 420 S E 2d 834, 842 (1992)) The Supreme Court recently clarified the two situations in which a Rule 59(e) motion is appropriate “A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it A party must file such motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review” Elam v S C Dept of Transp., 361 S C 9, 24, 602 S E 2d 772, 780 (2004) Additionally, “[a] party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not ” Anderson Memorial Hospital, Inc v Hagen, 313 S C 497, 498, 443 S E 2d 399, 400 (Ct App 1994) (citing C A H v L H., 315 S C 389, 434 S E 2d 268 (1993))

ANALYSIS

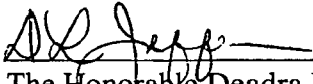
There is sufficient evidence in the record supporting the Court’s Order of November 9, 2009 and the parties have not raised adequate grounds for the Court to amend or reconsider its Order The Order notes that “Plaintiff advised the Court that it was withdrawing its remaining cause of action pursuant to the Unfair Trade Practices Act,” which is supported by the record The Order is clear and supported by the record as to all other matters, as well Further, all matters raised in the Motions to Alter or Amend were raised and ruled upon at trial

2013


CONCLUSION

Having fully considered the Plaintiff's Motion, the Defendant's Motion, the argument and memoranda on the Motions, the timeliness of the Motions, the full record and applicable law, as well as the various interests balanced by the Court at the time of the ruling, the Plaintiff's Motion to Reconsider and the Defendant's Motion to Reconsider are hereby **DENIED**

IT IS SO ORDERED



The Honorable Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

April 2, 2010
Charleston, South Carolina

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AKG

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT ON COMMON PLEAS

JUDGEMENT IN A CIVIL CASE

CASE NO 2008-CP-10-0069

Dudley N Carpenter & Jane G Carpenter
Plaintiff versus

Charles L Measter and Barbara P Measter
Defendant

FILED
2010 JUN -3 PM 3 41
JULIENNE
CLERK OF COURT

CHECK ONE

JURY VERDICT This action came before the court for a trial by jury The issues have been tried and the verdict has been rendered

DECISION BY COURT This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered

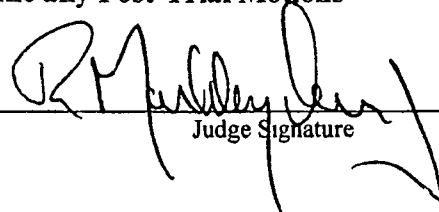
ACTION DISMISSED (CHECK ONE) Rule 12(b), SCRPC, Rule 41(a), SCRPC (Voluntary nonsuit),
 Rule 43(k), SCRPC (Settled), Other - _____

ACTION STRICKEN (CHECK ONE) Rule 40(j), SCRPC, Bankruptcy, Other- _____

IT IS ORDERED AND ADJUDGED See attached order, Statement of Judgment by Court,

We, the Jury, find for the plaintiffs against the defendants in the amount of Sixty Five Thousand Dollars (\$65,000 00) actual damages Parties will have 10 days to file any Post-Trial Motions

Dated at Charleston, South Carolina, June 3, 2010



Judge Signature 2101610
Judge Code

This judgment was entered on the ____ Day of ____ - ____, 200 ____, and a copy mailed first class this ____ Day of _____, 200 ____, to attorneys of record or to parties (when appearing pro-se) as follows

Thomas Hildebrand
Attorney(s) for Plaintiff(s)

James Stuckey
Attorney(s) for Defendant(s)

Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO 08-CP-10-69

DUDLEY N CARPENTER and)
JANE G CARPENTER,)
Plaintiffs,)

vs)

VERDICT

CHARLES L MEASTER and)
BARBARA P MEASTER,)
Defendants)

WE, THE JURY in the above-entitled action, find for the

1 ✓ Plaintiffs, in the amount of sixty five thousand
and 0/100 _____ DOLLARS (\$ 65,000 00)
actual damages

2 _____ Defendants

A. Miranda Cross
Presiding Juror

CHARLESTON, SOUTH CAROLINA

June 3, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Case No 08-CP-10 69

DUDLEY N CARPENTER and)
JANE G CARPENTER,)
Plaintiffs,)

-versus-

CHARLES L MEASTER and)
BARBARA P MEASTER,)
Defendants)

FILED
2010 OCT 15 PM 2 39
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

ORDER

Plaintiffs were awarded a jury verdict on June 3, 2010. After the verdict was announced defendants' counsel requested an additional ten days under Rule 50(e), SCRPC, to make a motion for judgment n o v. The court granted the motion and entered its judgment on June 3, 2010, that "Parties will have 10 days to file any Post-Trial Motions." The tenth day for filing the motion fell on Sunday, June 13, 2010, so pursuant to Rule 6(a), SCRPC "The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday." Accordingly, such "last day of the period so computed" extended the filing date to Monday, June 14, 2010.

On Monday, June 14, 2010, defendants' counsel prepared DEFENDANTS' MOTION FOR JUDGMENT NOV with Exhibits 1 and 2, and a copy was hand delivered and served on plaintiffs' counsel at 5 17 p m that day, as evidenced by the Certificate of Service of Alison M Loeb and

LM

letter of transmittal "VIA HAND DELIVERY" to plaintiffs' counsel

A letter of transmittal dated June 14, 2010, was also prepared to the clerk of court to file the DEFENDANTS' MOTION FOR JUDGMENT NOV, along with a copy to the trial judge to provide him a copy of the motion pursuant to Rule 50(f), SCRPC, which provides

(f) Judge to be Provided with Copy A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion

Copies of the letter and DEFENDANTS' MOTION FOR JUDGMENT NOV were mailed to the trial judge, but because the daily mail had already been picked up for that day at all Charleston post offices, and would not be picked up again until the following afternoon, defendants' counsel elected to have the motion hand delivered to the clerk of court the next morning because counsel's office is only 250 yards from the clerk of court's office and the motion would thus be filed and entered sooner than if deposited in the mail

DEFENDANTS' MOTION FOR JUDGMENT NOV with Exhibits 1 and 2, and letter of transmittal to the clerk of court were stamped as received by the clerk of court on Tuesday, June 15, 2010, at 10 39 a m , and filed The Certificate of Service evidencing service on plaintiffs' attorney on June 14, 2010, was stamped as received by the clerk of court and filed at 10 38 a m, June 15, 2010

DISMISSAL OF DEFENDANTS' MOTION FOR JUDGMENT NOV

Plaintiffs now argue that DEFENDANTS' MOTION FOR JUDGMENT NOV should be dismissed because it was not timely filed Defendants assert that their motion was timely filed under the holding of *Curtis v Blake*, 381 S C 189, 672 S E 2d 576 (2009) Since there is no question but

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that DEFENDANTS' MOTION FOR JUDGMENT NOV was served on plaintiffs' counsel within the ten day period allotted by the Court for filing post-trial motions and a copy was mailed to the presiding judge within the ten day period, plaintiffs' counsel argues that service was defective because the motion was not actually filed with the clerk of court until the morning of the eleventh day

This argument is foreclosed by the case of *Curtis v Blake*, 381 S C 189, 672 S E 2d 576 (2009) *Curtis* holds that the "filing" of the Defendants herein was timely because opposing counsel was timely served within the ten day period allotted. *Curtis* is dispositive of plaintiffs' argument

Curtis was a writ of *certiorari* to our Supreme Court. Respondent Curtis was awarded a jury verdict. Immediately following the verdict petitioner Blake requested to make post-trial motions at a later date. The trial court granted the request, stating "We'll have ten days to file any post-trial motions. And y'all can just send those to me in Spartanburg, and I will rule on those without the necessity of actual oral argument." On the tenth day following the verdict Blake served opposing counsel with a Rule 59(b) motion for a new trial by placing it in the mail, however, the motion was not actually filed with the clerk of court until five days later. Respondent claimed the motion was untimely, as plaintiffs do in this instant case, because it was not filed within the ten days allotted by the trial judge. The circuit court had ruled that the motion was timely, however, the Court of Appeals held that it was untimely.

On *certiorari* our Supreme Court considered the question whether the motion was timely filed when a copy was served by mail on opposing counsel within the ten day period allotted by the trial court. The Court held, in reversing the Court of Appeals, that, "Accordingly, we hold a

Rule 3

motion for a new trial is timely so long as it is served within the time period allotted by the trial judge We find the trial court properly held Blake's motion for a new trial was timely "

(Emphasis added)

Defendants' position in this instant case is even stronger because plaintiffs' counsel was hand delivered and served a copy of DEFENDANTS' MOTION FOR JUDGMENT NOV within the ten day period granted by the Court

MOTION TO ENLARGE TIME

Having thus found that the Court will consider DEFENDANTS' MOTION FOR JUDGMENT NOV because it was timely filed the Court does not deem it imperative to rule on Defendants' Motion to Enlarge Time, however, since Defendants have evoked the discretion of the court in order to put plaintiffs' objections to rest the Court will consider defendants' motion to enlarge the allocated filing date from June 14 to June 15, 2010, "for good cause shown" under Rule 6(b), SCRCP

"A failure to exercise discretion amounts to an abuse of that discretion *Fontaine v Peitz*, 291 S C 536, at 538, 354 S E 2d 565, 566 (1987)", *Samples v Mitchell*, 329 S C 105, 113, 495 S E 2d 213, 216 (S C App 1997)

Rule 6(b) **TIME** provides

(b) Enlargement When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the time may be extended by written agreement of counsel for an additional period not exceeding the original time provided in these rules, or the court for cause shown may at any time in its discretion (1) with or without written motion or notice order the period enlarged if request therefor is made before the expiration of the period as originally prescribed or extended or (2) upon motion made after

Amoly

the expiration of the specified period, for good cause shown, permit the act to be done. The time for taking any action under rules 60(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them. The time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order (Emphasis added)

As defendants' counsel was proceeding under Rule 50(e) in filing his post-trial motions the time for doing such may be extended under Rule 6(b), SCRCP, "for good cause shown"

In this instant case both opposing counsel and the trial judge were timely and properly furnished copies of DEFENDANTS' MOTION FOR JUDGMENT NOV. It was then filed with the clerk of court sooner than it would have been filed had it been mailed

"Appellate courts recognize - - - or at least they should recognize - - - an overriding rule of civil procedure which says whatever doesn't make any difference, doesn't matter" *E.g. Cox v Cox*, 290 S C 245, 349 S E 2d 92 (Ct App 1986) (appellant has the burden of showing that an error was prejudicial) Consistent with this heretofore unstated rule, McCall must show he was somehow harmed by having been denied a continuance "

McCall v Findley, 294 S C 1, 4, 362 S E 2d 26, 28 (S C App 1987)

DEFENDANTS' MOTION FOR JUDGMENT NOV

A Court may grant a motion for Judgment NOV only if no evidence exists to support the jury verdict, *Bishop Logging Co v John Deere Industrial Equipment Co.*, 317 S C 520, 455 S E 2d 183, 186 (Ct App 1995) The court views the evidence and all reasonable inferences in the light most favorable to the nonmoving party and must deny the motion if either the evidence yields more than one inference or its inferences are in doubt *Hilton Head Island v Skull Creek Club*, 287 S C 530, 532, 229 S E 2d 890, 891 (Ct App 1986)

There exists in every contract an implied covenant of good faith and fair dealing *Adams*

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v G J Creel & Sons, 320 S C 274, 465 S E 2d 84 (1995), Tadlock Painting Co v Maryland Cas Co., 322 S C 498, 473 S E 2d 52 (1996)

Paragraph 19 of the Agreement provided that Defendants would execute a Seller's Property Condition Disclosure Statement (A copy of the Agreement was introduced at trial as Plaintiffs' Exhibit 1) Paragraph 19 further provided that, after delivery of the disclosure statement, if Defendants were to discover any material inaccuracy in the statement, they would promptly notify the Plaintiffs

Defendants did submit a Disclosure Statement, which they never corrected, wherein Defendants represented that Defendants knew of no structural issues with the property (A copy of the Disclosure Statement which was introduced at trial as Plaintiffs' Exhibit 2) However, evidence was introduced that Defendants misrepresented to the Plaintiffs the existence of known structural deficiencies with their unit Specifically, evidence was introduced that major repairs (that actually prevented Plaintiffs from moving into the unit for four months) on account of structural issues were performed on Plaintiffs' unit right after the closing and that Defendants knew about the structural issues and the need for these repairs before the closing and even before submitting their Disclosure Statement

Herman Hatfield, the repair contractor who made the structural repairs, testified that he had two different conversations with Mr Measter before the closing about the structural repairs that were about to be made to the building in question

Additionally, at the trial, meeting minutes from the annual homeowners' meeting held one and a half months before the closing were introduced, these minutes also disclosed that structural repairs were about to start on Defendants' building Moreover, Kenneth Schneider, a

RW/s

long-time resident of the community, testified that the existence of structural issues in all of the buildings had been a matter of common knowledge shared by all the residents in the community for years and was, in any event, well known in the community long before the meeting minutes were mailed

Finally, Mrs Measter testified that she understood that she was obligated to disclose any known deficiencies related to her unit, whether the deficiencies were in the common or private elements. The evidence, as referenced above, established that the Measters knew or were aware of deficiencies with their building which they failed to disclose. In fact, the Measters were members of a class action that claimed in its pleadings that major structural deficiencies existed in all of the buildings.

Defendants argue that contract provisions regarding waiver, disclaimer and forfeiture bar Plaintiffs' claims. There is sufficient evidence to establish that the Defendants breached their contract and the implied covenant of good faith and fair dealing, and I do not find that the Plaintiffs' claims are barred by any of the cited contract provisions.

All of the above-referenced evidence enabled the jury to conclude that Defendants knew about the structural issues before submitting their Disclosure Statement, were given confirmation that structural repairs were to be commenced before the closing, and breached their contractual obligations to notify the Plaintiffs of the structural issues and the need for repairs.

IT IS THEREFORE,

ORDERED that DEFENDANTS' MOTION FOR JUDGMENT NOV was both timely served and filed and will be considered by the Court, and it is

FURTHER ORDERED that the time for Defendants' filing their DEFENDANTS' MOTION

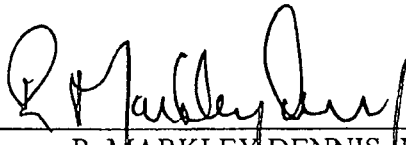
Rmf 7

FOR JUDGMENT NOV with the clerk of court is hereby enlarged to and through June 15, 2010, and

it is

FURTHER ORDERED that DEFENDANTS' MOTION FOR JUDGMENT NOV is DENIED

AND IT IS SO ORDERED



R. MARKLEY DENNIS, JR.
Circuit Judge, Ninth Judicial Circuit

Charleston, South Carolina

Oct 11, 2010

RMD/8

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
Case No 2008-CP-10-0069

DUDLEY N CARPENTER, et al

PLAINTIFF,

ORDER

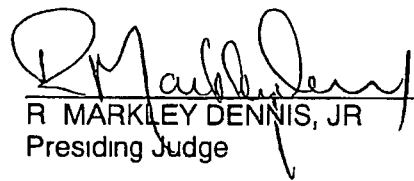
CHARLES L MEASTER and
BARBARA P MEASTER,

DEFENDANTS

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2011 APR -6 PM 2 52
JULIE J ARMSTRONG
CLERK OF COURT

This matter comes before me upon Motion for Reconsideration filed by James A Stuckey, Esquire, Attorney for Defendants, Charles L Measter and Barbara P Measter, on October 25, 2010 After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion for Reconsideration is denied,

AND IT IS SO ORDERED!


R MARKLEY DENNIS, JR
Presiding Judge

Moncks Corner, South Carolina

April 1, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Dudley N Carpenter and Jane G Carpenter,
Plaintiffs,

Case No 2008-CP-10-109

vs

SUMMONS
(Jury Trial Demanded)

Charles L Measter and Barbara P Measter,
Defendants


2008 JAN -7 PM 4 36
FILED
CLERK OF COURT
NINTH

TO DEFENDANTS ABOVE-NAMED

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the above-referenced court and on the below-signed at their office located at 134 Meeting Street, Third Floor, Post Office Box 340, Charleston, South Carolina 29402, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint

08-274

Dated January 7, 2008


Thomas C Hildebrand, Jr
HAYNSWORTH SINKLER BOYD, P A
134 Meeting Street, Third Floor
Charleston, SC 29401-2240
843 722 3366

Attorneys for Plaintiffs
Dudley N Carpenter and Jane G Carpenter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Dudley N Carpenter and Jane G Carpenter,

Case No 2008-CP-10-69

Plaintiffs,

vs

Charles L Measter and Barbara P Measter,

Defendants

COMPLAINT
(Jury Trial Demanded)

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The Plaintiffs, through their below-signed attorneys, complaining of the Defendants above-named, allege and say

1 Plaintiffs are citizens and residents of the State of South Carolina and reside in Charleston County, South Carolina

2 Defendants are citizens and residents of the State of South Carolina and reside in Charleston County, South Carolina

3 On or about March 17, 2007, Plaintiffs and Defendants executed an Agreement to Buy and Sell Real Estate for the purchase of a residence located at 1964 Marsh Oak Lane on Seabrook Island, South Carolina

4 Plaintiffs paid \$675,000 for the purchase of the residence, with the settlement taking place on July 18, 2007

5 Paragraph 19 of the Agreement to Buy and Sell Real Estate states that the Defendants will execute a Seller's Property Condition Disclosure Statement as required by South Carolina Code §27-5-10, et seq Paragraph 19 further provides that, after delivery of the

disclosure statement, if the Defendants discover any material inaccuracy, they shall promptly notify the Plaintiffs

6 As required by statute, Defendants did execute the disclosure statement. The relevant sections of the instructions for the Disclosure Statement that apply to this matter are as follows

2 You must check one of the boxes for each of the 24 questions on page 2 and 3 of this form

b If you check "No" you may be liable for making an intentional misrepresentation

d If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem

3 By signing below you acknowledge that the failure to disclose known material information about the property may result in liability

7 The relevant sections that the Defendants affirmatively and explicitly checked "No" are as follows

1 Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including

any modifications?

6 Heating and/or air conditioning?

a Heat source

b Cooling source

c Fuel source

d Approximate age of heating unit

20 Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to that property?

8 After the settlement, the Plaintiffs were about to move into the residence on August 2, 2007, when they were informed by a contractor that he was making major structural repairs to the units in the building, and the units were structurally unsound. He advised the Plaintiffs that they would be unable to occupy the residence for at least 90 to 120 days while the repairs were ongoing.

9 The Defendants intentionally deceived the Plaintiffs by improperly completing the Disclosure form and failing to subsequently correct the misrepresentations. The misrepresentations were fourfold. First, there were known major structural problems with the foundation and slab that were scheduled to be repaired. Second, the heating and air conditioning units, represented as being one half and one year old, were many years old. Third, there was active litigation involving the units that was not disclosed. Fourth, there were proposed special assessments that were discussed to fund the foundation repairs which were not disclosed to the Plaintiffs.

10 As a result of the Defendants' intentional misrepresentation to the Plaintiffs, the Plaintiffs have incurred damages which include, but are not limited to, the following

8/2/07	Repack and put belongings back into storage	\$1,569 00
8/1-12/1/07	Monthly storage fee (\$263 40/mth)	\$1,053 50
11/1/07	Replace sub-flooring and flooring	\$7,000 00
10/30/07	Assessment to repair building	\$7 515 00
12/1/07	Replace Air Handler and AC	\$5,500 00
8/1-12/1/07	Loss of use (monthly rental of \$2,400 x 4 months)	\$9,600 00
12/1/07	Diminution in value and stigma attributable to known defects and failure to disclose	\$50,000 000
		\$82,232 50
	Legal fees and attorneys fees	TBD
	Punitive Damages	TBD
	TOTAL	????

FOR A FIRST CAUSE OF ACTION

11 Plaintiffs incorporate herein the foregoing allegations contained in Paragraphs 1 through 10

12 Defendants breached their contract with the Plaintiffs for failing to disclose known problems and issues with the residence as discussed more fully above, all to the damage of the Plaintiffs, entitling Plaintiffs to actual and punitive damages

FOR A SECOND CAUSE OF ACTION
(Breach of South Carolina Code §27-50-10)

13 Plaintiffs incorporate herein the foregoing allegations contained in Paragraphs 1 through 12

14 Defendants executed a Residential Property Condition Disclosure Statement, required by South Carolina Code §27 50-10, et seq , as required by statute and Plaintiffs' contracts with the Defendants

15 Defendants knowingly failed to disclose problems and issues related to the structure as set forth in the act and form, and failed to correct their prior errors and omissions in completing the disclosure form

16 Defendants knowingly violated the statute by failing to disclose material information on the Disclosure Statement when the Defendants knew that their failure to provide the information was false, incomplete and misleading, entitling Plaintiffs to all damages caused by the false statement, and entitling Plaintiffs to their actual damages, court costs and attorneys' fees

FOR A THIRD CAUSE OF ACTION
(Fraud)

17 Plaintiffs incorporate herein the foregoing allegations contained in Paragraphs 1 through 16

18 Defendants were required pursuant to their contract and South Carolina Code §27-50-10, et seq , to disclose certain information, including information related to problems

and issues related to the structure Defendants negligently, recklessly and intentionally misrepresented information, problems and issues that related to the structure as set forth more fully above Defendants' representations were false and were material in inducing the Plaintiffs to purchase the structure Defendants knew of the falsity of their representations regarding their errors and omissions in disclosing and failing to disclose, or the Defendants made the misrepresentations with reckless disregard for the truth or falsity of the representations, Defendants made the representations intending that Plaintiffs rely and or act upon the representations, Plaintiffs did not know of the falsity of the representations of the Defendants, Plaintiffs relied on the truth of the representations of the Defendants, Plaintiffs rightfully relied on the representations of the Defendants, and, Plaintiffs suffered subsequent and proximate injuries as a result of the misrepresentations of Defendants as described herein

19 Defendants actions were reckless, willful and wanton, entitling Plaintiffs to actual and punitive damages against Defendants

AS TO THE FOURTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

20 Plaintiffs incorporate herein the foregoing allegations contained in Paragraphs 1 through 19

21 Defendants breached their contract by failing to disclose and by intentionally misrepresenting information, problems and issues that related to the residence, and such breach of contract was accompanied by the fraudulent acts as described with particularity above

22 Defendants actions were reckless, willful and wanton, entitling Plaintiffs to actual and punitive damages against Defendants

AS TO THE FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)

23 Plaintiff incorporates herein the foregoing allegations contained in Paragraphs 1 through 22

24 Defendants negligently misrepresented to Plaintiffs information relating to problems and issues that related to the residence as described with particularity above

25 Defendants had a pecuniary interest in making the false representations, and owed a duty to Plaintiffs to insure that truthful information was communicated to Plaintiff relative to the residence

26 Defendants breached their duty by failing to exercise due care with regard to the representations regarding the residence, and Plaintiffs justifiably relied on the representations of Defendants

27 As a direct and proximate result of Plaintiffs' reliance on the negligent misrepresentations of Defendants, Plaintiffs have suffered damages as described herein, entitling Plaintiffs to actual and punitive damages

AS TO THE SIXTH CAUSE OF ACTION
(Breach of South Carolina's Unfair Trade Practices Act)

28 Plaintiffs incorporate herein the foregoing allegations contained in Paragraphs 1 through 27

29 Defendants' acts, including various actions before and after execution of the Agreement to Buy and Sell Real Estate, were acts in and affecting commerce

30 Defendants acted in an unfair, unethical, oppressive and deceptive manner by making false statements in the Seller's Property Condition Disclosure Statement, by failing to disclose required information, in that Statement, and by failing to correct previously misrepresented information in that Statement

31 The actions of Defendants were violative of South Carolina's Unfair Trade Practices Act, S C Code §39-5-10, et seq entitling Plaintiffs to actual damages for breach of that Act

32 Moreover, the actions of the Defendants were willful and intentional, entitling Plaintiffs to have their actual damages trebled and their attorneys' fees paid by Defendant

DAMAGES

33 Plaintiffs incorporate herein the foregoing allegations contained in Paragraphs 1 through 32

34 As a result of the errors, acts and omissions of the Defendants described above, Plaintiffs have incurred damages including the following

- (a) Re-packing and storage fees for having to vacate the residence,
- (b) Storage fees while repairs were being made to the residence,
- (c) Replacement of sub flooring and flooring and all related damages,
- (d) Payment of special assessments to repair the building and their residence,
- (e) Cost to replace the air handler and air conditioning units,
- (f) Loss of use of the structure,
- (g) Diminution in value and stigma attributed to the residence,
- (h) Legal fees, court costs and attorneys' fees,

(1) And, punitive damages

WHEREFORE, Plaintiffs pray for an Order of this Honorable Court awarding them actual and consequential damages, attorneys' fees, costs and expenses, punitive damages for Defendants' reckless, willful and wanton acts, treble damages, and for such other and further relief as this Court may deem just and proper

Dated January 7, 2008



Thomas C Hildebrand, Jr
HAYNSWORTH SINKLER BOYD, P A
134 Meeting Street, Third Floor
Charleston, SC 29401-2240
843 722 3366

Attorneys for Plaintiffs
Dudley N Carpenter and Jane G Carpenter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
 FAMILY COURT

DUDLEY N CARPENTER, et al
 Plaintiff

vs

CHARLES L MEASTER and
BARBARA P MEASTER,
 Defendant

CASE NO 08-CP-10-69

**MOTION INFORMATION FORM
AND COVER SHEET**

check box above indicating submitting party

<u>Name, S C Bar No and address of plaintiff's attorney</u> Thomas C Hildebrand, Jr PO Box 340 Charleston, SC 29402 telephone 722-3366 e mail	<u>Name, S C Bar No and address of defendant's attorney</u> JAMES A STUCKEY SC Bar 5413 123 MEETING STREET CHARLESTON, SC 29401 telephone 843 577 9323 e mail jstuckey@stuckeylaw.com
fax 722-2266 other	fax 843 577 3635

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

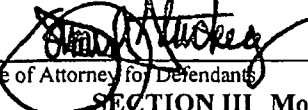
SECTION I Hearing Information

Nature of Motion Ratify Judge Markley Dennis' Order dated September 3, 2009
Estimated Time Needed Court Reporter Needed YES / NO

SECTION II Motion Type

- Written motion attached
- Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order



Signature of Attorney for Defendants

November 2, 2009
Date submitted

SECTION III Motion Fee

- PAID - AMOUNT \$25 00
- EXEMPT (check reason)
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse of Abuse and Neglect
 - Indigent Status State Agency v Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRCP)
 - Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter _____
 - Other

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order
- Other

JUDGE
CODE Date

CLERK'S VERIFICATION

Collected by _____
(print name)

DATE FILED

- MOTION FEE COLLECTED _____
- CONTESTED - AMOUNT DUE _____

SCCA/233 (01 03 03)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Case No 08-CP-10-69

DUDLEY N CARPENTER and)
JANE G CARPENTER,)

Plaintiffs,)

-versus-)

CHARLES L MEASTER and)
BARBARA P MEASTER,)

Defendants)

MOTION

FILED
2009 NOV -2 AM 9 14
JULIE J ARNSTRONG
CLERK OF COURT
BY _____

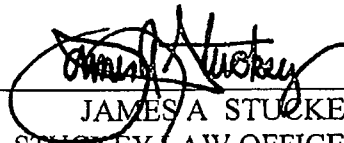
09-018294

TO THE HONORABLE DEADRA L JEFFERSON
Chief Administrative Judge, Ninth Judicial Circuit

Defendants CHARLES L MEASTER and BARBARA P MEASTER move the Court to ratify and confirm the summary judgment Order of The Honorable R Markley Dennis, Jr dated September 3, 2009, granting defendants' Motion for Summary Judgment "as to the causes of action for Fraud and Negligent Misrepresentation" as to plaintiffs' First Cause of Action (failing to disclose known problems and issues), Second Cause of Action (Breach of South Carolina Code § 27-50-10), Third Cause of Action (Fraud), Fourth Cause of Action (Breach of Contract Accompanied by Fraudulent Act), and Fifth Cause of Action (Negligent Misrepresentation) on the grounds that summary judgment was entered on those causes of action and are no longer in issue, so that the trial will proceed only on the Sixth Cause of Action (Breach of South Carolina's Unfair Trade Practices Act) as ordered by Judge Dennis that

“Defendants’ Motion for Summary Judgment is DENIED as to the cause of action for Unfair Trade Practices ”

Respectfully moved,



JAMES A. STUCKEY
STUCKEY LAW OFFICES, LLC
123 Meeting Street
Charleston, SC 29401
843-577-9323
Email jstuckey@stuckeylaw.com
Facsimile 843-577-3635

Attorney for Defendants

November 2, 2009'

Charleston, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARELSTON)

Dudley N Carpenter and Jane G Carpenter)

CASE NO
08-CP-10-0069

Plaintiff)

v)

MOTION INFORMATION FORM
AND COVER SHEET

Charles L Measter and Barbara P Measter)

Defendants)

Plaintiff's Attorney Thomas C Hildebrand, Jr Bar No 2501 Address Haynsworth Sinkler Boyd, PA PO Box 340 Charleston, SC 29402 phone 843 720 4437 fax 843 722 2266 email thildebrand@hsblawfirm.com	Defendant's Attorney James A Stuckey, Bar No Address Stuckey Law Offices, LLC 123 Meeting Street Charleston, SC 29401 phone 843 577 9323 fax 843 577 3635 e-mail jstuckey@stuckeylaw.com other
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I Hearing Information

Nature of Motion Notice and Motion to Alter or Amend Judgment
 Estimated Time Needed Court Reporter Needed YES / NO

SECTION II Motion Type

- Written motion attached
 Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order


 Signature of Attorney for Plaintiff / Defendants

November 30, 2009
 Date submitted

SECTION III Motion Fee

- PAID - AMOUNT \$25
 EXEMPT (check reason) Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court, or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter
 Other

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order
 Other

JUDGE _____

CODE _____ Date _____

CLERK'S VERIFICATION

Collected by _____

Date Filed _____

- MOTION FEE COLLECTED _____
 CONTESTED - AMOUNT DUE _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Dudley N Carpenter and Jane G
Carpenter,

Case No 2008-CP-10-0069

Plaintiffs,

vs

Charles L Measter and Barbara P
Measter,

Defendants

**NOTICE AND MOTION TO ALTER OR
AMEND JUDGMENT**

2009 NOV 30 PM 4:50
JULIE J ARMSTRONG
CLERK OF COURT

FILED

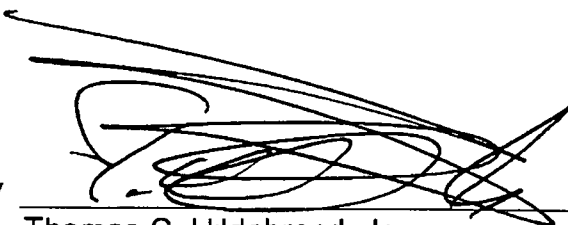
YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, Dudley N Carpenter and Jane G Carpenter, will move before this Honorable Court at a time and place to be arranged by the Court and counsel to respectfully request that the Honorable Deadre Jefferson alter or amend pursuant to SCRCP 59(e) her Order and Judgment dated November 4, 2009 of which Plaintiffs received written notice of entry on November 17, 2009 Plaintiffs request that the Court rule that the previous Form 4 Order of the Honorable R Markley Dennis, Jr dated September 3, 2009, dismissed only two of Plaintiffs' claims in this case, those being for Fraud and Negligent Misrepresentation

Plaintiffs make this motion on three grounds first, the Order of September 3, 2009 does not on its face dismiss the causes of action for breach of contract, breach of contract accompanied by a fraudulent act, and breach of S C 27-50-10, et seq (these three causes of action are hereinafter collectively referred to as the "Contract Causes of Action), second, at best, the Order of Judge Dennis is ambiguous, and therefore the

Court should not have ruled that the Order dismissed Plaintiffs' Contract Causes of Action, and, third, reference to the record makes it clear that Judge Dennis did not intend to dispose of the causes of action for Contract Causes of Action in his Form 4 Order

This motion will be supported by the pleadings, Plaintiff's prior Memorandum in Opposition to Defendants' Motion for Summary Judgment (with exhibits), the statutory and case law applicable hereto, memoranda, depositions or other materials which may be presented to the Court prior to a hearing on this matter. Plaintiffs' motion will also be supported by the transcripts of record before Judge R. Markley Dennis, Jr. dated July 6, 2009 (attached as Exhibit "A") and the transcripts of record before Judge Deadre L. Jefferson dated November 2, 2009 (attached as Exhibit "B") and November 4, 2009 (attached as Exhibit "C")

November 30, 2009

By 

Thomas C. Hildebrand, Jr.
HAYNSWORTH SINKLER BOYD, P A
134 Meeting Street, Third Floor
Charleston, SC 29401-2240
843 720 4437 (direct dial)
thildebrand@hsblawfirm.com

Attorneys for Plaintiffs
Dudley N. Carpenter and Jane G. Carpenter

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Plaintiffs' Notice and Motion to Alter or Amend Judgment has been served upon the following counsel of record via electronic mail, facsimile and by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this
November, 2009

James A Stuckey, Jr , Esq
Stuckey & Murphy Law Offices, LLC
123 Meeting Street
Charleston, SC 29401

FILED
2009 NOV 30 PM 4 20
CLERK OF COURT
J. ARISTRONG

Lauren A. Heuss

Lauren A Heuss, Legal Secretary
HAYNSWORTH SINKLER BOYD, P A
134 Meeting Street, Third Floor
Charleston, South Carolina 29401-2240
Telephone 843 722 3366

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
Dudley N Carpenter and Jane G)	
Carpenter,)	
)	
Plaintiffs,)	
)	
vs)	Case No 08-CP-10-0069
)	
Charles L Measter and Babara P)	
Measter,)	
)	
Defendants)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned case was held on July 6, 2009, before The Honorable R Markley Dennis, Jr in Courtroom 4B of the Charleston County Courthouse 100 Broad Street, Charleston South Carolina attended by Counsel, as follows

APPEARANCES

Tom Hildebrand, Jr , Esq
HAYNSWORTH SINKLER BOYD
P O Box 340
Charleston, SC 29401-2240
Appearing for Plaintiffs

James A Stuckey, Esq
STUCKEY LAW OFFICES, L L C
123 Meeting Street
Charleston, SC 29401-2217
Appearing for Defendants

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island South Carolina 29457
dGarrison@sccourts.org

THE COURT Let me state for the record that you may rely fully on your memoranda for the positions taken I'll be delighted to hear from you

MR STUCKEY Thank you, Your Honor, may it please the Court I am Jim Stuckey, James A Stuckey, and I represent the two defendants in this action, Charles and Barbara Measter, who were sellers of a condominium out at Seabrook Island to the two plaintiffs, Dudley Carpenter and Jane Carpenter The Carpenters have filed a six cause of action Complaint alleging the usual six causes of action that arise from negligence, alleged negligence, misrepresentation, unfair trade practices, breach of contract, fraud, breach of contract accompanied by a fraudulent act, etcetera

The defendants are before the court today on a Motion for summary judgment Believe it or not, and amazingly, I assert to you that there are almost exclusively questions of law involved and not questions of fact Of course we're very familiar with the Rule 56 mandates on that

They have alleged six causes of action breach of contract accompanied by fraudulent, fraud, negligent misrepresentation, unfair trade practices, breach of contract, breach of the Residential Disclosure Statement

Your Honor, we say that we're entitled to summary

judgment on the tort causes of action, which are fraud, negligent misrepresentation and Unfair Trade Practices Act under the Moss doctrine. Even under the Moss doctrine, as Your Honor well know, it provides that when you allege only economic loss and there is a contract involved, then your remedy is under the contract and under the provisions of the contract you can't turn around and sue for tort.

That is true if there is no personal injury involved and I believe the recent *Colleton Preparatory School* case said that unless there is a threat of serious personal injury. None of that is here.

So we think the three -- the two causes of action, three causes of action -- for fraud, for negligent misrepresentation and for unfair trade practices -- go out and that the exclusive remedy of plaintiffs in this case is to proceed under the contract.

Breach of contract accompanied by fraudulent act of course is denoted as a contract cause of action and not an equitable cause of action.

So we think those three tort causes of action should be dismissed and the plaintiff can then allegedly go forward on his remaining three causes of action.

We think that he is barred on those also, Your Honor, if he is proceeding under the contract by the clear, unequivocal

terms of the contract between the parties. The contract provided that there was a waiver provision, in paragraph 19(b) and it said that the plaintiffs should conduct an inspection. Now, it's specific and clear as to the fact that an inspection should be conducted. The plaintiffs in this action, Your Honor, conducted not one, not two, not three, not four but basically five different inspections.

In fact, they had a professional inspection team called The Home Team that they paid \$290 to, to come in on June the 5th accompanied by Jane Carpenter, who is one the plaintiffs, and she walked the property with them. They gave a clean bill of health on that, didn't find any problems. They went underneath the building, because they pointed out that the vapor barrier needed to be replaced and there was debris under the building. So clearly they inspected under the building, found no structural damage.

They got a \$400,000 loan from Bank of America and they did an inspection on it. As asserted in the affidavit of Barbara Measter, they called in another inspection team. So there were four or five inspections done on it.

Paragraph 19(b) of the contract stated that any repairs that were called to the attention of the sellers would be done by the sellers and that that would be complete by June 8th. Remember that the inspection was done on June 5th by The Home Team.

That provision provided that the sellers would be notified within forty-eight hours after any inspection and "time is of the essence"

That if there was -- that if there were any provisions or problems with the structure or with the air-conditioner or with the heating or with the many enumerated items then the plaintiffs would waive all rights, under Paragraph 19(b)

In addition there was a paragraph, Paragraph 19(e), which provided for repairs, saying that the heating system, the air condition system, whether or not the house would be structurally sound would be checked by the purchasers and any costs of those items would be paid by the sellers, and that it was an obligation of the seller to terminate the -- the obligations of the sellers for that were terminated on the day of the closing. So they are proposing, under the terms of the contract, that their obligation to make repairs would cease and would terminate

That provision also provided that the buyers could accept the property in its "present condition". So by accepting the property, going forward with it and not notifying the sellers, we submit that they waived that and they accepted the property in its present condition

Paragraph 19(h), which was a disclaimer, said that the "buyer understands that the seller gives no guarantees and no

warranties, express of implied, that all of those are hereby disclaimed" with the proviso that you had the inspection, you had the repairs, you had the other provisions of the contract. It basically says, you know, that with these safeguards then you're waiving everything else. So 'we aren't giving you any assertion or any guarantee or warranty to anything else other than as stated in the contract.'

So we think by those provisions, Your Honor, that the plaintiffs are limited to the provisions of the contract, the claim under the contract, and that the contract clearly provides that they have waived, they have disclaimed and, accordingly, do not have any remedy under the contract.

THE COURT: Okay. Thank you, Mr. Stuckey. Mr. Hildebrand?

MR. HILDEBRAND: Thank you, Your Honor. I am Tom Hildebrand, I represent the plaintiffs, Mr. and Mrs. Carpenter.

What happened is that we signed the contract to purchase a townhouse sort of structure at a project on Seabrook Island. The contract provided that the defendants would sign -- it specifically incorporates the Uniform Residential Disclosure Statement, and they signed that. The disclosure statement said that defendants were unaware of any structural problems, any

leakage problems, any roof problems or any lawsuits related to the house

We had the house inspected, they didn't find problems. We closed on the house and two weeks after we closed my clients were ready to move in, they got the moving truck up there and a contractor walks up to them and says 'You'all can't move in.' They said, 'why not?' He said 'there are major structural problems with these buildings, they are going to have to be repaired and you're going to be out for three to four months.'

So naturally my people were scratching their, saying 'What on earth is going on here? How could the Measters not know at the time that we closed that there are major problems and that these major repairs are been scheduled?'

They came to me, we've done some discovery and found out that there has been a lot of litigation over this particular project over the years. In fact, the Measters were members of a class action where members of the HOA had sued the board saying, 'you'all have not properly pursued your remedies' because of some roof leaks and some other problems with the structure. They were members of that class. After they closed they got fifteen (\$15,000), nineteen (\$19,000) thousand dollars as their portion of the settlement of that

We also discovered that six weeks prior to the

closing the annual meeting of the regime was held, minutes were taken and then mailed out afterwards that said, 'We've got problems with the buildings. The next ones to be fixed as Building A', which is where our unit is located, and 'we are going to start on those right away.' That 'they've got problems with leaks through the chimneys, windows,' so on, such and forth

We also -- I took Mrs Measter's deposition. Asked, 'Were you aware of any problems?' She said, 'Well, we did know that the windows leaked and that the regime was scheduled to be -- to remove and replace them, but I didn't think that we should put that on the disclosure, because they were going to be fixed by the regime.'

Also, we talked to the contractor who submitted an affidavit. We said, 'Sir, do you have any knowledge that the Measters have had any problems?' He said, 'Well, as a matter, I do. I remember Mr Measter specifically, when I was doing my preliminary work, walking out and saying 'What's up?' I said that 'we have some major problems with these buildings, we're going to have to fix them.' He said, 'Well, it ain't my problems, because I've sold my unit. I am going to be moving out.'

In light of all that, we think that there's sufficient evidence to show that the Measters did have actual knowledge

There is certainly conflicting evidence that the regime was aware of the problems, repairs started right when we closed

I don't think we're limited only to our contract's causes of action. We've cited some case law in our brief that if there are mis-representation then the courts have held that "as-is" clauses and disclaimer clauses are not barred by the parole evidence rule. Here the contract specifically encloses references to the Uniform Disclosure Act and says that if you're aware of any of these problems that you have to put them down, that if you don't put them down initially but then become aware of problems, you've got to tell the purchasers.

I would submit, Your Honor, that we are not limited only to our contract remedies and that there is certainly sufficient evidence to go to a jury that the Measters knew of problems and failed to disclose them.

THE COURT: What are your damages, that aren't tied to the economic loss?

MR. HILDEBRAND: The damages were not an issue in their Motion for summary judgment. The reasons that they articulate -- it's a good Motion and I appreciate the depth Mr. Stuckey went into to state what they are. I did not know that the damages is something that they were claiming. One of the damages certainly is that we've lost the value of our unit or lost

the use of our unit for four months while these repairs were being made We had a leaky -- (pause) I'm not prepared to answer that, Your Honor I do know that were ---

THE COURT That's the one issue concerns me, and I've got to revisit it Every time that I do it I think that I have a clear understanding of it and then I don't have one after I read it a little bit but -- in fact, I think your partner first caught me in one of those in '97, economic loss issues That's a major concern

What is the damage from the fraud that is not existing in your contract?

MR HILDEBRAND Well, Your Honor, I think if that ---

THE COURT It has to be something else, I think, from the way that I read that with everything tied to a contractual situation That's where your cause of action is because there is no -- there is no tort, *per se*

MR HILDEBRAND But I think the parole -- that the case law is that if you've got -- sorry, I didn't mean to interrupt you

THE COURT I don't have any problem with the parole evidence and that sort of -- getting around that But, again, if it deals with the remedies then the remedy is breach of contract -- breach of contract with fraudulent intent may be clearly there

Would that not entitle you to punitive damage, breach of contract with fraudulent intent?

MR HILDEBRAND It might but I don't think ---

THE COURT See, that's what I'm saying You have -- your remedy is there I just don't -- I don't see it as a fraud action I'll look at the memos but that gives me some concern I don't quarrel with the misrepresentation but that clearly is a breach of contract because, as you stated, the contract itself says that you're going to disclose it ---

MR HILDEBRAND Yes, sir

THE COURT --- by incorporating that document

MR HILDEBRAND Yes, sir

THE COURT There's no question -- if that's established there is a breach of contract Now the question is what is the damages going to be Certainly -- everything that you've talked about to me, just right off the bat without thinking about it, though maybe I'm missing something, flows as a natural damage from a breach of contract I mean, the value, the loss to you for what you thought you were getting versus what you ultimately got

Mr Stuckey, what about the time when they had to spend renting some other place?

Is that -- that may be -- that may get them

over the hurdle

MR STUCKEY I don't think so, Your Honor

THE COURT Okay I didn't think that you

would

MR STUCKEY I'll be glad to hand up to the court
-- one of the Federal judges did a good synopsis on that, I think
it's a plat line case out of Myrtle Beach Judge Traxler, I believe
I have the case, I don't have it right at-hand

THE COURT That's all right, we can get it He
itemizes about four cases talking about -- and basically he says
that if it all flows from the benefit of the bargain then it is
encompassed by the contract

THE COURT I don't quarrel with --
I understand the economic If that is your sole loss, then there's
no question as I understand the case law that it is ---

MR STUCKEY I think that everything that he is
claiming, Your Honor, clearly is encompassed by the economic
loss doctrine

THE COURT Okay

MR STUCKEY I think everything
Would Your Honor allow me to mention a couple of other things?

THE COURT Sure

MR STUCKEY I think most of them are covered

by the memorandum that we handed up but the disclosure statement, there is no fraud or no damages flowing from the disclosure statement because the disclosure statement talks about material misrepresentations. As we point out in our memorandum, Your Honor, the law is -- well, the law of the disclosure statements is that you only divulge material things. The ---

THE COURT It's pretty material when you have knowledge that certain things -- as they've alleged that they had

MR STUCKEY The thing about it is that we don't think that the structural damages are material at all, because we've handed up the -- in fact, they aren't material because they aren't damages to the individual

THE COURT

What are they?

MR STUCKEY They are damages that have to be done by the regime because the disclosure statement says that they have to be material. The condo, the Horizontal Property Act points out that things underneath the building are, of course, not the property of the individual homeowner.

THE COURT I understand all that. The concern that I have at this stage of the game, in the light most favorable to the plaintiff, -- and, yeah, whether or not it is material, the jury may ultimately have to determine that. Clearly to me that's a

question that -- what's "material"? That term isn't as crystal clear as I think you would like for it to be. That's my concern.

I would say to you that misrepresentation, that if you knew of something and that there's evidence that they knew or should have known of something that causes me when I'm moving into my house I suddenly can't move into my house, that would be pretty material to me. That is a material misrepresentation, to me.

Now, I'm not deciding this case. I'm just simply stating, for the purposes of summary judgment, that I have -- that I think that there is an issue of fact there. But, again, that goes more towards the contract than it does the tort action because, really and truly, I think -- although you give me some concern because you're arguing on the elements of fraud rather than saying the fraud is succumbed by the economic loss, it goes out the window because of the window because of the economic loss.

MR. STUCKEY: Correct.

THE COURT: Well, if it's clear that seems to be all that you need to argue rather than whether there's all the elements of fraud.

MR. STUCKEY: I am trying to add some extra bricks to it.

THE COURT I understand

MR STUCKEY I understand that

at 4 15 in the afternoon that Your Honor isn't interested in that

THE COURT No, I'm fine with it but, again, if somebody is adding bricks to something that you don't need bricks for, I am saying that maybe I am missing something on the economic loss issue But I'll read the memorandum I understand that But I'll be happy to hear from you further

MR STUCKEY Your Honor, the main crux of the thing is that the Measters, both of whom are attorneys, have stated that they had no knowledge of it We don't think that there's any evidence in the record that tends to establish that they had any knowledge of it

Now, they have submitted an affidavit by some guy named Henry Hatfield, which was alluded to by counsel, and he said that sometime after the closing -- he says in the late summer, and we know the closing was July the 18th, 2007 Hatfield supposedly met Mr Measter in the parking lot and he said, 'we are doing some work' and he said 'Well, I'm not worried about that because I've already my unit '

But at the time that they made the disclosure statement on May 18th, 2007, then there is absolutely no evidence, we assert, in the record other than this after-the-fact

statement by Henry Hatfield that he saw -- that he had looked through the window and had saw some deflections Now, what a "deflection" is

-- but we've submitted affidavits by the Measters, we've got the depositions of the Measters, we've got an affidavit from Floyd DeAnderegg, who was the president of the homeowners association, that he knew nothing about Then we've got inspection on top of inspection on top of inspection on top of inspection that there wasn't anything wrong

THE COURT My friend, you've got a ton of weight of evidence but the one thing that I've learned after fifteen years of getting reversed a number of times on these summary judgment, and I don't know why they want to do that, they just ought to let us go ahead and do what we were trained to do as lawyers, ---

MR STUCKEY You ought to be able to rule is what you ought to do, keep us from going up the road

THE COURT That's right John Kittridge said that he was going to do that very same thing and be dadgum if he didn't move on to the Supreme Court

MR STUCKEY I saw a case the other day saying that when you are complaining budgetary restraints and so forth, then why in the world don't you let the circuit judge do their job

THE COURT I agree with you The problem that I have and what gives me concerns is this, I've got people -- lawyers -- who are party to a class action about problems and they've received money I think, in fairness, at this stage of the game that there's a reasonable inference to be drawn that somebody knew something that they should have disclosed and they didn't

I appreciate it Thank you very much I'll look at your memorandum but -- and I'll be back in touch with you

MR STUCKEY That says, 'Mr Stuckey, I've ruled Sit down '

THE COURT No, sir, I want to digest your memo I understand Mr Hildebrand's point, I think Mr Hildebrand, if there is something else that you want to supplement I -- I understand your position in this, I think I think that you've raised certain inferences but, as I understand Mr Stuckey, he is not seeking a full summary judgment, only as to certain causes of action I think therein lies maybe what I have to decide, whether or not it really is something that -- for instance, the fraud Assuming misrepresentation, did you have a right to rely on it when you did all the inspection I really think the strength of this comes in the economic loss portion, I believe I want to read those cases and look at it

Thank you, sir

MR STUCKEY Thank you, Your Honor

THE COURT Thank you very much

MR HILDEBRAND Your Honor, my only point

there would be that frequently the courts allows plaintiffs to go forward on several cases of action, particularly in a construction case where you have a developer who has a contract and they breach the contract The courts have also said that if you have ---

THE COURT I agree with you if it came about --

Bill Helms was kind enough not to raise the issue with me but I was hearing a summary judgment in Jasper County in 1997 on a termite case and I thought that there was some -- that they didn't do -- that they were negligent in doing their inspection Not according to Mr Darling There were cases that I read and I said dadgum it, he's right He is ' They were limited to the economic loss The economic loss in that situation was kind of disturbing, was what was the loss for having contracted -- didn't tell you what you would have obtained, what was the value of that

I think they had to end up replacing the house

In this case -- that case gave me concern just because I thought 'that's not right', not fair In this case your damages,

I don't think it restricts your damages, the right to be fully compensated if the causes of action survive, I don't think that there's any question about that

As he stated, you're not -- the contract, breach of contract with fraudulent intent which is basically a contract action, and there was one other that you said you would not challenge -- or your memo says that I'll read it and let you know I'll decide one day this week or next week Thank you very much

If you have that case cite, would you e-mail that case cite?

MR STUCKEY Yes, sir

THE COURT We can find it in West Law, or is it cited in West?

MR STUCKEY It's quite an epistle

THE COURT We can find it under Traxler
That's fine Out of Myrtle Beach?

MR STUCKEY The name of it, I think, was Myrtle Beach Pipeline -- something to do with a pipeline

THE COURT We'll find it Thank you, sir
Thank you, Tom

(HEARING CONCLUDED)

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison, official court reporter for the 9TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the hearing held before The Honorable R Markley Dennis, Jr , on July 6, 2009,

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action

Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina

November 7, 2009

1 THE COURT All right I talked to Judge
2 Dennis just a few moments ago, and he indicated to
3 me, as I suspected, he indicated what I expected,
4 which was my interpretation of it, which is when he
5 said causes he meant all causes of action related to
6 fraud and all causes of action related to negligent
7 misrepresentation

8 He said he probably should have worded it
9 better, but he didn't And he remembered the other
10 causes of action because he spit them out and he said
11 that was his intention And that he probably should
12 have articulated better in the order, but that is
13 what he intended, what he ruled

14 MR HILDEBRAND Well, Your Honor, may I be
15 heard on that?

16 THE COURT Well, there is nothing to be
17 heard I'm just merely telling you what another
18 judge told me his order means That's what I am
19 going to enforce

20 MR HILDEBRAND But, Your Honor, the order
21 says it's granted as to the causes of action --

22 THE COURT Causes, plural

23 MR HILDEBRAND Right

24 THE COURT And he interpreted it just like I
25 did when he said causes plural, he meant all causes

1 of action related to fraud, and all related to
2 negligent misrepresentation. If you have a qualm
3 about what the interpretation is, you are going to
4 have to appeal it. It's his order. It's the law of
5 the case. I have told you what my interpretation of
6 it would have been. I inquired of him as to what he
7 meant and he told me that's what he meant.

8 MR. HILDEBRAND: Well, Your Honor, that's the
9 motion that I had this morning, Mr. Stuckey was first
10 notice I received that there is any argument in my
11 reading of it which says that he is granting the
12 motion for the causes of action for fraud and
13 negligent misrepresentation. Those are two causes
14 that are in --

15 THE COURT: That's is not how I would have
16 read it. When I say causes plural, I mean everything
17 related to that. And that's what he told me he meant
18 as well.

19 MR. HILDEBRAND: So what do you understand --

20 THE COURT: I am going to look at your
21 pleadings right now and see what would have survived
22 it.

23 Also I'm looking at Mr. Stuckey's motion to
24 ratify, that's really superfluous. It's not
25 necessary. I don't have to ratify another judge's

1 order, it's the law of the case so I would never
2 have heard his motion that he filed, because I don't
3 have to ratify someone else's order. It is the law
4 of what the judge ruled. I don't have any appellate
5 authority over Judge Dennis's ruling. We have
6 concurrent authority.

7 MR. HILDEBRAND: Well, Your Honor, if the
8 motion was made just this morning to ratify --

9 THE COURT: There is no motion, he has already
10 ruled. Once I read his order if I had any concern
11 about it I would have called him and I would do
12 exactly what I'm doing now which is enforce whatever
13 his order was.

14 MR. HILDEBRAND: I understand, Your Honor.
15 But I was --

16 THE COURT: That would apply to the third
17 cause of action which was fraud, fourth cause of
18 action, breach of fraud accompanied by a fraudulent
19 act, fifth cause of action, negligent
20 misrepresentation.

21 He denied it as to the sixth cause of action
22 which was the unfair trade practices. And as it
23 regards the breach of South Carolina code 27-50-10,
24 to the extent that it implies some fraudulent failing
25 to disclose.

1 He told me that's what he granted He
2 remembered them all actually And before I could
3 finish reading as to the motion for summary judgment
4 denied as to the unfair trade practices, he said
5 that's the only thing that -- he granted summary
6 judgment as to everything except that

7 MR HILDEBRAND Well, Your Honor, I would
8 request a continuance then so I can file a motion to
9 reconsider and to have that in the record

10 THE COURT I think your time has already
11 passed on that, hasn't it? This was, ruling was
12 September 8, 2009 what's your timeline to file a
13 motion for reconsideration? when did you receive it?
14 It's been over a month now

15 MR HILDEBRAND Well in any event, Your
16 Honor, on the second cause of action as to the breach
17 of the South Carolina disclosure statute, that does
18 not require fraud, it just requires a breach of that
19 statute The statute is real clear on it I've got
20 -- we can pull up the statute, but that's --

21 THE COURT knowingly failed to disclose, that
22 implies fraud That somehow you misled someone, that
23 you knew bit it and then you failed to disclose it

24 MR HILDEBRAND There is nothing in the
25 statute that says you have to prove fraud, just says

1 knowingly failed to disclose It does not say fraud
2 nor imply fraud Fraud is a separate cause of action
3 that was included as a separate cause of action in
4 our complaint

5 We have got breach of contract and breach of
6 the non-disclosure If they did not disclose, if
7 they breached that disclosure by remaining silent
8 or --

9 THE COURT I'm not going re-argue it, I'm
10 just going to honor what Judge Dennis has done And
11 that's what he told me, that he dismissed everything
12 except the UTPA cause of action

13 MR HILDEBRAND And breach of contract,
14 because that was also --

15 THE COURT Oh, the breach of contract
16 accompanied by a fraudulent intent To the extent
17 that the breach of contract dealt with any basis of
18 it being fraud is dismissed That's what he told me

19 He said one their breach of contract with
20 fraudulent act, he said, yeah, that too He said, I
21 probably should have worded it better and I didn't
22 He said, I probably should have spelled out every
23 single one of them but I didn't do that He said, I
24 felt that my reference to it being plural and to the
25 subject matter of each one of them was sufficient

1 burden of proof?

2 MR HILDEBRAND well I think if it's capable
3 repetition

4 THE COURT There are only two ways to show
5 that basically, one by showing that the same kind
6 of action has occurred in the past, thus making it
7 likely that they will continue to occur

8 or the other is by showing that a company's
9 procedures create a potential for repetition of
10 unfair, deceptive acts which is usually shown
11 through some form of advertising or some practice
12 that they have used that could be done repetitiously
13 to the public

14 Those aren't the only means, but those are
15 generally the way it's shown And you also have to
16 show that the members of the public were adversely
17 affected by the unfair conduct, or that they were
18 likely to be

19 Okay Do you all have any common ground in
20 this or do we need to go ahead with jury selection?

21 MR STUCKEY Your Honor, we think it's just a
22 question of the law for the Court We would be
23 agreeable just to referring it to have the Court try
24 it non-jury

25 I represent two attorneys, Your Honor And

1 I mean there is not going to be any repetition They
2 are not in the business of selling houses They are
3 just two attorneys who in an isolated sale happened
4 to sell to these two plaintiffs

5 And as far as unfair trade practices act goes,
6 that's it And I think Mr Hildebrand will agree
7 there is no evidence to the contrary

8 THE COURT Bear with me one second, let me
9 make sure I'm accurate about something

10 Bear with me one moment, I want to make sure
11 I'm accurate about the cause of action regarding the
12 South Carolina code 27-50-10

13 Okay Mr Hildebrand, while we are waiting
14 did you indicate whether you were amenable to the
15 matter being heard non-jury?

16 MR HILDEBRAND I would not agree to that,
17 Your Honor

18 THE COURT Okay

19 While we are waiting we will go ahead and go
20 forward and pick the jury You all indicated you
21 don't have any middle ground in terms of settlement,
22 correct? I'm sorry, my brain is -- I apologize

23 MR STUCKEY We do not, Your Honor

24 THE COURT Is that correct, Mr Hildebrand?

25 MR HILDEBRAND Yes, ma'am

1 May I be heard one more time on the order?

2 THE COURT Sure

3 MR HILDEBRAND Again just so that the record
4 is clear The order, specific written order says
5 that the motion for summary judgment is granted as to
6 the causes of action for fraud and negligent
7 misrepresentation

8 I had two separate causes in my complaint, one
9 for fraud and one for negligent misrepresentation
10 And I understood from this order, from it's clear
11 language, that those were the only two that it was
12 granted for

13 The order does not say that the motion is
14 granted for our breach of contract, or the breach of
15 the failure to disclose, nor for breach of contract
16 accompanied by fraudulent act The clear language of
17 the order only grants the cause for those two causes
18 of action

19 And if reference to Judge Dennis by telephone
20 call he says that he meant to make it more broader --

21 THE COURT He said that was his order He
22 didn't say he meant it He said, that was my order
23 I probably should have worded it better, but that was
24 my order

25 MR HILDEBRAND Yes, ma'am

1 THE COURT And that is what the Court is
2 going to enforce And I'm clear that your position
3 is different but I'm not going to re-argue it

4 MR HILDEBRAND Yes, Your Honor

5 THE COURT It's already been heard, it hasn't
6 been appealed and a motion for reconsideration has
7 not been filed If you have a problem with the
8 order, you'll need to appeal it

9 MR HILDEBRAND All right Thank you, Your
10 Honor

11 THE COURT You're welcome I'm going to get
12 clarity from him as to whether it applies to the
13 cause of action under the statute Because the
14 statute, as I read it, is actionable if someone makes
15 a false or misleading representation, which in and of
16 itself implies something fraudulent If you say
17 something false and it's deliberate, that's
18 fraudulent

19 Incomplete could be through inadvertence,
20 misleading however implies fraud And I need to know
21 exactly what his intention was regarding that And
22 once I get clarity on that we will proceed in that
23 manner But I don't think that stops us from
24 selecting the jury

25 Is the plaintiff ready to proceed?

1 MR HILDEBRAND Yes, Your Honor

2 THE COURT Is the defense ready to proceed?

3 MR STUCKEY Yes, Your Honor

4 THE COURT Please bring in the jury for me,
5 please

6 (Whereupon, jury voir dire and selection was not
7 transcribed)

8 THE COURT I sought further clarity from
9 Judge Dennis His response is, since I did grant
10 summary judgment as to negligent misrepresentation,
11 he's assuming that he did dismiss that cause of
12 action as well, meaning the statutory cause of
13 action And that was his intention So that leaves
14 us then with unfair trade practices cause of action

15 MR STUCKEY Fine

16 THE COURT Is there anything else we need to
17 take up before we adjourn from the plaintiff?

18 MR HILDEBRAND Not unless you'd like me to
19 rehash my arguments, Your Honor

20 THE COURT No And again the plain and
21 ordinary meaning, of course what a judge says on a
22 transcript is not what is binding, what is binding
23 is what has been reduced to writing And until it
24 is finally reduced to writing, of course within the
25 ten-day period the Court can sua sponte can change an

1 order to clarify or otherwise

2 AS is done, and lot's of time when you have
3 motions, Judge Dennis did a Form 4, which is of
4 course approved by the Supreme Court as an
5 appropriate means to issue an order

6 And what he did was he indicated, defendant's
7 motion for summary judgment is granted as to the
8 causes of action for fraud and negligent
9 misrepresentation Defendant's motion for summary
10 judgment is denied as to the cause of action for
11 unfair trade practices

12 My reading of the plain and ordinary language
13 that he used in this Form 4 indicated to me that he
14 had dismissed all causes of action related to fraud
15 and those related to negligent misrepresentation in
16 that he did not use the singular form of cause, he
17 used the plural form meaning that all causes of
18 action relating to fraud, and all causes of action
19 relating to negligent misrepresentation were
20 dismissed and that was his intention in issuing his
21 order

22 Instead of relying on my own assumption, I
23 contacted Judge Dennis and I asked him what his
24 ruling was and what his interpretation of the
25 language was And he confirmed that that was in his

1 interpretation of the language, that it was his
2 intention to dismiss all causes of action relating to
3 fraud and all causes of action relating to negligent
4 misrepresentation

5 He indicated to me in hindsight he maybe
6 should have worded it differently, but that was his
7 intention and that was his order Therefore, I'm
8 bound to enforce it as that is the law of the case

9 I do not act as an appellate court over my
10 colleagues, nor do they over me And it is now the
11 law of the case If you have some concern about
12 that, you certainly are free to appeal it And the
13 Court of course would encourage that if that is your
14 desire

15 we will go forward on wednesday If there is
16 nothing further you all have a wonderful afternoon
17 See you wednesday at 9 30, If you have any request
18 to charge, you need to bring that with you wednesday

19 MR STUCKEY Thank you, Your Honor

20 THE COURT You're welcome

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record, and of all the proceedings had and evidence introduced in the above captioned case, relative to appeal, in the Circuit Court for South Carolina, on the indicated date

I do further certify that I am neither of kin, counsel, nor interest to any party hereto



Anne Bouley Meyer, RPR
Circuit Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
2008-CP-10-000069

DUDLEY N CARPENTER, ET AL,)
)
 Plaintiff,)
)
 V)
)
 CHARLES L MEASTER ET AL,)
)
 Defendant)

TRANSCRIPT OF RECORD

NOVEMBER 4, 2009
CHARLESTON, SOUTH CAROLINA

B E F O R E

THE HONORABLE DEADRA L JEFFERSON, JUDGE

A P P E A R A N C E S

MR THOMAS G HILDEBRAND, JR , ESQUIRE
REPRESENTING THE PLAINTIFF

MR JAMES A STUCKEY, JR , ESQUIRE
REPRESENTING THE DEFENDANT

Anne Bouley Meyer, RPR
Circuit Court Reporter

1 THE COURT Is the plaintiff ready to proceed?

2 MR HILDEBRAND We stipulate we are going to
3 drop our unfair trade practices claim based on your
4 ruling that that's the only claim in the case

5 THE COURT Actually, what I indicated was the
6 Judge Dennis ruled The Court was merely enforcing
7 that ruling I have not made a ruling in the case on
8 any issue That's his ruling, he granted summary
9 judgment, I sought clarification of that ruling

10 What I indicated to you all is that you needed
11 to do one of two things If you were unclear as to
12 what his ruling is then you needed to do one of two
13 things You need to file a motion to clarify his
14 ruling, or you both needed to agree to have him
15 clarify his ruling

16 Based on his statement to me that he probably
17 should have listed out every cause of action, or it
18 could have been worded better, that was clearly his
19 intention So the Court has not had occasion to rule
20 in this case, merely interpreting another ruling

21 MR HILDEBRAND Right And I think the
22 appeal would be from your interpretation of that
23 order My understanding from the ruling is there
24 is --

25 THE COURT The appeal would be of the

1 granting of summary judgment

2 MR HILDEBRAND I think the way I would
3 phrase it is that I would appeal from your
4 interpretation of the order as you announced it in
5 court the other day

6 THE COURT You would be losing out, you need
7 to appeal the summary judgment I didn't grant the
8 summary judgment You need to appeal whether the
9 summary judgment was appropriately granted and on
10 what grounds it was granted

11 It would actually be twofold And
12 nevertheless, I need to know whether you all have
13 come to some consensus or whether you're going to
14 file a motion Because as I explained to you on
15 yesterday, the Court is just going to remand it back
16 for the order to be made clear as to what was done
17 They're not going to fiddle in the dark trying to
18 figure out what those words meant

19 MR HILDEBRAND I will file a motion for
20 that, Judge, under 54(B)

21 THE COURT Mr Stuckey, did you have a chance
22 to review the cases that the Court made you aware of
23 on yesterday?

24 MR STUCKEY I did

25 THE COURT And is your client -- as I

1 indicated, I think that Mr Hildebrand can appeal at
2 any time the summary judgment I don't think he is
3 required to appeal it when it's granted I think he
4 can appeal it, and the case law dealing with that
5 deals with whether it is interlocutory or not And
6 the analysis really to some extent is related to
7 those parameters

8 But I don't think there is anything that
9 requires him to do it And I don't think he waives
10 his appellate rights when he does it I think he can
11 appeal the summary judgment when the case is over

12 And so it seems to me it's in everyone's best
13 interest that you all get clarity on Judge Dennis's
14 ruling And that would be Court's position on it

15 MR STUCKEY I understand that, Your Honor
16 we object of course to Judge Dennis clarifying the
17 order I've consulted with my two clients, and enjoy
18 the privilege of both being attorneys And their
19 position is that of course once the super claim is
20 dismissed, then Judge Dennis's order stands as it was
21 originally issued and thus the final order of the
22 case

23 THE COURT Okay Well you all can hash that
24 out on an appellate basis But I think that Mr
25 Hildebrand should file a motion to clarify what Judge

1 Dennis's ruling was so that you all can be clear
2 I'm not going to speculate Although I have spoken
3 to him, and I know what his position is, I think his
4 record needs to be clear exactly what he ruled
5 without any question about it

6 I'm not -- I don't have any question about it
7 because I've had the ability to speak with him and he
8 related to me exactly what he intended I think for
9 everyone's purposes it is better that there be no
10 question

11 MR STUCKEY I understand, Your Honor

12 THE COURT If he denies that you all can go
13 where you want to go with it

14 MR HILDEBRAND So the status quo, if I
15 understand --

16 THE COURT The status quo is that the UTPA
17 claim has been dismissed with prejudice, and that you
18 are going to file a motion for clarification on Judge
19 Dennis's ruling And if he rules that he dismissed
20 everything then the case is over, you do what you
21 need to do

22 If he rules otherwise, it will come back for
23 trial on any causes of action he says still remains
24 It is my understanding, however, that he dismissed
25 everything So then you would be able to go forward

1 with your appeal

2 MR HILDEBRAND Well, may I retract the
3 dismissal with prejudice until we have Judge Dennis's
4 ruling on what he had intended on the order since
5 that was part of his order?

6 THE COURT Well, he denied -- I guess I'm a
7 little confused You've already indicated you
8 couldn't meet your burden of proof on it and that's
9 why you're withdrawing it

10 MR HILDEBRAND Right, but --

11 THE COURT And you thought that was your
12 weakest cause of action

13 MR HILDEBRAND I agree I think I will, but
14 I would like the Court -- to the extent that that
15 might impact his assessment of his earlier order

16 THE COURT I don't think it would

17 MR HILDEBRAND I don't think it would
18 either, Your Honor But just for the record I would
19 like to withhold our dropping of that UTPA claim with
20 prejudice until we have Judge Dennis's clarification
21 on his order

22 MR STUCKEY May I respond to that, Your
23 Honor?

24 THE COURT Absolutely

25 MR STUCKEY Thank you we came in here and

1 it was indicated by counsel that he felt his super
2 claim was the weakest he had, that he was throwing
3 that in basically as sort of a potpourri complaint

4 We asked that the Court decide the case
5 non-jury, since we think that's basically a question
6 of law on the super claim, and I think it is And
7 Your Honor gave me some cases that I think agree with
8 us

9 Despite that, counsel wanted to draw a jury
10 we drew a jury on the representation that he was
11 going to withdraw and dismiss the super cause of
12 action, which he has done on the record a couple of
13 times, and now he's flip-flopped and he says that he
14 thinks he wants to change his mind on it

15 And we think, Your Honor, since that has been
16 put on the record, that does not require an order
17 from Your Honor dismissing it Counsel has withdrawn
18 it and stated in open court on the record that he is
19 withdrawing it So I think it's withdrawn, ended,
20 finite, without the necessity of this Court entering
21 another order

22 MR HILDEBRAND Your Honor, if I may respond
23 to that That's what we had discussed

24 THE COURT No, you came in court this morning
25 and said you withdrew it We discussed it and you

1 also -- I mean I can go back and look at the court
2 reporter's notes but I think you said, I am
3 withdrawing the UTPA claim

4 MR HILDEBRAND Okay All right, as I
5 understand it --

6 THE COURT Now you are saying you want to
7 change it

8 MR HILDEBRAND No, that's fine

9 THE COURT You know, frankly, it would not
10 survive a directed verdict

11 MR HILDEBRAND Right, I understand That's
12 fine, Your Honor And on the other claims you will
13 withhold your ruling as to whether --

14 THE COURT I don't have to make a ruling I
15 keep trying to make that clear Judge Dennis has
16 ruled, it is a matter of interpreting his order which
17 as far as I'm concerned is clear

18 I've spoken with him to make sure that my
19 assumption regarding his order was correct He
20 confirmed what I thought he meant But I think for
21 purposes of the clarity of the record you need to
22 have him say to you what he meant because you seem to
23 be unclear And I think you need to be clear And I
24 think the records needs to be clear

25 And that is the danger in our circuit and

1 other big circuits where you hear so many motions
2 and doing Form 4's, that's why I rarely do them,
3 because what happens is you want to get it that -- no
4 reflection on Judge Dennis at all, we are all that
5 way, we want to be efficient, we want to get an order
6 done, we want it in the record, we want you to be
7 able to go on with your case

8 He indicated to me, he said, I should have
9 listed everything out, I could have done it, I should
10 have probably done it differently, but that was my
11 intention, that was my ruling

12 And I haven't had a chance to get a transcript
13 to see exactly what he said And nor do I think it's
14 necessary because I have spoken to him And he said
15 every cause of action that dealt with fraud it was my
16 intention to dismiss it Every cause of action that
17 dealt with negligent misrepresentation it was my
18 intention to dismiss it

19 The statute deals with from three different
20 perspectives, whether you fraudulently did not
21 disclose something, which is covered by his ruling,
22 whether you negligently did not disclose something,
23 or whether you intentionally mislead someone by not
24 disclosing something

25 So both of those are covered by fraud and

1 negligent misrepresentation But I would prefer that
2 there be no question in anyone's mind as to what he
3 meant So that he can speak for himself

4 MR HILDEBRAND I understand The procedure
5 is that we will file a motion and then when we get
6 the Judge's ruling we'll come back --

7 THE COURT And make sure you serve him with a
8 copy of it because filing a motion, it's going to get
9 stuck in the file Just like when you file a motion
10 for reconsideration, it does not get to us So I
11 would appreciate when you file it you make sure you
12 get a copy of it to him so that he is aware that it
13 exists so that he can do whatever he desires to do
14 with it, whether he wants to have a hearing, whether
15 he wants to have a conference call with you all and
16 indicate what he intended to do, however he wants to
17 handle it

18 MR HILDEBRAND When we get his ruling we'll
19 then --

20 THE COURT You can do what you want with it
21 Mr Stuckey can appeal if he wants or you can go
22 forward And if he says there is a cause of action
23 it will go right back on my trial roster and it will
24 be tried If he says nothing is left then you can go
25 forward and file your appeal on the summary judgment

1 MR HILDEBRAND Got you Thank you, Your
2 Honor

3 THE COURT You're welcome If you all would
4 stay put while I excuse the jury

5 Bring in the jury for me, please

6 (Whereupon, the jurors enter the courtroom)

7 THE COURT Thank you, you may be seated

8 Ladies and gentlemen of the jury, this case we
9 have had -- procedurally we are going to have to
10 delay the trial of this case so your services will
11 not be needed this morning So the good news, I
12 guess, I'm excusing you for the balance of the day
13 and I would just ask that you call the jury
14 information line after six o'clock this evening

15 I'm not certain, I have several other cases on
16 my roster this week, but each of them seem to have
17 some conflict or difficulty in being able to go
18 forward And I will have to make a decision today
19 about whether I will be trying any other jury cases
20 or whether I will go and try some non-jury cases for
21 the remainder of the week

22 The long and short of it is I'm not certain
23 whether I'm going to need your services any further
24 this week But if -- when you call in the morning
25 if we don't -- basically if we don't need your

1 services you probably will be excused for the week
2 Because Judge Newman's case, as I have indicated,
3 will go two weeks and so we have already selected the
4 jury for that case

5 So if I'm not in need of your services, if
6 there is not a message that we need you in the
7 morning, as I have indicated in all likelihood we
8 will be excusing you for the remainder of the week
9 So what I need for you all to do is call after six
10 o'clock, listen to the message, if the message says
11 we need you, then if you all would accommodate us by
12 arriving at the courthouse

13 And if not you are free to go Probably there
14 will be a message saying you are excused for the
15 week And if you are excused for the week, then I'm
16 sure you all will be happy about that, can go along
17 with your responsibilities and your jury service,
18 your obligation would have been met for the next
19 three years as to this court

20 I hope that although you all have not had the
21 opportunity to serve on a jury, that this has been
22 somewhat educational for you I like when we have
23 jurors because it gives, at least in my mind, every
24 time we have a panel of people the opportunity to see
25 the system firsthand, and for your faith in our

1 system to be renewed

2 Unfortunately, or fortunately, most people
3 learn about the court system on TV And
4 unfortunately most people believe what they see is
5 true when in fact it's entertainment Although I
6 find -- I won't say I find Judge Judy entertaining, I
7 know a lot of people who do Judge Judy, Judge Joe
8 Brown, Judge Mathis I forget now, there are a
9 plethora of court shows that are on

10 But unfortunately I think most people now
11 learn what our system is about by watching those
12 shows And most people don't know that while they
13 take on the form of court, they are arbitrations
14 Any of you could sit as a judge in those shows and
15 decide the case

16 So I hope that you will, even though you have
17 not had the opportunity to actually deliberate and
18 render a decision, that at least thus far the process
19 has been educational for you

20 So you are excused for the day with the
21 Court's profound thanks And if you need a work
22 excuse you can get one downstairs in the clerk's
23 office At clerk at the window can give you an
24 excuse Your checks will be made at the end of the
25 week

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If you don't need an excuse today, those will also be mailed out to you You are excused with the Court's thanks Have a wonderful day

Thank you all

(whereupon, the proceedings in this matter before the Court were adjourned)

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
complete transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date

I do further certify that I am neither
of kin, counsel, nor interest to any party hereto

Anne Bouley Meyer, RPR
Circuit Court Reporter

Haynsworth
Sinkler Boyd, PA.

ATTORNEYS AND COUNSELORS AT LAW

134 MEETING STREET THIRD FLOOR (29401 2240)
POST OFFICE BOX 340 (29402 0340)
CHARLESTON SOUTH CAROLINA
TELEPHONE 843 722 3366
FACSIMILE 843 722 2266
WEBSITE www.hsblawfirm.com

THOMAS C HILDEBRAND JR
DIRECT DIAL NUMBER 843 720 4437
EMAIL thildebrand@hsblawfirm.com

November 30, 2009

VIA HAND DELIVERY

The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re Dudley N Carpenter and Jane G Carpenter v Charles L Measter and Barbara P Measter
Case No 2008-CP-10-0069

Dear Ms Armstrong

Enclosed for filing please find the original and one copy of the Plaintiffs' Notice and Motion to Alter or Amend Judgment in the above-referenced matter I would appreciate it very much if you would file this with the Court

With best regards,

Yours very truly


Thomas C Hildebrand, Jr

TCHJr/lah
Enclosure

cc James A Stuckey, Jr (via hand-delivery)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARELSTON)

Dudley N Carpenter and Jane G Carpenter)
 Plaintiff)

v)

Charles L Measter and Barbara P Measter)
 Defendants)

IN THE COURT OF COMMON PLEAS

CASE NO
08-CP-10-0069

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney Thomas C Hildebrand, Jr Bar No 2501 Address Haynsworth Sinkler Boyd, PA PO Box 340 Charleston, SC 29402 phone 843 720 4437 fax 843 722 2266 email thildebrand@hsblawfirm.com	Defendant's Attorney James A Stuckey, Bar No Address Stuckey Law Offices, LLC 123 Meeting Street Charleston, SC 29401 phone 843 577 9323 fax 843 577 3635 e-mail jstuckey@stuckeylaw.com other												
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)													
SECTION I Hearing Information													
Nature of Motion Notice and Motion to Revise Previous Order Under Rule 54(B) Estimated Time Needed Court Reporter Needed <input type="checkbox"/> YES / <input type="checkbox"/> NO													
SECTION II Motion Type													
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order <div style="text-align: right; margin-right: 100px;"> November 30, 2009 Date submitted </div>													
SECTION III Motion Fee													
<input checked="" type="checkbox"/> PAID - AMOUNT \$25 <input type="checkbox"/> EXEMPT (check reason) <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td><input type="checkbox"/> State Agency v Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> <td><input type="checkbox"/> Post Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status</td> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act</td> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Other</td> <td></td> </tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> State Agency v Indigent Party	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Post Conviction Relief	<input type="checkbox"/> Indigent Status	<input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)	<input type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions		<input type="checkbox"/> Other	
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<input type="checkbox"/> Other													
JUDGE'S SECTION													
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order <input type="checkbox"/> Other	_____ JUDGE CODE _____ Date _____												
CLERK'S VERIFICATION													
Collected by _____ <input type="checkbox"/> MOTION FEE COLLECTED _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE _____	Date Filed _____												

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Dudley N Carpenter and Jane G
Carpenter,

Plaintiffs,

vs

Charles L Measter and Barbara P
Measter,

Defendants

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No 2008-CP-10-0069

**PLAINTIFFS' NOTICE AND MOTION TO
REVISE PREVIOUS ORDER UNDER
RULE 54(B)**

FILED
2009 NOV 30 PM 4 22
J. ARMSTRONG
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, Dudley N Carpenter and Jane G Carpenter, will move pursuant to SCRCP 54(B) before this Honorable Court at a time and place to be arranged by the Court and counsel to respectfully request that the Honorable R Markley Dennis, Jr revise his Form 4 Order dated September 3, 2009 to clarify and confirm that it did not, and was not intended to, dismiss Plaintiffs' causes of action for breach of contract, breach of S C 27-50-10, and breach of contract accompanied by fraudulent act (These three causes of action are hereinafter collectively referred to as the "Contract Causes of Action ") Plaintiffs make this Motion based on evidence in the record that there are genuine issues of fact such that a grant of summary judgment is not appropriate for the Contract Causes of Action This motion is also made on the grounds that the Court's Form 4 Order might be construed as being unclear or ambiguous as to what causes of action it did in fact dismiss, and therefore a clarification and revised Order would be appropriate

This motion will be supported by the pleadings, Plaintiff's prior Memorandum in Opposition to Defendants' Motion for Summary Judgment (with exhibits), the statutory

and case law applicable hereto, memoranda, depositions or other materials which may be presented to the Court prior to a hearing on this matter. Plaintiffs' motion will also be supported by the transcripts of record before Judge R Markley Dennis, Jr dated July 6, 2009 (attached as Exhibit "A") and the transcripts of record before Judge Deadre L Jefferson dated November 2, 2009 (attached as Exhibit "B") and November 4, 2009 (attached as Exhibit "C")

November 30, 2009

By



Thomas C Hildebrand, Jr
HAYNSWORTH SINKLER BOYD, P A
134 Meeting Street, Third Floor
Charleston, SC 29401-2240
843 720 4437 (direct dial)
thildebrand@hsblawfirm.com

Attorneys for Plaintiffs
Dudley N Carpenter and Jane G Carpenter

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Plaintiffs' Notice and Motion to Revise Previous Order Under Rule 54(B) has been served upon the following counsel of record via electronic mail, facsimile and by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 30 day of November, 2009

James A Stuckey, Jr , Esq
Stuckey & Murphy Law Offices, LLC
123 Meeting Street
Charleston, SC 29401

2009 NOV 30 PM 4 22
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

FILED

Lauren A. Heuss

Lauren A Heuss, Legal Secretary
HAYNSWORTH SINKLER BOYD, P A
134 Meeting Street, Third Floor
Charleston, South Carolina 29401-2240
Telephone 843 722 3366

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
Dudley N Carpenter and Jane G)	
Carpenter,)	
)	
Plaintiffs,)	
)	
vs)	Case No 08-CP-10-0069
)	
Charles L Measter and Babara P)	
Measter,)	
)	
Defendants)	

TRANSCRIPT OF HEARING

The within Hearing in the above captioned case was held on July 6, 2009, before The Honorable R Markley Dennis, Jr in Courtroom 4B of the Charleston County Courthouse, 100 Broad Street, Charleston South Carolina, attended by Counsel, as follows

APPEARANCES

Tom Hildebrand, Jr , Esq
HAYNSWORTH SINKLER BOYD
P O Box 340
Charleston, SC 29401-2240
Appearing for Plaintiffs

James A Stuckey, Esq
STUCKEY LAW OFFICES, L L C
123 Meeting Street
Charleston, SC 29401-2217
Appearing for Defendants

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29457
dGarrison@sccourts.org

THE COURT Let me state for the record that you may rely fully on your memoranda for the positions taken I'll be delighted to hear from you

MR STUCKEY Thank you, Your Honor, may it please the Court I am Jim Stuckey, James A Stuckey, and I represent the two defendants in this action, Charles and Barbara Measter, who were sellers of a condominium out at Seabrook Island to the two plaintiffs, Dudley Carpenter and Jane Carpenter The Carpenters have filed a six cause of action Complaint alleging the usual six causes of action that arise from negligence, alleged negligence, misrepresentation, unfair trade practices, breach of contract, fraud, breach of contract accompanied by a fraudulent act, etcetera

The defendants are before the court today on a Motion for summary judgment Believe it or not, and amazingly, I assert to you that there are almost exclusively questions of law involved and not questions of fact Of course we're very familiar with the Rule 56 mandates on that

They have alleged six causes of action breach of contract accompanied by fraudulent, fraud, negligent misrepresentation, unfair trade practices, breach of contract, breach of the Residential Disclosure Statement

Your Honor, we say that we're entitled to summary

judgment on the tort causes of action, which are fraud, negligent misrepresentation and Unfair Trade Practices Act under the Moss doctrine. Even under the Moss doctrine, as Your Honor well know, it provides that when you allege only economic loss and there is a contract involved, then your remedy is under the contract and under the provisions of the contract you can't turn around and sue for tort.

That is true if there is no personal injury involved and I believe the recent *Colleton Preparatory School* case said that unless there is a threat of serious personal injury. None of that is here.

So we think the three -- the two causes of action, three causes of action -- for fraud, for negligent misrepresentation and for unfair trade practices -- go out and that the exclusive remedy of plaintiffs in this case is to proceed under the contract.

Breach of contract accompanied by fraudulent act of course is denoted as a contract cause of action and not an equitable cause of action.

So we think those three tort causes of action should be dismissed and the plaintiff can then allegedly go forward on his remaining three causes of action.

We think that he is barred on those also, Your Honor, if he is proceeding under the contract by the clear, unequivocal

terms of the contract between the parties. The contract provided that there was a waiver provision, in paragraph 19(b) and it said that the plaintiffs should conduct an inspection. Now, it's specific and clear as to the fact that an inspection should be conducted. The plaintiffs in this action, Your Honor, conducted not one, not two, not three, not four but basically five different inspections.

In fact, they had a professional inspection team called The Home Team that they paid \$290 to, to come in on June the 5th accompanied by Jane Carpenter, who is one the plaintiffs, and she walked the property with them. They gave a clean bill of health on that, didn't find any problems. They went underneath the building, because they pointed out that the vapor barrier needed to be replaced and there was debris under the building. So clearly they inspected under the building, found no structural damage.

They got a \$400,000 loan from Bank of America and they did an inspection on it. As asserted in the affidavit of Barbara Measter, they called in another inspection team. So there were four or five inspections done on it.

Paragraph 19(b) of the contract stated that any repairs that were called to the attention of the sellers would be done by the sellers and that that would be complete by June 8th. Remember that the inspection was done on June 5th by The Home Team.

That provision provided that the sellers would be notified within forty-eight hours after any inspection and "time is of the essence"

That if there was -- that if there were any provisions or problems with the structure or with the air-conditioner or with the heating or with the many enumerated items then the plaintiffs would waive all rights, under Paragraph 19(b)

In addition there was a paragraph, Paragraph 19(e), which provided for repairs, saying that the heating system, the air condition system, whether or not the house would be structurally sound would be checked by the purchasers and any costs of those items would be paid by the sellers, and that it was an obligation of the seller to terminate the -- the obligations of the sellers for that were terminated on the day of the closing So they are proposing, under the terms of the contract, that their obligation to make repairs would cease and would terminate

That provision also provided that the buyers could accept the property in its "present condition" So by accepting the property, going forward with it and not notifying the sellers, we submit that they waived that and they accepted the property in its present condition

Paragraph 19(h), which was a disclaimer, said that the "buyer understands that the seller gives no guarantees and no

warranties, express of implied, that all of those are hereby disclaimed" with the proviso that you had the inspection, you had the repairs, you had the other provisions of the contract. It basically says, you know, that with these safeguards then you're waiving everything else. So 'we aren't giving you any assertion or any guarantee or warranty to anything else other than as stated in the contract.'

So we think by those provisions, Your Honor, that the plaintiffs are limited to the provisions of the contract, the claim under the contract, and that the contract clearly provides that they have waived, they have disclaimed and, accordingly, do not have any remedy under the contract.

THE COURT: Okay. Thank you, Mr. Stuckey. Mr. Hildebrand?

MR. HILDEBRAND: Thank you, Your Honor. I am Tom Hildebrand, I represent the plaintiffs, Mr. and Mrs. Carpenter.

What happened is that we signed the contract to purchase a townhouse sort of structure at a project on Seabrook Island. The contract provided that the defendants would sign -- it specifically incorporates the Uniform Residential Disclosure Statement, and they signed that. The disclosure statement said that defendants were unaware of any structural problems, any

leakage problems, any roof problems or any lawsuits related to the house

We had the house inspected, they didn't find problems We closed on the house and two weeks after we closed my clients were ready to move in, they got the moving truck up there and a contractor walks up to them and says 'You'all can't move in ' They said, 'why not?' He said 'there are major structural problems with these buildings, they are going to have to be repaired and you're going to be out for three to four months '

So naturally my people were scratching their, saying 'What on earth is going on here? How could the Measters not know at the time that we closed that there are major problems and that these major repairs are been scheduled?'

They came to me, we've done some discovery and found out that there has been a lot of litigation over this particular project over the years In fact, the Measters were members of a class action where members of the HOA had sued the board saying, 'you'all have not properly pursued your remedies' because of some roof leaks and some other problems with the structure They were members of that class After they closed they got fifteen (\$15,000), nineteen (\$19,000) thousand dollars as their portion of the settlement of that

We also discovered that six weeks prior to the

closing the annual meeting of the regime was held, minutes were taken and then mailed out afterwards that said, 'We've got problems with the buildings. The next ones to be fixed as Building A', which is where our unit is located, and 'we are going to start on those right away.' That 'they've got problems with leaks through the chimneys, windows,' so on, such and forth.

We also -- I took Mrs Measter's deposition. Asked, 'Were you aware of any problems?' She said, 'Well, we did know that the windows leaked and that the regime was scheduled to be -- to remove and replace them, but I didn't think that we should put that on the disclosure, because they were going to be fixed by the regime.'

Also, we talked to the contractor who submitted an affidavit. We said, 'Sir, do you have any knowledge that the Measters have had any problems?' He said, 'Well, as a matter, I do. I remember Mr Measter specifically, when I was doing my preliminary work, walking out and saying 'What's up?' I said that 'we have some major problems with these buildings, we're going to have to fix them.' He said, 'Well, it ain't my problems, because I've sold my unit. I am going to be moving out.'

In light of all that, we think that there's sufficient evidence to show that the Measters did have actual knowledge

There is certainly conflicting evidence that the regime was aware of the problems, repairs started right when we closed

I don't think we're limited only to our contract's causes of action. We've cited some case law in our brief that if there are mis-representation then the courts have held that "as-is" clauses and disclaimer clauses are not barred by the parole evidence rule. Here the contract specifically encloses references to the Uniform Disclosure Act and says that if you're aware of any of these problems that you have to put them down, that if you don't put them down initially but then become aware of problems, you've got to tell the purchasers.

I would submit, Your Honor, that we are not limited only to our contract remedies and that there is certainly sufficient evidence to go to a jury that the Measters knew of problems and failed to disclose them.

THE COURT: What are your damages, that aren't tied to the economic loss?

MR. HILDEBRAND: The damages were not an issue in their Motion for summary judgment. The reasons that they articulate -- it's a good Motion and I appreciate the depth Mr. Stuckey went into to state what they are. I did not know that the damages is something that they were claiming. One of the damages certainly is that we've lost the value of our unit or lost

the use of our unit for four months while these repairs were being made We had a leaky -- (pause) I'm not prepared to answer that, Your Honor I do know that were ---

THE COURT That's the one issue concerns me, and I've got to revisit it Every time that I do it I think that I have a clear understanding of it and then I don't have one after I read it a little bit but -- in fact, I think your partner first caught me in one of those in '97, economic loss issues That's a major concern

What is the damage from the fraud that is not existing in your contract?

MR HILDEBRAND Well, Your Honor, I think if that ---

THE COURT It has to be something else, I think, from the way that I read that with everything tied to a contractual situation That's where your cause of action is because there is no -- there is no tort, *per se*

MR HILDEBRAND But I think the parole -- that the case law is that if you've got -- sorry, I didn't mean to interrupt you

THE COURT I don't have any problem with the parole evidence and that sort of -- getting around that But, again, if it deals with the remedies then the remedy is breach of contract -- breach of contract with fraudulent intent may be clearly there

Would that not entitle you to punitive damage, breach of contract with fraudulent intent?

MR HILDEBRAND It might but I don't think ---

THE COURT See, that's what I'm saying You have -- your remedy is there I just don't -- I don't see it as a fraud action I'll look at the memos but that gives me some concern I don't quarrel with the misrepresentation but that clearly is a breach of contract because, as you stated, the contract itself says that you're going to disclose it ---

MR HILDEBRAND Yes, sir

THE COURT --- by incorporating that document

MR HILDEBRAND Yes, sir

THE COURT There's no question --

if that's established there is a breach of contract Now the question is what is the damages going to be Certainly -- everything that you've talked about to me, just right off the bat without thinking about it, though maybe I'm missing something, flows as a natural damage from a breach of contract I mean, the value, the loss to you for what you thought you were getting versus what you ultimately got

Mr Stuckey, what about the time when they had to spend renting some other place?
Is that -- that may be -- that may get them

over the hurdle

MR STUCKEY I don't think so, Your Honor

THE COURT Okay I didn't think that you

would

MR STUCKEY I'll be glad to hand up to the court
-- one of the Federal judges did a good synopsis on that, I think
it's a plat line case out of Myrtle Beach Judge Traxler, I believe
I have the case, I don't have it right at-hand

THE COURT That's all right, we can get it He
itemizes about four cases talking about -- and basically he says
that if it all flows from the benefit of the bargain then it is
encompassed by the contract

THE COURT I don't quarrel with --
I understand the economic If that is your sole loss, then there's
no question as I understand the case law that it is ---

MR STUCKEY I think that everything that he is
claiming, Your Honor, clearly is encompassed by the economic
loss doctrine

THE COURT Okay

MR STUCKEY I think everything
Would Your Honor allow me to mention a couple of other things?

THE COURT Sure

MR STUCKEY I think most of them are covered

by the memorandum that we handed up but the disclosure statement, there is no fraud or no damages flowing from the disclosure statement because the disclosure statement talks about material misrepresentations. As we point out in our memorandum, Your Honor, the law is -- well, the law of the disclosure statements is that you only divulge material things. The ---

THE COURT It's pretty material when you have knowledge that certain things -- as they've alleged that they had

MR STUCKEY The thing about it is that we don't think that the structural damages are material at all, because we've handed up the -- in fact, they aren't material because they aren't damages to the individual

THE COURT

What are they?

MR STUCKEY They are damages that have to be done by the regime because the disclosure statement says that they have to be material. The condo, the Horizontal Property Act points out that things underneath the building are, of course, not the property of the individual homeowner.

THE COURT I understand all that. The concern that I have at this stage of the game, in the light most favorable to the plaintiff, -- and, yeah, whether or not it is material, the jury may ultimately have to determine that. Clearly to me that's a

question that -- what's "material"? That term isn't as crystal clear as I think you would like for it to be That's my concern

I would say to you that misrepresenta-tion, that if you knew of something and that there's evidence that they knew or should have known of something that causes me when I'm moving into my house I suddenly can't move into my house, that would be pretty material to me That is a material misrepresentation, to me

Now, I'm not deciding this case I'm just simply stating, for the purposes of summary judgment, that I have -- that I think that there is an issue of fact there But, again, that goes more towards the contract than it does the tort action because, really and truly, I think -- although you give me some concern because you're arguing on the elements of fraud rather than saying the fraud is succumbed by the economic loss, it goes out the window because of the window because of the economic loss

MR STUCKEY Correct

THE COURT Well, if it's clear that seems to be all that you need to argue rather than whether there's all the elements of fraud

MR STUCKEY I am trying to add some extra bricks to it

THE COURT I understand

MR STUCKEY I understand that

at 4 15 in the afternoon that Your Honor isn't interested in that

THE COURT No, I'm fine with it but, again, if somebody is adding bricks to something that you don't need bricks for, I am saying that maybe I am missing something on the economic loss issue But I'll read the memorandum I understand that But I'll be happy to hear from you further

MR STUCKEY Your Honor, the main crux of the thing is that the Measters, both of whom are attorneys, have stated that they had no knowledge of it We don't think that there's any evidence in the record that tends to establish that they had any knowledge of it

Now, they have submitted an affidavit by some guy named Henry Hatfield, which was alluded to by counsel, and he said that sometime after the closing -- he says in the late summer, and we know the closing was July the 18th, 2007 Hatfield supposedly met Mr Measter in the parking lot and he said, 'we are doing some work' and he said 'Well, I'm not worried about that because I've already my unit '

But at the time that they made the disclosure statement on May 18th, 2007, then there is absolutely no evidence, we assert, in the record other than this after-the-fact

statement by Henry Hatfield that he saw -- that he had looked through the window and had saw some deflections Now, what a "deflection" is

-- but we've submitted affidavits by the Measters, we've got the depositions of the Measters, we've got an affidavit from Floyd DeAnderegg, who was the president of the homeowners association, that he knew nothing about Then we've got inspection on top of inspection on top of inspection on top of inspection that there wasn't anything wrong

THE COURT My friend, you've got a ton of weight of evidence but the one thing that I've learned after fifteen years of getting reversed a number of times on these summary judgment, and I don't know why they want to do that, they just ought to let us go ahead and do what we were trained to do as lawyers, ---

MR STUCKEY You ought to be able to rule is what you ought to do, keep us from going up the road

THE COURT That's right John Kittridge said that he was going to do that very same thing and be dadgum if he didn't move on to the Supreme Court

MR STUCKEY I saw a case the other day saying that when you are complaining budgetary restraints and so forth, then why in the world don't you let the circuit judge do their job

THE COURT I agree with you The problem that I have and what gives me concerns is this, I've got people -- lawyers -- who are party to a class action about problems and they've received money I think, in fairness, at this stage of the game that there's a reasonable inference to be drawn that somebody knew something that they should have disclosed and they didn't

I appreciate it Thank you very much I'll look at your memorandum but -- and I'll be back in touch with you

MR STUCKEY That says, 'Mr Stuckey, I've ruled Sit down '

THE COURT No, sir, I want to digest your memo I understand Mr Hildebrand's point, I think Mr Hildebrand, if there is something else that you want to supplement I -- I understand your position in this, I think I think that you've raised certain inferences but, as I understand Mr Stuckey, he is not seeking a full summary judgment, only as to certain causes of action I think therein lies maybe what I have to decide, whether or not it really is something that -- for instance, the fraud Assuming misrepresentation, did you have a right to rely on it when you did all the inspection I really think the strength of this comes in the economic loss portion, I believe I want to read those cases and look at it

Thank you, sir

MR STUCKEY Thank you, Your Honor

THE COURT Thank you very much

MR HILDEBRAND Your Honor, my only point

there would be that frequently the courts allows plaintiffs to go forward on several cases of action, particularly in a construction case where you have a developer who has a contract and they breach the contract The courts have also said that if you have ---

THE COURT I agree with you if it came about --

Bill Helms was kind enough not to raise the issue with me but I was hearing a summary judgment in Jasper County in 1997 on a termite case and I thought that there was some -- that they didn't do -- that they were negligent in doing their inspection Not according to Mr Darling There were cases that I read and I said dadgum it, he's right He is ' They were limited to the economic loss The economic loss in that situation was kind of disturbing, was what was the loss for having contracted -- didn't tell you what you would have obtained, what was the value of that

I think they had to end up replacing the house

In this case -- that case gave me concern just because I thought 'that's not right', not fair In this case your damages,

I don't think it restricts your damages, the right to be fully compensated if the causes of action survive, I don't think that there's any question about that

As he stated, you're not -- the contract, breach of contract with fraudulent intent which is basically a contract action, and there was one other that you said you would not challenge -- or your memo says that I'll read it and let you know I'll decide one day this week or next week Thank you very much

If you have that case cite, would you e-mail that case cite?

MR STUCKEY Yes, sir

THE COURT We can find it in West Law, or is it cited in West?

MR STUCKEY It's quite an epistle⁴

THE COURT We can find it under Traxler
That's fine Out of Myrtle Beach?

MR STUCKEY The name of it, I think, was Myrtle Beach Pipeline -- something to do with a pipeline

THE COURT We'll find it Thank you, sir
Thank you, Tom

(HEARING CONCLUDED)

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison, official court reporter for the 9TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the hearing held before The Honorable R Markley Dennis, Jr , on July 6, 2009,

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action

Dudley N Carpenter et al v Charles L Measter, et al
Case No 08 CP 10 0069
Hearing of July 6, 2009
Before The Honorable R Markley Dennis Jr

21

Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina

November 7, 2009

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OR COMMON PLEAS
2008-CP-10-000069

DUDLEY N CARPENTER, ET AL,
Plaintiff,

v

CHARLES L MEASTER ET AL,
Defendant

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NOVEMBER 2, 2009
CHARLESTON, SOUTH CAROLINA

B E F O R E

THE HONORABLE DEADRA L JEFFERSON, JUDGE

A P P E A R A N C E S

MR THOMAS G HILDEBRAND, JR , ESQUIRE
REPRESENTING THE PLAINTIFF

MR JAMES A STUCKEY, JR , ESQUIRE
REPRESENTING THE DEFENDANT

Anne Bouley Meyer, RPR
Circuit Court Reporter

1 THE COURT All right I talked to Judge
2 Dennis just a few moments ago, and he indicated to
3 me, as I suspected, he indicated what I expected,
4 which was my interpretation of it, which is when he
5 said causes he meant all causes of action related to
6 fraud and all causes of action related to negligent
7 misrepresentation

8 He said he probably should have worded it
9 better, but he didn't And he remembered the other
10 causes of action because he spit them out and he said
11 that was his intention And that he probably should
12 have articulated better in the order, but that is
13 what he intended, what he ruled

14 MR HILDEBRAND Well, Your Honor, may I be
15 heard on that?

16 THE COURT Well, there is nothing to be
17 heard I'm just merely telling you what another
18 judge told me his order means That's what I am
19 going to enforce

20 MR HILDEBRAND But, Your Honor, the order
21 says it's granted as to the causes of action --

22 THE COURT Causes, plural

23 MR HILDEBRAND Right

24 THE COURT And he interpreted it just like I
25 did when he said causes plural, he meant all causes

1 of action related to fraud, and all related to
2 negligent misrepresentation. If you have a qualm
3 about what the interpretation is, you are going to
4 have to appeal it. It's his order. It's the law of
5 the case. I have told you what my interpretation of
6 it would have been. I inquired of him as to what he
7 meant and he told me that's what he meant.

8 MR. HILDEBRAND: Well, Your Honor, that's the
9 motion that I had this morning, Mr. Stuckey was first
10 notice I received that there is any argument in my
11 reading of it which says that he is granting the
12 motion for the causes of action for fraud and
13 negligent misrepresentation. Those are two causes
14 that are in --

15 THE COURT: That's is not how I would have
16 read it. When I say causes plural, I mean everything
17 related to that. And that's what he told me he meant
18 as well.

19 MR. HILDEBRAND: So what do you understand --

20 THE COURT: I am going to look at your
21 pleadings right now and see what would have survived
22 it.

23 Also I'm looking at Mr. Stuckey's motion to
24 ratify, that's really superfluous. It's not
25 necessary. I don't have to ratify another judge's

1 order, it's the law of the case so I would never
2 have heard his motion that he filed, because I don't
3 have to ratify someone else's order It is the law
4 of what the judge ruled I don't have any appellate
5 authority over Judge Dennis's ruling We have
6 concurrent authority

7 MR HILDEBRAND: Well, Your Honor, if the
8 motion was made just this morning to ratify --

9 THE COURT There is no motion, he has already
10 ruled Once I read his order if I had any concern
11 about it I would have called him and I would do
12 exactly what I'm doing now which is enforce whatever
13 his order was

14 MR HILDEBRAND I understand, Your Honor
15 But I was --

16 THE COURT That would apply to the third
17 cause of action which was fraud, fourth cause of
18 action, breach of fraud accompanied by a fraudulent
19 act, fifth cause of action, negligent
20 misrepresentation

21 He denied it as to the sixth cause of action
22 which was the unfair trade practices And as it
23 regards the breach of South Carolina code 27-50-10,
24 to the extent that it implies some fraudulent failing
25 to disclose

1 He told me that's what he granted He
2 remembered them all actually And before I could
3 finish reading as to the motion for summary judgment
4 denied as to the unfair trade practices, he said
5 that's the only thing that -- he granted summary
6 judgment as to everything except that

7 MR HILDEBRAND Well, Your Honor, I would
8 request a continuance then so I can file a motion to
9 reconsider and to have that in the record

10 THE COURT I think your time has already
11 passed on that, hasn't it? This was, ruling was
12 September 8, 2009 what's your timeline to file a
13 motion for reconsideration? When did you receive it?
14 It's been over a month now

15 MR HILDEBRAND Well in any event, Your
16 Honor, on the second cause of action as to the breach
17 of the South Carolina disclosure statute, that does
18 not require fraud, it just requires a breach of that
19 statute The statute is real clear on it I've got
20 -- we can pull up the statute, but that's --

21 THE COURT Knowingly failed to disclose, that
22 implies fraud That somehow you misled someone, that
23 you knew but it and then you failed to disclose it

24 MR HILDEBRAND There is nothing in the
25 statute that says you have to prove fraud, just says

1 knowingly failed to disclose It does not say fraud
2 nor imply fraud Fraud is a separate cause of action
3 that was included as a separate cause of action in
4 our complaint

5 We have got breach of contract and breach of
6 the non-disclosure If they did not disclose, if
7 they breached that disclosure by remaining silent
8 or --

9 THE COURT I'm not going re-argue it, I'm
10 just going to honor what Judge Dennis has done And
11 that's what he told me, that he dismissed everything
12 except the UTPA cause of action

13 MR HILDEBRAND And breach of contract,
14 because that was also --

15 THE COURT Oh, the breach of contract
16 accompanied by a fraudulent intent To the extent
17 that the breach of contract dealt with any basis of
18 it being fraud is dismissed That's what he told me

19 He said one their breach of contract with
20 fraudulent act, he said, yeah, that too He said, I
21 probably should have worded it better and I didn't
22 He said, I probably should have spelled out every
23 single one of them but I didn't do that He said, I
24 felt that my reference to it being plural and to the
25 subject matter of each one of them was sufficient

1 He said, but in hindsight I probably should
2 have been more explicit in my order so that will
3 leave with you then with the cause of action for
4 unfair trade practices

5 Have any offers of settlement been made? You
6 told me this was about the sale of a house what are
7 the damages that are being alleged?

8 MR HILDEBRAND The repair costs, which were
9 about --

10 THE COURT I see a list of the damages on
11 Paragraph 34 of your complaint, but I don't see an
12 amount being listed

13 MR HILDEBRAND It's under Paragraph 10 of
14 our complaint

15 THE COURT Where is this house located?

16 MR HILDEBRAND Seabrook Island

17 THE COURT Was this mold or something?

18 MR HILDEBRAND What happened, Your Honor,
19 was we bought the house, the disclosure form

20 indicated that there were no problems with the house

21 We closed, and right after that we were moving
22 in and a contractor said, what are you all doing?

23 You all can't move in, there are major problems, we
24 are doing repairs And we weren't able to move in
25 for four months because there were problems with it

1 That's the major allegation

2 THE COURT What were the problems being
3 alleged with the house?

4 MR HILDEBRAND That there were foundation
5 problems that required us to evacuate the house We
6 couldn't move in after we closed for four months
7 because the building was being repaired

8 THE COURT Did you all ever mediate this
9 case?

10 MR HILDEBRAND We have not, Your Honor

11 THE COURT I was just curious

12 Have any offers of settlement or demands been
13 made?

14 MR HILDEBRAND Not in some time, Your Honor

15 THE COURT Was there -- has an offer or
16 demand ever been made in the case?

17 MR HILDEBRAND Our original demand was
18 70,000, the original offer was 7,500 as I recall

19 MR STUCKEY I don't recall any either demand
20 or offer, Your Honor

21 MR HILDEBRAND Then our subsequent demand
22 was for 32,000

23 MR STUCKEY Your Honor, two points that
24 really impact First of all counsel keeps referring
25 to this as a home This was not a home, this was a

1 condominium And of course under the condominium law
2 there is no responsibility of the owner for the
3 foundation and the structure, because that's not part
4 of anything that is sold by the owner

5 And the second thing is that two independent
6 inspections were done, one of which they paid I
7 believe \$190 to an independent company to check the
8 house And plus they had a contractor come in so
9 they had two independent full evaluations before
10 going forward with the purchase They found no
11 problems

12 THE COURT You didn't sue any company or
13 otherwise, did you? You sued an individual under the
14 UTPA?

15 MR HILDEBRAND Yes, ma'am

16 THE COURT Are you going to have to prove
17 that similar actions occurred in the past?

18 MR HILDEBRAND I'm sorry, Your Honor

19 THE COURT I said, are you going to have to
20 prove that the same kind of action occurred in the
21 past?

22 MR HILDEBRAND Prior to this incident?

23 THE COURT Uh-hum

24 MR HILDEBRAND No

25 THE COURT How are you going to meet your

1 burden of proof?

2 MR HILDEBRAND Well I think if it's capable
3 repetition

4 THE COURT There are only two ways to show
5 that basically, one by showing that the same kind
6 of action has occurred in the past, thus making it
7 likely that they will continue to occur

8 or the other is by showing that a company's
9 procedures create a potential for repetition of
10 unfair, deceptive acts which is usually shown
11 through some form of advertising or some practice
12 that they have used that could be done repetitiously
13 to the public

14 Those aren't the only means, but those are
15 generally the way it's shown And you also have to
16 show that the members of the public were adversely
17 affected by the unfair conduct, or that they were
18 likely to be

19 okay Do you all have any common ground in
20 this or do we need to go ahead with jury selection?

21 MR STUCKEY Your Honor, we think it's just a
22 question of the law for the Court We would be
23 agreeable just to referring it to have the Court try
24 it non-jury

25 I represent two attorneys, Your Honor And

1 I mean there is not going to be any repetition They
2 are not in the business of selling houses They are
3 just two attorneys who in an isolated sale happened
4 to sell to these two plaintiffs

5 And as far as unfair trade practices act goes,
6 that's it And I think Mr Hildebrand will agree
7 there is no evidence to the contrary

8 THE COURT Bear with me one second, let me
9 make sure I'm accurate about something

10 Bear with me one moment, I want to make sure
11 I'm accurate about the cause of action regarding the
12 South Carolina code 27-50-10

13 Okay Mr Hildebrand, while we are waiting
14 did you indicate whether you were amenable to the
15 matter being heard non-jury?

16 MR HILDEBRAND I would not agree to that,
17 Your Honor

18 THE COURT Okay

19 While we are waiting we will go ahead and go
20 forward and pick the jury You all indicated you
21 don't have any middle ground in terms of settlement,
22 correct? I'm sorry, my brain is -- I apologize

23 MR STUCKEY We do not, Your Honor

24 THE COURT Is that correct, Mr Hildebrand?

25 MR HILDEBRAND Yes, ma'am

1 May I be heard one more time on the order?

2 THE COURT Sure

3 MR HILDEBRAND Again just so that the record
4 is clear The order, specific written order says
5 that the motion for summary judgment is granted as to
6 the causes of action for fraud and negligent
7 misrepresentation

8 I had two separate causes in my complaint, one
9 for fraud and one for negligent misrepresentation
10 And I understood from this order, from it's clear
11 language, that those were the only two that it was
12 granted for

13 The order does not say that the motion is
14 granted for our breach of contract, or the breach of
15 the failure to disclose, nor for breach of contract
16 accompanied by fraudulent act The clear language of
17 the order only grants the cause for those two causes
18 of action

19 And if reference to Judge Dennis by telephone
20 call he says that he meant to make it more broader --

21 THE COURT He said that was his order He
22 didn't say he meant it He said, that was my order
23 I probably should have worded it better, but that was
24 my order

25 MR HILDEBRAND Yes, ma'am

1 THE COURT And that is what the Court is
2 going to enforce And I'm clear that your position
3 is different but I'm not going to re-argue it

4 MR HILDEBRAND Yes, Your Honor

5 THE COURT It's already been heard, it hasn't
6 been appealed and a motion for reconsideration has
7 not been filed If you have a problem with the
8 order, you'll need to appeal it

9 MR HILDEBRAND All right Thank you, Your
10 Honor

11 THE COURT You're welcome I'm going to get
12 clarity from him as to whether it applies to the
13 cause of action under the statute Because the
14 statute, as I read it, is actionable if someone makes
15 a false or misleading representation, which in and of
16 itself implies something fraudulent If you say
17 something false and it's deliberate, that's
18 fraudulent

19 Incomplete could be through inadvertence,
20 misleading however implies fraud And I need to know
21 exactly what his intention was regarding that And
22 once I get clarity on that we will proceed in that
23 manner But I don't think that stops us from
24 selecting the jury

25 Is the plaintiff ready to proceed?

1 MR HILDEBRAND Yes, Your Honor

2 THE COURT Is the defense ready to proceed?

3 MR STUCKEY Yes, Your Honor

4 THE COURT Please bring in the jury for me,
5 please

6 (Whereupon, jury voir dire and selection was not
7 transcribed)

8 THE COURT. I sought further clarity from
9 Judge Dennis His response is, since I did grant
10 summary judgment as to negligent misrepresentation,
11 he's assuming that he did dismiss that cause of
12 action as well, meaning the statutory cause of
13 action And that was his intention So that leaves
14 us then with unfair trade practices cause of action

15 MR STUCKEY Fine

16 THE COURT Is there anything else we need to
17 take up before we adjourn from the plaintiff?

18 MR HILDEBRAND Not unless you'd like me to
19 rehash my arguments, Your Honor

20 THE COURT No And again the plain and
21 ordinary meaning, of course what a judge says on a
22 transcript is not what is binding, what is binding
23 is what has been reduced to writing And until it
24 is finally reduced to writing, of course within the
25 ten-day period the Court can sua sponte can change an

1 order to clarify or otherwise

2 AS IS done, and lot's of time when you have
3 motions, Judge Dennis did a Form 4, which is of
4 course approved by the Supreme Court as an
5 appropriate means to issue an order

6 And what he did was he indicated, defendant's
7 motion for summary judgment is granted as to the
8 causes of action for fraud and negligent
9 misrepresentation Defendant's motion for summary
10 judgment is denied as to the cause of action for
11 unfair trade practices

12 My reading of the plain and ordinary language
13 that he used in this Form 4 indicated to me that he
14 had dismissed all causes of action related to fraud
15 and those related to negligent misrepresentation in
16 that he did not use the singular form of cause, he
17 used the plural form meaning that all causes of
18 action relating to fraud, and all causes of action
19 relating to negligent misrepresentation were
20 dismissed and that was his intention in issuing his
21 order

22 Instead of relying on my own assumption, I
23 contacted Judge Dennis and I asked him what his
24 ruling was and what his interpretation of the
25 language was And he confirmed that that was in his

1 interpretation of the language, that it was his
2 intention to dismiss all causes of action relating to
3 fraud and all causes of action relating to negligent
4 misrepresentation

5 He indicated to me in hindsight he maybe
6 should have worded it differently, but that was his
7 intention and that was his order Therefore, I'm
8 bound to enforce it as that is the law of the case

9 I do not act as an appellate court over my
10 colleagues, nor do they over me And it is now the
11 law of the case If you have some concern about
12 that, you certainly are free to appeal it And the
13 Court of course would encourage that if that is your
14 desire

15 we will go forward on wednesday If there is
16 nothing further you all have a wonderful afternoon
17 See you wednesday at 9 30 If you have any request
18 to charge, you need to bring that with you wednesday

19 MR STUCKEY Thank you, Your Honor

20 THE COURT You're welcome

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3 C E R T I F I C A T E
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8 I, the undersigned, ANNE BOULEY MEYER,
9 Official Court Reporter for the Ninth Judicial
10 Circuit of the State of South Carolina, do hereby
11 certify that the foregoing is a true, accurate, and
12 complete transcript of record, and of all the
13 proceedings had and evidence introduced in the
14 above captioned case, relative to appeal, in the
15 Circuit Court for South Carolina, on the indicated
16 date

17 I do further certify that I am neither
18 of kin, counsel, nor interest to any party hereto

19
20 

21 Anne Bouley Meyer, RPR
22 Circuit Court Reporter
23
24
25

1 THE COURT Is the plaintiff ready to proceed?

2 MR HILDEBRAND We stipulate we are going to
3 drop our unfair trade practices claim based on your
4 ruling that that's the only claim in the case

5 THE COURT Actually, what I indicated was the
6 Judge Dennis ruled The Court was merely enforcing
7 that ruling I have not made a ruling in the case on
8 any issue That's his ruling, he granted summary
9 judgment, I sought clarification of that ruling

10 what I indicated to you all is that you needed
11 to do one of two things If you were unclear as to
12 what his ruling is then you needed to do one of two
13 things You need to file a motion to clarify his
14 ruling, or you both needed to agree to have him
15 clarify his ruling

16 Based on his statement to me that he probably
17 should have listed out every cause of action, or it
18 could have been worded better, that was clearly his
19 intention So the Court has not had occasion to rule
20 in this case, merely interpreting another ruling

21 MR HILDEBRAND Right And I think the
22 appeal would be from your interpretation of that
23 order My understanding from the ruling if there
24 is --

25 THE COURT The appeal would be of the

1 granting of summary judgment

2 MR HILDEBRAND I think the way I would
3 phrase it is that I would appeal from your
4 interpretation of the order as you announced it in
5 court the other day

6 THE COURT You would be losing out, you need
7 to appeal the summary judgment I didn't grant the
8 summary judgment You need to appeal whether the
9 summary judgment was appropriately granted and on
10 what grounds it was granted

11 It would actually be twofold And
12 nevertheless, I need to know whether you all have
13 come to some consensus or whether you're going to
14 file a motion Because as I explained to you on
15 yesterday, the Court is just going to remand it back
16 for the order to be made clear as to what was done
17 They're not going to fiddle in the dark trying to
18 figure out what those words meant

19 MR HILDEBRAND I will file a motion for
20 that, Judge, under 54(B)

21 THE COURT Mr Stuckey, did you have a chance
22 to review the cases that the Court made you aware of
23 on yesterday?

24 MR STUCKEY I did

25 THE COURT And is your client -- as I

1 indicated, I think that Mr Hildebrand can appeal at
2 any time the summary judgment I don't think he is
3 required to appeal it when it's granted I think he
4 can appeal it, and the case law dealing with that
5 deals with whether it is interlocutory or not And
6 the analysis really to some extent is related to
7 those parameters

8 But I don't think there is anything that
9 requires him to do it And I don't think he waives
10 his appellate rights when he does it I think he can
11 appeal the summary judgment when the case is over

12 And so it seems to me it's in everyone's best
13 interest that you all get clarity on Judge Dennis's
14 ruling And that would be Court's position on it

15 MR STUCKEY I understand that, Your Honor
16 we object of course to Judge Dennis clarifying the
17 order I've consulted with my two clients, and enjoy
18 the privilege of both being attorneys And their
19 position is that of course once the super claim is
20 dismissed, then Judge Dennis's order stands as it was
21 originally issued and thus the final order of the
22 case

23 THE COURT Okay well you all can hash that
24 out on an appellate basis But I think that Mr
25 Hildebrand should file a motion to clarify what Judge

1 Dennis's ruling was so that you all can be clear
2 I'm not going to speculate Although I have spoken
3 to him, and I know what his position is, I think his
4 record needs to be clear exactly what he ruled
5 without any question about it

6 I'm not -- I don't have any question about it
7 because I've had the ability to speak with him and he
8 related to me exactly what he intended I think for
9 everyone's purposes it is better that there be no
10 question

11 MR STUCKEY I understand, Your Honor

12 THE COURT If he denies that you all can go
13 where you want to go with it

14 MR HILDEBRAND So the status quo, if I
15 understand --

16 THE COURT The status quo is that the UTPA
17 claim has been dismissed with prejudice, and that you
18 are going to file a motion for clarification on Judge
19 Dennis's ruling And if he rules that he dismissed
20 everything then the case is over, you do what you
21 need to do

22 If he rules otherwise, it will come back for
23 trial on any causes of action he says still remains
24 It is my understanding, however, that he dismissed
25 everything so then you would be able to go forward

1 with your appeal

2 MR HILDEBRAND Well, may I retract the
3 dismissal with prejudice until we have Judge Dennis's
4 ruling on what he had intended on the order since
5 that was part of his order?

6 THE COURT Well, he denied -- I guess I'm a
7 little confused You've already indicated you
8 couldn't meet your burden of proof on it and that's
9 why you're withdrawing it

10 MR HILDEBRAND Right, but --

11 THE COURT And you thought that was your
12 weakest cause of action

13 MR HILDEBRAND I agree I think I will, but
14 I would like the Court -- to the extent that that
15 might impact his assessment of his earlier order

16 THE COURT I don't think it would

17 MR HILDEBRAND I don't think it would
18 either, Your Honor But just for the record I would
19 like to withhold our dropping of that UTPA claim with
20 prejudice until we have Judge Dennis's clarification
21 on his order

22 MR STUCKEY May I respond to that, Your
23 Honor?

24 THE COURT Absolutely

25 MR STUCKEY Thank you we came in here and

1 it was indicated by counsel that he felt his super
2 claim was the weakest he had, that he was throwing
3 that in basically as sort of a potpourri complaint

4 we asked that the Court decide the case
5 non-jury, since we think that's basically a question
6 of law on the super claim, and I think it is And
7 Your Honor gave me some cases that I think agree with
8 us

9 Despite that, counsel wanted to draw a jury
10 We drew a jury on the representation that he was
11 going to withdraw and dismiss the super cause of
12 action, which he has done on the record a couple of
13 times, and now he's flip-flopped and he says that he
14 thinks he wants to change his mind on it

15 And we think, Your Honor, since that has been
16 put on the record, that does not require an order
17 from Your Honor dismissing it Counsel has withdrawn
18 it and stated in open court on the record that he is
19 withdrawing it So I think it's withdrawn, ended,
20 finite, without the necessity of this Court entering
21 another order

22 MR HILDEBRAND Your Honor, if I may respond
23 to that That's what we had discussed

24 THE COURT No, you came in court this morning
25 and said you withdrew it We discussed it and you

1 also -- I mean I can go back and look at the court
2 reporter's notes but I think you said, I am
3 withdrawing the UTPA claim

4 MR HILDEBRAND Okay All right, as I
5 understand it --

6 THE COURT Now you are saying you want to
7 change it

8 MR HILDEBRAND No, that's fine

9 THE COURT You know, frankly, it would not
10 survive a directed verdict

11 MR HILDEBRAND Right, I understand That's
12 fine, Your Honor And on the other claims you will
13 withhold your ruling as to whether --

14 THE COURT I don't have to make a ruling I
15 keep trying to make that clear Judge Dennis has
16 ruled, it is a matter of interpreting his order which
17 as far as I'm concerned is clear

18 I've spoken with him to make sure that my
19 assumption regarding his order was correct He
20 confirmed what I thought he meant But I think for
21 purposes of the clarity of the record you need to
22 have him say to you what he meant because you seem to
23 be unclear And I think you need to be clear And I
24 think the records needs to be clear

25 And that is the danger in our circuit and

1 other big circuits where you hear so many motions
2 and doing Form 4's, that's why I rarely do them,
3 because what happens is you want to get it that -- no
4 reflection on Judge Dennis at all, we are all that
5 way, we want to be efficient, we want to get an order
6 done, we want it in the record, we want you to be
7 able to go on with your case

8 He indicated to me, he said, I should have
9 listed everything out, I could have done it, I should
10 have probably done it differently, but that was my
11 intention, that was my ruling

12 And I haven't had a chance to get a transcript
13 to see exactly what he said And nor do I think it's
14 necessary because I have spoken to him And he said
15 every cause of action that dealt with fraud it was my
16 intention to dismiss it Every cause of action that
17 dealt with negligent misrepresentation it was my
18 intention to dismiss it

19 The statute deals with from three different
20 perspectives, whether you fraudulently did not
21 disclose something, which is covered by his ruling,
22 whether you negligently did not disclose something,
23 or whether you intentionally mislead someone by not
24 disclosing something

25 So both of those are covered by fraud and

1 negligent misrepresentation But I would prefer that
2 there be no question in anyone's mind as to what he
3 meant so that he can speak for himself

4 MR HILDEBRAND I understand The procedure
5 is that we will file a motion and then when we get
6 the Judge's ruling we'll come back --

7 THE COURT And make sure you serve him with a
8 copy of it because filing a motion, it's going to get
9 stuck in the file Just like when you file a motion
10 for reconsideration, it does not get to us So I
11 would appreciate when you file it you make sure you
12 get a copy of it to him so that he is aware that it
13 exists so that he can do whatever he desires to do
14 with it, whether he wants to have a hearing, whether
15 he wants to have a conference call with you all and
16 indicate what he intended to do, however he wants to
17 handle it

18 MR HILDEBRAND When we get his ruling we'll
19 then --

20 THE COURT You can do what you want with it
21 Mr Stuckey can appeal if he wants or you can go
22 forward And if he says there is a cause of action
23 it will go right back on my trial roster and it will
24 be tried If he says nothing is left then you can go
25 forward and file your appeal on the summary judgment

1 MR HILDEBRAND Got you Thank you, Your
2 Honor

3 THE COURT You're welcome If you all would
4 stay put while I excuse the jury

5 Bring in the jury for me, please

6 (whereupon, the jurors enter the courtroom)

7 THE COURT Thank you, you may be seated

8 Ladies and gentlemen of the jury, this case we
9 have had -- procedurally we are going to have to
10 delay the trial of this case so your services will
11 not be needed this morning So the good news, I
12 guess, I'm excusing you for the balance of the day
13 and I would just ask that you call the jury
14 information line after six o'clock this evening

15 I'm not certain, I have several other cases on
16 my roster this week, but each of them seem to have
17 some conflict or difficulty in being able to go
18 forward And I will have to make a decision today
19 about whether I will be trying any other jury cases
20 or whether I will go and try some non-jury cases for
21 the remainder of the week

22 The long and short of it is I'm not certain
23 whether I'm going to need your services any further
24 this week But if -- when you call in the morning,
25 if we don't -- basically if we don't need your

1 services you probably will be excused for the week
2 Because Judge Newman's case, as I have indicated,
3 will go two weeks and so we have already selected the
4 jury for that case

5 So if I'm not in need of your services, if
6 there is not a message that we need you in the
7 morning, as I have indicated in all likelihood we
8 will be excusing you for the remainder of the week
9 So what I need for you all to do is call after six
10 o'clock, listen to the message, if the message says
11 we need you, then if you all would accommodate us by
12 arriving at the courthouse

13 And if not you are free to go Probably there
14 will be a message saying you are excused for the
15 week And if you are excused for the week, then I'm
16 sure you all will be happy about that, can go along
17 with your responsibilities and your jury service,
18 your obligation would have been met for the next
19 three years as to this court

20 I hope that although you all have not had the
21 opportunity to serve on a jury, that this has been
22 somewhat educational for you I like when we have
23 jurors because it gives, at least in my mind, every
24 time we have a panel of people the opportunity to see
25 the system firsthand, and for your faith in our

1 system to be renewed

2 Unfortunately, or fortunately, most people
3 learn about the court system on TV And
4 unfortunately most people believe what they see is
5 true when in fact it's entertainment Although I
6 find -- I won't say I find Judge Judy entertaining, I
7 know a lot of people who do Judge Judy, Judge Joe
8 Brown, Judge Mathis I forget now, there are a
9 plethora of court shows that are on

10 But unfortunately I think most people now
11 learn what our system is about by watching those
12 shows And most people don't know that while they
13 take on the form of court, they are arbitrations
14 Any of you could sit as a judge in those shows and
15 decide the case

16 So I hope that you will, even though you have
17 not had the opportunity to actually deliberate and
18 render a decision, that at least thus far the process
19 has been educational for you

20 So you are excused for the day with the
21 court's profound thanks And if you need a work
22 excuse you can get one downstairs in the clerk's
23 office At clerk at the window can give you an
24 excuse Your checks will be made at the end of the
25 week

1 If you don't need an excuse today, those will
2 also be mailed out to you You are excused with the
3 Court's thanks Have a wonderful day

4 Thank you all

5 (Whereupon, the proceedings in this matter
6 before the Court were adjourned)

7 * * * * *

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
complete transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date

I do further certify that I am neither
of kin, counsel, nor interest to any party hereto

Anne Bouley Meyer, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

DUDLEY N CARPENTER, et al
 Plaintiff

CASE NO 08-CP-10-69

vs

CHARLES L MEASTER and
BARBARA P MEASTER,
x Defendant

**MOTION INFORMATION FORM
AND COVER SHEET**

check box above indicating submitting party

<u>Name, S.C. Bar No. and address of plaintiff's attorney</u> Thomas C Hildebrand Jr PO Box 340 Charleston SC 29402 telephone 722 3366 fax 722 2266 e mail other	<u>Name, S.C. Bar No. and address of defendant's attorney</u> JAMES A STUCKEY SC Bar 5413 123 MEETING STREET CHARLESTON SC 29401 telephone 843 577 9323 fax 843 577 3635 e mail jstuckey@stuckeylaw.com
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MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I Hearing Information

Nature of Motion **Defendant's Motion For Judgment NOV**

Estimated Time Needed 15 minutes

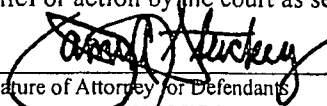
Court Reporter Needed **Yes**

SECTION II Motion Type

Written motion attached

Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order



Signature of Attorney for Defendants

June 14, 2010
Date submitted

SECTION III Motion Fee

PAID - AMOUNT \$25 00

- EXEMPT Rule to Show Cause in Child or Spousal Support
- (check reason) Domestic Abuse of Abuse and Neglect
- Indigent Status State Agency v Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter _____
- Other

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order
- Other

JUDGE
CODE Date

CLERK'S VERIFICATION

Collected by _____
(print name)

DATE FILED

- MOTION FEE COLLECTED _____
- CONTESTED - AMOUNT DUE _____

SCCA/233 (01 03 03)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Case No 08-CP-10-69

DUDLEY N CARPENTER and)
JANE G CARPENTER,)
Plaintiffs,)

-versus-

CHARLES L MEASTER and)
BARBARA P MEASTER,)
Defendants)

DEFENDANTS' MOTION
FOR
JUDGMENT NOV

BY

JULIE J ARMS, ROHS
CLERK OF COURT

2010 JUN 15 AM 10 39

FILED

Defendants CHARLES L MEASTER and BARBARA P MEASTER

respectfully move the Court for Judgment *non obstante veredicto* in this case on the grounds herein set forth

FACTS

Plaintiffs sued defendants on six causes of action arising out of the sale of a condominium at Bohicket Marina. By Order of the Court dated September 3, 2009, plaintiffs' causes of action for fraud and negligent misrepresentation were dismissed pursuant to the Economic Loss Rule. Plaintiffs voluntarily dismissed their cause of action under the South Carolina Unfair Trade Practices Act, S C Code § 39-5-10 *et seq*. The case went to trial on plaintiffs' causes of action for breach of contract accompanied by a fraudulent act and breach of the Residential Property Condition Disclosure Act, S C Code § 27-50-10, *et seq*.

10-10665

At the conclusion of the testimony defendants' motions for directed verdict for the Residential Property Condition Disclosure Act and to strike punitive damages were granted. The sole remaining cause of action for breach of contract was submitted to the jury. After deliberation the jury returned a verdict for \$65,000 actual damages on June 3, 2010. Defendants were granted ten (10) days in which to submit post-trial motions.

LAW AND ARGUMENT

The parties never made any verbal promises or representations to each other. Plaintiffs' breach of contract action is based on their AGREEMENT TO BUY AND SELL REAL ESTATE CONDOMINIUMS (Ptf's' Exh 1, attached) and STATE OF SOUTH CAROLINA RESIDENTIAL PROPERTY-CONDITION DISCLOSURE STATEMENT (Ptf's'-Exh-2, attached).

"Contract liability is a no-fault liability. The fundamental maxim is *pacta sunt servanda* - - agreements must be kept. Even if performance is impossible or senseless, the assessment of damages for non-performance remains a possibility." *Calamari and Perillo on Contracts* (Fifth Edition) p. 551, § 13-20
Underlying Rationale

* * * *

Introductory Note Contract liability is strict liability. It is an accepted maxim that *pacta sunt servanda*, contracts are to be kept. The obligor is therefore liable in damages for breach of contract even if he is without fault and even if circumstances have made the contract more burdensome or less desirable than he had anticipated. (As to the effect of hardship on equitable remedies, see § 364(b).) The obligor who does not wish to undertake so extensive an obligation may contract for a lesser one by using one of a variety of common clauses: he may agree only to use his "best efforts", he may restrict his obligation to his output or requirements, he may reserve a right to cancel the contract, he may use a flexible pricing arrangement such as a "cost plus" term, he may insert a *force majeure* clause, or he may limit his damages for breach.

Restatement of the Law Second, Contracts 2d, Vol 2, Chap 11, p 309 (American Law Institute, 1981) (emphasis added)

In this case plaintiffs' purported cause of action for breach of contract fails because the plaintiffs waived, disclaimed, and forfeited any such rights they may have had under the AGREEMENT TO BUY AND SELL REAL ESTATE CONDOMINIUMS (Ptf's' Exh 1)

WAIVER

As to waiver the Agreement provided

"18 (B) **Inspection** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure including but not limited to appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances All Inspections shall be completed by June 8, 2007 In the event repairs are necessary to place the heating system, air conditioning, plumbing and electrical system to be conveyed in operative condition and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above **Time is of the essence** If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph (Emphasis added)

Buyers' inspection by The Home Team Inspection Service was completed on June 5, 2007, and Buyers were provided a Home Inspection Report

Time was specifically made "of the essence" No notification was given by Buyers to Sellers of any problems with the condominium being structurally sound or with the air-conditioning system, so such, along with the other enumerated items, were thus waived pursuant to the contractual provision between the parties

"Durham alleges the issue of waiver was a jury question and should not have been decided on summary judgment We disagree When the facts pertaining to waiver in an insurance case are undisputed, a question of law is presented *Turner v Pilot Life Insurance*

Company, 238 S C 387, 120 S E 2d 223 (1961)", *Greene v Durham Life Insurance Company*,
287 S C 197, 336 S E 2d 478 (1985)

DISCLAIMER

The AGREEMENT TO BUY AND SELL REAL ESTATE CONDOMINIUMS (Ptf's' Exh 1)
between the parties provided

(H) **Disclaimer** The Buyer acknowledges the Seller, except as provided in subparagraphs (B) [**Inspection**], (C) [**Maintenance**], (D) [**Wood Infestation Report**], and (E) [**Repairs**] of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller (Brackets and Emphasis added)

This paragraph disclaimed any warranties of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto This was a contractual provision by and between the parties and is binding on them

Plaintiffs have forfeited any right to pursue their action against the defendants and to sue them because Para 19 (E) of the AGREEMENT TO BUY AND SELL REAL ESTATE CONDOMINIUMS (Ptf's' Exh 1) specifically provided

(E) **Repairs** The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7 The repairs to any other items are the sole responsibility of Buyer The obligations of Seller under paragraph 19

terminate on the day of closing or on the day possession is given, whichever occurs first (Emphasis added)

Pursuant to Para 19 (E) of the sales contract by and between the parties, “The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first ” (Emphasis added) Thus any and all obligations and requirements stated in subparagraphs (B) [**Inspection**], (C) [**Maintenance**], (D) [**Wood Infestation Report**], and (E) [**Repairs**], of Paragraph 19 terminated on June 18, 2007, the date of closing, and when possession was given that day, and can not now furnish the basis for any action by plaintiffs because any rights they may have had were contracted away

Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous 73 Am Jur 2d Summary Judgment § 5 at 727-28 (1974) In such a case, summary judgment is proper and a trial unnecessary where the intention of the parties as to the legal effect of the contract may be gathered from the four corners of the instrument itself *Cure v City of Jefferson*, 380 S W 2d 305 (Mo 1964), *Bethlehem Steel Co v Turner Construction Co*, 2 N Y 2d 456, 161 N Y S 2d 90, 141 N W 2d 590, 63 A L R 1331 (1957), all cited in *First Citizens Bank & Trust Company v Conway National Bank*, 282 S C 303, 305, 317 S E 2d 776, 777 (S C App 1984)

RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

Plaintiffs have emphasized Para 20 of the Residential Property Condition Disclosure Statement It questions whether defendants had “knowledge of any”

20 Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property? (Emphasis added)

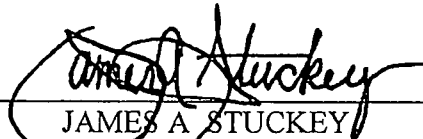
The defendants checked “No ”

Prior to closing the plaintiffs had a title examination conducted by Leonard Krawcheck, Esquire. The testimony was that Mr. Krawcheck was a competent, capable, and well-respected attorney. Of course, any of these alleged impediments would have been detected and revealed by attorney Krawcheck's title examination. None were found. That is because none of the listed items "could affect title to the property" because clear title passed to the plaintiffs. At trial, plaintiffs emphasized a class action lawsuit that had previously been brought and settled with the proceeds to be disbursed to certain condominium owners, however, that action was already litigated and certainly did not "affect title to the property" bought by plaintiffs.

CONCLUSION

For the reasons stated, based on the applicable principles and law, defendants' motion for judgment notwithstanding the verdict should be made, the jury verdict should be set aside, and judgment should be granted to defendants.

Respectfully moved,



JAMES A. STUCKEY
STUCKEY LAW OFFICES, LLC
123 Meeting Street
Charleston, SC 29401
843-577-9323
Email jstuckey@stuckeylaw.com
Facsimile 843-577-3635

June 14, 2010
Charleston, South Carolina

Attorney for Defendants



AGREEMENT TO BUY AND SELL REAL ESTATE CONDOMINIUMS



1 PARTIES This legally binding Agreement entered into on May 17, 2007 between, Buyer(s) Dudley N Carpenter, Jane G Carpenter, (hereinafter called BUYER) and Seller(s) Charles L Measter, Barbara P Measter, (hereinafter called SELLER) The property shall be deeded in the name(s) of To Be Determined

THE [] BUYER [] SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

2 PROPERTY TO BE SOLD Subject to terms and conditions herein Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon

Lot _____ Block _____ Section _____ Subdivision Bohicket Marina Village Address 1964 Marsh Oak Lane Tax Map # 204-00-00-100 City Seabrook Island Zip 29455 County of Charleston State of South Carolina

Seller represents that the property is connected to [x] public sewer system or to [] septic tank or to [x] public water or to [] well system or to [] other _____

No personal property will convey as a part of this sale except as described (attach addendum if necessary). Electric Range, Refrigerator, Dishwasher, Microwave, Washer, Dryer

3 CONVEYANCE SHALL BE MADE Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes ordinances, rules and regulations Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated Seller agrees to pay all statutory deed recording fees The deed shall be delivered at the stipulated place of closing, and transaction closed on or before July 2, 2007 not later than 9 00 p m Time is of the essence Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing

4 POSSESSION Possession of said property will be given to Buyer at the time of closing Seller agrees to deliver property free of debris and in a clean condition The property including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy

5 PURCHASE PRICE shall be \$ 640,000.00 675,000.00 Six Hundred Forty Thousand seventy five thousand dollars

6 METHOD OF PAYMENT Purchase price shall be paid as follows [] Cash, or [x] Subject to Financing Financing to be obtained by [x] Conventional [] Seller [] VA [] FHA [] Other terms _____

7 EARNEST MONEY This offer is accompanied by an earnest money deposit of \$ 10,000.00 Buyer and Seller authorize Kiawah Bohicket Real Estate as Escrow Agent to hold and disburse earnest money according to the terms of this agreement Earnest money paid by [] Cash [x] Check or [] Other Broker does not guarantee payment of a check or checks accepted as earnest money All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations At the consummation of this sale, the earnest money deposit shall be credited to the Buyer

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT

[Signature] BUYER [Signature] BUYER [Signature] SELLER [Signature] SELLER HAVE READ THIS PAGE

8 **LOAN PROCESSING AND APPLICATION** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan Buyer shall apply for a maximum 80 000 % loan (loan-to-value ratio) within 7 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 15 consecutive days that contains no credit income or asset conditions, unless otherwise set forth in this contract Time is of the essence Should the Buyer fail to make loan application or receive approval within said period and to diligently pursue the application the Seller shall have the option to terminate this Agreement with written notice Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner Buyer will take any action that is needed or requested by Lender to process the loan application Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s) if Buyer fails to comply with these above conditions, Buyer shall be in default of this agreement subject to the terms of paragraph 16
FHA Mortgage Insurance will will not be added to the mortgage VA funding fee will will not be added to the mortgage

9 **CLOSING COSTS** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items shall be paid as follows
(a) SELLER shall provide or pay for preparation of deed any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing
(b) BUYER shall pay unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey cost of obtaining loan, discount points, title examination escrow deposits, and prepaid expenses The Buyer shall also pay if applicable, interim interest and mortgage insurance premium or VA funding fee Buyer's hazard insurance policy shall provide coverage as required by lender Other terms _____

10 **HOME PROTECTION-PLAN-COVERAGE** *To be offered by agents [initials]* Both parties understand that a third party home warranty Plan will not be issued at closing If applicable the warranty premium will be paid at closing by the Buyer or Seller not to exceed ~~\$500.00~~ _____

11 **EXPIRATION OF OFFER** The offer from Buyer shall be withdrawn at 5 00 o'clock P M on May 18, 2007 unless accepted or countered by Seller in written form prior to such time Time is of the essence

12 **EXTENSION AGREEMENT** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party then both parties agree to extend this agreement for a period not to exceed 7 consecutive days from the original closing date Closing shall occur within this time extension but in no event shall closing occur later than the above extension date Time is of the essence

13 **ADJUSTMENTS** Taxes water, all sewer assessments sewer charges fuel oil rents as when collected insurance premiums, if applicable and other assessments including homeowner's association fees shall be adjusted as of the date of closing Special assessments approved prior to closing shall be the responsibility of the SELLER Special assessments approved after closing shall be the responsibility of the BUYER The Buyer or the Seller shall pay for the cost of any Certificate of Assessment, or other similar document made available if applicable Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing and are to be prorated on that basis **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS** Property taxes and rent, as well as other expenses and income of the property if applicable, shall be apportioned to the date of closing Annual expenses or income shall be apportioned using 365 days Monthly property expenses or income shall be apportioned by the number of days in month of closing Prorations at closing shall be final

14 **NON RESIDENT TAX** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12 8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute _____

15 **RISK OF LOSS OR DAMAGE** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder or of terminating this Agreement

[Signature] BUYER *[Signature]* BUYER *[Signature]* SELLER *[Signature]* SELLER HAVE READ THIS PAGE

16 **DEFAULT** If Buyer or Seller fails to perform any covenant of this Agreement the other may elect to seek any remedy provided by law including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17 **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include but are not limited to cost of credit report appraisal survey, inspections and reports title examination and Broker's fee or commission for this sale.

18 **SURVEY, TITLE EXAMINATION, AND INSURANCE** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property obtain owner's title insurance and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19 **CONDITION OF PROPERTY**

(A) **Seller's Property Condition Disclosure Statement** (check one)

- Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws as amended Section 27-50-30, Paragraph (13)
- Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understand and agree that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws as amended.

(B) **Inspection** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure square footage, environmental concerns including but not limited to mold, radon gas, lead based paint and lead-based paint hazards wetlands study, appurtenant buildings heating, air conditioning, electrical and plumbing systems as well as built in appurtenant equipment or appliances. All inspections shall be completed by June 8, 2007. In the event repairs are necessary to place the heating system air conditioning, plumbing and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications these are to be provided by Buyer.

(C) **Maintenance** After any inspection by Buyer and after repairs if any made as a result of any such inspection the Seller agrees to maintain the heating, air conditioning plumbing and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted until the day of closing or the day possession is given whichever occurs first. Seller agrees to maintain the property, including lawn shrubbery and grounds until the day of closing or possession whichever occurs first.

(D) **Wood Infestation Report** If the property to be sold has been previously occupied, The Buyer The Seller shall at their expense have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator on or before June 22, 2007. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above but fails to have the property inspected by this date Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms Seller shall remedy

[Signature] BUYER [Signature] BUYER [Signature] SELLER [Signature] SELLER HAVE READ THIS PAGE

such deficiencies subject to section (E) below and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing

If the property to be sold has not been previously occupied Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer at closing a written certification from a licensed pest control operator

(E) **Repairs** The cost of all repairs to heating system, air conditioning plumbing and electrical system to be conveyed, and to make the roof free of leaks to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment if any, required by section (B) and (D) above to be paid by Seller If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment or (3) terminate this Agreement, subject to paragraph 7 The repairs to any other items are the sole responsibility of Buyer The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first

(F) **Residential Dwellings Built before 1978** (check one of the following)

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead based paint and/or lead based paint hazards which shall be done, at the Buyer's expense by midnight on the tenth day after ratification of this contract or by midnight on _____, _____ (Intact lead based paint that is in good condition is not necessarily a hazard See EPA pamphlet "Protect Your Family From Lead in Your Home for more information) This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed together with a copy of the inspection and/or risk assessment report The Seller may, at the Seller's option within _____ days after Delivery of the addendum elect in writing whether to correct the condition(s) prior to settlement If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement If the Seller does not elect to make the repairs or if the Seller makes a counter offer the Buyer shall have _____ days to respond to the counter offer or remove this contingency and take the property in 'as-is' condition or this contract shall become void Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder The Buyer may remove this contingency at any time without cause, or

Buyer waives the opportunity to conduct a risk assessment or inspection for lead based paint and/or lead-based paint hazards

(G) **Megan's Law** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials

(H) **Disclaimer** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C) (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements services appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof and any implied warranty is hereby disclaimed by the Seller

Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved

20 **APPRAISED VALUE** (check one) _____

This agreement is not contingent on the lot or parcel with building and improvements thereon if any appraising according to the lender's appraisal or other appraisal as agreed for the selling price

This agreement is contingent on the lot or parcel with building and improvements thereon, if any appraising, according to the lender's appraisal or other appraisal as agreed for the selling price or more if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value In such case the Buyer agrees to proceed with the consummation of this sale at the reduced price

[Signature] BUYER [Signature] BUYER [Signature] SELLER [Signature] SELLER HAVE READ THIS PAGE

However if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation or terminate the agreement without penalty

21 DISCLAIMER BY BROKERS AND AGENTS The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s) (1) Give no guaranty or warranty of any kind, express or implied as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto included but not limited to termite damage roof basement appliances, heating and air conditioning systems plumbing sewage electric systems, and to the structure (2) Give no warranty express or implied as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed (3) Give no warranty as to title, (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property, (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals, (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer

22 COASTAL TIDELANDS & WETLANDS ACT In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39 10 et seq, South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at Buyer's Seller's expense

23 MEDIATION CLAUSE Any dispute or claim arising out of or relating to this Agreement the breach of this Agreement or the services provided in relation to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS® Disputes shall include representations made by the Buyer(s) Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment misrepresentation negligence and/or fraud Any agreement signed by the parties pursuant to the mediation conference shall be binding This mediation clause shall survive for a period of 120 days after the date of the closing

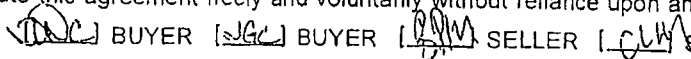



The following matters are excluded from mediation hereunder (a) judicial or non judicial foreclosure or other action or proceeding to enforce a deed of trust mortgage or land contract, (b) an unlawful detainer action, (c) the filing or enforcement of a mechanic's lien (d) any matter which is within the jurisdiction of a probate court, (e) the filing of an interpleader action to resolve earnest money disputes The filing of a judicial action to enable the recording of a notice of pending action for order of attachment receivership injunction or other provisional remedies shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate

24 SURVIVAL If any provision herein contained which by its nature and effect is required to be observed kept or performed after the closing it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed

25 ENTIRE BINDING AGREEMENT This written instrument including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants and warranties between the Buyer and Seller It can be changed only by a subsequently written instrument signed by both parties Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators Whenever used singular includes plural and use of any gender shall include all

26 FACSIMILE AND OTHER ELECTRONIC MEANS The parties agree that the offer any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means including but not limited to electronic mail and the internet, and the signatures initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party

27 NON RELIANCE CLAUSE Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein If not contained herein such statements representations promises or agreements shall be of no force or effect This general non reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non reliance language is included in this agreement This is a non reliance clause and is neither a merger clause nor an extension of a merger clause The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents

 BUYER  BUYER  SELLER  SELLER HAVE READ THIS PAGE

FORM 300 PAGE 5 of 6

except as set forth herein Parties have fully read and understand this Agreement and the meaning of its provisions Parties are legally competent to enter into this agreement and to fully accept responsibility Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so

28 CONTINGENCIES These stipulations shall preempt printed matter herein (attach and reference addendum if necessary)

THIS IS A LEGALLY BINDING AGREEMENT BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED

IN WITNESS WHEREOF this Agreement has been duly executed by the parties

X BUYER Dudley N Carpenter Date 5-16-07 Time 3:30
WITNESS _____ Date _____ Time _____

X BUYER Janie G Carpenter Date 5/16/07 Time 3:30
WITNESS _____ Date _____ Time _____

SELLER Charles L Measter Date 5/18/07 Time 5:00pm
WITNESS _____ Date _____ Time _____

SELLER Barbara P Measter Date 5/18/07 Time 5:00pm
WITNESS _____ Date _____ Time _____

LISTING AGENT AND COMPANY Janice Franklin Seabrook Island Real Estate
SELLING AGENT AND COMPANY Cooper Williams Kiawah Bohicket Real Estate

SELLING AGENT IS PRESENTING THIS OFFER AS A BUYER'S AGENT OR SUBAGENT OF THE SELLER

ESCROW AGENT ACKNOWLEDGMENT _____
Kiawah Bohicket Real Estate

The foregoing form is available for use by the entire real estate industry The use of the form is not intended to identify the user as a REALTOR® REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics Expressly prohibited is the duplication or reproduction of such form or the use of the name South Carolina Association of REALTORS® in connection with any written form without the prior written consent of the South Carolina Association of REALTORS® The foregoing form may not be edited revised or changed without the prior written consent of the South Carolina Association of REALTORS®

268906



STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

- 1 South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2003, an owner of residential real estate...
2 You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.
A. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency...
B. If you check "No" for any question, you are stating that you have no actual knowledge of any problem...
C. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property...
D. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate...
3 If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser...
4 You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property...

Initiated by Seller Date 3/15/07 Buyer Date 5/16/07

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

	Yes*	No Representation	No
1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ <u>red cedar + hard plank</u> b. Approximate age of structure <u>10</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Roof (leakage or other problem)? a. Approximate age of roof covering <u>NA</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Plumbing system (pipes, fixtures, water heater, etc)? <u>leaky</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Heating and/or air conditioning? a. Heat source: furnace ___ heat pump <u>X</u> baseboard ___ b. Cooling source: central <u>X</u> wall/window unit(s) ___ c. Fuel source: electricity <u>X</u> natural gas ___ propane ___ oil ___ d. Approximate age of heating unit <u>1/2</u> /cooling unit <u>1</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Water supply (including water quality, quantity and water pressure)? a. water supply is: city/county <u>X</u> community system ___ private well ___ b. water pipes are: copper <u>X</u> galvanized ___ PVC/CPVC ___ polybutylene ___	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Septic system? a. Type system: septic tank ___ community system <u>NA</u> connected to city/county system ___ city/county system available ___ b. Does the system require a pump? Yes ___ No ___ c. Has the septic system been serviced/pumped during your ownership?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ___	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Drainage, grading or stability of soil or retaining structure?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ___ exhaust fan ___ ceiling fan ___ sump/pump ___ irrigation system ___ cable tv wiring or satellite dish <u>1</u> security system ___ or other systems ___	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Initials rpm Seller 3/5/07 Date 3/5/07 Buyer SSC Date 6-16-07
 Rev 1/04

REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY.

	Yes*	No	Representation
13. Room additions or other structural changes?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Previous damage caused by fire?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Violations or variances of building codes or zoning ordinances?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18. Restrictions to property use? (covenants or deed)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. Lawsuits, foreclosures, bankruptcy, tax liens, judgments, tax or other liens, proposed assessments or notices from any governmental agency that could affect title to the property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
21. Owners' association fees or "common area" expenses or assessments?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22. Flood hazards or that the property is in a federally-designated flood plain?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.

13. Resurfaced
 14. Radon & Asbestos
 15. Asbestos
 16. Asbestos
 17. Asbestos
 18. Asbestos
 19. Asbestos
 20. Asbestos
 21. Asbestos
 22. Flood zone
 23. Asbestos
 24. Asbestos

Initials: DM Seller JK Date 3/21/06 Buyer JK Date 5/16/01

"Yes" explanations continued:

Multiple horizontal lines for providing explanations.

Owner(s) Acknowledgement

Property Address: 1954 Hibiscus Way, Seabrook Island, SC 29455
The property is currently owner-occupied [checked] leased ___ in an estate ___ in foreclosure ___
vacant ___ (if vacant, how long?)
Owner's Name(s): Charles Maister, Barbara Maister
Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.
Owner Signature: Charles Maister Date:
Owner Signature: Barbara Maister Date: 3/16/07

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing, that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain, and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.
Purchaser Signature: [Signature] Date: 5-16-07
Purchaser Signature: [Signature] Date: 5/16/07

1 They have alleged six causes of action
2 breach of contract accompanied by fraudulent,
3 fraud, negligent misrepresentation, unfair trade
4 practices, breach of contract, breach of the
5 Residential Disclosure Statement

6 Your Honor, we say that we're entitled
7 to summary judgment on the tort causes of
8 action, which are fraud, negligent misrep-
9 sentation and Unfair Trade Practices Act under
10 the Moss doctrine Even under the Moss
11 doctrine, as Your Honor well know, it provides
12 that when you allege only economic loss and
13 there is a contract involved, then your remedy
14 is under the contract and under the provisions
15 of the contract you can't turn around and sue
16 for tort

17 That is true if there is no personal
18 injury involved and I believe the recent
19 *Colleton Preparatory School* case said that
20 unless there is a threat of serious personal
21 injury None of that is here

22 So we think the three -- the two causes
23 of action, three causes of action -- for fraud,
24 for negligent misrepresentation and for unfair
25 trade practices -- go out and that the exclusive

1 remedy of plaintiffs in this case is to proceed
2 under the contract

3 Breach of contract accompanied by
4 fraudulent act of course is denoted as a
5 contract cause of action and not an equitable
6 cause of action

7 So we think those three tort causes of
8 action should be dismissed and the plaintiff can
9 then allegedly go forward on his remaining three
10 causes of action

11 We think that he is barred on those
12 also, Your Honor, if he is proceeding under the
13 contract by the clear, unequivocal terms of the
14 contract between the parties The contract
15 provided that there was a waiver provision, in
16 paragraph 19(b) and it said that the plaintiffs
17 should conduct an inspection Now, it's
18 specific and clear as to the fact that an
19 inspection should be conducted The plaintiffs
20 in this action, Your Honor, conducted not one,
21 not two, not three, not four but basically five
22 different inspections

23 In fact, they had a professional
24 inspection team called The Home Team that they
25 paid \$290 to, to come in on June the 5th

1 accompanied by Jane Carpenter, who is one the
2 plaintiffs, and she walked the property with
3 them They gave a clean bill of health on that,
4 didn't find any problems They went underneath
5 the building, because they pointed out that the
6 vapor barrier needed to be replaced and there
7 was debris under the building So clearly they
8 inspected under the building, found no
9 structural damage.

10 They got a \$400,000 loan from Bank of
11 America and they did an inspection on it As
12 asserted in the affidavit of Barbara Measter,
13 they called in another inspection team So
14 there were four or five inspections done on it.

15 Paragraph 19(b) of the contract stated
16 that any repairs that were called to the
17 attention of the sellers would be done by the
18 sellers and that that would be complete by June
19 8th Remember that the inspection was done on
20 June 5th by The Home Team That provision
21 provided that the sellers would be notified
22 within forty-eight hours after any inspection
23 and "time is of the essence" That if there was
24 -- that if there were any provisions or problems
25 with the structure or with the air-conditioner

1 or with the heating or with the many enumerated
2 items then the plaintiffs would waive all
3 rights, under Paragraph 19(b)

4 In addition there was a paragraph,
5 Paragraph 19(e), which provided for repairs,
6 saying that the heating system, the air
7 condition system, whether or not the house would
8 be structurally sound would be checked by the
9 purchasers and any costs of those items would be
10 paid by the sellers, and that it was an
11 obligation of the seller to terminate the --
12 the obligations of the sellers for that were
13 terminated on the day of the closing So they
14 are proposing, under the terms of the contract,
15 that their obligation to make repairs would
16 cease and would terminate

17 That provision also provided that the
18 buyers could accept the property in its "present
19 condition". So by accepting the property, going
20 forward with it and not notifying the sellers,
21 we submit that they waived that and they
22 accepted the property in its present condition

23 Paragraph 19(h), which was a
24 disclaimer, said that the "buyer understands
25 that the seller gives no guarantees and no

1 concerns me, and I've got to revisit it Every
2 time that I do it I think that I have a clear
3 understanding of it and then I don't have one
4 after I read it a little bit but -- in fact, I
5 think your partner first caught me in one of
6 those in '97, economic loss issues. That's a
7 major concern

8 What is the damage from the fraud that
9 is not existing in your contract?

10 MR HILDEBRAND Well, Your Honor, I
11 think if that ---

12 THE COURT It has to be something
13 else, I think, from the way that I read that
14 with everything tied to a contractual situation
15 That's where your cause of action is because
16 there is no -- there is no tort, *per se*

17 MR HILDEBRAND But I think the
18 parcel -- that the case law is that if you've got
19 -- sorry, I didn't mean to interrupt you.

20 THE COURT I don't have any problem
21 with the parole evidence and that sort of --
22 getting around that But, again, if it deals
23 with the remedies then the remedy is breach of
24 contract -- breach of contract with fraudulent
25 intent may be clearly there Would that not

1 entitle you to punitive damage, breach of
2 contract with fraudulent intent?

3 MR HILDEBRAND It might but I don't
4 think ---

5 THE COURT See, that's what I'm
6 saying You have -- your remedy is there I
7 just don't -- I don't see it as a fraud action
8 I'll look at the memos but that gives me some
9 concern I don't quarrel with the
10 misrepresentation but that clearly is a breach
11 of contract because, as you stated, the contract
12 itself says that you're going to disclose it ---

13 MR HILDEBRAND Yes, sir

14 THE COURT --- by incorporating that
15 document

16 MR HILDEBRAND Yes, sir

17 THE COURT There's no question --
18 if that's established there is a breach of
19 contract Now the question is what is the
20 damages going to be Certainly -- everything
21 that you've talked about to me, just right off
22 the bat without thinking about it, though maybe
23 I'm missing something, flows as a natural damage
24 from a breach of contract I mean, the value,
25 the loss to you for what you thought you were

1 getting versus what you ultimately got

2 Mr Stuckey, what about the time when
3 they had to spend renting some other place?
4 Is that -- that may be -- that may get them
5 over the hurdle

6 MR STUCKEY I don't think so,
7 Your Honor.

8 THE COURT Okay I didn't think
9 that you would.

10 MR STUCKEY I'll be glad to hand
11 up to the court -- one of the Federal judges did
12 a good synopsis on that, I think it's a plat
13 line case out of Myrtle Beach Judge Traxler, I
14 believe I have the case, I don't have it right
15 at-hand

16 THE COURT That's all right, we can
17 get it He itemizes about four cases talking
18 about -- and basically he says that if it all
19 flows from the benefit of the bargain then it is
20 encompassed by the contract

21 THE COURT I don't quarrel with --
22 I understand the economic If that is your sole
23 loss, then there's no question as I understand
24 the case law that it is ---

25 MR STUCKEY I think that

1 MR HILDEBRAND Yes, Your Honor

2 THE COURT Is the defense ready to proceed?

3 MR STUCKEY Yes, Your Honor

4 THE COURT Please bring in the jury for me,
5 please

6 (whereupon, jury voir dire and selection was not
7 transcribed)

8 THE COURT I sought further clarity from
9 Judge Dennis His response is, since I did grant
10 summary judgment as to negligent misrepresentation,
11 he's assuming that he did dismiss that cause of
12 action as well, meaning the statutory cause of
13 action And that was his intention so that leaves
14 us then with unfair trade practices cause of action

15 MR STUCKEY Fine

16 THE COURT Is there anything else we need to
17 take up before we adjourn from the plaintiff?

18 MR HILDEBRAND Not unless you'd like me to
19 rehash my arguments, Your Honor

20 THE COURT No And again the plain and
21 ordinary meaning, of course what a judge says on a
22 transcript is not what is binding, what is binding
23 is what has been reduced to writing And until it
24 is finally reduced to writing, of course within the
25 ten-day period the Court can sua sponte can change an

1 THE COURT Is the plaintiff ready to proceed?

2 MR HILDEBRAND We stipulate we are going to
3 drop our unfair trade practices claim based on your
4 ruling that that's the only claim in the case

5 THE COURT Actually, what I indicated was the
6 Judge Dennis ruled The court was merely enforcing
7 that ruling I have not made a ruling in the case on
8 any issue That's his ruling, he granted summary
9 judgment, I sought clarification of that ruling

10 What I indicated to you all is that you needed
11 to do one of two things If you were unclear as to
12 what his ruling is then you needed to do one of two
13 things You need to file a motion to clarify his
14 ruling, or you both needed to agree to have him
15 clarify his ruling

16 Based on his statement to me that he probably
17 should have listed out every cause of action, or it
18 could have been worded better, that was clearly his
19 intention so the court has not had occasion to rule
20 in this case, merely interpreting another ruling

21 MR HILDEBRAND Right And I think the
22 appeal would be from your interpretation of that
23 order My understanding from the ruling if there
24 is --

25 THE COURT The appeal would be of the

1 granting of summary judgment

2 MR HILDEBRAND I think the way I would
3 phrase it is that I would appeal from your
4 interpretation of the order as you announced it in
5 court the other day

6 THE COURT You would be losing out, you need
7 to appeal the summary judgment I didn't grant the
8 summary judgment You need to appeal whether the
9 summary judgment was appropriately granted and on
10 what grounds it was granted

11 It would actually be twofold And,
12 nevertheless, I need to know whether you all have
13 come to some consensus or whether you're going to
14 file a motion Because as I explained to you on
15 yesterday, the Court is just going to remand it back
16 for the order to be made clear as to what was done
17 They're not going to fiddle in the dark trying to
18 figure out what those words meant

19 MR HILDEBRAND I will file a motion for
20 that, Judge, under 54(B)

21 THE COURT Mr Stuckey, did you have a chance
22 to review the cases that the Court made you aware of
23 on yesterday?

24 MR STUCKEY I did

25 THE COURT And is your client -- as I

1 indicated, I think that Mr Hildebrand can appeal at
2 any time the summary judgment I don't think he is
3 required to appeal it when it's granted I think he
4 can appeal it, and the case law dealing with that
5 deals with whether it is interlocutory or not And
6 the analysis really to some extent is related to
7 those parameters

8 But I don't think there is anything that
9 requires him to do it And I don't think he waives
10 his appellate rights when he does it I think he can
11 appeal the summary judgment when the case is over

12 And so it seems to me it's in everyone's best
13 interest that you all get clarity on Judge Dennis's
14 ruling And that would be Court's position on it

15 MR STUCKEY I understand that, Your Honor
16 we object of course to Judge Dennis clarifying the
17 order I've consulted with my two clients, and enjoy
18 the privilege of both being attorneys And their
19 position is that of course once the super claim is
20 dismissed, then Judge Dennis's order stands as it was
21 originally issued and thus the final order of the
22 case

23 THE COURT okay well you all can hash that
24 out on an appellate basis But I think that Mr
25 Hildebrand should file a motion to clarify what Judge

1 Dennis's ruling was so that you all can be clear
2 I'm not going to speculate Although I have spoken
3 to him, and I know what his position is, I think his
4 record needs to be clear exactly what he ruled
5 without any question about it

6 I'm not -- I don't have any question about it
7 because I've had the ability to speak with him and he
8 related to me exactly what he intended I think for
9 everyone's purposes it is better that there be no
10 question

11 MR STUCKEY I understand, Your Honor
12 THE COURT If he denies that you all can go
13 where you want to go with it

14 MR HILDEBRAND So the status quo, if I
15 understand --

16 THE COURT The status quo is that the UTPA
17 claim has been dismissed with prejudice, and that you
18 are going to file a motion for clarification on Judge
19 Dennis's ruling And if he rules that he dismissed
20 everything then the case is over, you do what you
21 need to do

22 If he rules otherwise, it will come back for
23 trial on any causes of action he says still remains
24 It is my understanding, however, that he dismissed
25 everything so then you would be able to go forward

1 all, the deposition was taken as to net worth
2 back on August the 5th, 2009 To use a figure of
3 March the 5th, 2009, with all the convulsions our
4 economy has been through really does not project
5 an accurate picture for the jury

6 The second thing is that it's irrele-
7 vant to any issue in this case It may have
8 some semblance of relevancy if punitive damages
9 are found in the case Because if punitive
10 damages are to be inserted, then I guess the net
11 worth of the defendants is one item to be
12 considered under the balancing analysis

13 But I would ask the Court that until
14 such time as punitive damages may be found to be
15 applicable in the case, that the net worth of
16 the defendants not be put before the jury
17 because I think it's a brazen attempt just to
18 show a deep pocket and 'you ought to give money
19 to the plaintiff because the defendants possibly
20 have it ' That's the first thing

21 The third thing, Your Honor, is that
22 there was a class action settlement in a lawsuit
23 of the Bohicket Marina Village Homeowners
24 Association Basically, what happened was that
25 the board of directors was sued for breach of

1 fiduciary duty They were sued by Kenneth
2 Snyder who is a forensic engineering expert, who
3 -- (bailiff interrupts to retrieve item for
4 juror) -- and the class action lawsuit has
5 already been settled, Your Honor

6 There's nothing -- this is exclusively
7 a contract action because Your Honor previously
8 threw out an economic loss of any tort damages

9 There's nothing in the contract about
10 the purchaser will be entitled to any of these
11 proceeds There's no mention of it at all So
12 we submit that, here again, it's just an effort
13 to show -- try to show that the defendants
14 somehow have been unjustly enriched at the
15 expense of the plaintiffs And that's not the
16 case at all Because the plaintiffs had no
17 entitlement, no right to any of that And we
18 would ask the Court to instruct counsel to not
19 ask any questions about that and instruct the
20 witnesses that that is not to be mentioned, and
21 also to delete that from the excerpted portions
22 of the depositions of plaintiffs

23 THE COURT Okay Mr Hildebrand,
24 I'll be happy to hear you

25 MR HILDEBRAND Thank you, Your

1 If they find that, we'll go into that If
2 they do, then we'll have additional evidence
3 concerning punitive damages

4 MR HILDEBRAND Yes, sir

5 THE COURT So until that is ruled
6 on, there's no mention of net worth in the
7 underlying action I just find that
8 preliminarily

9 MR HILDEBRAND Yes, sir That's
10 fine Third is the class action settlement
11 There was a class action There was
12 construction defect litigation that had been
13 going on relative to these condominiums for many
14 years Plaintiffs were members of that class
15 action I think it's their position that it
16 didn't have anything to do with this case I
17 don't know what they're going to say at trial
18 But the fact is there was a class action that
19 alleged construction defects We'll have
20 witnesses to testify to that fact And, in
21 fact, the plaintiffs -- we settled this case --
22 I'm sorry, the settlement on this house occurred
23 in July of 2007 Six months later the
24 plaintiffs got a check for nineteen thousand
25 dollars related to construction defects So I

1 of that Yes, sir

2 THE COURT I understand that But
3 I'm just saying was that part of the resolution
4 of the class action?

5 MR HILDEBRAND Yes, sir Any
6 construction ---

7 THE COURT That the work that was
8 being done was created and ultimately was the
9 product of the class action lawsuit?

10 MR HILDEBRAND That's my under-
11 standing

12 THE COURT If testimony comes in
13 concerning that, then obviously it becomes
14 relevant, very relevant My observations would
15 be that if that's the case -- and what I'm going
16 to do during my lunchtime is I'm going to read
17 this and look at the briefs in detail

18 You're talking about resolutions If
19 that comes in, that in and of itself, to me,
20 creates a damage as a matter of law Because
21 they knew that was coming and they didn't do it
22 -- they didn't disclose it That means these
23 people were not going to be able to occupy that
24 house and they should have known that -- that
25 'something may come up that they may not be able

1 to occupy that residence ' So I'm going to look
2 at it I don't know whether it is But clearly
3 if that's connected to it, then yeah, that
4 becomes very relevant and very much a part of
5 it

6 Anyway, I'll be happy to -- at this
7 point, Mr Stuckey, I understand what you're
8 saying And unless there's a connection to it,
9 I would agree with you If there's a connection
10 to any of the construction work that was done
11 and what precipitated and caused these persons
12 not to be able to occupy the premises, then
13 that's very relevant, and I'll allow it Okay?

14 MR STUCKEY Would Your Honor direct
15 counsel to give me a copy of the brief he handed
16 up to the Court He hasn't given it to me

17 THE COURT He doesn't have to It's
18 a pretrial brief I don't think he has to
19 disclose it You ought to exchange it, but I
20 don't think the Rules require it It's just for
21 the Court's benefit Okay Thank you

22 MR STUCKEY Thank you, Your Honor

23 (LUNCH RECESS)

24 THE COURT Plaintiff ready?

25 MR HILDEBRAND Yes, sir

1 sharing of a home So, obviously, it's talking
2 about condos and it contemplates that

3 But, clearly, they went to -- the
4 simple restriction is the unit that the person
5 occupies, which makes perfect sense to me

6 MR HILDEBRAND I have two points,
7 Your Honor First, 27-50-60 states that if the
8 owner discovers, after he completes delivery of
9 a disclosure statement to a purchaser, a
10 material inaccuracy -- and there isn't any
11 material inaccuracy If we look at the
12 disclosure statement that was actually signed by
13 -- they can say, listen, when we signed it we
14 did not -- we were not legally obligated to
15 disclose common elements

16 THE COURT No, sir Listen, they
17 make that disclosure consistent with the law
18 Your clients have to interpret it consistent
19 with the law Everybody's on notice of the law
20 So they don't have a duty to say, 'oh, by the
21 way, there's some things going on that are not
22 part of my control ' And that's your argument
23 I mean, that's your position They knew that it
24 existed Sure, they did But they didn't have
25 a duty to disclose it under the law

1 MR HILDEBRAND Just for the record,
2 Your Honor ---

3 THE COURT You don't have to worry
4 about the record I mean, obviously we're going
5 to try it I'm just telling you how I'm going
6 to interpret the motion *in limine* and restrict
7 the testimony about units that they've
8 discovered about problems with the windows and
9 her knowledge of that No question about that

10 MR HILDEBRAND Your Honor, our
11 issue is that the ---

12 THE COURT Mr Hildebrand, I've made
13 myself clear When you get ready to elicit that
14 testimony, if you -- I've said I'm going to
15 allow what you put in your brief about the
16 window units in the unit they occupied Mr
17 Stuckey's going to object to that Because I'm
18 sure he doesn't think that applies I'm going
19 to allow the unit that they occupy -- any
20 repairs to that No question about it

21 Anything else, I suggest that you say,
22 'Your Honor, there's a proffer I need to make '
23 And we'll excuse the jury We'll take it that
24 way

25 MR HILDEBRAND It's units ---

1 THE COURT Have those persons been
2 sued?

3 MR HILDEBRAND No, sir

4 THE COURT Yeah You know what?
5 That's one place where there obviously did
6 something There's some fiduciary responsi-
7 bility there, I believe, that goes much greater
8 than just what we're talking about, the
9 Disclosure Act

10 This is a technical Act I'm going to
11 construe it as I've indicated If they want to
12 expand it, they'll do so But I'm not going
13 to I just want you to know that So we'll go
14 from there Okay?

15 MR HILDEBRAND Yes, sir

16 THE COURT Thank you Mr Stuckey,
17 obviously, you have maintained it doesn't apply
18 because it's a condo And you're protected on
19 that I would assume at the time they ask --
20 if they ask any questions, you'll just make
21 your objections based on previous argument and
22 I'll state my ruling on the record insofar as
23 that specific area is concerned, that being the
24 windows The rest of it I'll just have to take
25 on a case-by-case basis

1 interesting and very important on this
2 particular issue as to what would be the
3 responsibility of the Measters, and what would
4 be the responsibility of the homeowners
5 association and the regime And at that point
6 we will ask you to consider all of the evidence
7 and consider the law and return a verdict for
8 the Measters so that we can all leave all of
9 this behind us

10 Thank you for your attention and thank
11 you for the attention given to me Thank you
12 very much

13 THE COURT Call your first witness,
14 Mr Hildebrand

15 MR HILDEBRAND Thank you, Your
16 Honor We would call Jane Carpenter

17 (WITNESS TAKES STAND)

18 MR HILDEBRAND Your Honor, we
19 will use the screen Will it be okay to do
20 that now?

21 THE COURT Sure We can set it up
22 now Take your time

23 JANE A CARPENTER, being duly sworn to
24 tell the truth, the whole truth and nothing but
25 the truth, testified, as follows

1 Measters at that time?

2 A Janice Franklin

3 Q Did you -- how many times did you and your
4 husband look at the condominium before you
5 decided to buy it?

6 A Chip and I went together the first time
7 with Cooper And then Cooper and I went back
8 the second time It was all within a few days

9 Q Okay Did you have any discussions with
10 the Measters during that period?

11 A Well, we met them They were at the house
12 The first time we went, I don't believe they
13 were there the first time Mrs Measter was
14 there the second time I can't recall if Mr
15 Measter was there or not Mrs Measter
16 definitely was She let us in the second time

17 Q Did you and your husband ultimately decide
18 to make an offer on the condominium?

19 A We did

20 Q Did you ultimately enter into a contract to
21 buy it?

22 A We did

23 MR HILDEBRAND (Tenders document to
24 be marked as exhibit)

25 COURT REPORTER Plaintiff's Exhibit

1 1 for identification

2 DIRECT EXAMINATION CONTINUED

3 BY MR HILDEBRAND

4 Q Ms Carpenter, I'm going to hand you what
5 will be marked as Plaintiff's Exhibit 1 and
6 would ask if you can identify that?

7 A I'm sorry?

8 Q Can you identify that?

9 A Yes, it's our contract to purchase 1964

10 MR HILDEBRAND We would like to
11 admit as Plaintiff's Exhibit 1, Your Honor

12 THE COURT Any objection?

13 MR STUCKEY No objection

14 THE COURT Without objection,

15 Plaintiff's 1 is admitted

16 (SO ENTERED AS PLAINTIFF'S EXHIBIT 1)

17 DIRECT EXAMINATION CONTINUED

18 BY MR HILDEBRAND

19 Q Just a couple of questions about the
20 contract The date of the contract? At the
21 top, can you identify when the contract was
22 entered into?

23 A May 17, 2007

24 Q And then the address?

25 A 1964 Marsh Oak Lane

1 Q Scroll down What is the -- do you
2 remember when the closing date was on the
3 contract? The closing date?

4 A The closing date was scheduled for July
5 18th

6 Q 2007?

7 A Yes

8 Q And the purchase price was what?

9 A Six hundred and seventy-five thousand,
10 (\$675,000)

11 Q Do you recognize the language on page three
12 of the contract, Ms Carpenter?

13 A Yes, I do

14 Q It reads, "Sellers Property Condition
15 Disclosure Statement " "Check One" Do you
16 see that?

17 A Yes

18 Q Okay Which disclosure statement did the
19 Measters sign in your contract to buy?

20 A I'm sorry

21 Q Which one did they check?

22 A They would provide us with a disclosure
23 statement

24 Q And can you read the sentence which begins
25 "If the seller discovers " ---

1 A (Reading) "If the seller discovers after
2 delivery of the disclosure statement to a buyer
3 a material inaccuracy in the disclosure
4 statement or the disclosure is rendered
5 inaccurate in a material way by the occurrence
6 of some event or circumstance, the seller shall
7 correct promptly the inaccuracy by delivering a
8 corrected disclosure statement to the buyer or
9 make reasonable repairs before closing "

10 Q It says in this particular paragraph "the
11 seller " Who were the sellers?

12 A Charles and Barbara Measter

13 Q So according to this paragraph and this
14 sentence, the sellers were to give you a
15 disclosure statement

16 A That's correct

17 Q In that contract And if they discovered a
18 material inaccuracy under that section, what
19 did you understand that they were to do?

20 A Disclose it

21 MR HILDEBRAND (Tenders document to
22 be marked as exhibit)

23 COURT REPORTER Plaintiff's Exhibit

24 2 for identification

25 DIRECT EXAMINATION CONTINUED

1 BY MR HILDEBRAND

2 Q Ms Carpenter, we have marked as
3 Plaintiff's Exhibit 2 a document I will ask
4 if you can identify that

5 A Yes, this is the disclosure statement

6 MR HILDEBRAND We'd like to
7 introduce that as Plaintiff's Exhibit 2, Your
8 Honor

9 MR STUCKEY No objection

10 THE COURT Without objection,
11 Plaintiff's 2 is admitted

12 (SO ENTERED AS PLAINTIFF'S EXHIBIT 2)

13 (OFF RECORD SIDEBAR BETWEEN COUNSEL)

14 MR HILDEBRAND Your Honor, Mr
15 Stuckey would like for me to say for the record
16 that this is an exact copy of the disclosure
17 The disclosure statement has been faxed
18 innumerable times and it's difficult to read

19 THE COURT Let's introduce whatever
20 you want to be an exhibit

21 MR HILDEBRAND (Tenders document to
22 be marked as exhibit)

23 COURT REPORTER Plaintiff's Exhibit
24 3 for identification

25 DIRECT EXAMINATION CONTINUED

1 BY MR HILDEBRAND

2 Q Ms Carpenter, I hand you what we've marked
3 as Exhibit 3 I ask if you can identify that?

4 A Yes, this is also the disclosure statement

5 Q So that's just a clean copy that hasn't
6 been faxed and is more legible?

7 A Right

8 THE COURT We just need to
9 substitute We don't need two of the same
10 documents floating around All you need is the
11 one everybody agrees to Plaintiff's 2 will be
12 whatever has been marked Let's make that
13 Plaintiff's 2 We don't need a two and a three
14 that is the same thing

15 MR HILDEBRAND The only problem is
16 ---

17 THE COURT There's no argument
18 about that, is there? Approach, please

19 (OFF RECORD BENCH CONFERENCE)

20 THE COURT There's no question that
21 the document that's being entered is -- the
22 difference is it's not a signed copy But
23 everybody agrees it's signed, so that's not an
24 issue Okay?

25 MR HILDEBRAND Okay

1 Q Let's walk through briefly, if we could,
2 the disclosure statement that's been marked as
3 Exhibit 2 I want to ask you some questions
4 about that I'd like to direct your attention,
5 Ms Carpenter, if I may, to Section 2 of the
6 disclosure Okay?

7 A Uh-humm

8 THE COURT Is that a "yes?"

9 THE WITNESS "Yes " I'm sorry

10 THE COURT That's okay

11 DIRECT EXAMINATION CONTINUED

12 BY MR HILDEBRAND

13 Q And the first sentence in Paragraph 2,
14 would you read that into the record, please?

15 A (Reading) *"Check one of the boxes for each*
16 *of the twenty-four questions on pages two and*
17 *three of this form "*

18 Q Okay So the second and third pages of the
19 form are boxes that contain questions that the
20 seller has to check to tell us what they have
21 knowledge about Is that right?

22 A Yes

23 Q And can you read into the record 2A, what
24 that says?

25 A (Reading) *"If you check yes for any*

1 question you must explain the problem or attach
2 a descriptive report from an engineer,
3 contractor, pest control operator or other
4 expert or public agency If you attach a
5 report you will be liable for any inaccurate or
6 incomplete information contained in the report
7 as long as you were not grossly negligent in
8 obtaining or translating the information "

9 Q I think you said "you will be liable "

10 But it says you will "not" be liable for
11 inaccuracies

12 A Correct

13 Q Would you read into the record, please, 2B,
14 what happens -- what the form states if you
15 check No on those questions?

16 A (Reading) "If you check no for any
17 question, you are saying that you have no
18 actual knowledge of any problem If you check
19 no and you know there is a problem, you may be
20 liable for making an intentional misrepresenta-
21 tion "

22 Q And then is there a third option that the
23 sellers are given on this form?

24 A Yes

25 Q That's 2C What's that?

1 A Yes (Reading) *"If you check no*
2 *representation for any question, you are*
3 *stating that you are making no representation*
4 *regarding the conditions or characteristics of*
5 *the property But you may have a duty to*
6 *disclose even if you know or should have known*
7 *of them Please consult with an attorney to*
8 *determine any possibility liability you may*
9 *have for checking this answer "*

10 Q Okay And let's turn to page -- the second
11 page of Exhibit 2 Now we've got that on the
12 screen In all capitals and in boldface, what
13 does the top of the form say?

14 A (Reading) *"As seller of the property*
15 *herein identified, do you have knowledge of any*
16 *problem, malfunction or defect with any of the*
17 *following " ---*

18 Q Okay And are any of the boxes checked
19 "yes" on this page?

20 A No

21 Q Are all of the boxes that are checked
22 checked "no?"

23 A They are

24 Q Are there any boxes that are checked that
25 say "no representation?"

1 A Uh, -- (upon review), no

2 Q Okay Can you read into the record what
3 the disclosure is for number one?

4 A (Reading) *"Foundation, slab, fireplace,*
5 *chimney, doors, windows, including storm*
6 *windows and screens, doors sealings, interior*
7 *and exterior walls, attached garage, patio,*
8 *deck or other structural components, including*
9 *any modifications "*

10 Q And the disclosure form that you and your
11 husband were provided said that there was no
12 problem with those Is that correct?

13 A That's correct

14 Q How about let's jump down to number six

15 A (Reading) *"Heating and/or air condition-*
16 *ing "*

17 Q Yes Is there a space on that one, on the
18 last one, which says approximate age of heating
19 unit and cooling unit?

20 A Yes

21 Q And what do those show?

22 A Heating unit, it says one-half Cooling
23 unit, one -- it may be one to two, I am not
24 sure

25 Q Then on the next page, can you read into

1 the record paragraph twenty?

2 A (Reading) "*Lawsuits, foreclosures, bank-*
3 *ruptcy, judgments, tenancy, tax or other liens,*
4 *or proposed assessments or notice from any*
5 *governmental agency that can affect title to*
6 *the property "*

7 Q What was the representation made by the
8 Measters?

9 A "No "

10 Q The contract also provides that you and
11 your husband had the opportunity to have an
12 inspection done of the property Is that
13 correct?

14 A Yes

15 Q Did you have that done?

16 A We did

17 Q Who did that?

18 A Roger Goodman

19 Q Do you recall what problems, if any, that
20 are related to this suit that you were notified
21 of on that inspection form?

22 A Yeah, there were some problems with rot
23 around a couple of the windows There were
24 problems in the crawlspace Insulation had
25 fallen and there was no vapor barrier But I

1 can't specifically remember all of them, but
2 they were all addressed

3 Q Were any inspections done at your request
4 of the property other than the inspection by
5 the general inspection?

6 A No

7 Q Did you ever have occasion to visit the
8 property with any contractors prior to closing
9 on the house?

10 A I did

11 Q Tell me about that

12 A I brought in one man who was going to take
13 down all the popcorn ceilings for me, and then
14 another one who had just finished doing a
15 kitchen renovation for some friends of ours
16 And we were thinking about reconfiguring the
17 master bathroom And he came in to look at
18 that -- just to give us some ballpark quotes on
19 what it was going to cost to have those things
20 done

21 Q Okay Was Ms Measter or was Mr Measter
22 present when either of those contractors came
23 in?

24 A Ms Measter was I'm not certain about Mr
25 Measter, but she definitely was there

1 Q Did either of those contractors go
2 underneath the house?

3 A No

4 Q We talked about the disclosure form that
5 has been introduced as Exhibit 2 And I would
6 ask if any of the disclosures that you
7 particularly read into the record, number one,
8 number six or number twenty -- if any of those
9 were ever changed or if you were provided any
10 documentation by the Measters after that was
11 provided to you?

12 A No

13 Q How about the Measters' realtors? Were you
14 provided any information from them contrary to
15 what was provided in the disclosure form that
16 the Measters signed?

17 A No

18 Q How about any -- was there any oral
19 representations to you that any of the three
20 items that I've just discussed -- items one,
21 six or twenty -- were inaccurate? Did the
22 Measters ever advise you of that?

23 A No

24 Q Tell me, where were the belongings that you
25 were planning to move into the condominium on

1 the day of closing?

2 A They were in storage

3 Q Where had they been moved from?

4 A From our house on Seabrook

5 Q Had y'all sold that?

6 A We sold that, yes

7 Q And when was the closing on that?

8 A I believe the end of June

9 Q When was the closing on this condo to be?

10 A Not until the 18th of July

11 Q Just to iterate, on the date of closing or
12 prior to the closing were any of the items set
13 forth in the disclosure form ever changed?

14 A No

15 Q When were you planning to move into the
16 house or the condo?

17 A We had the movers coming on August the 3rd

18 Q Did you move in that day?

19 A No

20 Q Why not?

21 A At that time my son was living in the condo
22 temporarily, and we were staying at a friend's
23 house on Seabrook in the interim between our
24 house selling and moving into the condo And
25 my son called and said, "Mom, you need to get

1 over here " And I said, "Why? What's the
2 problem?" And he said, "There's a contractor
3 here who says you've got all kinds of
4 foundation issues and that you're not going to
5 be able to move in "

6 Q What did you do as a result of that?

7 A I immediately drove over

8 Q How far was it from where you were living?

9 A Maybe a mile or two

10 Q Did you -- who did you talk to when you got
11 onsite?

12 A My son met me and I think Herman Hatfield,
13 was the contractor for Mark Stafford

14 Q I'm sorry, who's Herman Hatfield?

15 A He's the contractor for Mark Stafford,
16 Stafford Construction

17 Q And who are they?

18 A They were doing the renovation work on the
19 building that we were getting ready to move
20 into

21 Q And tell me what discussion you had with
22 Herman Hatfield

23 A Mr Hatfield told me that the buildings
24 basically were sinking They were built on
25 five feet of pure sand That the floors were

1 all sagging and that there was serious
2 structural problems to the point that maybe the
3 buildings weren't even safe And he took me
4 over to the unit right next to ours ---

5 MR STUCKEY Objection Hearsay

6 THE COURT I sustain the objection
7 to hearsay

8 DIRECT EXAMINATION CONTINUED

9 BY MR HILDEBRAND

10 Q Did you have occasion -- were you shown
11 around the building at that time?

12 A I was I was taken into the unit next to
13 ours

14 Q Okay And what did you observe there?

15 A A lot of the furniture had all been put
16 into one room Some of it had been moved out,
17 but at any rate there were two holes cut in the
18 floors of every room And he was showing me
19 what the problems were and concluded by saying,
20 "And your unit is the next one that this is
21 going to be done to "

22 Q Okay Did you move into your unit that
23 day?

24 A No Herman said, "You can't unload that
25 furniture " So I had to call the moving

1 company They were at the gate at this house
2 I called the moving company and said, "Just
3 turn the truck around and take it back "

4 Q Did you have an understanding at that point
5 when it would that you actually would be able
6 to move in as a result of the repairs that were
7 going to be made?

8 A I'm not sure if it was that day I mean, I
9 went back and spoke with Herman on a couple of
10 occasions after that I'm not even sure that
11 we got Floyd DeAndrade involved, who was the
12 president of the homeowners association, at
13 that point And he -- I don't know if it was
14 that day or the next day I think the first
15 thing I did was to call my husband and tell him
16 what was going on The day was kind of a blur
17 at that point

18 Q What actual -- were repairs made to your
19 individual unit subsequent to the day that you
20 were supposed to move in?

21 A Yes, there were repairs made

22 Q Can you describe what those repairs were?

23 A Similar to what I described in the unit
24 next door to us Holes, large holes, cut in
25 every single floor All the carpet had to be

1 ripped up and the tile had to all come out, and
2 that's a nasty job The air handler had to
3 come out from underneath the building and they
4 had to go down in and reinforce the foundation
5 It had to be jacked up

6 THE COURT Ladies and gentlemen,
7 I'll let you go to your jury room for just a
8 moment Do not begin your deliberations
9 Don't discuss the case We'll be with you
10 momentarily

11 (JURY OUT AT 2 50 P M)

12 THE COURT I understand about
13 lawsuits and how people can get entrenched in
14 various positions But one thing we're not
15 going to have is disruption of how this is
16 proceeding We're not going to have the
17 clients reviewing these exhibits in detail
18 every time they're handled That should have
19 been done long before today So y'all take a
20 moment and review the exhibits And I don't
21 want that kind of delay It's shown to us and
22 that's the exhibit We're going to move this
23 case on, folks, okay?

24 So y'all talk among yourselves,
25 please, for a few moments Thank you

1 Ms Carpenter, you may come down, if
2 you wish but don't have any discussions with
3 anybody about the case

4 (BRIEF RECESS)

5 (JURY IN AT 3 01 P M)

6 MR HILDEBRAND Please mark this
7 COURT REPORTER Plaintiff's Exhibit
8 4 for identification

9 DIRECT EXAMINATION CONTINUED

10 BY MR HILDEBRAND

11 Q I want to hand you a photograph that's been
12 marked as Plaintiff's Exhibit 4, and I would
13 ask if you can identify that, please?

14 A That is a picture of the master bathroom
15 being repaired

16 MR HILDEBRAND I'd like to intro-
17 duce that as Plaintiff's Exhibit 4, Your Honor

18 THE COURT Subject to the objection
19 of counsel previously placed on the record
20 during the recess, it's admitted as Plaintiff's
21 Exhibit 4

22 (SO ENTERED AS PLAINTIFF'S EXHIBIT 4)

23 DIRECT EXAMINATION CONTINUED

24 BY MR HILDEBRAND

25 Q Can you tell me -- do you have an

1 approximate time period when this was taken?

2 A I can't give you an exact date as to when
3 it was taken It was shortly after they
4 started doing the repairs to our unit And you
5 can see in the lower right-hand corner the hole
6 in the floor

7 Q At that marker, that's where the hole was?

8 A Right

9 Q What rooms actually had holes cut in the
10 floors?

11 A I believe every room

12 Q And what would that be? The dining room
13 -- and what other, kitchen?

14 A Living room, dining room, kitchen I'm not
15 certain about the guest bedroom But the
16 master bedroom, master bath Second bedroom,
17 again, I'm not certain Actually there was a
18 hole in the second bedroom, and there's another
19 bathroom The half bath, I don't believe there
20 was a hole in there

21 Q How did that affect the floor coverings and
22 that sort of thing?

23 A The floor coverings were tile so, you know,
24 anytime you start putting holes in tile it
25 breaks and it all has to come up

1 Q I'm going to hand you what's been marked
2 Plaintiff's Exhibit 5, and ask if you can
3 identify that

4 A That's a picture of where the master
5 bathroom shower used to be

6 Q Is Exhibit 5 basically just another picture
7 of Exhibit 4?

8 A It is We kind of closed in on the shower
9 area because it showed there had been new
10 subfloor put in and shims underneath that to
11 level the floor from whenever that shower stall
12 was put in there

13 MR HILDEBRAND I'd like to move to
14 introduce Plaintiff's Exhibit 5

15 THE COURT Plaintiff's Exhibit 5,
16 subject to the objection of counsel, is
17 admitted

18 (SO ENTERED AS PLAINTIFF'S EXHIBIT 5)

19 DIRECT EXAMINATION CONTINUED

20 BY MR HILDEBRAND

21 Q I've handed you what I've marked as Exhibit
22 6 and ask if you can identify that?

23 A That is the air handler for our unit

24 MR HILDEBRAND I'd like to
25 introduce that as Plaintiff's Exhibit 6, Your

1 Honor

2 THE COURT Subject to the objection
3 of counsel, it is admitted

4 (SO ENTERED AS PLAINTIFF'S EXHIBIT 6)

5 DIRECT EXAMINATION CONTINUED

6 BY MR HILDEBRAND

7 Q Again, what was the age represented on the
8 disclosure form for that?

9 A One year old

10 Q Exhibit 7, can you identify that one?

11 A It's just a different view of the air
12 handler

13 MR HILDEBRAND I'd like to intro-
14 duce that as Exhibit 7, Your Honor

15 THE COURT Subject to the objection
16 of counsel, it is admitted

17 (SO ENTERED AS PLAINTIFF'S EXHIBIT 7)

18 DIRECT EXAMINATION CONTINUED

19 BY MR HILDEBRAND

20 Q Can you tell us, please, what repairs had
21 to be made that you and your husband had to pay
22 for?

23 A Well, obviously, the air handler That had
24 to be removed in order for the foundation work
25 to be done And we were told that it could not

1 be put back and there was no way they could re-
2 install it and have it function So we had to
3 replace the entire air conditioning unit The
4 outside unit, it wasn't compatible with this
5 So we had to buy the whole thing -- the air
6 handler and the exterior, I guess, the
7 compressor part of it And we've had to
8 replace all the flooring in the unit

9 Q Did you replace the floor, the tile, with
10 the original tile flooring?

11 A We did not One of the things we were told
12 at the time that the tile was being ripped up
13 is that was part of the problem with the build-
14 ing That people went in and did renovations
15 and put all these heavy materials in that made
16 the problems with the foundation even worse
17 So we replaced it with hardwood

18 Q If you had been advised of the conditions
19 that existed in your unit prior to the closing
20 what would you have done?

21 A Prior to the closing?

22 Q Yes

23 A I think we probably would have walked away
24 I know we would have We talked about it, you
25 know, after the fact And the not knowing, the

1 uncertainty of it all I think would have been a
2 little bit too scary for us

3 Q Thank you very much That's all I have

4 THE COURT Cross examine

5 MR STUCKEY Thank you, Your Honor

6 CROSS EXAMINATION

7 BY MR STUCKEY

8 Q Good afternoon, Ms Carpenter

9 A Good afternoon

10 Q You had an inspection done by The Home Team
11 Inspection Service of the property prior to
12 buying it and closing on it, did you not?

13 A Yes

14 Q And that gentleman was Mr John Goodman who
15 is The Home Team Inspection Service representa-
16 tive from Summerville Is that correct?

17 A I don't know where he's from But, yes, it
18 is The Home Team

19 Q Would you look over this inspection report,
20 please? I believe you signed for it as having
21 received it

22 A Uh-hum Yes

23 MR STUCKEY Your Honor, we would
24 offer this as Defendant's 1 It's a copy of
25 The Home Team Inspection Service dated June 5,

1 2007, the complete report

2 THE COURT Any objection?

3 MR HILDEBRAND No objection

4 THE COURT Without objection,

5 Defendant's 1 is admitted

6 (SO ADMITTED AS DEFENDANT'S EXHIBIT 1)

7 CROSS EXAMINATION CONTINUED

8 BY MR STUCKEY

9 Q Ms Carpenter, you went to Unit 1964 with
10 Mr John Goodman to inspect the property, did
11 you not?

12 A I did

13 Q And you and Mr Carpenter had owned
14 previous homes before, I believe In fact, I
15 alluded in my opening statement to the jury,
16 I believe y'all had bought a condominium
17 previously over in Craft House Is that
18 correct?

19 A Yes

20 Q And you paid seven hundred and forty
21 thousand dollars for that

22 A Yes, sir

23 Q And you'd owned a home, I believe, over
24 in Deer Point on Seabrook previous to that
25 Is that correct?

1 Baltimore or actually Columbia, Maryland Let

2 me get it all straight There were several

3 Q And is that because you sort of moved

4 around because of Mr Carpenter's employment?

5 A Yes

6 Q What kind of work or profession is he in?

7 A He works for NewsCorp, News America

8 Marketing It's in-store advertising He runs

9 the field operations

10 Q Okay, so he's in basically the news

11 business Would you say that?

12 A No NewsCorp is a division of it The do

13 couponing, in-store advertising, the little

14 coupon machines that you see in the grocery

15 stores with the little ads on them He's in

16 charge of the field operations of that In

17 other words, the people who install

18 Q So I guess he's sort of in a combination of

19 sales and management Would that a fair

20 statement?

21 A Management is more accurate He's not on

22 the sales side of it

23 Q And would that entail being out of state or

24 out of town a good bit?

25 A Yes

1 Q Now, would you tell us, please, how you
2 arranged this evaluation and inspection by The
3 Home Team Inspection Service?

4 A Through our real estate agent, Cooper
5 Williams

6 Q Did you ever discuss any of the details of
7 the condominium with Mrs Measter?

8 A The details of the condominium?

9 Q Yes

10 A Casual conversations about a few things

11 Q When was that? Did you bump into her on
12 occasion?

13 A No, well, only when I went to the condo
14 I went there the one day I took the young man
15 that was going to take down the popcorn
16 ceilings for me She was there that afternoon

17 Q And that was David Fuller, I believe, with
18 Inside Outside Is that correct?

19 A No, that was Jonathan Mold (phonetic)

20 Q Jonathan ---

21 A Mold

22 Q Okay, so we have an additional gentleman,
23 Jonathan Mold, who came and inspected the
24 premises Is that right?

25 A All he did was give me a quote on taking

1 down the popcorn ceilings

2 Q Now, let me ask you this When you went on
3 the premises you had full range and full right
4 to explore Is that correct?

5 A Uh-humm, sort of

6 THE COURT That's a "yes?" You
7 need to say "yes "

8 THE WITNESS I'm sorry

9 THE COURT Not a problem It just
10 helps the court reporter

11 THE WITNESS Okay Well, yes, they
12 were still living there

13 CROSS EXAMINATION CONTINUED

14 BY MR STUCKEY

15 Q The Measters weren't there when you went
16 there

17 A When I went with the two contractors, yes,
18 Mrs Measter was there on one occasion Mr
19 Measter was there on a second occasion I
20 remember one time that they were having lunch
21 in the kitchen as I was leaving

22 Q So you inspected -- actually, you went to
23 the property what, three times? Once when they
24 were eating lunch, once with Mr Mole, I
25 believe you said, and once with Roger Goodman

1 Is that correct?

2 A No, there was an additional time

3 Q There were four times

4 A After the contract was written, I went with
5 Jonathan Mold to get a quote for the ceilings

6 I went with another contractor who was going to

7 give us a quote on and some ideas on what to do

8 with the master bathroom And I went with John

9 Goodman

10 Q Okay, and as a result of that, Mr Goodman
11 issued this report?

12 A That's correct

13 Q And he had, I believe -- I don't know
14 whether they were orange or not But he had
15 his overalls and coveralls on so he could go
16 under the house, didn't he?

17 A I don't recall what he was wearing I do
18 recall him wanting access to the crawlspace

19 Q Going under the house?

20 A Correct

21 Q Now, did you notice when you were there on
22 those some four occasions maybe what could be
23 termed a deflection of the kitchen floor or
24 anything?

25 A I didn't I wasn't really looking at the

1 floors The place was still furnished So, I
2 mean, I didn't really take a good hard look at
3 things like that I was looking more at the
4 ceilings and what we might want to do in the
5 bathroom as far as a remodel

6 Q So, I guess we could say, then, that since
7 you didn't notice it if you weren't looking for
8 it, then it wasn't so severe or marked that it
9 would call particular attention to it Is that
10 a fair statement?

11 A That's fair

12 Q Okay And you signed for this report that
13 John Goodman did Is that correct?

14 A Yes

15 Q And this is your signature, I believe you
16 told us, on this page Is that right?

17 A It is

18 Q And he states in the report (reading)
19 *"The inspection would include all of the*
20 *following systems and components of the*
21 *property unless otherwise indicated*
22 *Foundations, electrical system, structural*
23 *system, plumbing system, roofs and HVAC*
24 *system "* Is that a fair statement of what he
25 evaluated and what he inspected?

1 A Uh-humm

2 THE COURT Is that a "yes?"

3 THE WITNESS I'm sorry "Yes "

4 CROSS EXAMINATION CONTINUED

5 BY MR STUCKEY

6 Q And it says here, (reading) "*The Home Team*
7 *inspects for evidence of structural failure and*
8 *safety concerns only* " Is that what the report
9 says?

10 A Yes

11 Q (Reading) "*The utilities were on at the*
12 *time of the inspection The buyer was present*
13 *during the inspection* "

14 A Yes

15 Q You being the buyer? You were present
16 during the inspection?

17 A I was, (affirmative nod)

18 Q And it says (reading) "*Plumbing age*
19 *Buyer should expect repairs because of the age*
20 *of plumbing and fixtures* " Is that what it
21 says?

22 A I'm sorry? I didn't hear that

23 Q "Buyer should expect repairs because age of
24 plumbing and fixtures "

25 A Yes

1 Q Now, I it has down here major concerns in
2 this report Is there anything listed under
3 "major concerns" by Mr Goodman?

4 A No

5 Q And he has down under "maintenance
6 concerns" that he's listed some six or seven or
7 eight things there Is that correct?

8 A Eight, yes

9 Q And I believe those were put on a punch
10 list that was presented to the realtor Is
11 that correct?

12 A Yes

13 Q Let me hand you, Ms Carpenter, what's been
14 marked as an inspection addendum which lists
15 certain maintenance concerns

16 A Yes

17 Q Are those basically the ones that are
18 listed on the Goodman report?

19 A (Upon review), yes

20 Q So as I understand it, then ---

21 A I'm sorry Was there something after
22 number eight? There's a number nine and ten
23 on here, as well

24 Q No, there's nothing after eight on here

25 A There's a nine and ten on here

1 Q Nine, ten, eleven So, basically, would it
2 be fair to say, then, that when you and Mr
3 Goodman went through the house you made a
4 detailed discussion of it, and anything that
5 needed to be repaired or changed is listed on
6 this punch list that was given to the realtors?

7 A Yes, he made a detailed inspection I was
8 there, but I wasn't following him around, you
9 know

10 MR STUCKEY Your Honor, we offer
11 this inspection addendum which has been
12 identified by Ms Carpenter as Defendant's 2

13 THE COURT Any objection?

14 MR HILDEBRAND None, Your Honor

15 THE COURT Without objection,
16 Defendant's 2 is admitted

17 (SO ENTERED AS DEFENDANT'S EXHIBIT 2)

18 CROSS EXAMINATION CONTINUED

19 BY MR STUCKEY

20 Q Mrs Carpenter, both you and your husband,
21 Chip Carpenter, signed the agreement to buy and
22 sell real estate with the Measters Is that
23 correct?

24 A Yes

25 Q And your agent, I believe you told us, was

1 Cooper Williams who represented you?

2 A That's correct

3 Q And he's a real estate agent -- he was a
4 real estate agent at the time out on Seabrook
5 Island, South Carolina

6 A Yes, sir

7 Q And the Measters were represented by Ms
8 Janice Franklin who was the listing agent
9 Is that correct?

10 A That's correct

11 Q So you had two agents involved You had
12 Mr Cooper Williams who was representing you,
13 the buyers, And you had Ms Janice Franklin who
14 was representing the Measters, who were the
15 sellers Is that correct?

16 A That's correct

17 Q And the purchase price you agreed on was
18 six hundred seventy-five thousand dollars

19 A That's correct

20 Q And the closing -- the contract was dated
21 May the 17th, 2007 Is that right?

22 A Yes

23 Q And the closing was to be on or before July
24 the 18th, 2007 Is that correct?

25 A Yes

1 Q So you had from May 17 to July the 18th,
2 which is two months You had a period of time
3 that you could inspect the property?

4 A Right

5 Q Anybody ever -- nobody ever turned you
6 down Did you say, "I want to go over there
7 and inspect the property I want to look at
8 it I want to check this out " You had no
9 problem that with at all

10 A No problems, no

11 Q In this provision under Inspection -- I
12 guess you're familiar with the contract? It
13 says (reading) "Inspection Buyer, at
14 buyer's expense " -- you're the buyer, you
15 and your husband, Mr Carpenter (Reading)
16 "*Buyer, at buyer's expense, shall have the*
17 *privilege and responsibility of inspecting the*
18 *premises for square footage, environmental*
19 *concerns, including but not limited to Radon*
20 *gas, lead-based paint and lead-based paint*
21 *hazards, wetlands, appurtenant buildings, heat*
22 *and air conditioning, electrical and plumbing*
23 *system as well as built-in equipment or*
24 *appliances "*

25 It basically gives you the right to check

1 any and all things on the property

2 A That's correct

3 Q And nobody ever halted you from doing that
4 or interfered with your right to do that?

5 A No

6 Q (Reading) "All inspections shall be
7 completed by June 8, 2007 In the event repairs
8 are necessary to place the heating system, air
9 conditioning, plumbing or electric systems to
10 be conveyed in operative condition and to make
11 the roof free of leaks and the dwelling
12 structurally sound, the seller shall be
13 notified in writing of the specific defects or
14 deficiencies within 48 hours after the
15 inspection date mentioned above "

16 So other than the items set forth on
17 Defendant's Exhibit 2, which is the inspection
18 addendum, you didn't list any other things, any
19 other problems with the property?

20 A No

21 Q It says, (reading) "Time is of the
22 essence If the buyer fails to notify seller
23 within this time, buyer shall have waived any
24 and all rights under the terms of this
25 paragraph If the lender's commitment requires

1 *any additional inspections or certifications,*
2 *these are to be provided by the buyer "*

3 So you told us that other than Defendant's
4 Exhibit 2, that neither you nor your husband,
5 Chip Carpenter, ever made any other complaints
6 about it Is that correct?

7 A We didn't know of the other things

8 Q And I believe you -- there was also a
9 termite inspection conducted Is that right?
10 What's known as a CL-100?

11 A Right

12 Q And that's when the termite guy comes and
13 he crawls under the house and he writes you a
14 report and so forth And I believe your legal
15 work was done by attorney Leonard Krawcheck in
16 Charleston Is that right?

17 A That's right

18 Q And I believe Mr Krawcheck -- and you
19 correct me if I'm wrong, probably enjoys the
20 reputation as being one of the finest real
21 estate attorneys in this area Would you agree
22 with that?

23 A He's done a lot of work for us

24 Q In fact, probably just about every real
25 estate issue you've had, you've called on him

1 to handle for you Is that correct?

2 A That's correct

3 Q And in addition to the termite inspection
4 and the inspections that you've told us these
5 other people did, in addition you borrowed four
6 hundred seventeen thousand dollars from Bank of
7 America And you're familiar with the loan
8 process They did an appraisal They did an
9 inspection and an appraisal of the property
10 Is that correct?

11 A I assume that's correct, yes

12 Q And they didn't point out anything to you
13 that was a problem or anything?

14 A No

15 Q And under "E" which is also part of the
16 contract that you and Mr Carpenter signed --
17 I'll read that to you It says, (reading)
18 *"Repairs The cost of all repairs to the*
19 *heating system, air conditioning, plumbing and*
20 *electric systems to be conveyed and to make the*
21 *roof free of leaks, address environmental*
22 *concerns and to make the dwelling structurally*
23 *sound and provide wood infestation treatment,*
24 *if any, required by Section D above to be paid*
25 *by seller "*

1 In other words, any of these things that
2 were pointed out that you discovered that might
3 be a problem were to be paid and corrected by
4 the Measters Is that correct, according to
5 that provision?

6 A I'm sorry I got confused as you were
7 reading that

8 Q I'm sorry Let me read it again, "*The cost*
9 *of all repairs to the heating system, air*
10 *conditioner,* " -- and you saw the air
11 handler ---

12 A Right

13 Q --- " *plumbing and electrical systems to*
14 *be conveyed, and to make the roof free of*
15 *leaks, to address environmental concerns and*
16 *make the dwelling structurally sound and*
17 *provide wood infestation treatment, if any,*
18 *required by Section D above to be paid by*
19 *seller "*

20 Which means that all of those things would
21 be -- if any problems were discovered with any
22 of those, it would be paid by the Measters

23 A That's correct, if we'd known about it
24 beforehand

25 Q (Reading) "*If the seller refuses to*

1 *make the repairs, the buyer shall have the*
2 *option to (1) accept the property in its*
3 *present condition " If you were getting a good*
4 *buy, you should go ahead and accept that*
5 Number two, (reading) *"Negotiate with the*
6 *seller for the payment of these repairs and*
7 *treatment, or ", three, "terminate this*
8 *agreement subject to paragraph 7 The repairs*
9 *to any other items are the sole responsibility*
10 *of the buyer " The buyer being you and Mr*
11 Carpenter Is that correct?

12 *"The obligations of the seller under*
13 *Paragraph 19 terminate" -- which is where I've*
14 *been reading from -- "on the day of closing or*
15 *on the date possession is given, whichever*
16 *occurs first "*

17 So, I mean, -- you understood that was in
18 the contract?

19 A Yes

20 Q And, finally, the last, paragraph H of
21 paragraph nineteen of the contract to buy and
22 sell, *"The buyer of the property acknowledges*
23 *to the seller ,"* which is the Measters
24 *"except as provided in subparagraphs (b), (c),*
25 *(d) and (e) of this Section, gives no guaranty*

1 *or warranty of any kind, express or implied, as*
2 *to the physical condition of the property or to*
3 *the conditions of or existence of improvements,*
4 *services, appliances or systems thereof or as*
5 *to the merchantability or fitness for a*
6 *particular purpose as to the property or*
7 *improvements thereof, and any implied warranty*
8 *is hereby disclaimed by the seller "*

9 In other words, the crux and understanding
10 of these provisions of the contract is that
11 y'all were given full and free access to the
12 property to inspect it, look at it, approve it
13 and if there's anything wrong with it that you
14 can either discover by your own inspection or
15 by competent expert inspection, then let the
16 Measters know and do something about it, right?

17 A That's correct

18 Q And then if you don't do anything about it
19 then, basically -- basically, I guess, it says
20 'don't come back and complain after the fact '
21 Isn't that what it says?

22 A That is what it says

23 Q We mentioned, Ms Carpenter, that you and
24 Mr Carpenter own a condominium in Craft House
25 in downtown Charleston

1 were interested in maybe moving some walls
2 around within the condominium Is that
3 correct?

4 A Yes It wasn't Mr Mole that I took him
5 because of that He was strictly ---

6 Q He was the popcorn ceiling man

7 A (Affirmative nod), he was going to scrape
8 the ceilings for me I didn't take him related
9 to moving any walls

10 Q The day before was the guy who was Inside
11 Outside, David ---

12 A Yes, he was the contractor that I was
13 interested in having help possibly remodel the
14 bathroom and possibly the kitchen

15 Q And were you and Mr Carpenter going to be
16 staying there, or were you going to have your
17 son stay there?

18 A Our son was never going to stay in there
19 after we moved in He was just staying there
20 in the interim while we were just waiting to
21 get out things out of storage

22 Q Is that the one I believe you told us was
23 in high school Is that correct?

24 A At that time, no, he had already graduated
25 from high school

1 Q That's all I have Thank you very much for
2 your time

3 THE COURT Redirect, Mr Hildebrand?

4 MR HILDEBRAND Nothing further,
5 Your Honor

6 THE COURT Thank you You may come
7 down

8 (WITNESS STEPS DOWN)

9 THE COURT Call your next witness

10 MR HILDEBRAND Thank you, Your
11 Honor Plaintiffs call Mr Hatfield

12 (WITNESS TAKES STAND)

13 JUROR Could the witnesses speak a
14 little louder?

15 THE COURT Is there some reason why
16 you can't use the screen here?

17 MR HILDEBRAND Yes, sir Power is
18 out

19 THE COURT That's a good reason
20 It's called monitoring and adjusting Thank
21 you, Mr Hildebrand I am sorry for the
22 inconvenience to you, sir

23 HERMAN PAUL HATFIELD, having been
24 previously sworn, continued under her oath and
25 testified, as follows

1 DIRECT EXAMINATION

2 BY MR HILDEBRAND

3 Q Mr Hatfield, how old are you?

4 A Sixty-eight

5 Q Where are you from originally?

6 A Barksdale, Kentucky

7 Q Tell us about your educational background

8 How far did you go in school?

9 A I went through ninth grade

10 Q Have you been in the construction business?

11 A For eleven years

12 Q Tell us what you've done in the construc-
13 tion business

14 A I've framed apartment houses, houses,
15 probably anything

16 Q How long have you lived in the Charleston
17 area?

18 A Twenty-nine years

19 Q Do you have a name of a business?

20 A Herman Hatfield Construction

21 Q Have you heard the name Mark Stafford?

22 A Yes, sir

23 Q And who is that?

24 A He's a general contractor that I worked
25 for, I guess close to six years

1 Q For about six years?

2 A Uh-humm

3 Q And what do you do for him?

4 A Frame houses, do remodel jobs, whatever he
5 has to do, you know, we do it

6 Q Have you had occasion to do any work at the
7 Bohicket Marina Village?

8 A Yes, I have I worked -- I stayed close to
9 two years out there It was real close to it

10 Q When did you start working out there?

11 A I think it was 2007

12 Q Okay

13 A I believe it was

14 Q Okay Do you know which buildings you've
15 worked in out there?

16 A Well, I've worked on almost every one of
17 them some But the biggest part would be
18 building one, 1904, and building eight

19 Q Do you know what unit the Carpenters' unit
20 is in or what building it's in?

21 A Yes, it's building 1964

22 Q In building eight?

23 A Building eight, (affirmative nod)

24 Q What did you do -- which building did you
25 work in first, building one or building eight?

1 A One Number 1903

2 Q What sort of work did you do there?

3 A We went in and -- we had to go in and shore
4 up the building because it had some bad
5 deflections and beams We went in and shored
6 it up and wound up jacking the building up, I
7 believe it was two or two and a quarter inches
8 Then we added -- we had to add beams under it,
9 three runs all the way through it Had to add
10 piers, block piers Had two-by-ten beams under
11 the joists That's been -- we added joists in
12 under bearing load walls that whoever framed it
13 didn't put in That's where the weight comes
14 from above, second and third floor, down and
15 pushing them all the way down to the bottom,
16 foundation

17 Q Okay Was there any evidence of sagging in
18 building one?

19 A Yes

20 Q Tell me how that appeared

21 A According to the paperwork and what we
22 found out by using a laser transit, is what
23 I've used, it was down right at two inches in
24 the middle That's close to where your washer
25 and dryer is That was the worst section of

1 the building

2 Q And tell me how that was repaired How did
3 you have to repair building one?

4 A First off, we shored it up for safety The
5 beams, I think ---

6 Q What do you mean, shored it up for safety?

7 A Well, he had to go in and put down three-
8 quarter -- two-foot by two-foot squares of
9 plywood on a stand, make sure it was solid
10 Then you put four-by-fours on top of that in
11 the square around with a half-inch piece of
12 steel on top of the four-by-fours And you put
13 a 50-ton jack on top of that Then you've got
14 a two-by-ten beam on top of that that goes up
15 under the joists

16 Q Okay And the floor was sagging about two
17 inches?

18 A Yes, sir

19 Q How did that straighten out? How did you
20 straighten it?

21 A By laser transit, you shoot the floor above
22 it You use a tack point from the front wall
23 to the back wall And you use that all the way
24 through the building So sometimes the front
25 wall and the back wall might vary, so you break

1 it in the middle That's the thing you use all
2 the way across In the middle you might have
3 an eighth inch crown, no more than that

4 Q And how was the building -- how were the
5 unleveled floors actually made level?

6 A When we jack them up, put the beam under it
7 and use steel shims to hold it there It's
8 back up to where it should have been in the
9 first place

10 Q Is that a lengthy process?

11 A Yes, it is

12 Q How did that process -- how does that
13 process, when you're jacking up an entire
14 building by a few inches, how did that affect
15 the inside of the building?

16 A Okay When it goes down, deflects, it'll
17 crack the walls You can see it Okay? When
18 you jack it back up you watch and you'll see
19 those cracks close back up It won't be
20 completely tight But it will close it back
21 up Because when it goes down and opens up, it
22 splits the walls

23 Q Does it have any impact on the flooring?

24 A Yes

25 Q Tell me what impact it has

1 A It sags It will pop the nails loose
2 And there's a time, at a certain point, the
3 floor will pop loose, and sag even more with
4 a buckling deflect, do down

5 Q Okay What -- did you have occasion to
6 make repairs to building eight?

7 A Yes, I did

8 Q Tell us about that

9 A We started on building eight on 61 We did
10 it the same way, same thing Added three sets
11 of beams through it On 1903, the people who
12 framed it had only had two piers in the dead
13 center with two-by-ten beams spanning a
14 section There was a deflect of 66 percent
15 That's a good three-quarters of an inch or
16 maybe more for bearing load pushing it down

17 Q Okay So the floors were sagging in
18 building eight as well?

19 A Yes Well, put it this way, people -- if
20 you have furniture in a building like that, and
21 in that section is where your washer and dryer
22 are on about all the buildings They are
23 usually set level, you know, so that they won't
24 , move In time, when these things go down,
25 people, you know, can see it because the units

1 will over and touch each other because the
2 floor going down below it Same way with any
3 furniture you have in it There's no way it'll
4 sit level because the floor's tilted

5 Q How about -- tell me how the -- were the
6 interior finishes of the floors impacted by the
7 repairs that had to be made in building eight?

8 A I'd have to say it this way Anytime
9 something deflects, it pops nails loose And
10 once you push it up, the nails will go back in
11 the same place but they're not tight They're
12 in space, just like this room And the only
13 way that you can do the job and do it right was
14 the floors need to be taken up where you can
15 make certain that there's nothing under it
16 that's rotten from moisture or anything like
17 that or from water or anything They need to
18 be re-nailed Because if you don't, you're
19 going to have squeaks in it for a lifetime

20 Q To effect the repairs that you did in
21 building eight, how did you access underneath
22 the building?

23 A In 61, we went through the floors We had
24 to You could tell by walking on it that the
25 studs was rotten or were not in the proper

1 place And on those buildings, all of them,
2 you only have about two foot of crawlspace from
3 the bottom of the joist to the sand You put a
4 guy under there my size or bigger and you're
5 working in a tight place So we needed to go
6 through the floor so we could come down through
7 it and get to it But some of them we didn't
8 get to We had to do it the hard way

9 Q What's the hard way?

10 A Going through from the outside

11 Q How about in unit 1964? How did you do the
12 floor repairs?

13 A We went through the floors there

14 Q Was that in every room?

15 A We went through in, yes, just about every
16 room In fact, the little bathroom on the
17 left, we took the floor out of it because it
18 was in bad shape It was -- the sub was
19 rotted Someone had miscut the plumbing holes
20 in it and if you step on it, you'd fall
21 through So we had to take it up

22 Q How big were the holes that you cut in the
23 floors?

24 A Well, we usually try to cut a four-foot by
25 four-foot Can you can in with 32-by-32, but

1 that's only giving you the access between two
2 joists, thirty-two It's better off if you can
3 go four foot Because you have to take the
4 lumber in and the lumber at the time was eight-
5 foot long And you can't go in a smaller
6 opening

7 Q And tell me exactly what the repairs
8 consisted of in building eight After you cut
9 the four-by-four in the floor, what did you
10 have to do?

11 A That's when we go under and shore it up,
12 like I was telling you The first step is we
13 had to put a temporary shore in Because you
14 can't take no chances of a building giving
15 after you've done the work It would be
16 dangerous So we shore it up tight and lift
17 it up, just like I told you, with a piece of
18 plywood and six-by-sixes and a metal plate
19 Then we take two-by-four wedges or plywood
20 wedges and drive it up tight up under the joist
21 to hold it and make certain it stays there
22 Then you come back in and lay out the piers at
23 every bearing load section in the building
24 And there's places that they don't bear load
25 but they had such a span in the joists that it

1 was sagging So we had to put piers through it
2 all and a beam It's all raised back up level
3 When we come out of there it's as level as it
4 would be if it had just been built yesterday

5 Q Did the repairs involve the interiors of
6 the unit that you were making -- in Unit 1964,
7 the interior floors and such were damaged
8 because you had to cut the holes in them?

9 A Yeah There were some joists that were
10 rotten I don't know if it was from a leak or
11 just moisture decay But some of them had to
12 be taken out It was doubled or tripled
13 Somebody over the years -- I don't know when --
14 had worked on some of them And we had to redo
15 that because they had nailed the joists on it
16 short of the inside bearing load walls, which
17 was no good

18 Q How long is the -- when you say you have
19 to do this jacking up to get the floors ---

20 A Eighth of an inch each time One-eighth of
21 an inch each time

22 Q What do you mean "each time?" How long --
23 you'd raise it up an eighth of an inch, then
24 you have to wait for a period?

25 A What I was doing, we'd either pick a

1 Tuesday and a Wednesday that we'll tell the
2 owners that they'd have to be out of the house
3 Because I had to have men under the building,
4 men up on the first floor running a transit and
5 another guy upstairs to make certain that
6 nothing in the building gives under pressure
7 Because whenever you're moving something with a
8 50-ton jack, you can't take no chances of
9 something kicking out or breaking Because
10 it's all covered it up You can't see exactly
11 how it's framed So we had to go in the
12 building anyway Every building's bearing load
13 walls going up, we had to go upstairs and cut a
14 hole around that corner to make certain that
15 they had put double blocks in or double joists
16 in If they hadn't, we had to put either
17 joists or blocks in it to support whenever we
18 picked up the bottom, to push to pick up the
19 top section You're not only jacking up the
20 bottom floor You're jacking up the floors all
21 the way up and the roof

22 Q So when you jacked up Unit 1964, the
23 Carpenters' unit, the entire building was
24 raised?

25 A Yes, sir

1 Q You said you raised it an eighth inch at
2 the time?

3 A Uh-humm

4 Q And how long between -- how long an
5 interval would you have to wait between raises?

6 A We'd skip a day and then go back the next
7 day See, there's something else that takes
8 time The first two times that you start doing
9 the raising, the sand -- you usually pack it
10 down the best you can but the first couple of
11 times under the load, the sand will go back
12 down some So it might take you to the fourth
13 time before the sand is settled down good and
14 tight enough to hold that load because you're
15 picking up, in some cases, three-story
16 buildings

17 Q Okay Did you have occasion prior to
18 starting the actual physical repairs on
19 building eight, to have a conversation with
20 Mr Measter?

21 A Yes, I talked to him twice just for awhile
22 I pulled up the first time I was going to go in
23 building eight Because I had to go in ---

24 Q Let me ask you this before you get started
25 Can you identify Mr Measter here in the court

1 room?

2 A Right over there, (indicating area of
3 defense table)

4 MR HILDEBRAND Let the record
5 reflect that he identified Mr Measter sitting
6 at the defense table

7 DIRECT EXAMINATION CONTINUED

8 BY MR HILDEBRAND

9 Q Tell me what happened

10 A I pulled up and I had a couple of trucks
11 with some of my men And we had to go through
12 and measure for, you know, lumber that we were
13 going to have to order, six-by-sixes and a
14 whole lot of things we had to look at I
15 pulled up ---

16 Q So this was before you did any work?

17 A Yes

18 Q You were there to evaluate what was going
19 to be necessary for the repairs?

20 A Yes We drove up and parked And he come
21 out and ---

22 MR STUCKEY Could we establish the
23 date on this, Your Honor?

24 THE COURT You can ask him on cross
25 examination Thank you

1 DIRECT EXAMINATION CONTINUED

2 BY MR HILDEBRAND

3 Q When did the physical repairs actually
4 start in building eight?

5 A That's a good one I don't know exactly
6 Because we went up in June That's when I met
7 him the first time

8 Q June 2007?

9 A Yeah, June 2007

10 Q Mr Measter was living in the unit?

11 A I don't know He just walked out and tells
12 me who he was and asked me what I was going to
13 do I told him I'd come to inspect, you know,
14 to look and see what we had to do to do the
15 work We were going to jack the building up,
16 level it And that was when he said it wasn't
17 no worry of his, he'd sold his unit

18 Q Which unit did Mr Measter walk out of?

19 A I believe it was 64 He come from that
20 area I wasn't up close next to the building
21 I parked down to the lower side of the parking
22 area and walked over to 61 I met him there in
23 the parking lot

24 Q And what did Mr Measter say to you when
25 you told him the repairs you were going to

1 make?

2 A He said it wasn't no worry of his, that
3 he'd sold his building, is what he said

4 Q Did you have any conversations with Mr
5 Measter after that time?

6 A I talked to him one other time It was
7 maybe a week later or two weeks later He was
8 telling me that he had bought a place on
9 Seabrook and he was renovating a house He
10 talked to me about that and about the boats and
11 stuff in the rear and, you know, the looks of
12 the property That was it That's the last
13 time I talked to him

14 Q Did he ask you what you were doing on that
15 visit?

16 A Yeah, the first time he asked me what I was
17 there for And I told him, you know, what I
18 had been told that we was going to do

19 Q How about on the second occasion? Did he
20 ask why you were there on the second occasion?

21 A No I think that time the only thing he
22 did ask me was when we was going to aim to
23 start the work I told him that I couldn't
24 answer that yet

25 Q Did it appear to you that Mr Measter was

1 still living in the unit when you saw him the
2 second time?

3 A I don't know I wouldn't have no idea

4 Q Did he walk out of the unit?

5 THE COURT He can't -- if he

6 doesn't know, he's answered the question

7 Anything now is speculation, Mr Hildebrand

8 Move on, sir

9 MR HILDEBRAND All right

10 DIRECT EXAMINATION CONTINUED

11 BY MR HILDEBRAND

12 Q When you actually started the repairs on
13 building eight was the Measter unit occupied?

14 A No

15 Q How did you determine that?

16 A Well, we can walk around the building In
17 fact, I walked around it with the architect and
18 one of the board members, just walking around
19 looking And we walked around to the back --
20 the glass sliding doors, and we was looking in
21 at the floors and talking about what we could
22 see But the base, just like this space right
23 here, only had the carpet And you could see
24 the floor sags in it, and that's the sub-
25 flooring You could see it

1 Q So you were able to see sagging floors in
2 the Measters' unit?

3 A Yes Well, it's the party wall between 61
4 and 64

5 Q And tell me how that sagging exhibits
6 itself

7 A It's by the deflection of the beams under
8 it

9 Q Is that person that a normal person could
10 see?

11 A Well, to me, I'm a carpenter and I know
12 what to look for But, now, an ordinary
13 person, I don't think so I don't really know

14 Q What evidence did you see inside the
15 building that showed you that the floors were
16 sagging?

17 A Just what I told you The best thing to
18 look for is the base, look at the corners and
19 see if they're split For the inspection, yes
20 That's the only way we can do it

21 Q Did you look at the molding, the shoe
22 molding that goes around the edges of the
23 floors?

24 A Yes

25 Q And if the floors are sagging there's a gap

1 under it?

2 A Yes, sir

3 Q Okay And there are cracks on the inside
4 where you have settling?

5 A Uh-humm

6 THE COURT Is that a "yes?"

7 THE WITNESS That's what you see,
8 yes

9 DIRECT EXAMINATION CONTINUED

10 BY MR HILDEBRAND

11 Q After you started work on the Carpenters'
12 unit, did you observe any evidence that anybody
13 had made repairs to their unit to try to
14 address the cracking?

15 A Yes

16 Q What was that?

17 A Well, in the master bathroom somebody had
18 put strips down and laid out from -- say, from
19 three-eighths of an inch maybe to three-quarters
20 or an inch, and put plywood on the top of it to
21 level it That on the top was good, but that
22 still leaves the bottom unlevel

23 Q Okay, let me see if I can picture that
24 If there's a floor from here to here, and this
25 is the floor, you saw a floor that had plywood

1 on top Is that right?

2 A That's right

3 Q And there were long shims start out or some
4 structures in there and they came down to real
5 narrow points?

6 A Yes

7 Q And there were a bunch of those that were
8 under plywood in the Measters' unit?

9 A Yes, sir And in the living room where the
10 tile was, I don't know who did it -- I don't
11 have no idea But they used -- I guess a
12 transit or a vector level I don't know I
13 don't have no idea But they put phillips-head
14 screws and screwed down in the subflooring and
15 let them stick up And they poured the mud to
16 it and then put the floor on top of it And
17 that was done -- you can't see until you take
18 the tile up to know what's under it

19 Q Was the thing you just described part of
20 the original construction of the unit?

21 A Not the original, no I would say not
22 Like I say, I don't know who put them in
23 But the original construction is the bottom
24 subflooring What's on top of it was added
25 in a finish by somebody, the way that it

1 looked

2 Q In order to effect the repairs that you
3 were originally called out to do for the
4 Measters' unit, to do the jacking and then to
5 fix the interior floors and replace the floors
6 and all, do you have an approximation of how
7 long that work would have taken to do every-
8 thing that was concerned?

9 A Everything, from start to finish, rough
10 guess, I would say it was close to a month
11 It would be somewhere in that category, because
12 there's so much time that you lose by having to
13 wait on jacking up the units and letting them
14 sit It's a long -- it takes a long time

15 Q Did you ever have any conversation with
16 Mrs Carpenter, on the day that she was getting
17 ready to move into the unit?

18 A Yes, I did

19 Q Tell me what you told her

20 A Well, she come up and she told me that she
21 was going to move in At that point ---

22 MR STUCKEY Objection Hearsay

23 THE COURT I sustain the objection

24 DIRECT EXAMINATION CONTINUED

25 BY MR HILDEBRAND

1 Q What did you tell her?

2 A I told her, I said, "Ma'am, you'd be making
3 a mistake Because all the floors are going to
4 be tore up, you know -- and," I said, "if you
5 bring in furniture it's going to be really
6 messed up and tore up because everything in
7 there will be moved around and redone "

8 And it kind of shook her up, you know, because
9 she done had her truck -- the van was on the
10 way to put the stuff in her building And I
11 told her, I said, "If I was you, I would go out
12 and talk to them and send it back to the
13 storage place And when we got done and
14 everybody gets done, bring it back That way
15 your furniture won't be tore up and destroyed "
16 And it would have been, because you can't work
17 in a building that's full of furniture

18 Q Thank you, Mr Hatfield

19 THE COURT Cross examine

20 MR STUCKEY Thank you, Your

21 Honor

22 CROSS EXAMINATION

23 BY MR STUCKEY

24 Q You are Herman H Hatfield Is that
25 correct?

1 A Yes, sir

2 Q And you've been involved in the carpentry
3 business the whole time?

4 A Yes

5 Q And you told us that you have developed an
6 experienced, capable eye better than the normal
7 person who might look at something Is that
8 right?

9 A Yeah

10 Q And you can detect defects or you can
11 detect problems that nobody else can see?

12 A Yeah

13 Q And you did work on building one at
14 Bohicket Marina, you told us Is that right?
15 In fact, you went into a lot of detail about
16 jacking that up two inches, I believe, is that
17 right?

18 A Yes

19 Q And at Bohicket Marina Village there are
20 eight buildings, I believe Is that right?

21 A Yes

22 Q And each one of them has, say, six or eight
23 condominiums?

24 A Yes

25 Q And building one is some, what, three

1 A I went -- the first time that I talked to
2 him I went and did part of it And the second
3 time I'd come back, I did the same thing But
4 it was only to measure to get where I could
5 have the right lumber and stuff for when I did
6 do the work

7 Q Okay And when was the -- how far in
8 advance of the actual work starting did you do
9 -- did you have your first meeting with Mr
10 Measter?

11 MR STUCKEY That's been asked and
12 answered, Your Honor

13 THE COURT I'll allow it, if he
14 knows

15 WITNESS My guess -- it could
16 have been forty-five days before I started the
17 actual work, you know, to do the work to start
18 on the building Because one thing we have to
19 do, and you don't just start the building work
20 -- we have to go in and go under the buildings
21 and clean out anything that's under them,
22 debris, anything, so that we can get under
23 there and do our work But you find plumbing
24 pipes under it or maybe work on the heating and
25 air -- you'll find pipes to that effect, and

1 even sometimes you find dead animals under
2 there, like dead possums and coons and dead
3 cats

4 MR HILDEBRAND Thank you very much

5 THE COURT Recross

6 MR STUCKEY Nothing, Your Honor

7 THE COURT Thank you, sir You may
8 step down

9 (WITNESS STEPS DOWN)

10 THE COURT Ladies and gentlemen, at
11 this point we'll take a break and let you go to
12 your jury room Don't begin your delibera-
13 tions Don't discuss the case We'll be with
14 you in about ten minutes

15 (JURY OUT @ 4 14 P M)

16 THE COURT We'll be at-ease for
17 about five minutes Thank you

18 (BRIEF RECESS)

19 (JURY IN @ 4 24 P M)

20 THE COURT Mr Hildebrand, you may
21 call your next witness, please

22 MR HILDEBRAND Thank you, Your
23 Honor The plaintiffs call Kenneth Schneider

24 (WITNESS TAKES STAND)

25 KENNETH G SCHNEIDER, JR , having been

1 previously sworn, continued under her oath and
2 testified, as follows

3 DIRECT EXAMINATION

4 BY MR HILDEBRAND

5 Q Hello, Mr Schneider Tell us how old you
6 are, please

7 A I'm seventy-eight (78)

8 Q And how long have you lived in the
9 Charleston area?

10 A For about twenty-two years

11 Q What about your educational background?
12 How far did you go in school?

13 A I received a degree in Architecture from
14 Princeton University in 1954

15 Q Have you practiced as an architect?

16 A I have Next year will be the 50th year of
17 practicing as a principal

18 Q Are you licensed as an architect in South
19 Carolina?

20 A Excuse me?

21 Q Are you licensed as an architect in South
22 Carolina?

23 A Yes I'm also licensed in seventeen
24 states, and that includes South Carolina

25 Q Tell me what sort of architectural -- how

1 long did you practice architecture?

2 A How long have I practiced?

3 Q Yes, sir

4 A Next year will be the 50th year that I've
5 practiced as a principal

6 Q Can you tell me generally what your
7 practice has consisted of? What have you done
8 primarily?

9 A Well, my practice consists of some original
10 design and also for remediation that is the
11 result of forensic work The normal way that I
12 design works is an owner would call us, like a
13 condominium owner They call us and ask us to
14 go look at their buildings And we tell them
15 what's wrong Sometimes they say 'Okay, we'll
16 fix it ourselves And sometimes they say we
17 don't have the money to fix it ' So it results
18 in legal ramifications In that vein we have
19 been expert witnesses, which is part of the
20 work that we do, as well as design and repair
21 of buildings that we inspect

22 Q Okay How did you first become involved
23 with Bohicket Marina villas

24 A Well, I live there I've lived there since
25 19--, -- as part of the early stage -- 1991 is

1 when I bought my first condo there It was in
2 1991 I lived at Pelican Watch and they were
3 doing construction down there, so I had to move
4 into a friend of mine's And I just liked it
5 so much that I bought his unit from him

6 Q Okay What building is your unit located
7 in?

8 A We actually own three units there In
9 Building 2, we own two units that are connected
10 together And in Building 4 we own one unit

11 Q When you say "we," is that you and your
12 wife?

13 A Yes

14 Q How long have you been married?

15 A Five years

16 Q When did you first gain knowledge that
17 there was alleged construction problems in the
18 buildings?

19 A In 1990 I knew that there were construction
20 problems because I lived there And the --
21 there was talk amongst the homeowners The
22 chairman of the board lived next to me and we
23 talked, of course, fished and stuff, you know,
24 at the marina I knew that Russell Rosen, who
25 is an engineer, made a report to the board

1 about some claimed defects I had been the
2 chairman of the board at Pelican Watch units
3 down on Seabrook Island And so I was
4 interested in that, because we had faced the
5 same problems down there

6 Q Okay Can you describe to me generally
7 what the nature of the problems that had been
8 known to the regime, say, as of ten years ago?

9 A The problems are basically twofold One,
10 there are structural deficiencies or there were
11 structural deficiencies which are now being
12 corrected This goes back as far as 1990 and
13 the Russell Rosen report And there's water
14 intrusion And my feeling is that if you're
15 going to fix your buildings, the first thing
16 you've got to do is stop the water from getting
17 in them So you stop the water first and then
18 you fix where the water's getting in And at
19 that time then you make the structural repairs
20 along with that

21 Q Have you been involved in any litigation
22 or lawsuits related to the Bohicket villas?

23 A Yes

24 Q And when did you first get involved in that
25 litigation?

1 A I was the class representative of the
2 Bohicket class and filed a class action in
3 which all members of the homeowners at Bohicket
4 were to be members, unless they opted out of
5 the class

6 And in case you don't know what a class
7 action is, it's a group of people that is
8 represented by some people that are similarly
9 situated

10 In this particular case, the board had done
11 nothing about correcting the defects to the
12 buildings I filed an action against the board
13 to require them to do something about the
14 buildings And that case went ---

15 Q When did you file that class action --
16 approximately?

17 A I think it was file in 1999 -- that's
18 right

19 Q What was the basis of the action, what was
20 the underlying problems?

21 A The class was certified in 2000 It was
22 filed in 1999

23 Q Okay

24 A The class asserted that the board had
25 failed to fulfill its fiduciary duty by

1 collecting funds and then fixing our buildings
2 And the Court brought back an affirmative
3 decision in our favor on that point for actual
4 damages

5 Q What was the verdict amount in that action?

6 A Excuse me?

7 Q What was the verdict amount in that class
8 action?

9 A The verdict amount from the jury was
10 actually two point five million dollars (\$2 5
11 Million) But there were two questions that
12 the court -- let me clarify The actual amount
13 paid was one point two five million (\$1 25
14 Million) dollars

15 Q Okay And the class members were people
16 who owned units as of -- at the time the class
17 was certified in 2000?

18 A Yes

19 Q Were the Measters members of that class?

20 A I don't know

21 Q Were they ---

22 A I suppose that they were, because it wasn't
23 settled -- I mean it wasn't -- the verdict
24 didn't come until 2005 I don't know when they
25 bought their unit If they weren't, then they

1 could have easily been a member Because the
2 previous owner would have sold the right to
3 whatever proceeds to them

4 Q Did the individual owners of the units at
5 Bohiket receive any money as a result of that
6 class action?

7 A The individual owners?

8 Q The class members Did they also receive
9 money as a result of that class action?

10 A Yes, sir

11 Q How much did each one get?

12 A Sixteen thousand one hundred eighteen
13 dollars and three cents (\$16,118 03)

14 Q Okay What was that money -- what were the
15 damages that were claimed in that suit that
16 resulted in them getting that money? What were
17 the deficiencies?

18 A The idea is that this money was paid to fix
19 the buildings That's what the suit was
20 brought for -- to fix the buildings So the
21 money was supposed to go to fix the buildings

22 Q And, again, what were the primary
23 deficiencies that were to be fixed?

24 A The primary deficiencies were water
25 intrusion and structural problems that the

1 Board had known about since about 1990 and had
2 not fully corrected

3 Q What were the structural deficiencies?

4 A There are two building types One type,
5 let's call it Type A, that has carports And
6 the other type, let's call it Type B, does not
7 have carports The buildings that have
8 carports had problems And the buildings that
9 did not have the carports also had problems
10 But the problems varied because of the

11 architecture There are four building of the
12 one type, and three buildings of another type

13 Q How about building eight that's the subject
14 of this action?

15 A Building eight is the type that does not
16 have a carport

17 Q Did it have structural problems that were
18 alleged in the class action litigation?

19 A Yes, sir The class action was all across
20 the board because of the structural
21 deficiencies

22 Q Did all eight buildings have structural
23 problems?

24 A Yes, sir

25 Q What did the structural problems result in

1 in the buildings?

2 A They resulted in building movement They
3 resulted in the fact that the buildings are
4 unsafe And because of the water intrusion,
5 then those things get coupled together -- the
6 water intrusion has washed some things and then
7 the building begins to weaken In the cases of
8 these buildings, some of the foundations were
9 inadequate and the beams themselves were not
10 placed directly on the piers And that goes
11 back to Mr Rosen's inspection back in 1990
12 The board knew that

13 Q What actual problems were known with
14 building eight, say in 2006?

15 A It, like buildings one, four and five, all
16 the problems were the same There was a
17 structural defect in the way that the buildings
18 were framed And I think you heard from Mr
19 Hatfield what those problems were And from an
20 architect's point of view they must be fixed,
21 from a safety point of view they must be fixed

22 Q I'm not sure I'm real clear on what a
23 structural problem is When you have a pier of
24 cinderblocks under a house, the floor joists
25 aren't properly resting on the pier? Is that

1 what the problem was?

2 A It's more complicated than that In the
3 type of building that we're talking about, of
4 which there are four, there's a laundry room
5 wall in the center of the house that comes down
6 from the upper unit There are actually two
7 walls that come parallel to each other, just
8 about as wide as this is, where you put your
9 laundry equipment in There's one wall on this
10 side and one wall on this side all the way down
11 from the roof When it got to the bottom there
12 was only one beam that went between these two
13 walls So the weights from above the walls are
14 trying to push -- the beam is here These
15 weights from the two walls are trying to make
16 the beam bend this way So our solution
17 structurally is to put weights -- put
18 foundation walls under the walls to hold the
19 walls up that go all the way to the roof Does
20 that make any sense?

21 Q When did the Court determine that it -- and
22 the structural deficiencies were in all eight
23 buildings?

24 A Yes

25 Q And it would have impacted each unit in all

1 eight buildings?

2 A Yes, sir

3 Q When was it decided by the regime that they
4 were going to fix those problems?

5 A I think the deciding factor was the fact
6 that lawsuit was brought -- the class action --
7 was that they had to fix it They had had an
8 earlier lawsuit and they put the money in a
9 savings account rather than fixing the
10 buildings That didn't make any sense to me
11 Because the problems were getting worse And
12 the reason that I filed the class action was
13 because the board was not doing anything to fix
14 the problems

15 Q As a result of the structural problems were
16 any damages incurred in the interior of the
17 units?

18 A Yes, sir

19 Q What were those?

20 A Cracking because the buildings were
21 shifting The overweight foundations and the
22 load distribution -- where the load of the
23 building and the weight of the building was
24 being transmitted onto the earth, it must be
25 the same And a part of an engineer's design

1 is that those footings that are carrying the
2 load, that that load is transmitted to the
3 ground in the same numbers of pounds per square
4 foot Just like when you stand on the floor,
5 you're exerting your weight in two separate
6 places on the floor Now, the problem comes in
7 the fact that those middle foundations were
8 being overloaded, because all that weight from
9 two walls was being transferred in one wall,
10 like Mr Hatfield told you There was
11 deflections and the buildings were cracking
12 And you could see the cracking in the tops of
13 the buildings as well as underneath the
14 buildings

15 Q How about the floors? Was there any
16 evidence of sagging in the floors?

17 A Yes, sir Particularly in buildings, Type
18 A, the building were sagging because the loads
19 were not evenly distributed

20 Q Do you recall when the repairs were started
21 to the buildings to correct the structural
22 deficiencies?

23 A Yes, sir There was evidence of that back
24 in the nineties

25 Q Do you know when the repairs were actually

1 started by the regime?

2 A The repairs did what?

3 Q Do you know when the repairs were started
4 for the structural problems, approximately?

5 A In the Dietrich suit, the first suit, there
6 was a suit filed earlier from which the board
7 received some money that they put in the
8 savings account I believe that that work
9 started about '98 -- between '96 and '99,
10 somewhere in there They fixed one building a
11 year

12 Q Was any work done by individual homeowners
13 to fix it?

14 A No, sir Homeowners are not allowed to fix
15 the common elements, it's a regime responsi-
16 bility

17 Q When was it anticipated that the structural
18 problems were going to fixed?

19 A I don't know the answer to that question,
20 Mr Hildebrand I was not on the board, so I
21 don't know Whenever they could raise some
22 money That was the problem They didn't
23 raise the money and didn't ask the homeowners
24 to contribute money, which they should have

25 Q Are you aware that repairs were actually

1 being made to building eight's unit owned by
2 the Measters?

3 A Was I aware that the piers --- ?

4 Q Yes, sir Are you aware that repairs were
5 actually being made to building eight and the
6 unit that was owned by the Measters?

7 A I'm sorry I still didn't understand your
8 question I'm terribly hard of hearing

9 Q That's fine Do you understand that
10 repairs ---

11 A Repairs Okay

12 Q --- were made to building eight?

13 A Yes

14 Q Do you know when those repairs actually
15 started, when the actual physical work started?

16 A Yes, sir Ronnie Givens owns the end unit,
17 Unit 1961 And he had called my office in 2004
18 and asked me to send two engineers, which I
19 did, to his unit to see why the floors were
20 sagging And we did that And the planning
21 began then Ronnie Givens' unit is adjacent to
22 the Carpenters' unit And in case you can't
23 figure out why 61 is next to 64, it goes 61,
24 62, 63, 64 So you've got the two bottom-floor
25 units are 61 and 64, 61 being on the end So

1 Q And when would the permit have to be
2 issued When he did his preliminary -- when he
3 was given the -- do you know when he was given
4 the design drawings and told that he was going
5 to be doing the repairs to building eight?

6 A I think -- Russell Rosen, the engineer, he
7 did the drawings And then from an engineering
8 point of view he said, 'Okay, these will work '
9 I agreed with him Then he sent them to me and
10 I sealed them I think that was in July of
11 2007

12 There was a drawing to show the contractor
13 how to do it We had already put the drawings
14 in his hands, but he actually hadn't done
15 anything A lot of work has to go on first
16 The building has to be shored up It has to be
17 made safe before anybody can actually do any
18 demolition

19 Q How far in advance of your actual repair
20 documents would the repairs start?

21 A I think our repair drawings went all the
22 way back to 2004, the concept -- conceptual
23 drawings

24 Q Were there any preliminary repairs that
25 were done before the major repairs?

1 A Yes, sir There was some temporary repairs
2 made to Mr Given's floor before Mr Hatfield's
3 work

4 MR HILDEBRAND (Tenders document to
5 be marked as exhibit)

6 COURT REPORTER Plaintiff's Exhibit
7 8 for identification

8 DIRECT EXAMINATION CONTINUED

9 BY MR HILDEBRAND

10 Q Mr Schneider, I want to hand you what
11 we've marked as Plaintiff's Exhibit 8 and would
12 ask if you can identify that?

13 A Yes, sir This is a report of the annual
14 meeting dated June 2, 2007 of the Bohicket
15 Marina Village Council of Homes

16 MR HILDEBRAND I'd like to move to
17 introduce that as Plaintiff's Exhibit 8, Your
18 Honor

19 THE COURT Any objection?

20 MR STUCKEY No, Your Honor

21 THE COURT Without objection it is
22 admitted

23 (SO ENTERED AS PLAINTIFF'S EXHIBIT 8)

24 DIRECT EXAMINATION CONTINUED

25 BY MR HILDEBRAND

1 Q Are the minutes -- the annual meeting,
2 that's the big meeting of the board that
3 happens every year?

4 A Yes, sir

5 Q Is that a pretty big deal at Bohicket?

6 A Yes

7 Q Is notice given to all the owners of the
8 condominiums?

9 A Yes

10 Q Are agendas typically provided?

11 A Yes

12 Q How about the meeting minutes, such as
13 we've marked as Plaintiff's Exhibit 8? Are
14 these provided to the owners?

15 A They are provided to the owners, yes

16 Q How is that done? Is it mailed to them?

17 A It's automatic We have a property manager
18 and the property manager takes care of those
19 notifications at the direction of the board
20 This is required by the master deed and bylaws
21 that we have this meeting every year

22 Q All right Can you identify what the date
23 of this meeting -- when it was actually held?

24 A Say again?

25 Q At the top of the page, can you identify

1 when this meeting was held?

2 A Yes Bohicket Marina Village Council of
3 Homeowners Annual Meeting of June 2, 2007

4 Q I'd like to refer you to the second page of
5 that document, please Start with the sentence
6 about halfway down in this document Can you
7 read into the record where it starts right
8 there with "simultaneous "

9 A With "simultaneous activities?"

10 Q Yes, sir Can you read that into the
11 record, please?

12 A Yes, sir, (reading) *"The simultaneous*
13 *activities being undertaken by the ARB at this*
14 *time are repair of the leaking and rot in the*
15 *carport buildings, repair of the sagging,*
16 *sinking three-bedroom stacked buildings and*
17 *taking action as needed in response to owners*
18 *calls In addition, at the rate of two*
19 *buildings per year (this rate determined by*
20 *available funds) each building in turn (at*
21 *present, number eight) will have all needed*
22 *repairs completed before work moves to the*
23 *next "*

24 Q Then the next sentence?

25 A (Reading), *"Mr Schneider said their*

1 *greatest difficulty is having no drawing to*
2 *work with and that their priority is to get all*
3 *of the leaks stopped chimneys, roofs,*
4 *flashings, windows "*

5 Q In the first sentence, where it talks about
6 repair of the sagging, sinking three-bedroom
7 stacked buildings, is building eight a three-
8 bedroom stacked unit?

9 A Yes, sir The three-bedroom units are in
10 the prototype that we're talking about

11 Q And it says at the rate of two building per
12 year, at present building number eight Does
13 that mean number eight was scheduled at this
14 time to have the sagging, sinking ---

15 MR STUCKEY Objection That is
16 not what is says, Your Honor

17 THE COURT Sustained

18 WITNESS May I make a comment?

19 THE COURT No, sir You may answer
20 the questions, please, sir But thank you

21 WITNESS Would you repeat the
22 question, please?

23 THE COURT He hasn't asked one yet
24 I sustained the objection to the last one
25 He's going to ask you another question

1 WITNESS Thank you

2 DIRECT EXAMINATION CONTINUED

3 BY MR HILDEBRAND

4 Q At the time of this meeting when were the
5 repairs to building eight anticipated to start?

6 A How much were the repairs?

7 Q No, when was it expected that they would
8 begin to fix the sinking/sagging?

9 A Immediately

10 Q How were those repairs to be funded?

11 A Initially the repairs were to be funded
12 from the reserve from the regime

13 But since the lawsuit had been settled,
14 then the repairs were to be funded by the
15 board's levying an assessment against the
16 property owners, those who were in the class
17 and those not in the class, equally, since
18 everybody's got to be treated equal So they
19 were going to be funded from those in the
20 lawsuit for those who were in the class and for
21 those that weren't in the class, it would be
22 their problem to come up with money

23 Q So the class members eventually got sixteen
24 thousand dollars and the idea was that was
25 supposed to be used to fix the buildings?

1 A To fund fixing the buildings, right

2 Q Did you observe the actual repairs that
3 were made to the Carpenters' unit?

4 A Yes

5 Q Were you here when Herman Hatfield
6 testified?

7 A Excuse me?

8 Q Were you here when Herman Hatfield
9 testified?

10 A Yes

11 Q Did he accurately describe what those
12 repairs were?

13 A He did

14 Q Did you observe any indications in the
15 Carpenters' unit that was previously owned by
16 the Measters that the floors had previously
17 sagged and had been repaired?

18 A Yes

19 Q What were those indications?

20 A When the top level of the flooring was
21 removed, that is the finished flooring, it was
22 tile One of the problems is that it was
23 Italian or Spanish tile It's very heavy And
24 the floors just couldn't support it And then
25 two layers of plywood, as Mr Hatfield

1 described The tile was on top of the first
2 layer of plywood There was then a space that
3 was underneath And then the original
4 construction was under that I saw it a number
5 of times while it was being demolished and
6 while the work was going on I went there
7 twice a week or so

8 MR HILDEBRAND That's all I have
9 Thank you very much

10 THE COURT Cross examine

11 MR STUCKEY Thank you, Your
12 Honor

13 CROSS EXAMINATION

14 BY MR STUCKEY

15 Q Good afternoon, Mr Schneider

16 A Good afternoon, Mr Stuckey

17 Q You are basically retired now, I believe
18 Is that correct?

19 A I'm what? I'm sorry

20 Q You are basically retired now

21 A Well, theoretically, yes

22 Q I believe you described yourself as a
23 forensic architect primarily Is that true?

24 A Yes

25 Q And a forensic specialist in any area is

1 JUNE 2, 2010 10 00 A M

2

3 THE COURT Is there anything before
4 we bring in the jury?

5 MR HILDEBRAND Your Honor, may we
6 approach?

7 THE COURT Sure

8 (OFF RECORD BENCH CONFERENCE)

9 THE COURT Are the plaintiffs
10 ready?

11 MR HILDEBRAND Yes, Your Honor

12 THE COURT Defendants ready?

13 MR STUCKEY We are, Your Honor

14 THE COURT Let's bring in our jury,
15 please

16 MR HILDEBRAND Your Honor, we're
17 going to -- the next item will be to introduce
18 the deposition transcripts

19 THE COURT Do you have the
20 originals?

21 MR HILDEBRAND We'll read Barbara
22 Measter first

23 (JURY IN AT 10 00 A M)

24 THE COURT Good morning, ladies and
25 gentlemen I hope you had a good evening

1 MR STUCKEY That's correct, Your
2 Honor

3 THE COURT I will agree with that
4 That would not be problem So you cannot
5 publish that on the screen You may do it,
6 obviously, at another point I don't have any
7 problem in closing arguments for that to be
8 done But for the purpose of that, it would
9 distinguish the testimony I understand the
10 reason for it, but we've got to balance that
11 They can't see a visual of the testimony of any
12 witness

13 MR HILDEBRAND That's fine

14 THE COURT Thank you

15 MR HILDEBRAND I would publish the
16 testimony of Barbara Measter As the judge
17 said, it was taken on March 5 of 2009

18 Barbara Measter, after being duly
19 sworn, testified as follows

20 Your Honor, for the record, I'm
21 reading from Page 6, Lines 24 through Page 7,
22 Line 2, (reading)

23 Q So that takes us up to '98?

24 A Yes

25 Q And is that when you bought this

1 *property?*

2 A *Yes, sir*

3 *Page 7, line 25, (reading)*

4 Q *All right Did you graduate from*
5 *college?*

6 A *Yes, I did*

7 Q *Where was that?*

8 A *Smith College in Northampton,*
9 *Massachusetts*

10 Q *And what year was that?*

11 A *1966*

12 Q *And your degree was in what?*

13 A *American studies*

14 Q *Have you had any other post-graduate*
15 *studies after that?*

16 A *Yes, I do*

17 Q *What would that be?*

18 A *I hold a juris doctorate*

19 Q *From where?*

20 A *Pace University School of Law*

21 Q *Where is that?*

22 A *In White Plains, New York*

23 Q *When did you obtain that degree?*

24 A *1980*

25 *Page 10, Line 4, (reading)*

1 Q Okay, so you were in private practice
2 from roughly 1981, '82 through when?

3 A I would say '83 I was in private
4 practice from '83 until approximately 2004

5 Q Okay And what was the nature of your
6 practice?

7 A General practice

8 Page 25, Line 24 (reading)

9 Q Okay, so is that when he then -- let me
10 ask, how about when you were filling out the
11 disclosure statement in this case? Was it your
12 understanding that you were only obligated to
13 disclose deficiencies with the private elements
14 as opposed to common elements?

15 A No, that was not my understanding at
16 the time

17 Q What was your understanding at the
18 time?

19 A My understanding at the time was that
20 I should answer all the question in the
21 disclosure statement truthfully

22 Q Okay, how about if there were
23 deficiencies that were not in the private
24 elements that were in the common elements of
25 the regime? Was it your obligation, from what

1 you understood, to disclose those deficiencies?

2 A It was my understanding at the time
3 that I should disclose any deficiencies with
4 regard to Unit 1964

5 Q Okay, so when you filled out the
6 disclosure form it was your understanding that
7 you were supposed to fill that out with the
8 private elements and the common elements But
9 you were not speaking as to the common
10 elements, correct?

11 A It is my understanding that I should
12 disclose anything I knew about Unit 1964 and
13 that the purchasers should know

14 Q Okay

15 A And if there were anything with any
16 part of the unit, the limited common elements
17 or the common elements connected with 1964, I
18 would have disclosed that

19 Page 37, Line 12 (reading)

20 Q When did you and your husband spend
21 your last night in this condominium prior to
22 the closing? Was it the night before? Was it
23 the week before or several days, what?

24 A I believe it was either the night
25 before or two nights before

1 Q Okay Since you sold the house to the
2 Carpenters have you spent any further nights
3 there?

4 A No

5 Q Have you been back to the condominium
6 since you sold it to the Carpenters?

7 A To that condominium?

8 Q Yes, ma'am

9 A No

10 Page 51, Line 21 (reading)

11 Q Were you involved with litigation
12 related to the Bohicket building projects while
13 you were an owner of Unit 1964?

14 A Yes

15 Q So when I asked you earlier whether
16 you had been involved in any litigation prior
17 to this action, that would be some litigation
18 you were in Is that correct?

19 A Yes

20 Q And that was a class action
21 litigation?

22 A Yes

23 Q And you were a member of that class?

24 A Yes

25 Page 57, Line 3, (reading)

1 Q All right, let's turn to the last page
2 of this document, page four It says "The
3 Special Circuit Judge finds that each owner is
4 entitled to the sum of nineteen thousand one
5 hundred sixteen dollars and seventy-three cents
6 per unit " Is that how much you and your
7 husband got out of the class action?

8 A That's not what I recall

9 Q What did you and your husband get?

10 A I don't remember it was that
11 particular sum of money I thought it was a
12 lot less

13 Q What's your approximation?

14 A I don't know Fourteen or fifteen
15 thousand I don't know

16 Page 76, (reading)

17 Q I'm going to hand you what I've marked
18 as Exhibit Number 11

19 Which, Your Honor, for the record, was
20 introduced yesterday as Exhibit Number 8, the
21 Bohicket Marina Village Council of Co-owners
22 Annual Meeting Minutes dated June 2, 2007
23 (Reading continued, Page 76)

24 Q I'm going to hand you what I've marked
25 as Exhibit Number 11 Can you testify under

1 oath here today as to whether you have seen
2 this document or not?

3 A I believe I've seen this document

4 Q Okay If I represent to you that we
5 have been told the annual meeting minutes are
6 mailed out to homeowners within thirty days of
7 the meeting, you would have no reason to
8 dispute that

9 A No

10 Page 82 (reading)

11 Q How about Janice Franklin Have you
12 had any discussions with her about any alleged
13 deficiencies in building eight, either before
14 or at the present?

15 A I have had many discussions with
16 Janice Franklin because she happens to be a
17 good friend of mine, but I do not believe any
18 of them involved deficiencies in building
19 eight

20 Page 87, (reading)

21 Q Number six, heating and air condition,
22 approximate age of the cooling unit, one year
23 Was that right?

24 A No, it was not

25 Q Why was that incorrect?

1 MR HILDEBRAND Nothing

2 THE COURT You may step down

3 MR HILDEBRAND Your Honor, we would
4 now like to read some portions of Charles
5 Measter's deposition

6 THE COURT That would be Court's
7 Exhibit 2 now being published You may
8 proceed

9 MR HILDEBRAND This is the
10 deposition of Mr Measter, taken also on March
11 5, 2009 Page 3, Line 5

12 Q Would you say your full name for
13 the record?

14 A Charles Lewis Measter
15 Page 4, Line 10, (reading)

16 Q Maybe I'm confused Let's start
17 over Where did you go to law school?

18 A St John's

19 Q When?

20 A I graduated in 1973

21 Q And your undergraduate degree was
22 from where?

23 A I have an undergraduate degree
24 from St Francis College in Brooklyn, New York
25 I have a master of arts degree from Columbia

1 *University in New York City, and St John's*

2 *University is also in New York City*

3 *Q Okay, and those degrees are in*
4 *what?*

5 *A I have a B A and an M A in*
6 *history, and I have a juris doctorate degree*

7 *Q' All right But you have never*
8 *been licensed as an attorney? Is that correct?*

9 *A I never applied for admission*

10 *Q You passed the Bar, but then you*
11 *did not apply for admission?*

12 *A That's correct*

13 *Q Why is that?*

14 *A I was in business and I had a very*
15 *profitable company*

16 *Q What did you do?*

17 *A I bought and sold ships*

18 *Page 6, Line 6, (reading)*

19 *Q Okay, do you have any current*
20 *occupation?*

21 *A I have an international*
22 *arbitration practice*

23 *Q Okay, what is that called?*

24 *A Charles L Measter*

25 *Q How do people know to contact you*

1 *as an arbitrator?*

2 *A I am a member of the Society of*
3 *Maritime Arbitrators and the American*
4 *Arbitration Association I'm on the panel of*
5 *the International Chamber of Commerce*
6 *Arbitration Panel, the Hong Kong Arbitration*
7 *Association, the Chinese Maritime Association*
8 *and the Singapore International Arbitration*
9 *Board*

10 *Q How many arbitrations do you*
11 *typically hold or handle?*

12 *A I have a number of cases pending,*
13 *but, like an attorney, you never knew when they*
14 *might come to fruition*

15 *Q Okay, on average, how many would*
16 *you have pending at any given time?*

17 *A At this juncture, I have twenty-*
18 *two pending*

19 Page 8, Line 13, (reading)

20 *Q Have you been back to 1964 -- Unit*
21 *1964 since it was sold to the Carpenters?*

22 *A No*

23 Line 25, (reading)

24 *Q Does the name Herman Hatfield ring*
25 *a bell with you?"*

1 A No, it does not

2 Q Were you ever at building eight
3 when repairs were being performed to correct
4 alleged construction deficiencies by any
5 contractor, to your knowledge?

6 A I don't remember

7 Q Not that you can recall?

8 A No, I can't recall

9 Q So let me ask you this If
10 someone were to testify that they were either
11 making repairs to building eight or were about
12 to start repairs and you had a conversation
13 with them and they advised you that they were
14 about to make repairs to building eight and
15 your response was "it's not my problem because
16 I've sold the unit," would you deny that? You
17 would deny that, is that correct?

18 A I don't recall having a
19 conversation

20 MR STUCKEY No, there's an errata
21 added to that

22 THE COURT Are you going to publish
23 the errata as well? Are you going to publish
24 it? He requests that under 107

25 MR HILDEBRAND Okay Page 9, Line

1 9, (Reading)

2 Q So let me ask you this If
3 someone were to testify that they were either
4 making repairs to building eight or were about
5 to start repairs and you had a conversation
6 with them and they advised you that they were
7 about to make repairs to building eight and
8 your response was "it's not my problem because
9 I've sold the unit," you would deny that, is
10 that correct?"

11 Then the original answer was,
12 (reading) "I don't recall having a
13 conversation "

14 The answer was changed on an errata
15 sheet from the March 5, 2009 -- it was changed
16 on April 3, 2009, and the new answer is
17 (reading)

18 A I don't recall having a
19 conversation

20 Replaced that with, (reading)

21 A I was present and did have a
22 conversation with two repairmen who came to
23 measure the windows in the kitchen/dining area
24 facing the unit in 1964

25 Q So you wouldn't deny that you said

1 that, you just don't recall?

2 A I don't recall ever having a
3 conversation

4 Q So is my statement correct, you
5 don't deny it, you just don't recall it?

6 A I don't recall

7 THE COURT Any additions?

8 MR STUCKEY Your Honor, due to
9 counsel's remarks concerning the errata sheet,
10 could Your Honor instruct the jury as to what
11 that is?

12 THE COURT An errata sheet is --
13 deposition witnesses are given an opportunity
14 to review it They reserve the right to read
15 it and sign it And from time to time they
16 make additional comments or change answers
17 You consider all of them That's your purpose
18 You must decide what you find to be credible
19 and believable

20 MR STUCKEY Beyond that, ladies
21 and gentlemen of the jury, let me read some
22 other portions of the deposition of Mr Charles
23 L Measter, our client

24 Page 4, Line 1, (reading)

25 Q Are you still licensed as an

1 MR STUCKEY Thank you, Your

2 Honor

3 THE COURT Thank you Anything

4 else?

5 MR HILDEBRAND Nothing further,

6 Your Honor

7 THE COURT All right Thank you

8 Call your next witness

9 MR HILDEBRAND We would call Chip

10 Carpenter

11 (WITNESS TAKES STAND)

12 DUDLEY N CARPENTER, having been
13 previously sworn, continued under her oath and
14 testified, as follows

15 DIRECT EXAMINATION

16 BY MR HILDEBRAND

17 Q Hello, Mr Carpenter, how old are you?

18 A I am fifty-four (54) years old

19 Q Okay, and where did you go to school?

20 A I went to college at the University of
21 Pennsylvania

22 Q And when did you obtain a degree there?

23 A I graduated in 1978

24 Q Okay, and what was the degree in?

25 A I got a degree in economics

1 Q And are you currently employed?

2 A Yes, I am

3 Q What do you do for a living?

4 A I work for News America Marketing

5 Q Okay, and how long have you done that?

6 A I'm in my twenty-fifth year

7 Q Okay How did you and your wife come to be
8 interested in purchasing the property that is
9 the subject of this action?

10 A As Jane testified yesterday, we decided
11 that the house that we built for ourselves on
12 Seabrook was too large and we really didn't
13 need that much space So we wanted to
14 downsize So in the process of downsizing, we
15 looked at all available larger condominiums on
16 Seabrook Island We wanted to stay on Seabrook
17 since we were a member of the Club and had a
18 lot of good friends there

19 Q There's been a lot of testimony about the
20 disclosure form Do you recall getting a dis-
21 closure form that was signed by the Measters
22 when you bought your unit?

23 A Yes, I did

24 Q And did you review that?

25 A Yes, we did

1 Q There's been some discussion about number
2 one which relates to the foundation, slab,
3 fireplace and chimneys, doors and windows,
4 doors, ceilings, interior and exterior walls,
5 attached garage, patio, deck or other
6 structural components, including any
7 modification Do you recall that the
8 representation was checked "no" from the
9 Measters?

10 A Yes, I do

11 Q Have you received any documentation from
12 the Measters which changed this document after
13 you were provided it?

14 A No, we haven't

15 Q Prior to closing or at any time?

16 A No, we haven't

17 Q And how about number six, heating and air
18 conditioning -- approximate age of heating
19 unit, half year, cooling unit, one year And
20 that was checked "no " Have you been provided
21 any update or change from the answer that the
22 Measters checked which was "no problem "

23 A No, we haven't

24 Q How about number twenty, lawsuits,
25 foreclosures, bankruptcy, tenancies, judgments,

1 tax liens, foreclosed assessments or notice
2 from any governmental agency that could affect
3 title to the property? The answer was no
4 Have you been provided anything that changed
5 that?

6 A No, we haven't

7 Q Mr Carpenter, if you could turn to the
8 third page of that document, and item number
9 thirteen, it says (reading) "room additions or
10 other structural changes " And the answer
11 there is checked "yes " Do you see that?

12 A Yes, I do

13 Q Can you read the bottom where it says as
14 far as what changes, additions or whatever was
15 made? At the very bottom where it says number
16 13

17 A I believe it says reconfirmed -- not
18 reconfirmed -- yes, it is, (reading)
19 "reconfirmed two bedrooms and bathroom 2001 "

20 Q Did you have any conversations with the
21 Measters as to what renovations they had done
22 to two bedrooms and a bathroom in 2001?

23 A I do believe we discussed during the
24 initial walk-through with them the fact that
25 they had remodeled the master bathroom, and it

1 was certainly different than the other units --
2 similar units in the same building

3 Q Had y'all looked at other units in that
4 building?

5 A Yes, we did

6 Q Was the floor the same or different as the
7 Measters' unit?

8 A It was different It was tile

9 Q When did you first learn that there was a
10 problem with your unit?

11 A The morning of August 3rd I was out of
12 town I got a call from my wife rather
13 frantically saying that we weren't going to be
14 able to move our belongings into the unit

15 Q When did you actually physically see the
16 unit that y'all were ready to move into?

17 A I believe that following weekend when I
18 arrived home I usually get in on Thursday
19 night, so it probably was Friday I'm not sure
20 what day the 3rd was on, so whatever the Friday
21 after the 3rd was

22 Q There's been a lot of discussions
23 yesterday, and you were here while there was
24 testimony about what repairs were made to the
25 unit Do you recall that?

1 A Yes, I do

2 Q Do you recall you and your wife had to pay
3 out-of-pocket monies for repairs to your unit
4 that arose?

5 A Yes, we did

6 MR STUCKEY Your Honor, may we
7 approach the Bench?

8 THE COURT Sure

9 (BENCH CONFERENCE)

10 DIRECT EXAMINATION CONTINUED

11 BY MR HILDEBRAND

12 Q Mr Carpenter, can you identify what I hand
13 to you that has been marked as Plaintiff's
14 Exhibit Number 9?

15 A Number 9 is an invoice from Sellers
16 Transfer And it's the bill to repack and
17 reload and put back into storage and then the
18 delivery of all our belongings that had been
19 taken out of storage and started the move
20 toward the building And then we had to return
21 it and have it re-boxed and re-stored And
22 that was a total of fourteen hundred ninety-two
23 dollars and seventy-five cents (\$1,492 75)

24 MR HILDEBRAND Move to admit, Your
25 Honor

1 THE COURT Any objection? Any
2 objection to Plaintiff's 9?

3 MR STUCKEY Your Honor, it's
4 dated March 2008

5 THE COURT He's moving to introduce
6 it He's identified it You can ask -- cross
7 examine him Do you have any objection to the
8 document?

9 MR STUCKEY None to the
10 document

11 THE COURT Thank you, sir It's
12 admitted without objection

13 (SO ENTERED AS PLAINTIFF'S EXHIBIT 9)

14 DIRECT EXAMINATION CONTINUED

15 BY MR HILDEBRAND

16 Q So there's testimony that the delivery van
17 had to be turned around Tell me what caused
18 the repacking, why your furniture or your
19 belongings had to be repacked?

20 A I believe it was fourteen hundred and
21 ninety-two dollars and seventy-five cents
22 (\$1,492 75)

23 Q It says "cost to repack " Do you know why
24 your furniture had to be repacked? Was it
25 unpacked?

1 A Yeah, it had been unpacked and loaded on
2 the truck to be delivered, for delivery

3 Q' And what's been marked Exhibit 10, do you
4 have that in front of you?

5 A Yes

6 Q And can you identify that, please?

7 A Yes, another invoice from Sellers Transfer
8 That was the monthly storage fee for September
9 2007 of two hundred sixty-three dollars and
10 forty cents (\$263 40) That was the fee to
11 store the furniture

12 MR HILDEBRAND We would like to
13 move to admit this, Your Honor

14 THE COURT What exhibit?

15 MR HILDEBRAND Ten, Plaintiff's
16 Exhibit 10

17 THE COURT Any objection?

18 MR STUCKEY No objection

19 THE COURT Without objection, 10 is
20 admitted

21 (SO ENTERED AS PLAINTIFF'S EXHIBIT 10)

22 DIRECT EXAMINATION CONTINUED

23 BY MR HILDEBRAND

24 Q So the monthly storage fees that you
25 incurred for storing your belonging was two

1 hundred sixty-three and forty cents (\$263 40)?

2 A Per month, yes

3 Q How long were you out of the unit because
4 of the repairs that had been made? I'm not
5 talking about renovations that you might have
6 done separate from the repairs But do you
7 have an opinion as to how long you were out as
8 the repairs were made?

9 A Four months

10 Q So four times two hundred sixty-three
11 dollars and forty cents would be one thousand
12 fifty-three dollars and sixteen cents
13 (\$1,053 16) Is that correct?

14 A Correct

15 Q Plaintiff's Exhibit 11, can you identify
16 that, Mr Carpenter?

17 A Yes, that's an invoice from Pritchard
18 Construction Company Do you want me to list
19 ---

20 MR HILDEBRAND Move to admit as
21 Plaintiff's Exhibit 11, Your Honor

22 THE COURT Any objection?

23 MR STUCKEY No objection, Your
24 Honor

25 THE COURT Without objection,

1 Plaintiff's Exhibit 11 is admitted

2 (SO ENTERED AS PLAINTIFF'S EXHIBIT 11)

3 DIRECT EXAMINATION CONTINUED

4 BY MR HILDEBRAND

5 Q And this is an invoice to you from
6 Pritchard Construction Company, correct?

7 A Correct

8 Q It's dated August 26, 2008 Do you know
9 why it is dated so late?

10 A This was after we had decided to submit the
11 lawsuit, I guess, and to document the costs
12 that were associated with just the jacking of
13 the building and the tearing up of the floor

14 Q Did you actually have to pay these amounts
15 that are set forth on Plaintiff's Exhibit 11?

16 A I believe so, yes

17 Q Item number one, replace air handler and
18 condenser unit, five thousand six hundred
19 fifty-five dollars (\$5,655) Is that correct?

20 A Correct

21 Q Why did you have to do that?

22 A Because the air handler was, you know,
23 original to the building You saw the pictures
24 yesterday It was twenty years old, and was
25 not in operable condition That unit -- the

1 exterior unit was tied into the same technology
2 or code that the old air handler The code had
3 since changed, so you had to get both the new
4 air handler and the new condenser

5 Q How about item number two, replace sub-
6 flooring, two thousand nine hundred sixty-one
7 dollars (\$2,961)? What was that?

8 A That's the plywood that had to go back on
9 the floor after all the holes were cut in to
10 grade the subfloor and which they put the
11 carpet and hardwood on

12 Q Who told you that you had to pay that?

13 A The regime

14 Q And you were told that was part of what you
15 owned, therefore you had to pay for that?

16 A Correct We submitted, you know, and --
17 it went to the regime of what we, you know,
18 incurred And what we got back was a breakdown
19 saying that they were responsible for some of
20 the costs from Pritchard and from Mark Stafford
21 and then these were the items that were our
22 responsibility

23 Q Replace carpets, five thousand seven
24 hundred fifty-five dollars (\$5,755) What's
25 that for?

1 A That's the carpeting in the bedrooms to,
2 you know, go down after they'd been torn up

3 Q Number four, replace ceramic tile with
4 hardwood floors, five thousand four hundred and
5 one dollars (\$5,401) What is that?

6 A That's the hardwood that goes through the
7 majority of the living area and the hallways
8 that was put down after the subfloor was fixed

9 Q Were the floors damaged as a result of the
10 holes that were cut into them for the repairs?

11 A Yes, they had to be completely torn up and
12 discarded

13 Q How about Plaintiff's Exhibit Number 12?
14 What is this?

15 A This is a cancelled check for the amount of
16 \$7,515 which was the 2008 assessment by the
17 regime to repair the issue that were being
18 repaired at that time within the building

19 Q What is the amount of the assessment that
20 you had to pay?

21 A Seven thousand five hundred fifteen dollars
22 (\$7,515) for the 2008 I believe there was
23 also a 2007 assessment which the Measters
24 originally paid, but then ---

25 MR STUCKEY I object to this line

1 of testimony, Your Honor It's not a
2 legitimate expense

3 THE COURT Overrule the objection

4 WITNESS The 2007 assessment the
5 Measters originally paid but then we had to pay
6 an annualized or prorated percent of it at the
7 closing, so we also paid an assessment on that

8 DIRECT EXAMINATION CONTINUED

9 BY MR HILDEBRAND

10 Q What is the date of this check where you
11 had to pay the regime \$7,515?

12 A October 29, 2007

13 Q So it's about two months after you moved
14 in?

15 A No That was in the middle of the repair
16 work being done underneath

17 Q So about three months after the closing

18 A Yes

19 Q If you had been advised that your unit had
20 the issues that it had, that you found out
21 about after it closed, and if you had been
22 advised that the buildings had been the subject
23 of litigation and had the problems that have
24 been discussed here in this trial, would you
25 have bought your unit?

1 A No We know we wouldn't have, but we had
2 actually had that conversation, you know, since
3 we found out afterwards I think the risk
4 would have been too great The unknown would
5 have been too much There certainly was going
6 to be a devaluation in the value, and the
7 investment certainly wouldn't have been worth
8 what the Measters had asked for it We would
9 definitely not have bought the unit

10 Q Do you have an opinion as the owner of the
11 property how much it has been devalued, if at
12 all, as a result of the ---

13 MR STUCKEY Objection

14 THE COURT What is the basis of
15 your objection?

16 MR STUCKEY He's not qualified
17 to give that opinion

18 THE COURT Owners are qualified to
19 testify it He's an owner He's allowed to
20 testify about the value That's the law

21 Thank you, sir Objection is overruled Thank
22 you

23 DIRECT EXAMINATION CONTINUED

24 BY MR HILDEBRAND

25 Q Mr Carpenter, do you have an opinion as to

1 -- as the owner of the house, what it has been
2 devalued because of the issues with the unit
3 that were non-disclosed?

4 A It was our estimate at the time that we
5 tried to figure our damages for this case, and
6 that was back a year later, based on the
7 market, based on what we know and based on the
8 cost of other units, you know, within the
9 building, we estimated it And it strictly is
10 an estimation We estimated that if everyone
11 had known about the issues in the building that
12 it probably would have sold at least for fifty
13 thousand dollars less

14 MR HILDEBRAND Thank you That's
15 all I have

16 THE COURT You may cross examine,
17 Mr Stuckey

18 CROSS EXAMINATION

19 BY MR STUCKEY

20 Q What's the appraisal of the property now,
21 the tax appraisal of the property?

22 A I don't know

23 Q What was the appraisal last year for your
24 property for tax purposes?

25 A I don't know exactly, but I could certainly

1 look it up

2 Q What was the appraisal for tax purposes for
3 the year before that?

4 A I don't know The appraised value doesn't
5 really have anything directly to do with the
6 sale value, though

7 Q And you learned that in the degree you got
8 in economics from Pennsylvania Is that right?

9 A No, I just know that the appraisals are
10 always different than what the sales prices
11 are

12 Q But, in fact, the appraisal is basically
13 ten percent less than the actual appraised
14 value Isn't that correct?

15 A Say that again

16 Q For tax purposes, the tax assessor for
17 Charleston County appraises property ten
18 percent less than the actual value of the
19 appraisal that they appraise Isn't that
20 correct?

21 A Yes

22 Q But the value of the property depends on
23 the market value of it Isn't that true?

24 A Correct

25 Q And it may or may not have any direct

1 correlation to the tax value Is that right?

2 A Correct

3 Q And you had really liked this particular
4 piece of property, hadn't you?

5 A Yes

6 Q Because prior to your buying it in 2007,
7 you talked to Mrs Measter two years before, in
8 2005, about buying the property then, didn't
9 you?

10 A We were investigating our options, yes

11 Q And what you really liked about this
12 property was the fact that it sits on the very
13 end of basically a peninsula at Bohicket
14 Marina, doesn't it?

15 A That's one of the things we like, yes

16 Q And you have an unobstructed, beautiful
17 view of the sunset, going down over the marsh
18 and over the water, don't you?

19 A Yes, we do

20 Q And probably your view of the sunset is one
21 of the best that you can find in Charleston
22 County Isn't that true?

23 A That's a matter of opinion

24 Q But in your opinion, don't you agree with
25 that?

1 A I travel probably forty weeks out of the
2 year I usually leave by air on Tuesday
3 mornings and return on Thursday evenings I
4 typically go to a different city each week and
5 work with the management team within that what
6 we call "market " I have thirty-eight markets
7 within the U S and Canada, and we manage the
8 field service team

9 Q So you basically leave on Tuesday and you
10 come back on Thursday?

11 A The majority of the weeks

12 Q And so you left mainly the details of the
13 purchase of this property to your wife, Jane
14 Isn't that true?

15 A I wouldn't say the details I think the
16 actual move was certainly something that she
17 was responsible for The negotiation and the
18 purchasing of the unit, we did together

19 Q So the negotiation and the purchasing of
20 the unit you did together?

21 A Right

22 Q You signed the contract for sale with the
23 Measters along with Jane Is that correct?

24 A Correct

25 Q But you did not attend the closing in Lenny

1 Krawcheck's office, did you?

2 A I did not

3 Q You weren't there

4 A Correct

5 Q And Jane signed for you through a power-of-
6 attorney at closing Isn't that correct?

7 A Correct

8 Q Now, I trust that you read the contract of
9 sale since you did sign that Is that right?

10 A Yes, sir

11 Q And did both of you sign together? Do you
12 recall?

13 A I believe so

14 Q And your agent was Cooper Williams, who is
15 an agent on Seabrook Is that right?

16 A Correct

17 Q And had you dealt with Cooper before?

18 A This was the first transaction we had done
19 with Cooper but he had shown us a number of
20 properties, you know, over the period of time
21 we were selecting the unit

22 Q And Jane has told us about your sale of the
23 property on Deer Point for \$1 62 Million, which
24 is one million six hundred twenty thousand
25 dollars She told us about your buying the

1 condominium at the Craft House for \$740,000, I
2 believe And you own some other properties in
3 Charleston County in addition to those two Is
4 that correct?

5 A Yes

6 Q And she mentioned that y'all had bought
7 houses in, I believe, Wilmington and some other
8 places as you moved up and down the Atlantic
9 seacoast Tell the ladies and gentlemen of the
10 jury, please, how many other property over the
11 course of your marriage that you and Jane had
12 bought?

13 A The first purchase I purchased myself in
14 Baltimore Then we bought our first house
15 together in Richmond, Virginia

16 MR HILDEBRAND Objection, Your
17 Honor I represent this is irrelevant

18 THE COURT Overruled

19 WITNESS We bought the house --
20 I bought a house in Baltimore We bought our
21 first home in Richmond, Virginia We bought a
22 house in Dumfries, Virginia We bought another
23 house in Richmond We bought a house in
24 Madison, Connecticut We bought another house
25 in Richmond We bought a second home on

1 Seabrook in 1988, which we sold in '96 Then
2 we bought the property for our house at Deer
3 Point in 1999 We built in 2003 Then we
4 bought the two condominiums

5 CROSS EXAMINATION CONTINUED

6 BY MR STUCKEY

7 Q Based on that past experience in buying
8 homes, and based on your college degree and
9 your business experience and so forth, then
10 you're not any stranger to buying a piece of
11 property, are you?

12 A No, I'm not

13 Q And the contract of sale that was entered
14 into with the Measters, you read that in
15 detail, I suppose, did you not? So you knew
16 what was in it?

17 A Yes

18 Q And it's got a provision in there -- it's
19 got three provisions One's about termination,
20 one's about release and one's about waiver,
21 that says you're to do certain things within a
22 period of time if you've got any problems about
23 it, and you didn't notify anybody about those
24 problems, did you?

25 A No, and we don't have any disagreement

1 about that

2 Q Okay And that's clear cut

3 A Yeah, the only disagreement we have is we
4 don't feel ---

5 Q I didn't ask you what your disagreement
6 was

7 THE COURT He can explain his
8 answer You may continue to answer the
9 question, please, sir

10 WITNESS The one thing we don't
11 feel is that that contract did not waive the
12 Measters' obligation to honestly disclose the
13 condition of the unit in the disclosure form
14 And we used that information to base our
15 decision And subsequently, as testified here,
16 we feel that they were not forthright and they
17 did not answer that correctly As a result,
18 that's the cause of the damages

19 CROSS EXAMINATION CONTINUED

20 BY MR STUCKEY

21 Q Do you have any training in law, any
22 background and experience in law?

23 A No

24 Q Okay I'm fascinated because of how you
25 can say that when this lawsuit that you're

1 because I've already sold the unit "

2 A Yes, that's true But he was still
3 obligated to inform us about it

4 Q Did you read during the time that you were
5 home from Thursday until the following Tuesday
6 -- did you go over the Home Team Inspection
7 Service inspection that was done on the home?

8 A Yes

9 Q And you told us, I believe, that the air
10 handler was twenty years old

11 A Correct

12 Q That's your testimony?

13 A That's what we'd been told

14 Q Not being told I mean, do you know
15 anything about it personally?

16 A No, I don't know exactly It's the same as
17 the other air handlers that were beneath the
18 building They were all original to the
19 building

20 Q So you say it's twenty years old Let me
21 call your attention to the inspection of The
22 Home Team Inspection Service that was done by
23 Roger Goodman And it says under Heating and
24 Cooling, -- because he inspected that, right?

25 A Yes

1 Q And you read the report You knew what was
2 in the report And the report says, under
3 Heating and Cooling, reading), "The electric
4 outdoor heat and cooling condensing unit was
5 Trane, model number" such-and-such, "and serial
6 number," such-and-such, "manufactured 10/2003 "
7 That would be October 2003 when it was
8 manufactured

9 A That's the outdoor unit That's not the
10 air handler We're talking about the unit
11 underneath the building, the air handler

12 Q And this was the one that was within what
13 we call the common area space Is that right?

14 A But it belongs to the owners We were
15 responsible for replacing it It belongs to
16 the individual owner We saw the pictures of
17 it yesterday

18 Q It was in the crawlspace

19 A Yes

20 Q Now, you've shown us a check or offered a
21 check written by your wife, Jane Carpenter, for
22 \$7,515 for a 2008 assessment How do you say
23 that the Measters had any obligation to pay a
24 2008 assessment when they sold you the property
25 in 2007?

1 A Because that money was used to repair our
2 building

3 Q But you owned the building then, in 2008,
4 didn't you?

5 A But ---

6 Q You told us that Leonard Krawcheck, a local
7 Charleston attorney, is the one that handled
8 the closing for you, right?

9 A Correct

10 Q And he's handled other closings for you?

11 A Right

12 Q And he's a capable and competent and well-
13 recognized attorney Isn't that true?

14 A Correct

15 Q And you told us and you told the ladies and
16 gentlemen of the jury that he prorated the
17 assessments when he closed it in 2007 Isn't
18 that right?

19 A Right

20 Q Which is what lawyers do Isn't that
21 right?

22 A Correct

23 Q In other words, you have assessments and
24 you have monthly bills from the regime which
25 owns the common properties and operates,

1 basically, the condominium complex?

2 A This was a special assessment to repair
3 building deficiencies It's not your normal,
4 everyday regime fees

5 Q Well, you knew about the assessments
6 because an assessment was prorated between you
7 -- when you closed in July of 2007 -- between
8 you and the Measters Isn't that right?

9 A Correct

10 Q And that's the way it should have been
11 done, right?

12 A I'm not sure But, yeah

13 Q And so you were aware that they were doing
14 assessments, right?

15 A Due to the building -- we thought that that
16 was for the repair of building one and the
17 windows and doors and patios and decks and
18 different things that were being repaired

19 Q Because the common elements, be it in
20 building one, two, three, eight, whatever --
21 all of those are prorated among all condominium
22 owners in the complex, aren't they?

23 A Yes, we own one-seventieth of everything

24 Q So you're saying that this is a measure of
25 damages, \$7,515, for an assessment in 2008,

1 put down on December 1st, for us to -- the walls
2 had already been torn up and everything We
3 decided it was just easier to do the work at
4 that time

5 Q Now, Plaintiff's Exhibit 11, you have
6 itemized certain things replace the air
7 handler and condenser unit, replace the
8 subflooring, replace the carpet, replace
9 ceramic tile And you were asked if those
10 had been paid by you, and your answer was "I
11 believe so, yes " Did you pay them or did you
12 not pay them or do you not know?

13 A We submitted all our charges to Oliver
14 Matthews at Bohicket Marina Regime And these
15 are the amounts they told us that we were
16 responsible for So we paid this

17 Q And I note that there's no charge for any
18 structural repairs -- structural repairs
19 underneath the condominium Is that correct?

20 A Correct That was paid with the
21 assessment

22 Q Because that was an expense of the regime
23 Is that correct?

24 A Correct

25 Q Because you don't own that?

1 A Yes, I do I own one-seventieth of it

2 Q So you own one-seventieth of building one
3 also Is that right?

4 A Correct

5 Q And one-seventieth of building two also?

6 A Correct

7 Q And so -- you've got a charge down here of
8 \$2,900 for replacing the subflooring Did you
9 pay that or was that an expense of the regime,
10 Bohicket Marina Village?

11 A I paid it

12 Q You paid it Did you get reimbursed for
13 it?

14 A No, we did not get reimbursed for it

15 Q You're living in the unit now

16 A Correct

17 Q And you share time, I guess, between the
18 condominium and Craft House here in downtown
19 Charleston and Bohicket Marina Is that
20 correct?

21 A Correct

22 Q Enjoying the sunsets out there very much?

23 A Correct

24 MR STUCKEY Would Your Honor indulge
25 me just a moment?

1 MR STUCKEY Thank you, Mr

2 Carpenter That's all I have

3 THE COURT Redirect?

4 MR HILDEBRAND Just a few questions,

5 Your Honor

6 REDIRECT EXAMINATION

7 BY MR HILDEBRAND

8 Q You were out of the apartment for four
9 months because of the named deficiencies in
10 this case?

11 A Yeah, actually it was closer to nine
12 months But there were -- no, eight months
13 totally Four months for the repair underneath
14 and four months for renovations

15 Q Were you able to occupy the unit during any
16 of that time?

17 A No

18 Q Do you have a value for loss of use for the
19 months that you were out of the unit?

20 MR STUCKEY That's exceeding cross,
21 Your Honor

22 THE COURT I'll allow it

23 WITNESS We feel our unit -- the
24 typical rental for our unit at, you know, that
25 time of the year is \$2,400 per month

1 REDIRECT EXAMINATION CONTINUED

2 BY MR HILDEBRAND

3 Q And you were out four months?

4 A Correct

5 Q So that's \$9,600, total?

6 A How much?

7 Q It's \$2,400 a month You said \$9,600?

8 A Ninety-six (\$9,600), yes

9 MR HILDEBRAND Thank you That's all I
10 have

11 THE COURT Recross

12 RECROSS EXAMINATION

13 BY MR STUCKEY

14 Q Mr Carpenter, one more question You own
15 the Craft House Isn't that right?

16 A Correct

17 Q And so what you're saying now is that since
18 -- when you were renovating 1964 Bohicket
19 Marina, you and Jane were living in the Craft
20 House, weren't you?

21 A We weren't planning on doing that

22 Q But you did live in the Craft House

23 A A combination of the Craft House and we had
24 use of friends homes on Seabook

25 Q Had to do what?

1 to go into your jury room Do not begin your
2 deliberations Don't discuss the case We'll
3 be with you as quickly as we can Thank you

4 (JURY OUT @ 11 26 A M)

5 THE COURT Any motions from plain-
6 tiffs at this point?

7 MR HILDEBRAND Yes, sir

8 THE COURT Okay

9 MR HILDEBRAND Plaintiffs would
10 move for a directed verdict on all causes of
11 action On breach of contract there is
12 uncontradicted testimony that the disclosure
13 form that is incorporate in the contract was
14 not filled out correctly in three principle
15 areas one, disclosure of known deficiencies
16 that existed, two, the value or the age of the
17 air conditioning unit Mr Stuckey brought out
18 that the unit was a 2003 model when the
19 plaintiffs said in their disclosure and stated
20 in 2007 that it was a half year to a year So
21 that is invalid

22 THE COURT Which was read from a
23 document that was acquired or obtained by the
24 Plaintiff's agent for inspection to inspect the
25 premises Therefore, knowledge of the

1 plaintiffs No question about that So at
2 this point I deny your motion for a directed
3 verdict

4 MR HILDEBRAND Thank you

5 THE COURT Thank you Mr Stuckey,
6 any motions from the defendant?

7 MR STUCKEY Yes, Your Honor May it
8 please the Court, the defendants move for a
9 direct verdict in their favor under Rule 50 of
10 the South Carolina Rules of Civil Procedure
11 The Court is very familiar with the background
12 of this On July the 18th, 2007, pursuant to a
13 negotiated contract of sale signed two months
14 before, on May the 18th, 2007, the defendants
15 sold Unit 1964, their condominium home on
16 Seabrook Island to the plaintiffs, Jane and
17 Chip Carpenter

18 THE COURT Mr Stuckey, I under-
19 stand and you've been kind enough to give me a
20 copy -- if you want me to make a copy for the
21 record I don't think it's necessary because
22 you have it at your disposal Everything is
23 there to support it if I fail to grant it

24 Let me just tell you what I think the
25 real issue is in this case from what I've heard

1 thus far And quite frankly, it really doesn't
2 deal with -- the air conditioner was obviously
3 a mistake She said it was, and there was no
4 question it was not changed

5 However, they had knowledge that there
6 was something -- there's some inconsistency
7 there by the information they obtained What
8 they don't have -- and this is where the
9 problem comes in this case, as I see it and why
10 it really becomes a jury issue If your client
11 had testified that she didn't have any
12 obligation for anything other than what was
13 inside the walls of the condominium, then she
14 probably would be -- I wouldn't argue with her
15 interpretation of the law But she said
16 otherwise She said 'I know it extends to
17 everything '

18 There's no question there's a question
19 of fact of what she should have seen or known,
20 given the testimony of the contractor who did
21 the repair work

22 But where the problem comes in, really
23 comes in is we now have a provision of a
24 contract that requires disclosure And they,
25 by their own testimony, said 'we were going to

1 disclose everything '

2 The problem that I have is that they
3 are part of a lawsuit We heard from Mr
4 Schneider in great depth about what the purpose
5 of the lawsuit was And the purpose of the
6 lawsuit, frankly, was to get the repairs done
7 and the regime needed to be paying for it

8 Ma'am, Ms Measter, I appreciate it
9 But you're here and you can talk to your lawyer
10 all the time But you're not going to have any
11 -- we're not going to tolerate any displays
12 You can disagree with me all day long, and
13 that's your right, and I respect you for that
14 But what I'm telling you now is I'm ruling on
15 the Motion And in the light most favorable to
16 the plaintiffs, that's what he's testified to
17 In my opinion, the jury can conclude that was
18 the case And, furthermore, that everyone in
19 the lawsuit knew that there was going to be an
20 additional expense to them Therein lies your
21 breach That there's an expense coming
22 There's evidence of it, seven thousand five
23 hundred dollars Would it have changed their
24 minds? I don't know Probably not

25 But the fact of the matter is there's

1 the breach, in the light most favorable to the
2 plaintiffs That in and of itself Because
3 they have -- they should have known They were
4 part of a lawsuit That was the purpose of it
5 They were going to make the repairs And
6 there's no question -- the assessment -- the
7 testimony right now was that was a special
8 assessment, which is consistent with Mr
9 Schneider's testimony Therein lies the
10 problem

11 So they should have known that was
12 coming They should have disclosed -- the best
13 thing to have been done would have been to
14 disclose the lawsuit and what was involved
15 Everybody knew there was structural problems
16 Whether or not it was in building eight or any
17 others, that should have been disclosed And
18 that really comes out of her volunteering to
19 say, 'I'm going to disclose everything I know '
20 And the underlying -- and this we know is the
21 law in this state -- there exists in every
22 contract an unspoken but legally enforceable
23 promise of good faith and fair dealing That
24 is the controlling aspect of all contracts
25 If you don't volunteer something and you don't

1 disclose something as critical as what was
2 going on, I think that violated that provision

3 So thank you, sir Your motion is
4 denied for those reasons

5 How many witnesses do you anticipate
6 calling?

7 MR STUCKEY Four, maybe five

8 THE COURT Very good The length
9 of the first one?

10 MR STUCKEY Probably about an hour

11 THE COURT Let's go ahead and start
12 then We'll do that Let's take about a five-
13 minute break

14 (BRIEF RECESS)

15 (JURY IN @ 11 45 A M)

16 THE COURT Thank you ladies and
17 gentlemen We're ready to continue now Mr
18 Stuckey, as the defendant, do you plan to call
19 witnesses?

20 MR STUCKEY We do, Your Honor
21 We would call Barbara Measter

22 (WITNESS TAKES STAND)

23 BARBARA P MEASTER, being duly sworn
24 to tell the truth, the whole truth and nothing
25 but the truth, testified, as follows

1 practice was then extended to the family
2 members of the mentally ill and disabled

3 Q How long have you been in South Carolina?

4 A Since 2006

5 Q What was it that brought you and your
6 husband to Charleston, South Carolina?

7 A Well, the weather mainly We lived in
8 Connecticut My husband could conduct his
9 business, he mainly works on a computer, so he
10 could be anywhere I had retired from my law
11 practice My mother, who had had dementia for
12 many years had just died And we had promised
13 my father that we would stay in Connecticut for
14 a certain number of years And we had really
15 been there longer than that, so we made our
16 move to South Carolina after a four-month ice
17 storm in which our driveway was frozen for four
18 months

19 Q This lawsuit is about Unit 1964, Bohicket
20 Marina When did you and your husband buy that
21 condominium?

22 A In 1998

23 Q And why did you buy it?

24 A Because of some of the testimony you had
25 with Mr Carpenter It has the most fabulous

1 Q No question about that?

2 A No question

3 Q There's been some mention in this case --
4 let me refer you specifically to one of the
5 questions on the form, and that is number
6 twenty And it says at the top, regarding the
7 topic here and identify other improvements and
8 fixtures located thereon Do you have
9 knowledge of any?" And number twenty says
10 "Lawsuits, foreclosures, bankruptcy, tenancies,
11 judgments, tax or other liens, proposed
12 assessments or notice from any governmental
13 agency that could affect title of the
14 property " And what was your answer on that?

15 A I believe -- where are you talking about?

16 Q It's number twenty

17 A I said 'no '

18 Q Was that a correct and proper answer to
19 that?

20 A Yes, it was

21 Q Tell us why

22 A Well, there was a lawsuit There were two
23 lawsuits brought by Kenneth Schneider I found
24 it very interesting that Mr Schneider
25 testified that he knew about the problems from

1 structure of the lawsuit (sic) It mentioned a
2 few buildings at the beginning, which there's
3 been a lot of testimony we're about a quarter
4 of mile away from building eight, which was
5 built later than any of the other buildings
6 They had nothing to do with this lawsuit
7 whatsoever The people who were in the class
8 were the individuals, not the units The
9 lawsuit applied to the individual people who
10 lived there at certain times, like in 2004
11 And that is why when the money was eventually
12 disbursed, it was disbursed to the individuals
13 who had lived there in 2004 It had nothing to
14 do with structural repairs or anything else

15 Q Did you make 1964, when you were living
16 there, fully accessible to the Carpenters if
17 they wanted to come in and inspect it, look
18 around, do anything they wanted to do?

19 A Yes As I said, I only met Mr Carpenter
20 once outside when they came to go inside But
21 Mrs Carpenter came in several times, and I was
22 there when she was there with a couple of her
23 contractors

24 Q Did you receive later a list from your
25 realtor of things that the Carpenters wanted to

1 be done to the unit?

2 A Yes, I did

3 Q Let me show you what's been marked as
4 Defendant's Exhibit 2 and ask you if you would
5 tell the ladies and gentlemen of the jury about
6 that

7 A Okay This is the inspection addendum
8 I guess it's from the real estate people, I
9 can't really tell It lists ten items that
10 need to be repaired And if I recall the
11 inspection report itself said that the entire
12 building itself was in excellent shape Then
13 it said that there were ten minor items that
14 needed maintenance And all of these things
15 were done either by the condominium association
16 or if it was inside the unit, by my husband and
17 myself

18 Mr Stuckey, I didn't mention before that
19 when Mrs Carpenter was in the unit with one of
20 her contractors, I was in the kitchen with
21 them She was asking him if she could move
22 walls in the unit And he, who had been
23 underneath the unit inspecting -- he was there
24 for like two or three hours -- he told her
25 there would be absolutely no problem moving

1 walls when she renovated the unit

2 Q Do you know whether that was Mr Mole or
3 that was the gentlemen from Mr Inside and Mr
4 Outside?

5 A It was Mr Inside and Mr ---

6 Q Roger Goodman

7 A No, it was Inside Outside because he
8 actually had -- he had done the inspection for
9 the people that were going to buy in 2005 So
10 he knew that unit

11 Q And Mrs Carpenter wanted to move a wall?

12 A Yes, they discussed moving a wall

13 Q And you and Mr Measter both attended the
14 closing in Mr Krawcheck's office?

15 A Yes, we did

16 Q And Mr Krawcheck, I believe, was
17 representing both parties at that time Is
18 that correct?

19 A To my surprise, he was, yes

20 Q I believe there's been testimony that Mr
21 Carpenter did not attend the closing Is that
22 right?

23 A That's correct

24 Q After you signed the contract with the
25 Measters to the Carpenters, it's been pointed

1 the unit I wanted to know if it was still
2 there and if I, might have it back So I went
3 over to ring the doorbell And when I got
4 there, there was a construction pile, this
5 carpenter's thing, in front of Unit 1951, which
6 is the unit to our right And I said, 'What is
7 that? What's going on?' And then somebody --
8 and I honestly cannot ---

9 MR HILDEBRAND Object, Your Honor,
10 hearsay

11 THE COURT Sustained Unless she
12 can identify the other person or party it would
13 be hearsay

14 WITNESS Okay Well, I think it
15 was Ethel Ambacher (phonetic)

16 THE COURT Sustain the objection as
17 to hearsay

18 DIRECT EXAMINATION CONTINUED

19 BY MR STUCKEY

20 Q Tell us -- don't tell us what she said
21 And as a result of that ---

22 A As a result of finding out that the
23 Carpenters had been prevented from moving in,
24 I was absolutely horrendously horrified and
25 shocked and upset And I -- first of all, I

1 rang the doorbell and no one was there And
2 secondly, I ran home and I sent an e-mail to
3 Floyd DeAndrade who was the president of the
4 condominium -- and would I be allowed to read
5 this e-mail that I sent to him?

6 Q Yes, I think so There probably might be
7 some objection about reading the response back,
8 but you can read what you said to him

9 MR HILDEBRAND Objection

10 THE COURT You're standing What
11 is the objection?

12 MR HILDEBRAND To his response

13 THE COURT She's going to testify
14 to what she said She can testify to that

15 MR HILDEBRAND As to what she said

16 THE COURT Yes, sir

17 WITNESS Okay I said because I

18 got cut off his message machine I said
19 (reading) *"To finish my phone message, our*
20 *purchasers were prevented from moving in We*
21 *heard that they had to repack and restore their*
22 *furnishings What is going on? Why weren't*
23 *informed of this? The purchasers are terribly*
24 *upset and are, quote, unquote, "consulting a*
25 *lawyer", I presume about suing us for*

1 *misrepresentation Not only do I not blame*
2 *them, Charlie and I are very embarrassed that*
3 *we knew nothing about this Please call or e-*
4 *mail me ASAP "*

5 Q Did you know at that point what the
6 Carpenters problem was?

7 A That somebody told them that they couldn't
8 move in I didn't know who

9 Q Ms Measter, did you make any false
10 representations on the residential property
11 questionnaire to the Carpenters about the
12 condition of Unit 1964?

13 A No, I did not

14 MR STUCKEY Indulge me, Judge, for
15 just a moment

16 THE COURT Certainly

17 MR STUCKEY That's all we have,
18 Your Honor

19 THE COURT Cross examine

20 MR HILDEBRAND Thank you, Your
21 Honor

22 CROSS EXAMINATION

23 BY MR HILDEBRAND

24 Q Did you read the disclosure statement
25 before you signed it?

1 -- if it's found that you made an improper
2 disclosure on this form, do you think the
3 Carpenters are at fault?

4 A Of course not But I think the Carpenters
5 were not -- the Carpenters signed a contract
6 And that contract -- I don't have it front of
7 me, but I know that that contract said that the
8 fact that the purchasers are given a disclosure
9 form does not in any way waive their
10 responsibility for doing their own inspection
11 The word "supercede" is not the correct word
12 Perhaps you'd like to read the statement in the
13 contract

14 Q Let's look at the actual form

15 THE COURT What form are you
16 talking about?

17 MR HILDEBRAND Plaintiff's Exhibit
18 3

19 THE COURT Why don't you just look
20 at that and let's not worry about the screen do
21 much at this point

22 CROSS EXAMINATION CONTINUED

23 BY MR HILDEBRAND

24 Q Okay, on the first page it says
25 Instructions to Property Owners, number two,

1 top of Exhibit Number 2 It says (reading)
2 "If you check 'no' for any question, you are
3 stating that you have no actual notice of any
4 problem If you check 'no' and there is a
5 problem, you may be liable for an intentional
6 misrepresentation " Did you understand those
7 were your obligations in filling out the form?

8 A Yes

9 Q How about the next section? Did you under-
10 stand option three, which is no representation?

11 A Yes

12 Q , (Reading) "If you check 'no
13 representation' you are stating that you are
14 making no representation regarding the
15 conditions or the characteristics of the
16 property which you may have a duty to disclose
17 even if you know or have known about them
18 Please consult an attorney to determine any
19 potential liability you may have for checking
20 this answer "

21 So you understand when you were filling out
22 the form that if you had a question about it
23 you could just say very simply "no
24 representation " Did you understand that?

25 A Yes, I understood that

1 Q Now, the lawsuit that we were talking about
2 earlier was a lawsuit by individual owners of
3 the units, right?

4 A It was a class action

5 Q On behalf of the individual owners

6 A At a certain time

7 Q And you were a member of that class action?

8 A We did not opt out is the way I would put
9 it

10 Q So you were a member?

11 A (No verbal response)

12 Q Is your answer "yes"?

13 A Yes

14 Q So you were a member of the class action
15 And the class action was a suit by the
16 homeowners against the board saying that the
17 board needed to make proper assessments to
18 correct construction deficiencies in the
19 building?

20 A Absolutely not

21 Q So what Mr Schneider testified was
22 incorrect?

23 A You know, I discussed that with Mr
24 Schneider at the time -- well, when I ran into
25 him I would meet him walking the dogs He

1 really didn't understand the lawsuit was for
2 breach of fiduciary duty and that it did not --
3 it was not for the improper structure of the
4 buildings We discussed that

5 Q You're an attorney?

6 A Yes, I am

7 Q Did you ever take the time to read the
8 pleadings that were in the class action
9 lawsuit?

10 A Yes, I did

11 Q And don't they, in fact, claim construction
12 defects and structural defects with the unit?

13 A I believe that -- I haven't looked at it
14 for awhile I believe that it referenced a
15 couple of buildings at the beginning Not
16 building eight I believe that it was a breach
17 of fiduciary duty of a prior board, which I
18 guess was in 2004, because they did not proceed
19 with collecting insurance proceeds, to the best
20 of my knowledge

21 Q On the third page of the document that you
22 signed, the disclosure form, it says, number
23 twenty, "Lawsuits " And you disclosed in your
24 representation that there were no lawsuits
25 related to the project, correct?

1 A That's correct

2 Q That's an incorrect statement, isn't it?

3 A No, it's not an incorrect statement, and I
4 consulted my attorney about it

5 Q Well, there was in fact a lawsuit, an
6 active lawsuit, wasn't there?

7 A That lawsuit was completely over The only
8 that still in court was how much money should
9 be awarded to the individual owners I believe
10 that actually Mr Stuckey was involved in
11 bringing some kind of a Motion about the
12 payment It had nothing to do with the
13 underlying lawsuit which was completely over

14 Q So the lawsuit was not over and you didn't
15 get your check for it ---

16 A The lawsuit was over The only thing that
17 was being discussed was how the money was going
18 to distributed

19 Q There were still Motions in court?

20 A And attorneys' fees Actually, I believe
21 it was dealing with how much attorneys fees the
22 attorneys were taking That wasn't part of the
23 lawsuit

24 Q There were still Motions pending and
25 proceedings in the Court over that lawsuit when

1 the closing occurred on the Carpenters' unit

2 Isn't that correct?

3 A No, I do not think that that's true

4 Q There were not proceedings in front of this
5 Court?

6 A They were post-trial proceedings

7 Q They were still proceedings, weren't they?
8 Aren't they still proceedings?

9 A It's my understanding, Mr Hildebrand, that
10 the underlying lawsuit which would have any-
11 thing to do with any building in the Bohicket
12 Marina -- that would have anything that would
13 have to be told to anybody was completely
14 concluded All right? The only things were
15 some post-trial motions with respect to
16 attorneys' fees and payout

17 Q You didn't get your payment -- you didn't
18 receive your portion of the payment until about
19 January 2008? Isn't that correct?

20 A No, I don't think that's correct

21 Q Well, when did you get it?

22 A I think somebody testified it was in
23 November

24 Q November 2007?

25 A Seven, (affirmative nod)

1 You understand that that language -- in that
2 paragraph you're the seller?

3 A (Affirmative nod)

4 Q You're the seller?

5 A Yes

6 Q And that contractual paragraph says that if
7 you, as the seller, discover that any of the
8 representations made in the disclosure form are
9 false or inaccurate, that you have to inform
10 the Carpenters, correct?

11 A Well, first of all, when you read -- it
12 talks about material inaccuracies, and rendered
13 inaccurate in a material way I don't consider
14 a leaky window that was part of the limited
15 condo elements that was immediately going to be
16 replaced by the condominium to be material in
17 any way

18 Q How about the structural problems in your
19 unit? Were those material?

20 A No, they were not material actually,
21 because they were part of the common elements
22 for which we had no responsibility

23 Q So your view is that the structural
24 problems that we've talked about were not
25 included within "material," and therefore you

1 did not have an obligation, if you had known
2 about it, to correct the disclosure? Is that
3 what it says?

4 A Well, I don't know what it actually says
5 I think structural problems would definitely be
6 material, number one Two, I did not know
7 about them And number three, the structure is
8 a common element about which I could do nothing
9 and had no obligation to disclose

10 Q When did you have renovations done to your
11 unit?

12 A Before we moved in, in 1998

13 Q And those renovations included removing the
14 floor in the bathroom

15 A We replaced all the floors

16 Q Okay And the contractor, in fact, had to
17 level the floors by inserting shims and plywood
18 to get them level, because they sagged, didn't
19 he?

20 A I don't know anything about that We had
21 an inspection As a matter of fact, we had two
22 or three inspections before we bought it
23 Because the people that owned the unit were
24 extremely elderly and one of them actually had
25 dementia And the apartment was not in good

1 there was anything wrong with the property at
2 all?

3 A That's correct

4 MR STUCKEY That's all I have, Your
5 Honor

6 THE COURT Recross

7 MR HILDEBRAND Nothing, Your Honor

8 THE COURT You may come down, Mr

9 Williams Thank you

10 WITNESS Thank you

11 (WITNESS STEPS DOWN)

12 MR STUCKEY Your Honor, we'd call

13 Ms Janice Franklin

14 (WITNESS TAKES STAND)

15 JANICE FRANKLIN, having been previously
16 sworn, continued under her oath and testified,
17 as follows

18 DIRECT EXAMINATION

19 BY MR STUCKEY

20 Q Where do you live, Ms Franklin?

21 A On Seabrook Island

22 Q And what kind of business or profession are
23 you?

24 A I'm a real estate agent with Seabrook
25 Island Realty

1 Q And how long have you been a real estate
2 agent?

3 A I've been a real estate agent for about
4 thirteen years and with Seabrook about eleven

5 Q And you are duly licensed under the State
6 of South Carolina Is that correct?

7 A Yes, I am

8 Q And do you know the parties -- I believe
9 both parties to this lawsuit?

10 A Yes

11 Q Now, in Bohicket condominiums, Unit 1964,
12 building eight at Bohicket Marina Village, how
13 were you involved?

14 A The Measters acquired me to represent them
15 in the sale

16 Q Since you were representing the seller,
17 what is your designation as a real estate
18 agent?

19 A Seller's agent

20 Q Seller's agent?

21 A Um-humm, (affirmative nod)

22 Q And a so-called listing agent Is that
23 correct?

24 A That's correct

25 Q And how do you go about marketing or

1 A Right, but I can't do both at the same
2 time

3 Q I understand Do you have involvement with
4 your clients when they fill out the disclosure
5 forms?

6 A Oh, yes

7 Q You understand that's a legal document?

8 A Yes

9 Q Is it important?

10 A Yes

11 Q Why is it important?

12 A It's important so that the buyers know if
13 there's any defects that the seller's aware of

14 Q And who's in the best position, in your
15 experience, to know what deficiencies there
16 might be in a house?

17 A It would be the person who owns the house

18 Q Do you understand that the standard
19 contract provides that the buyer may have the
20 house inspected?

21 A Yes

22 Q Is it customary in the industry that the
23 inspection is to take the place of the
24 disclosure that is filled out by the seller?

25 A No

1 Q Did the Measters seek your guidance when
2 they filled out the disclosure form?

3 A Well, we sat and talked about it

4 Q You knew the importance of each of those
5 items?

6 A Yes

7 Q So you sat down with them individually and
8 went through each one and asked them, face-to-
9 face, whether this -- whether the appropriate
10 answer was yes, no, or --

11 A We discussed it, yes

12 Q And they didn't give you any reason to
13 believe that the answers they were giving were
14 inappropriate Is that correct?

15 A No

16 Q What if you had been advised that there
17 was ongoing litigation at the condominiums
18 involving construction deficiencies in all
19 eight buildings, and particularly major
20 construction deficiencies? If you had been
21 advised of that, would you have told the
22 Measters to check "yes" on the lawsuit section?

23 A Yes

24 Q If you had known that special assessments
25 were going to be levied to fund repairs to the

1 units would you have told the Measters that
2 they should check "yes?"

3 A Yes

4 Q Did Mr Measter ever tell you that he had
5 had a discussion with a contractor named Herman
6 Hatfield before the closing on the house where
7 he was told that structural deficiencies were
8 going to be corrected on this?

9 A No

10 Q If he had told you that what would you have
11 done?

12 A I would have disclosed it

13 Q Is that stressed -- do you have to take an
14 exam to become a realtor?

15 A Of course, yes

16 Q And, in fact, on that exam and when you're
17 studying to be a realtor, ethics are a really
18 big part of your training?

19 A They're a really big part of the training,
20 plus we have ongoing training And I took
21 another ethics class last year, yes

22 Q And the mantra that they stress is
23 disclosure, disclosure, disclosure?

24 A Yes

25 Q They hammer that home?

1 A Yes, they do

2 Q And they hammer it home with the sellers,
3 that the sellers have to be absolutely truthful
4 in their disclosure because the buyer's going
5 to rely on that disclosure Is that right?

6 A Yes

7 Q And if they don't, what is the -- what
8 happens if the seller misinforms the buyer on
9 that disclosure form?

10 A It would be illegal

11 Q It resulted in a lawsuit about this
12 property?

13 A Yes

14 Q And if a realtor knows about that, then
15 they can be subject to a lawsuit, correct?

16 A Correct

17 Q But you didn't know anything about this,
18 did you?

19 A No, I did not

20 Q Thank you

21 THE COURT Redirect, Mr Stuckey?

22 REDIRECT EXAMINATION

23 BY MR STUCKEY

24 Q This was a condominium, of course, wasn't
25 it, Ms Franklin?

1 Q Did you pay for those out of your own
2 pocket?

3 A (Affirmative nod), I do that all the time
4 on closings

5 Q Why is that?

6 A Just out of kindness to my seller and
7 because I'm making money off of the sale and
8 it makes it go easier for both parties

9 MR HILDEBRAND Thank you very much

10 THE COURT You may come down

11 WITNESS Thank you

12 (WITNESS STEPS DOWN)

13 THE COURT Call your next witness

14 MR STUCKEY Thank you, Your Honor

15 Your Honor, we call Mr Floyd DeAndrade

16 (WITNESS TAKES STAND)

17 FLOYD R DeANDRADE, having been previously
18 sworn, continued under her oath and testified,
19 as follows

20 DIRECT EXAMINATION

21 BY MR STUCKEY

22 Q Where do you live, Mr DeAndrade?

23 A I live in 1924 Marsh Walk Lane, Bohicket
24 Marina

25 Q So you actually live at Bohicket Marina

1 admitted

2 (SO ENTERED AS DEFENDANT'S EXHIBIT 4)

3 DIRECT EXAMINATION CONTINUED

4 BY MR STUCKEY

5 Q And this is sent to Floyd DeAndrade,
6 Thursday, August 9, 2007 And the subject line
7 says, What is the story? It says (reading)
8 *"To finish my phone message, our purchasers*
9 *were prevented from moving in We heard that*
10 *they had to repack and re-store their*
11 *furnishings What is going on? Why weren't we*
12 *informed of this? The purchasers are terribly*
13 *upset and are 'consulting a lawyer' I presume*
14 *about suing us for misrepresentation Not only*
15 *do I not blame them, Charlie and I are very*
16 *embarrassed that we knew nothing about this*
17 *Please call or e-mail me ASAP Thank you*
18 *Barbara P Measter "* And did you reply to
19 that, Mr DeAndrade?

20 A Yes, I did

21 Q And would you read to the ladies and
22 gentlemen of the jury, please, what your
23 response was?

24 A (Reading) *"The following is my reply to*
25 *your inquiry and my follow-up to our phone*

1 conversation On Monday, August 6 at
2 approximately eight a m I went to Unit 1961 to
3 look at the work that was being done to
4 reinforce the foundation As I was talking to
5 Herman's staff and supervisor, I met and was
6 introduced to Mrs Carpenter I'm not exactly
7 sure how it happened, but Herman took us to
8 your old residence, 1964, and showed us where
9 the floor was uneven while looking through the
10 sliding glass doors At that point Herman said
11 the foundation underneath the unit 1964 was
12 unstable and also needed to be reinforced
13 This is the first time, to my knowledge, that
14 this problem was discovered under 1964 As
15 soon as 1961 is fixed they will start work on
16 1964 and other parts of the building as needed
17 It was my understanding it will take approxi-
18 mately three weeks to complete the work on
19 1964 Regards, Floyd "

20 Q Thank you, Mr DeAndrade

21 MR STUCKEY That's all I have, Your
22 Honor

23 THE COURT Cross

24 MR HILDEBRAND Yes, sir Thank
25 you

1 A There was a promise made at the time that
2 the suit was -- had not been settled I had an
3 installment contract with a seller, and the
4 seller promised that any funds that would be
5 forthcoming to him or he and his wife would be
6 passed on to me and my wife if, in fact, the
7 settlement came to them or in favor of the
8 class

9 Q And did you understand that the idea of the
10 class action settlement being paid to the
11 members was that they would then use those
12 proceeds to fund the repairs that would be
13 ongoing to the buildings?

14 MR STUCKEY Objection to the form
15 of the question, Your Honor

16 THE COURT Overruled

17 WITNESS Would you please restate
18 the question?

19 CROSS EXAMINATION CONTINUED

20 BY MR HILDEBRAND

21 Q Was the idea -- what was the class action?

22 A The class action was made because Mr
23 Schneider, representing the class, was the one
24 that brought the suit and the rest of the class
25 -- indicated that the board of directors did

1 not take proper action to get the buildings
2 fixed in a proper manner

3 Q What were the deficiencies that were
4 alleged?

5 A The deficiencies, as I understand it -- and
6 you'll have to forgive me a little bit because
7 I was not involved in the suit itself -- was
8 basically, I think in most cases, from water
9 intrusion that Mr Schneider allegedated (sic)
10 that had occurred to the buildings, and that
11 had not been taken care of in a timely manner

12 Q How about structural deficiencies?

13 A That also -- again, I can't give the
14 details about that because I don't know I
15 know they got involved in the details in the
16 case That case had already been concluded by
17 the time we moved in and before I went on the
18 board

19 MR HILDEBRAND Please mark these
20 COURT REPORTER Plaintiff's Exhibits
21 13 through 16 marked for identification

22 CROSS EXAMINATION CONTINUED

23 BY MR HILDEBRAND

24 Q Mr DeAndrade, I've handed you what has
25 been marked Plaintiff's Exhibits 13 through 16

1 A Yes

2 Q Do you recognize that as the class action
3 -- the caption for the class action lawsuit?

4 A I've seen that document before,
5 (affirmative nod)

6 Q Would you turn to page eight?

7 A Okay

8 Q The first document is the official docu-
9 ment Do you see that, on the first page?

10 A Yes

11 Q Can you turn to page nine and subparagraph
12 (d)?

13 THE COURT Is that Plaintiff's 13?

14 MR HILDEBRAND Yes, sir

15 WITNESS 9(d), "d" as in David?

16 CROSS EXAMINATION CONTINUED

17 BY MR HILDEBRAND

18 Q Yes, sir Page nine at the very bottom,
19 paragraph small letter "d "

20 A Yes, I see that

21 Q I'm going to read that into evidence

22 (Reading) *"The Detrich suit alleged that in*

23 *or about May of 1990, the plaintiffs in the*

24 *suit discovered substantial structural defects*

25 *in the construction of its buildings, including*

1 *but not limited to defects in the area of*
2 *girders or headers supporting the flooring*
3 *adjacent to masonry block firewalls where the*
4 *girders or headers spanned excessive distances*
5 *without intervening support "*

6 And then in paragraph (f), (reading)
7 *"Finally, the Detrich suit alleges that as a*
8 *result of the breaches, acts and omissions by*
9 *Detrich and Associates, Plaintiff's buildings*
10 *are deteriorating, floors and walls are*
11 *sagging, carpentry, doors and trim are out of*
12 *line and conditions are worsening all to*
13 *Plaintiff's great loss "*

14 And finally, on page eleven, paragraph
15 thirty-eight (reading) *"Upon information and*
16 *belief the failure of your defendants to*
17 *correct, repair, mitigate or stay the*
18 *structural deficiencies has caused, is causing*
19 *and will continue to cause substantial*
20 *deflections in and collapse of the regime's*
21 *apartment buildings which has, is and will*
22 *continue to cause damage to the regime's*
23 *buildings themselves and the individual*
24 *property of the plaintiffs in the class "*
25 Did you understand that those were the

1 allegations in the class action?

2 A I knew basically that, yes I mean, I
3 haven't read the details But basically, yes

4 Q That was the first Complaint And that
5 first Complaint was filed August 18, 2000 for
6 the class action Can you turn to the Fourth
7 Amended Complaint, sir?

8 A Yes, I have that

9 Q That's Plaintiff's Exhibit 14, and that's
10 filed February 15, 2005 Do you see that?

11 A Yes, I'm looking at Plaintiff's Exhibit 14
12 Is that what you're talking about?

13 Q Yes, sir And I just want to read into the
14 record paragraphs twenty-five, six and seven
15 Would you turn to page eight, please?

16 A Yes

17 Q (Reading) *"On or about March 17, 2000,*
18 *during the combination of his two units,*
19 *Plaintiff"* -- and that was Ken Schneider Is
20 that right?

21 A Yes

22 Q He was acting as the class representative
23 for all the owners?

24 A Yes

25 Q (Reading) *"Plaintiff discovered*

1 structural defects in the floors, walls,
2 ceiling and structural supports throughout the
3 structure of building two Upon consulting
4 with a structural engineer, Plaintiff was
5 advised that due to the serious deterioration
6 and structural deficiencies present in building
7 two, collapse of the building was imminent
8 Due to the exigency of the circumstances,
9 Plaintiff immediately implemented a plan to
10 shore or support the structure and level the
11 affected walls, floors and ceilings He
12 thereafter notified the board and urged them to
13 investigate and to perform destructive testing
14 in June of 2000 As a result of the refusal of
15 the board, suit was initiated on August 18,
16 2000, and prior to filing suit any further
17 meetings with the board would have been futile
18 After institution of this suit, he sought
19 permission from the board to initiate
20 destructive testing by Marshall Clark,
21 architect Such permission was refused On
22 November 13, 2000, the board permitted only
23 limited intrusive testing but was interrupted
24 by the board Only in January 12, 2004, did
25 the board permit invasive testing of buildings

1 two, three and six At all times above he
2 sought to have the board investigate or permit
3 investigation of the problems "

4 There's two more sentences, (reading)
5 "Thereafter the visual inspections of the
6 remaining apartment buildings of the regime
7 indicate that substantially the same conditions
8 were present in those building as was found in
9 plaintiff's building Upon information and
10 belief it would require in excess of fifteen
11 million dollars to correct and repair the
12 significant structural problems of the
13 apartment buildings of the regime and to
14 compensate the class for the resulting loss of
15 use for the apartments during said repairs "

16 Did I read that correctly?

17 A From what I read, that is correct, yes

18 Q And, ultimately, that lawsuit was settled

19 And can you turn to Plaintiff's Exhibit 16,
20 please, Mr DeAndrade

21 A Sixteen?

22 Q Yes, sir

23 A Yes, I have it

24 Q And the very last paragraph of that Order

25 A On the last page?

1 Q Yes, sir

2 A Yes

3 Q (Reading) "I therefore find that each
4 unit owner is entitled to the sum of \$19,116 73
5 per unit and hereby order the class counsel to
6 distribute this sum to each owner per the
7 matrix of homeowners who constitute the class
8 members, pursuant to the list of the class
9 previously made and amended and as contained
10 herein, as to the amount and to whom the awards
11 shall be made " Is that what you had a suit
12 for to get?

13 A No Indirectly, yes I mean, I sued for
14 misrepresentation and fraud and one other item
15 I forget what it was But one of them -- one
16 of the actions was -- I think the fraud action
17 was -- receive the settlement and there was
18 some question what that amount of money was

19 Q The class action actually went to trial
20 Is that right?

21 A Pardon?

22 Q Did the class action litigation actually go
23 to trial?

24 A To my knowledge, yes, it did

25 Q Can you tell us what the jury verdict was

1 then?

2 A The verdict was in favor of the class

3 Q And do you remember what the amount was?

4 A I'm not sure It was somewhere around a
5 million dollars or so And there was question
6 of whether or not that was to be doubled And
7 then it went to appeal I don't know exact
8 details I'm sorry But I think it was around
9 a million-something I mean whatever that
10 nineteen thousand is minus attorney's fees

11 MR HILDEBRAND Your Honor, I'd like
12 to admit Exhibits 13, 14, and 16 I did not
13 reference Exhibit 15

14 THE COURT 13, 14 and 16 are
15 admitted without objection

16 (SO ENTERED AS PLAINTIFF'S EXHIBIT 13)

17 (SO ENTERED AS PLAINTIFF'S EXHIBIT 14)

18 (SO ENTERED AS PLAINTIFF'S EXHIBIT 16)

19 MR HILDEBRAND No further
20 questions, Your Honor

21 THE COURT Redirect?

22 MR STUCKEY Thank you, Your Honor

23 REDIRECT EXAMINATION

24 BY MR STUCKEY

25 Q Mr DeAndrade, you have been involved in a

1 THE COURT Recross

2 MR HILDEBRAND Thank you, Your
3 Honor Madam Court Reporter, can you hand the
4 witness Plaintiff's Exhibit 8, please?

5 COURT REPORTER Yes, sir

6 RECROSS EXAMINATION

7 BY MR HILDEBRAND

8 Q Mr DeAndrade, as to the class action,
9 would you agree that the class action
10 identified a lot of construction defects in
11 the buildings?

12 A Yes, sir

13 Q And the plan was that the structural
14 deficiencies and a lot of the water intrusion
15 issues were to be fixed that were identified in
16 that litigation, right?

17 A That is true That's correct

18 Q And the way that those repairs were going
19 to be funded was that each individual, as the
20 costs were incurred, would be assessed Each
21 member of the regime would get a special
22 assessment from the board to make those
23 repairs Is that right?

24 A What the people received in the class
25 versus what they were assessed were fully

1 independent situations I mean, as the board,
2 we knew what repairs were that we had to make
3 or we assumed we knew what repairs we had to
4 make, once I got on the board And then,
5 depending on what we thought we needed to raise
6 the funds, we had an assessment for those
7 individual years, and it's still ongoing

8 Q So it's an ongoing process as buildings are
9 fixed?

10 A As we know that there are problems, we then
11 have to raise the funds to -- we have to assess
12 funds We have operation funds to replace
13 normal wear-and-tear items, windows, doors, et
14 cetera However, if there are major items, for
15 example, if we need to replace a roof or siding
16 or whatever the case might be, then we have to
17 have assessments to cover those expenses

18 Q Turn in Plaintiff's Exhibit 8 with me And
19 these are the annual meeting minutes

20 A Yes, sir

21 Q June 2, 2007?

22 A Yes, sir

23 Q Can you turn to the second page, the bottom
24 paragraph, please

25 A Yes

1 Q And read now -- it's about eight lines down
2 -- do you see the sentence that says
3 "simultaneous activities?"

4 A Yes

5 Q I'm going to read that and ask you some
6 questions about it

7 A Okay

8 Q (Reading) *"Simultaneous activities being*
9 *undertaken by the ARB at this time are repair*
10 *of the leaking and rot in the carport*
11 *buildings, repair of the sagging, sinking*
12 *three-bedroom stacked buildings and taking*
13 *action as needed in response to owners' calls*
14 *In addition, at a rate of two buildings per*
15 *year, this rate to be determined by available*
16 *funds, each building, in turn (at present*
17 *building number eight), will have all needed*
18 *repairs completed before work moves to the next*
19 *building "*

20 So was it understood in this document and
21 published by the regime that repairs were going
22 to be made to building eight at this time to
23 fix the sinking, sagging floors in building
24 eight?

25 A Yes, we were working on building number

1 eight at that time

2 Q And who is the contractor who actually did
3 that work?

4 A Stafford Builders

5 Q Does the name Herman Hatfield ring a bell
6 with you?

7 A Yes, he was the building supervisor, at
8 that time

9 Q Have you dealt with him directly?

10 A From time to time, yes I mean, in my
11 position, most of the contract was through the
12 ARB That's why the ARB was established I
13 mean, I'm not a building-knowledgeable person
14 *per se* regarding contracts, et cetera I can
15 administer and negotiate, et cetera But, you
16 know, I left that to the ARB in most cases
17 But, yes, I had ongoing conversation with
18 Herman from time to time

19 Q Did you find him to be a good worker?

20 A He seemed to be knowledgeable

21 Q Did you have any reason to believe he is
22 dishonest?

23 A No If he were, we would have known and he
24 would not have been employed

25 Q So it was known on June 2 that repairs were

1 going to be made to building eight But you
2 didn't know exactly what repairs were going to
3 be done specifically in June Is that what
4 you're saying?

5 A To each unit?

6 Q Yes, sir

7 A We knew some of the repairs that would be
8 done to various units, yeah What we tried to
9 do is get to those units and get to those jobs
10 that were most important and had the highest
11 risk associated with them, and then on to the
12 others It was a matter of how much funding we
13 thought we could raise in an individual year on
14 assessments We didn't want to -- you know,
15 you've got to balance and try to balance those
16 things over a period of time so you're not
17 killing everybody with the high expense in any
18 one year

19 Q Do you know the Measters?

20 A Yes, I do

21 Q Are they sitting in court here today?

22 A Yes, sir

23 Q Tell me what they're like generally? Are
24 they hermits? Do they stay in their unit and
25 kept to themselves and weren't involved with

1 the activities of the board, or were they
2 active members?

3 A I would think they were active members

4 Q That's based on your knowledge?

5 A I mean, they attended meetings and voiced
6 their opinions on certain items They came to
7 the -- I'm almost certain, but, you know, they
8 could correct me on this -- when the funds were
9 disbursed for the -- in the Court, they were
10 there and present at the time They took an
11 interest in the community

12 Q Thank you, sir

13 THE COURT You may come down

14 Thank you

15 (WITNESS STEPS DOWN)

16 MR STUCKEY May we approach?

17 THE COURT Please approach

18 (OFF RECORD BENCH CONFERENCE)

19 THE COURT I sustain the objection
20 and will not allow further questions of the
21 witness

22 At this point, ladies and gentlemen,
23 we'll take a break Do not begin your
24 deliberations Don't discuss the case
25 We'll be with you in about ten minutes Thank

1 Q And it was held on June the 2nd, 2007

2 Is that correct?

3 A Correct

4 Q Why did you have no reason to?

5 A Because the unit was under contract I
6 just didn't have any interest in going

7 Q So you had written a contract with the
8 Carpenters to sell your unit?

9 A That is correct

10 Q So you had no interest in going?

11 A Correct Or I could have been out of town
12 I don't remember

13 Q Did you ever see a copy of the minutes or
14 anything of that type?

15 A They might have been sent to the house, but
16 I never read those darn things I just throw
17 them in a pile

18 Q What kind of business or profession are you
19 in?

20 A I have at this juncture an international
21 arbitration practice

22 Q And I believe you are a graduate of law
23 school Is that correct?

24 A That's correct

25 Q And you also have a master's in English?

1 go to Seabrook?

2 A (Affirmative nod), we then made the move to
3 Bohicket Marina

4 Q Why did you buy at Bohicket Marina?

5 A Because where we lived in Seabrook there
6 were no permanent residents, they were all
7 renters So we wanted to have some permanency,
8 people that were permanent And Bohicket
9 Marina was the ideal spot And we found the
10 ideal unit

11 Q And that was 1964 (sic)?

12 A That is correct

13 Q And describe that, please, for the ladies
14 and gentlemen of the jury

15 A It was a three-bedroom condo with unique
16 configuration so the master bedroom was on the
17 water The kitchen was on the water and the
18 living room was on the water And it went out
19 behind Bohicket Creek It was the last unit
20 It was ideal And for what I paid for it,
21 \$220,000, it was a deal

22 Q And when did you buy it?

23 A 1998

24 Q And thereafter did you decide that you were
25 going to sell?

1 then the other unit was owned by Martin del
2 Gobi personally

3 Q What about the unit to the left of you?

4 A That was owned by the Washburns

5 Q And did you have another unit to the left
6 of the Washburns?

7 A That's correct That was owned by Dr
8 Stanford Crook and Dr Ruth -- I forget the
9 last name

10 Q Tell the ladies and gentlemen of the jury
11 what knowledge you had, if any, about any
12 structural problems and any repairs or
13 renovations that were to be done to your unit

14 A I only knew that Ronnie Givens had
15 problems Nobody else

16 Q But you had no problems with yours?

17 A None whatsoever

18 Q Did you have a sagging floor?

19 A No

20 Q Did it have deflected floors or slanting
21 floors?

22 A Not that I knew of And I could roll a
23 golf ball straight -- you could roll a golf
24 ball on the rug, you couldn't roll it on the
25 tile

1 should or I shouldn't And we asked a number
2 of fellow members of the Bar what we should do
3 And every one of them told us, on their advice,
4 they said "you don't have to disclose it "

5 Because we were very concerned about it, from
6 an ethical point of view, what we should do

7 Q Mr Hildebrand was asking the realtor about
8 their ethics How does that compare with the
9 ethics of lawyers?

10 A I don't think real estate agents have
11 ethics I hate to say it But I don't think
12 the ethics of a real estate agent could compare
13 to the ethics of members of the Bar or people
14 who have been legally trained

15 Q Can you think of any reason, fair and
16 logical reason, that the Carpenters should be
17 entitled to any of the class proceeds when the
18 case was settled a year before you had any
19 dealings with them?

20 A No And the Carpenters, in the closing
21 package and before the closing, should have
22 gotten from their attorney all the documents
23 that the condominium association -- including
24 all the minutes for the past several years, or
25 from their real estate broker I don't know

1 THE COURT Certainly

2 DIRECT EXAMINATION CONTINUED

3 BY MR STUCKEY

4 Q Did you and Ms Measter deal in good faith
5 in selling this unit to the Carpenters?

6 A I believe we did

7 Q Can you think of anything you consider
8 unfair that you did in dealing with them?

9 A Not to my knowledge

10 MR STUCKEY Please answer any
11 questions Mr Hildebrand might have

12 CROSS EXAMINATION

13 BY MR HILDEBRAND

14 Q So, Mr Measter, after hearing all the
15 testimony here today you don't think -- you
16 still can sit here in front of the jury and you
17 proclaim that you did absolutely nothing wrong?

18 A Yes, I do

19 Q That the Carpenters filed a frivolous
20 lawsuit?

21 A I believe so

22 Q They should be thrown out of Court?

23 A I think their attorney should be brought up
24 on sanctions

25 Q You think I should be sanctioned?

1 A That's correct

2 Q And, in fact, before this trial you moved

3 -- you asked the Court to sanction me ---

4 MR STUCKEY Objection

5 THE COURT Sustained That's

6 inappropriate

7 CROSS EXAMINATION CONTINUED

8 BY MR HILDEBRAND

9 Q The Carpenters claims are utterly baseless?

10 A I think they're acting from emotion And,

11 yes, they are baseless

12 Q Utterly baseless?

13 A They are baseless

14 Q There's been no testimony, and sitting here

15 today you haven't learned a lesson? You don't

16 have any remorse? Do you?

17 A I'm sorry they were put in this situation,

18 as my wife wrote in that e-mail But they had

19 the opportunity to find out everything and

20 anything about these buildings It wasn't our

21 duty We sold them a condominium We did not

22 sell them the common elements

23 Q So you don't think you had any duty -- that

24 you didn't do anything wrong and you have no

25 remorse whatsoever for any of the actions or

1 been down here for a month that year

2 Q So you were doing all that when you didn't
3 even live here?

4 A That's right I had the background in the
5 maritime industry So for me to do this was
6 very simple All I had to do was get on Lexis
7 and do some research, which any lawyer has
8 available to them

9 Q Let me understand your testimony Your
10 testimony previously was that you and your wife
11 were highly concerned about whether you should
12 make a representation about whether a lawsuit
13 was pending related to this property, correct?

14 A No, the lawsuit was finished

15 Q I thought you testified that you were going
16 to contact your ---

17 A I testified that the lawsuit was finished,
18 as per the testimony of Mr DeAndrade I was
19 still wondering if we should make a disclosure
20 on that fact Because there was still Motion
21 practice taking place as to the disbursement of
22 the funds I did not testify that the lawsuit
23 was still going on

24 Q But you were concerned enough as to whether
25 -- how to answer that, to consult -- did you

1 say with two or three or how many attorneys?

2 A We consulted with our closing counsel,

3 Leonard Krawcheck

4 Q Well, didn't you testified that you ---

5 A And other members of the Bar

6 Q How many?

7 A Five or six

8 Q Wow You consulted with five or six

9 attorneys and you told them about the class
10 action and the allegations that were ongoing

11 And they said 'don't worry about it?'

12 A They told me since the lawsuit was finished
13 I had no -- we had no obligation

14 Q Did you tell them that it wasn't finished,
15 that ---

16 A It was finished

17 THE COURT Hold on a second Mr
18 Measter As I instructed your wife, please
19 allow Mr Hildebrand to finish asking the
20 question ---

21 WITNESS I'm sorry

22 THE COURT --- and then you may
23 respond It helps us keep the record

24 WITNESS Excuse me

25 THE COURT Thank you

1 CROSS EXAMINATION CONTINUED

2 BY MR HILDEBRAND

3 Q The final order had not been entered giving
4 you the receipts, had it?

5 A I couldn't tell you We knew that the case
6 was finished and the decision as made, as per
7 what Floyd testified We didn't care about
8 anything else from that point on

9 Q And none of the allegations -- you didn't
10 care about those? None of the allegations of
11 the class action lawsuit?

12 A We weren't involved in the class action
13 lawsuit, counsel We might have been a party
14 to it But like anybody who has stock or
15 anything, you're always involved in a class
16 action lawsuit The only people who make money
17 on a class action lawsuit are the attorneys

18 Q Well, didn't you get a check?

19 A That was surprising Believe we, we didn't
20 expect it

21 Q Well, -- my question, though, Mr Measter,
22 was that we read into the record the actual
23 legal papers that were the lawsuit that you
24 were a member of that you got about twenty
25 thousand dollars from

1 A You read into the record the allegations in
2 the Complaint

3 Q Well, aren't those allegations what led to
4 the repairs that had to be made to all the
5 units?

6 A No, it did not You did not read the
7 decision And you did not -- the lawsuit did
8 not lead to the repairs Because in the
9 Complaint they only referenced three buildings
10 building number two, building number three and
11 building number six

12 Q You didn't hear the aspects of the
13 pleadings where I read that it said that the
14 allegations applied to all the buildings?

15 A I think that's lawyerspeak

16 Q Well, you're a lawyer, aren't you?

17 A No, I don't practice I'm legally trained
18 but I don't practice I have never practiced

19 Q I asked you in your deposition what you do
20 for a living Do you remember that?

21 A Correct

22 Q And your answer was (reading) "I am a
23 member of the Society of Maritime Arbitrators

24 A Correct

25 Q *The American Arbitration Association*

1 A Correct

2 Q *I am on the panel of the International*
3 *Chamber of Commerce Arbitration Panel*

4 A Correct

5 Q *The Hong Kong Arbitration Association*

6 A Correct

7 Q *The Chinese Maritime Association*

8 A Correct

9 Q *And the Singapore International Arbitration*
10 *Panel*

11 A Correct

12 Q As an arbitrator, basically you're a judge,
13 aren't you?

14 A That is correct

15 Q You sit in judgment of other claims And,
16 in fact, you render decisions on multi-million
17 dollar claims, don't you?

18 A I render decisions on commercial disputes
19 The money is irrelevant But they are
20 commercial decisions on commercial disputes

21 Q Multi-million dollar claims is what you
22 render opinions on Is that correct, sir?

23 A Sometimes

24 Q So you're basically a judge, and you didn't
25 think that it was even important in this case

1 to read the disclosure statement that you
2 signed?

3 A Counselor, I am a commercial man I am not
4 a judge I don't act as an attorney, nor do I
5 act as a legal principal in arbitration I am
6 strictly a commercial man making a commercial
7 decision between two parties who are either
8 represented by counsel or doing it *pro se*

9 Q Do you swear in people who testify before
10 you?

11 A Yes, we do

12 Q Thank you

13 THE COURT Redirect?

14 REDIRECT EXAMINATION

15 BY MR STUCKEY

16 Q As a judge, Mr Measter, how did you feel
17 when you were served a copy of the Complaint of
18 what the ---

19 THE COURT I am not going to allow
20 that, Mr Stuckey I stopped Mr Hildebrand
21 We're not going to get into that That's not
22 relevant and not germane to any topic here

23 MR STUCKEY I have nothing further,
24 Your Honor

25 THE COURT Thank you, sir You may

1 morning Hopefully, we'll be with you very
2 shortly

3 When you come back, you won't hear any
4 more evidence You'll hear the closing remarks
5 of the attorneys and then you'll receive the
6 charge on the law and then you'll begin your
7 deliberations

8 While you won't hear any more
9 evidence, the temptation is certainly there to
10 start trying to resolve this case Please
11 remember that the two remaining portions of
12 this process are very, very important So do
13 not begin your deliberations in any fashion,
14 individually or collectively Continue not to
15 discuss the case with anyone at home

16 And just -- we'll see you tomorrow and
17 we'll finish this case tomorrow for sure Thank
18 you, and have a good evening

19 (JURY OUT AT 4 18 P M)

20 THE COURT Thank you very much
21 Mr Hildebrand, I will now hear from you fully
22 on your motions that I'm sure you want to make
23 at this time

24 MR HILDEBRAND Thank you, Your
25 Honor I'd like to for a directed verdict on

1 all causes of action I think the undisputed
2 testimony is that misrepresentations were, in
3 fact, made on the disclosure form certainly as
4 to the lawsuit, that a lawsuit was pending for
5 alleged major problems It was still ongoing
6 and it was not disclosed The HVAC units
7 clearly were not disclosed The problems with
8 the buildings in general which did impact the
9 interiors of the buildings and which resulted
10 in the damages that the Carpenters had to pay
11 were known The Defendants got the meeting
12 minutes, according to Mrs Carpenter (sic)
13 She knew about it I think she testified that
14 she was at the meeting or she knew that the
15 meeting was going on Your Honor, I just think
16 it's a case for a directed verdict I almost
17 think that it is a case for directed verdict on
18 punitive damages

19 THE COURT Mr Stuckey?

20 MR STUCKEY Your Honor, we reiterate
21 all the grounds for our motion for directed
22 verdict which has been handed up to the Court
23 and was handed up at the conclusion of
24 Plaintiff's case And in addition to that, we
25 would certainly move for a direction of verdict

1 on the breach of contract by fraudulent act
2 We can't see that there were any fraudulent
3 acts at all in the case, and we ask the Court
4 to direct a verdict on that

5 I'd be more than happy to attempt to
6 answer any concerns the Court has

7 THE COURT Do you wish to respond
8 to that, Mr Hildebrand?

9 MR HILDEBRAND Your Honor, I have
10 our requests to charge

11 THE COURT No, sir, what's the
12 fraudulent act that was admitted after the
13 contract?

14 MR HILDEBRAND A misrepresentation
15 made in reckless disregard of the truth will
16 support an action for a breach of contract
17 accompanied by fraudulent act A fraudulent
18 act is one characterized by ---

19 THE COURT I understand the law,
20 I've read that What's the act that you're
21 talking about that was a reckless disregard for
22 the truth?

23 MR HILDEBRAND There are a number
24 of them One was the lawsuit that they failed
25 to disclose

1 THE COURT I don't agree with you
2 I don't think that's fraudulent To be candid
3 with you, the only way you can talk about that
4 is affecting title And that's not a suit
5 affecting title, technically I was in hopes
6 that Mr Krawcheck was going to testify I
7 assume in a case with this much money, I would
8 have imagined a certificate of title was issued
9 that they paid for and obtained Normally they
10 except to certain things I really was
11 surprised that that wasn't done But be that
12 as it may, I don't have it

13 But I know this I know that that is
14 not technically a suit affecting title It
15 affects the occupancy, yes, the right of
16 undisturbed occupancy of a premise Nothing
17 has damaged the title The title is still in
18 place and is as solid as it was the day it was
19 conveyed So, technically, yes, I understand
20 what you're arguing

21 And I haven't decided yet what I'm
22 going to do with respect to the breach of
23 contract aspect of the case But is it
24 fraudulent -- no In my opinion, it is not
25 I think it's a legitimate question that

1 obviously, could well have been given the --
2 the inference could be drawn, from talking with
3 the attorney, the closing attorney, as was
4 stated by Ms Measter and others, that, you
5 know, it wouldn't apply

6 Certainly he had to be on notice of
7 it If he's checking the title of this
8 property he had to be on notice of it Didn't
9 he?

10 MR HILDEBRAND I don't know the
11 answer to that

12 THE COURT Well, as a lawyer to a
13 judge, as an attorney of the Bar, understanding
14 your responsibility as a person representing
15 someone in a closing, you know, as well as I
16 do, that's notice, actual, constructive notice
17 to the world It's a recorded lawsuit that
18 involves this property No question about it
19 Everybody's on notice You can't commit fraud
20 to which he had notice, because he hired
21 somebody, he hired an attorney to handle the
22 closing for him That's his agent The
23 knowledge that he had to have was there

24 I mean, that's like saying that I
25 didn't know that the person didn't have title

1 when I hired an attorney, they got a deed from
2 them And then, come to find out, they get
3 involved in a lawsuit and the person never
4 owned it in the first place But you know and
5 I know who people are looking at it I used to
6 handle title insurance I was an agent so that
7 I could write title insurance But I would
8 always tell the people, 'You know what, I
9 appreciate it and glad the mortgage companies
10 want it, but you're not going to worry about
11 the title insurance You're going to take my
12 letter and you're coming after me if there's
13 something messed up ' My errors and omissions
14 is going to pay, not the title insurance

15 So, I mean, I don't understand how the
16 lawsuit -- it is clearly, to me, not fraud
17 Whether or not it should have been disclosed,
18 that's an issue I've got to decide on the
19 contractual aspect Because the problem that
20 you've got, as I see it, is there are numbers
21 of -- first of all, if you want to have it that
22 we're talking about the condo, then I agree
23 with you that it applies because it is one to
24 four But if you're talking about the unit
25 that has multiple, more than four, that clearly

1 is excluded from the definition In addition,
2 it clearly says common elements don't apply

3 So, frankly, is it fraud? No

4 It's a difference of opinion I
5 understand your clients' position, but I don't
6 think it's fraud With all due respect to you,
7 I understand your feeling about the matter I
8 don't fault you for that You're an advocate
9 and I understand that I just don't think that
10 is a fraud

11 I don't think -- clearly, I'm thinking
12 -- I assume you're not going to say that the
13 fraud was the air conditioning Because
14 clearly you can't rely on that

15 MR HILDEBRAND That is one that
16 comes to mind Another, Your Honor, is that
17 case ---

18 THE COURT Okay

19 MR HILDEBRAND --- law says that
20 fraud may be prior to, contemporaneous with or
21 subsequent to the breach I believe that the
22 fact that the renovations were done and the
23 sagging floors were fixed as part of the
24 renovations, as Mr Schneider testified to,
25 creates an inference that the Measters actually

1 knew about the problems ---

2 THE COURT Based on what? Every-
3 body said -- your agent said -- no one -- you
4 looked at it You had an inspector come
5 through Nobody points it out That's not
6 fraud There's no inference there

7 The inference is, yeah, somebody with
8 a trained eye who's there to -- I mean, I can
9 argue that one He's there to make money And
10 so he's going to say, sure, 'we've got to do
11 all these things ' I don't fault him I think
12 he's an honorable man But he wasn't there to
13 sit there and say, you know, 'I don't need to
14 say -- I don't need to do this job ' That's
15 plain He's there to do something because they
16 said we want make a profit And that's what
17 they did

18 There's no question about the fact --
19 to me the question comes of should it have been
20 disclosed as a potential problem so that people
21 could think about it And therein lies the
22 issue that I -- I just don't know if I can
23 resolve that issue as a matter of law That
24 is, are you going to be able to use it when you
25 wanted to? And there's, I guess, enough

1 inference to say 'you should have disclosed it
2 because the potential for the work, given
3 everything that somebody's on notice exists'
4 But clearly I haven't heard anything that puts
5 everybody on notice that this unit had any
6 problem, other than the fact of what was
7 disclosed after they bought it

8 They are not -- you've got to show
9 that they should have known that before for
10 that to be fraud, I think I don't think
11 anything in the record of this case that
12 indicates that, nothing Nothing at all

13 MR HILDEBRAND Your Honor, the
14 meeting or the annual meeting occurred after
15 the closing took place

16 THE COURT So?

17 MR HILDEBRAND And it specifically
18 referenced that -- the report referenced that
19 repairs were about to start to fix the sagging
20 ---

21 THE COURT Sagging places But
22 nobody -- had they said -- they identified the
23 buildings, and that was clear That was
24 cleared up today for me Certain buildings, no
25 question, they had been And then they said

1 "and any additional problems " And it comes
2 under the "additional problems " The only one
3 that they knew about at this point, from the
4 evidence in this case, was the one that Ronnie
5 Givens owned in that building And that was
6 being undertaken

7 So, the other buildings? Sure But
8 this building is really and truly distinguish-
9 able from any of the others It really can't
10 be lumped with the others And that's what
11 you've been trying to do the whole lawsuit
12 I don't blame you for doing it, but you can't
13 do it It's configured differently and it
14 doesn't have the same problems

15 So, I'm sorry, I don't agree with you
16 I don't think -- I think as to the breach of
17 contract with fraud, I don't think there's any
18 fraud If there's a breach of contract --
19 there may be a breach of contract, I don't
20 know That's why most of the cases talk about
21 it Everybody talked about breach of contract
22 with fraud and all it is are that people are
23 upset because somebody breached a contract, in
24 their opinion, and they throw that in there
25 But it really isn't It isn't, and that's why

1 you don't have that many of them, to be candid
2 with you

3 So I just don't think it's there If
4 the Court of Appeals wants to reverse that,
5 they can But that's going to be my ruling on
6 the breach of contract with fraudulent act

7 MR HILDEBRAND Okay

8 THE COURT Clearly, you've brought
9 two breaches of contract I can't select, in
10 good conscious, the breach of the Act itself
11 Because I don't think the Act itself applies
12 I think the Act -- just the Act -- I don't
13 think it had any application whatsoever I
14 just don't think it applies in this
15 transaction But on your breach of contract
16 you get the Act because it incorporates it
17 That's what the testimony is So I'm granting
18 a directed verdict as to the breach of contract
19 on violating the disclosure

20 I will tell you now that the
21 provisions -- so that you are protected -- I
22 really don't think it is willful in any way
23 Even if you had it, I don't think it's a
24 willful violation I think it's such a cloudy
25 issue that -- what would have cleared it up

1 would have been that the attorney came in and
2 said 'nope, don't take any exception to that '
3 May he should have, maybe he shouldn't have I
4 don't know, I didn't check the title So I
5 don't know I didn't have to pass judgment on
6 that

7 That's one of those things that I
8 remember as a lawyer waking up, when I was
9 practicing -- waking up at 3 00 o'clock in the
10 morning and getting into my car and going down
11 to my office to check something because it hit
12 me and I thought, 'did I cover that?' Frankly,
13 I would certainly worry about decisions but I
14 don't wake up in the middle of the night with
15 what I am doing now You know, I do the best I
16 can If I mess up, they'll correct it But I
17 don't think I am in this one I thought about
18 it all last night I thought about it all day
19 today while you've been doing -- I've been
20 reading cases all day long, breach of contract
21 with fraudulent act -- reading, re-reading and
22 re-reading this contract Because, clearly,
23 that is the controlling document

24 I think it's a jury issue as to
25 whether or not that non-disclosure of -- as

1 plaintiffs testified, 'had I known that ' At
2 least -- whether they would have done it or not
3 and whether or not they would have ultimately
4 purchased it really is of no consequence The
5 question is were you entitled to do what Mr
6 DeAndrade did and brought his lawsuit about it
7 He said, "I'm entitled to that money " And you
8 questioned him about that

9 But the persons buying this property
10 had a right, if they had known about the
11 lawsuit, to ask specific questions and say,
12 "Hey, look, I think I'm entitled to the money
13 It was settled before but it was for the
14 purposes of construction It's for the purpose
15 of defraying the costs That's why it was
16 there in the first place "

17 Certainly the Measters would have
18 said, "Oh, no, it had nothing to do with that
19 It had to do with breach of fiduciary
20 responsibility and the damages caused by that
21 breach, and they're damages that I am entitled
22 to because they occurred when I occupied the
23 premises and therefore they are my damages "

24 What would have happened? I don't
25 know They would have had to negotiate But

1 clearly that gives the buyer the right to deal
2 at an arms length transaction, and that's the
3 part that I can't directed verdict on the
4 breach of contract I just think there's a
5 question as to whether or not it was disclosed

6 And, frankly, if Mr Measter's
7 testimony is believed in its entirety, that he
8 asked the closing attorney and went to six
9 attorneys, if it concerned him that much then I
10 think the jury ought to hear it too Because,
11 obviously, that indicates there was enough
12 concern

13 One thing about being a judge, and I
14 have practiced law and it's probably been -- I
15 was practicing with somebody and I would
16 probably be reminded of my friend who's now
17 retired, but who was a judge for a good while
18 I think most of the, certainly the attorneys
19 here know him John Hamilton Smith, when he
20 went back to practice law with Young Clement
21 Rivers He was there for about seven months
22 and one of the partners came in and told him,
23 said, "John, we love you but you're not a judge
24 anymore You're supposed to be a lawyer You
25 don't have to take both sides in every

1 situation " So I understand, I think, that
2 But I think the better practice -- because I
3 used to get in discussions with my father about
4 freedom of information requests -- why not let
5 them have it? Why fight it? Why not disclose
6 it? That way you eliminate any problems Had
7 that been done here we may not be here today
8 I don't know But be that as it may, I don't
9 think it's a fraudulent act But I'm going to
10 let the case go on a breach of contract

11 Certainly -- but having said that, Mr
12 Hildebrand, obviously, breach of contract goes
13 with all damages And you don't have to have
14 fraud -- the damages are the same insofar as --
15 the only difference is punitives You were
16 talking about how that is -- but that's for the
17 jury to assess Sometimes I think punitives,
18 at least in my career -- maybe you'all haven't
19 had it, one side of the other, I've been the
20 recipient of somebody awarding punitive damages
21 through actual damages

22 CLERK (Sidebar with Judge)

23 THE COURT All right One of the
24 jurors wants to speak to me -- has apparently
25 some family matters At the conclusion of the

1 testimony from the experts that those were
2 problems that were known in the class action
3 that were made known to the owners

4 Heating and air conditioning, they
5 represented that the air conditioning unit was
6 only a half year to a year old when it looks
7 like to me from the photographs that it was
8 probably older than that It was at least a
9 2003, maybe a 2005 unit That's was a
10 misrepresentation, though that is not a real
11 big one

12 The one other deals with lawsuit,
13 number twenty, lawsuits and proposed assess-
14 ments And they struck "no" on that They
15 didn't know of a problem involving one of
16 those

17 Were those statements true? That's
18 what you're going to have to answer in this
19 case Were those factual, truthful representa-
20 tions that the Measters made to the Carpenters
21 and that the Carpenters relied on? I don't
22 believe they were, and I think the evidence
23 shows that they were not for a number of
24 reasons

25 First, let's look at the class action

1 THE COURT We'll be at-ease for
2 probably about five minutes

3 (BRIEF RECESS)

4 THE COURT Let me just say this --
5 it wasn't argued anyway because I was listening
6 closely But in reading the time of the
7 essence charge that you submitted, it really
8 isn't -- the charge is not -- it's when they
9 don't do something The contract speaks for
10 it, and I don't think that really applies to
11 this particular provision

12 MR STUCKEY That's fine

13 THE COURT So I'm not going to give
14 that charge But I wanted to see before you --
15 that there was no argument based on what I
16 mentioned to you So I'm not going to give
17 them the charge I think it is getting close
18 to the issue of timeliness and I don't want to
19 do that That would be to your benefit,
20 thought I wanted to decide about the charge
21 on that issue about the time, and I don't want
22 to do that

23 (JURY IN @ 12 07 P M)

24 THE COURT Thank you very much,
25 ladies and gentlemen We're reached the final

1 portion of this process And very shortly you
2 will be instructed to begin your deliberations
3 to resolve this dispute by resolving the
4 factual issues and then by taking the law that
5 I will be giving to you and applying that law
6 fairly and impartially to those facts that you
7 will determine When you do that you will have
8 honored the commitment that you made to these
9 parties when we started

10 I appreciate very much your attention
11 throughout and ask you to give me your
12 attention now, please, for the charge on the
13 law

14 And as I mentioned to you when we
15 started, it is very proper for the plaintiffs
16 to bring this matter for our consideration
17 That's what the law allows They have every
18 right to make these claims and bring them to
19 this Court

20 While they have that right and they're
21 seeking compensation for damages which they
22 claim were caused by the defendant's actions or
23 inactions in this case, they have the duty and
24 burden of proving that As I mentioned to you,
25 they, alone, have the responsibility of proving

1 the elements required for them to recover for
2 breach of contract And the defendant has no
3 responsibility with respect to any one of those
4 -- there are three essential elements that they
5 have to establish that we'll talk about

6 But while there is no responsibility
7 of the defendants to prove or disprove anything
8 concerning their claim, the defendants have
9 raised in this matter, and I will be
10 instructing you on a matter known as waiver
11 And that's an affirmative defense which they've
12 raised And I'll discuss it with you I'll
13 remind you that as to that limited aspect the
14 defendants have the burden proof and the
15 plaintiffs have no burden to prove or disprove
16 or explain that aspect

17 But, by and large, insofar as the
18 action itself, that rests on the plaintiffs
19 And what do they have to do? They have to
20 present evidence that persuades, that it meets
21 the standard or the preponderance of the
22 evidence standard, that probability standard
23 that we will discuss more in just a moment --
24 that they've met their burden of proof

25 Under our Constitution and under our

1 law only you can make the findings of fact in
2 this case and determine whether or not they
3 have met that burden That means that you have
4 to evaluate the credibility and believability
5 of each witness For you see, the fact that
6 testimony in a case is not contradicted
7 directly would not necessarily render it
8 undisputed I say that because there would
9 always remain the inherent probability and
10 credibility of about what one says And that's
11 something you have to assess by applying your
12 life's experience, your common sense, your
13 sense of logic and reason

14 And there are many, many factors that
15 we consider to assist us in making these
16 determinations I'm going to discuss some of
17 them with you now But if I don't mention a
18 fact or a method that you've employed in your
19 life and found it to be reliable and beneficial
20 in assisting you in making these types of
21 determinations, please use it when you're
22 instructed to begin your deliberations

23 Some of the factors that you may want
24 to consider would be -- one would be the
25 appearance of the witness How did they appear

1 to you, their demeanor in the courtroom? Were
2 they hesitant or straightforward in answering
3 the questions? Was the testimony of a witness
4 consistent or was it inconsistent? Was it
5 strengthened or weakened by other evidence in
6 the case? How did the witness come to know the
7 facts that he or she testified to? And what
8 was the ability of that witness to know those
9 particular facts and circumstances? Was the
10 testimony of a witness motivated by some
11 reason? In other words, some desire or need to
12 benefit one side or the other? In other words,
13 was the witness biased or prejudiced in any
14 fashion?

15 In making these determinations you are
16 given very wide latitude, very broad
17 discretion Our law allows you to believe many
18 witnesses against one, one witness against
19 many You have a right to believe all of a
20 witness's testimony, parts of a witness's
21 testimony or none of a witness's testimony
22 Now, of course, you don't make these decisions
23 arbitrarily But if there's a reason in the
24 record of this case, that is the evidence that
25 has been presented to you for your

1 consideration, you have that right, that
2 prerogative Because your objective is and has
3 been throughout this entire proceeding -- your
4 mission is to determine the truth, regardless
5 of the source of the evidence

6 Now, you don't enjoy the same When
7 it comes to the law, obviously, you promised to
8 accept the law as I give it to you notwith-
9 standing your personal beliefs of what the law
10 was, is or should be You may hear a principle
11 of law with which you differ And I respect
12 your right to feel that way But for purposes
13 of this processing you've promised the Court,
14 you've promised the parties and their attorneys
15 that notwithstanding your opinions or views,
16 that you will set those aside and take the law
17 as I give it to you I know that you will do
18 that

19 In giving a charge, please remember
20 that nothing that I say is to be taken by you
21 as evidence or as a suggestion of how you are
22 to resolve an evidentiary matter of factual
23 issue Because that is your sole respon-
24 sibility I have absolutely nothing to do with
25 that

1 Furthermore, the fact that I give you
2 an instruction on a particular aspect of this
3 case is not to be taken as a suggestion of how
4 or what you are to conclude about anything that
5 you have to decide in this case. It's my
6 responsibility to give you instruction on
7 certain principles of law. And you, of course,
8 are the sole judges of the facts, and you will
9 make that determination and apply the law as I
10 give it to you.

11 Now, the evidence consists of the
12 testimony of the witnesses and exhibits that
13 were introduced through their testimony and
14 nothing else. My remarks, as I just stated,
15 are not and the attorneys' remarks are not
16 considered evidence. I would instruct you that
17 if, during an opening statement or a closing
18 argument, the attorneys have made a statement
19 about what a witness said or didn't say and
20 that differs from your individual and
21 collective reason about what that witness said
22 or didn't say, you are instructed to disregard
23 the attorneys' remark. Why? Because you are
24 the sole judges of the facts and you have to
25 decide.

1 Now, please remember something We're
2 human, and we all recall things And you have
3 that recall as well And you're going to rely
4 on that recall Sometimes it's good and some-
5 times it's not so good Sometimes there may
6 be a difference about what a witness said or
7 didn't say If that should arise during your
8 discussion and you can't resolve it to your
9 satisfaction, please remember something The
10 lady that's been seated to my left and you've
11 heard me -- and I hope you didn't think I was
12 rude, but I have the responsibility of trying
13 to keep the record straight And that's what
14 -- during the time I made comments about that
15 Ms Garrison (court reporter) has the
16 responsibility for the record She and she
17 alone -- just as you're the sole judges of
18 fact, and I'm the sole judge of the law, she's
19 the sole custodian and she is solely
20 responsible for the verbatim record in this
21 proceeding So if you have something that you
22 can't agree upon, she has the ability and we
23 can replay that testimony for your
24 consideration, should that be a concern So
25 just remember that I'm not suggesting that

1 you will But should that come up, you have
2 that opportunity and that right

3 But you and you alone must resolve
4 those factual issues Again, if they suggest
5 to you -- if an attorney's remarks suggested
6 some legal principle that differs from my
7 instruction, you're to disregard their remarks
8 and take it as I give it to you And the
9 reason for that is for purposes of this
10 proceeding today, I have the responsibility of
11 being the sole judge of the law

12 Now, ladies and gentlemen, in cases
13 such as this, parties that have any burden of
14 proof present evidence for your consideration
15 There are two types of evidence which we
16 recognize and use And, quite frankly, in many
17 cases both are quite often One's called
18 direct, the other indirect or the more common
19 name is circumstantial evidence They apply
20 for the benefit of plaintiffs and defendants
21 equally There's no distinction to be made
22 between the two They both are proper and
23 proper for a jury to consider

24 Direct evidence, as the name would
25 imply, generally is evidence that proves a fact

1 without an inference It's generally a sensory
2 perception Someone says I saw something, I
3 heard something, felt something or the like
4 And if you believe that and you're convinced of
5 that, then it would establish that particular
6 fact or circumstance

7 Circumstantial evidence is the proof
8 of a chain of facts and circumstances
9 indicating the existence of another fact or
10 circumstance It is evidence which immediately
11 establishes collateral facts from which the
12 main fact may be inferred Circumstantial
13 evidence is based on inference and not on
14 personal knowledge or observation It is proof
15 that does not actually establish the fact in
16 question but that asserts or describes
17 something else from which you may either
18 reasonably infer the truth of the fact or at
19 least reasonably infer an increase in the
20 probability that that fact is true

21 For circumstantial evidence to be
22 sufficient to warrant a finding of a fact, the
23 circumstances must lead you to the conclusion
24 that is reasonably certain, that is it meets
25 the probability standard that it's most

1 probable or most likely

2 So the facts and circumstances should
3 be considered in the light of ordinary
4 experience and common sense The existence of
5 a fact cannot be based on speculation, surmise
6 or conjecture

7 The law makes absolutely no
8 distinction between the weight or the value to
9 be given to either direct or circumstantial
10 evidence, nor is there any greater degree of
11 certainty required for one then the other And
12 in a civil case such as this, every other
13 reasonable conclusion need not be excluded
14 And there are several reasonable inferences
15 that may be drawn from all the circumstances
16 and the evidence, it's for you to decide what
17 is established by the greater weight of the
18 evidence That's that probability standard

19 Now, the burden of proof rests solely
20 on the plaintiffs as to their main claim, and
21 to the defendants as to the waiver issue And
22 it's the same measure that applies It's the
23 preponderance or the greater weight of the
24 evidence As I stated, it's a probability
25 standard It does not mean that the party who

1 has to meet it has to prove something to an
2 absolute certainty, but rather means that the
3 party has to prove it so that each aspect of it
4 has to be established in your mind that it's
5 most probably so That based on the evidence,
6 that's most probably the case or most likely
7 so

8 If your conclusion in assessing the
9 evidence as to that particular element is that,
10 well, you know, 'it's possible, it could be, it
11 might be', that's not sufficient Might be,
12 could be, possible -- that's speculative It
13 has to be -- your conclusion has to be 'yes, I
14 think that's most probably so ' And if that is
15 your conclusion, then that party has met his or
16 her burden of proof as to that particular
17 issue

18 Now, a contract in our law is an
19 agreement entered into between two or more
20 parties in which each party promises to perform
21 or not to perform certain duties But a
22 contract is more than a mere exchange of
23 promises For an agreement to be legally
24 binding and enforceable the parties must have
25 intended to have entered into a contract And

1 through their negotiations they must have
2 reached a mutual understanding of the terms of
3 that contract, which is sometimes referred to
4 as the meeting of the minds

5 There also exists in every contract an
6 unspoken but legally enforceable promise of
7 good faith and fair dealing In order to
8 recover under a breach of contract cause of
9 action the plaintiffs must establish three
10 essential elements by the greater weight of the
11 evidence That's that probability standard

12 First, they must prove that the
13 parties entered into a binding contract

14 Secondly, they must prove that the
15 defendants breached or unjustifiably failed to
16 perform under this contract

17 Thirdly, that the plaintiffs suffered
18 damage as a direct and proximate result of the
19 breach of contract

20 And that direct and proximate result
21 means simply this If they hadn't have
22 breached the contract, they wouldn't have
23 experienced or suffered the damage That's
24 what you have to assess And the plaintiffs
25 have to establish all three of those, as I

1 mentioned, by the preponderance or greater
2 weight of the evidence

3 Now, the word "breach" as it applies
4 to a contract is defined as a failure without
5 legal excuse to perform any promise that forms
6 a whole or a part of a contract In other
7 words, a party breaches a contract when that
8 party does not perform as that person agreed to
9 perform under the contract A breach occurs
10 when one party to a contract fails to carry out
11 a term, promise or condition of the contract

12 I further charge you that, as I
13 mentioned, the defendants in this matter first
14 denies that they breached any contract But
15 says further in their response that if the jury
16 should conclude that there was a breach of the
17 contract, then they allege and raise the issue
18 that the plaintiffs, by their actions after the
19 alleged breach, waived their right to enforce
20 that aspect of the contract

21 Waiver involves the intentional
22 relinquishment of a known right That is,
23 waiver is a voluntary and intentionally
24 abandonment or relinquishment of a known right
25 It may be implied from circumstances indicating

1 an intent to waiver

2 An applied waiver results from acts
3 and conducts of the party against whom the
4 doctrine is invoked from which an intentional
5 relinquishment of the right is reasonably
6 inferred Acts that are inconsistent with the
7 continued assertion of a right may also give
8 rise to a waiver

9 The burden of proof is on the party
10 asserting it, and that is the defendants
11 Generally, the party claiming waiver must show
12 that the party against whom the waiver is
13 asserted possessed at the time actual or
14 constructive knowledge of his or her rights or
15 of all the material facts upon which those
16 rights depended Strict and full performance
17 of the contract by one party may be waived by
18 the other party, in which case there is no
19 entitlement -- excuse me, let me re-read that
20 In which case there is, to the extent of the
21 waiver, no right to damages for the failure to
22 perform strictly or fully

23 Either party to a contract may waive
24 any of the provisions made for his or her
25 benefit And unexplained delay in enforcing a

1 contract may constitute evidence of waiver and
2 acquiescence and non-performance Waiver of
3 contractual right is largely a matter of
4 intent The right to prosecute a breach of
5 contract action may be waived if the party
6 which has the right acts in such a manner as to
7 lead the other side to believe that the right
8 has been relinquished

9 A default in the performance of a
10 contract may be waived, although intent is
11 necessary to effect a waiver of a contract It
12 need not be shown by direct evidence The
13 waiver of a breach of contract may be shown by
14 an act which is solely consistent with an
15 intent to enforce the right which arises upon
16 the breach as reasonably to induce the belief
17 that the right has been relinquished

18 Now, ladies and gentlemen, if, in
19 accordance with these instructions, you find
20 the plaintiff is not entitled to a recovery,
21 then your verdict, of course, must be for the
22 defendant If, however, you find the plaintiff
23 is entitled to a recovery, then your next
24 consideration would be that of damage And
25 that is simply how much money should be awarded

1 to the plaintiffs

2 Actual damages are known as
3 compensatory damages, meaning to compensate an
4 injured party, to make them whole, put them in
5 the same position they were in before the
6 breach occurred

7 The measure of damages for a breach of
8 contract should be actual damages that the
9 injured party may reasonably have incurred
10 The one injured by the breach of contract is
11 entitled to be placed in the same position,
12 insofar as that can be done with money, as that
13 party would have occupied if the contract had
14 been fully performed That is, damages give
15 the non-breaching party the benefit Damages
16 recoverable for breach of contract as such as
17 may be fairly and reasonably be considered as
18 arising naturally from the breach of contract
19 itself or such as may be reasonably to supposed
20 to have been in the minds or contemplation of
21 the parties at the time they entered the
22 contract

23 Now, ladies and gentlemen, the
24 plaintiffs do not have to prove their actual
25 damages to a mathematical certainty In fact,

1 they don't have to evidence of the precise
2 amount of damages for you to award damages, if
3 you find they're entitled to it They have to
4 present evidence which satisfies you that they
5 experienced a damage and allows you to
6 determine, based on the evidence, what amount
7 of damage is fair, just and reasonable to
8 compensate them if you, again, determine that
9 they are entitled to that award

10 Those terms fair, just and reasonable
11 ought to ring true in your mind, because that's
12 what we talked about when we started and that's
13 what it's all about That's why, when we
14 perform these tasks that we are undertaking as
15 a judge, we have to remind ourselves of being
16 human That we don't have any friends to
17 reward, nor do we have any enemies to punish
18 We're here to perform our tasks, really and
19 truly by setting aside all human emotion I'll
20 confess that's not always easy But if every
21 time we think about it or feel that, we need to
22 remind ourselves that that doesn't have
23 anything to do with this We promised to apply
24 our common sense, our sense of logic and
25 reason, our knowledge fairly and impartially I

1 know that you will do that in just a moment in
2 the process of analyzing the evidence

3 To assist you in reporting your
4 verdict I've prepared a verdict form which I
5 will send back with the evidence I would like
6 to discuss it now with you, Madame Presiding
7 Juror, and the other jurors You will note
8 that it is captioned The caption is simply to
9 facilitate filing It means nothing to you

10 There are two choices, and the order
11 in which they appear means nothing I had to
12 put them in some order

13 The first choice is, "We, the jury in
14 the above-entitled action find, number one, for
15 the plaintiffs in the amount of blank dollars "
16 You will note that there's a line that involves
17 that and there's a parenthesis and a dollar
18 sign and another line If that's your verdict,
19 first, I would ask that you write on the lines
20 in words the amount of money that you find to
21 be fair, just and reasonable to compensate the
22 plaintiffs for their damages and for their
23 loss Then between the parenthesis write it in
24 numbers

25 What will you be saying if that's your

1 choice? You'll be saying that based on your
2 view of the evidence you're convinced that
3 plaintiffs met their burden of proving and
4 established those three elements, the contract
5 was breached and the damages that proximately
6 resulted from that breach That that's the
7 amount of money that you believe is fair, just
8 and reasonable

9 If that's your verdict I would ask
10 that you check it and complete it as we
11 discussed, sign it where it says Presiding
12 Juror and you will have completed the verdict
13 form

14 Now, let's look at the second one
15 The second one says, "We, the jury, find for
16 the defendants " What will you be saying if
17 that's your verdict? You'll be saying, number
18 one, in assessing the evidence that you find
19 the plaintiff has failed to meet its burden of
20 proof, that they didn't either establish the
21 contract or that they didn't establish a breach
22 of the contract or that they failed to
23 establish, again, by that standard of
24 preponderance or greater weight of the
25 evidence, some damage that's a proximate result

1 of the breach If they fail on any one of
2 those, then you must return a verdict for the
3 defendants

4 Another reason would be if you find
5 that there was a breach, then we go back to
6 that waiver issue that I just discussed with
7 you You may find then that, yes, there was a
8 breach established but the defendants -- 'in
9 considering the evidence, I am convinced that
10 the plaintiffs, by their actions, most probably
11 waived it Therefore, that affirmative defense
12 having been established, you'll return a
13 verdict for the defendant Either one, in
14 either of those situations, I would ask if that
15 is your choice that you would check and, of
16 course, sign where it says Presiding Juror

17 For you to complete either one of the
18 choices -- and, again, by discussing those
19 choices with you, I am not suggesting in any
20 way that's what you should do That's your
21 determination Whichever your choice, it has
22 to be unanimous That means eleven to zero
23 Ten to one won't work It's not the majority
24 We have to have everybody

25 Other than that, -- you will go back

1 in just a moment, evaluate this evidence I
2 know that you're anxious to get started in that
3 process You're almost there

4 As I mentioned to you, the last thing
5 that I would tell you is when you may start
6 your deliberations I have to excuse you As
7 you may have noticed, there's been several
8 times when I've said that there was a matter of
9 law that I had to take up and in order to that,
10 I had to excuse you I have to discuss my
11 charge with the attorneys If there is
12 something that I forgot to say or something
13 that I need to clarify, then we will bring you
14 back in the courtroom and give you additional
15 instructions If there aren't any exceptions
16 or additions that need to be made, changed or
17 corrected, then we will gather the exhibits and
18 the verdict forms and bring them to you When
19 you receive them, then you may begin your
20 deliberations -- but not before

21 Once the deliberations start, the only
22 restriction that I place on the deliberations
23 is this If at any time, once the
24 deliberations have started, you have to leave
25 the table for any reason, then you must stop

1 deliberations until all eleven are you are
2 together Other than that, you may proceed as
3 you fit and proper

4 Thank you for your attention
5 throughout the trial Please retire to your
6 jury room and await the exhibits before
7 commencing your deliberations

8 (JURY OUT @ 12 35 P M)

9 THE COURT The exhibits, I
10 understand that you'all have already viewed
11 one That Defendant's Exhibit 1 had some pages
12 that have been removed, by agreement?

13 MR HILDEBRAND That's right

14 THE COURT Any exceptions or
15 additions from the plaintiff?

16 MR HILDEBRAND None, Your Honor

17 THE COURT Any exhibits or
18 additions from the defendant?

19 MR STUCKEY None, Your Honor

20 THE COURT Thank you very much We
21 will be at-ease You don't have to stay in the
22 courtroom but if you leave, please leave a
23 number where you can be reached

24 (REVIEW OF EXHIBITS BY COUNSEL)

25 (JURY IN DELIBERATION AT 12 45 P M)

1 jury has reached a verdict If you would pass
2 the verdict form, please, to Mr Rivers
3 (bailliff)

4 PRESIDING JUROR (Complies)

5 THE COURT (Upon review), the
6 verdict form has been properly completed Case
7 number 2008-CP-10-69, Dudley Carpenter and Jane
8 Carpenter versus Charles L Measter and Barbara
9 Measter "We, the jury in the above-entitled
10 action, find for the plaintiffs in the amount
11 of Sixty-five Thousand Dollars (\$65,000) actual
12 damages "

13 Signed by A Miranda Cross, as
14 presiding juror and dated June the 3rd, 2010

15 Ladies and gentlemen, if the Court
16 has accurately published your verdict please
17 indicate that by raising your right hand

18 (ALL JURORS RESPOND AFFIRMATIVELY)

19 THE COURT Thank you You may put
20 them down Let the record reflect that each
21 juror raised their right hand in response to
22 the Court's inquiry

23 Anything further from the jury panel
24 from the plaintiffs?

25 MR HILDEBRAND No, Your Honor

1 made to help us resolve this And we thank
2 you Good luck to each one of you

3 You're free to leave now You're free
4 to talk about the case if you want to If
5 somebody asks you a question you're free to
6 answer the question, or if you choose not to
7 answer the question and you don't want to talk
8 about it, just let them know if they persist
9 in asking you a question, if you'll call Ms
10 Armstrong, she can let me know and we'll try to
11 help you out with that Thank you so much
12 You are free to leave Have a great day

13 (JURY EXCUSED)

14 THE COURT 'Anything from the
15 plaintiffs regarding the verdict?

16 MR HILDEBRAND No, Your Honor

17 THE COURT Anything from the
18 defendants regarding the verdict?

19 MR STUCKEY Your Honor, might I
20 have ten days to file post-trial motions?

21 THE COURT I'll allow you ten days,
22 Mr Stuckey Thank you very much Good luck
23 to all the parties

24 MR STUCKEY Thank you

25 (PROCEEDS CONCLUDED)



AGREEMENT TO BUY AND SELL REAL ESTATE CONDOMINIUMS

1 PARTIES This legally binding Agreement entered into on May 17, 2007 between, Buyer(s) Dudley N Carpenter, Jane G Carpenter, (hereinafter called BUYER), and Seller(s), Charles L Measter, Barbara P Measter, (hereinafter called 'SELLER') The property shall be deeded in the name(s) of To Be Determined

THE BUYER SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

2 PROPERTY TO BE SOLD Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon

Lot Block Section Subdivision Bohicket Marina Village Address 1964 Marsh Oak Lane Tax Map # 204-00-00-100 City Seabrook Island Zip 29455 County of Charleston, State of South Carolina

Seller represents that the property is connected to public sewer system or to septic tank or to public water or to well system or to other

No personal property will convey as a part of this sale except as described (attach addendum if necessary) Electric Range, Refrigerator, Dishwasher, Microwave, Washer, Dryer

3 CONVEYANCE SHALL BE MADE Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations Seller agrees to convey by marketable title and deliver a proper general warranty deed if applicable, free of encumbrances except as herein stated Seller agrees to pay all statutory deed recording fees The deed shall be delivered at the stipulated place of closing, and transaction closed on or before July 21 2007 not later than 9 00 p m Time is of the essence Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing

4 POSSESSION Possession of said property will be given to Buyer at the time of closing Seller agrees to deliver property free of debris and in a clean condition The property, including but not limited to, landscaping and lawn shall be maintained in the same condition from the effective date of this agreement until possession is delivered ordinary wear and tear excepted Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy

5 PURCHASE PRICE shall be \$ 640,000.00 675,000.00 Six Hundred Forty Thousand seventy five thousand dollars

6 METHOD OF PAYMENT Purchase price shall be paid as follows Cash, or Subject to Financing Financing to be obtained by Conventional Seller VA FHA Other terms

7 EARNEST MONEY This offer is accompanied by an earnest money deposit of \$ 10,000.00 Buyer and Seller authorize Kiawah Bohicket Real Estate, as Escrow Agent to hold and disburse earnest money according to the terms of this agreement Earnest money paid by Cash, Check, or Other Broker does not guarantee payment of a check or checks accepted as earnest money All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations At the consummation of this sale, the earnest money deposit shall be credited to the Buyer

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT

[Signature] BUYER [Signature] BUYER [Signature] SELLER [Signature] SELLER HAVE READ THIS PAGE

8 **LOAN PROCESSING AND APPLICATION** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 80 000 % loan (loan-to-value ratio) within 7 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 15 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period and to diligently pursue the application, the Seller shall have the option to terminate this Agreement with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above conditions, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance will will not be added to the mortgage. VA funding fee will will not be added to the mortgage.

9 **CLOSING COSTS** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.

(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: _____

10 **HOME PROTECTION PLAN COVERAGE** *To be offered by agents [initials]* Both parties understand that a third party home warranty Plan will will not be issued at closing. If applicable, the warranty premium will be paid at closing by the Buyer or Seller not to exceed ~~\$500.00~~.

11 **EXPIRATION OF OFFER** The offer from Buyer shall be withdrawn at 5 00 o'clock P M on May 18, 2007 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12 **EXTENSION AGREEMENT** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 7 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13 **ADJUSTMENTS** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Special assessments approved prior to closing shall be the responsibility of the SELLER. Special assessments approved after closing shall be the responsibility of the BUYER. The Buyer or the Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Tax proration pursuant to this Agreement are to be based on the tax information available on the date of closing and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14 **NON-RESIDENT TAX** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15 **RISK OF LOSS OR DAMAGE** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder or of terminating this Agreement.

[Signature] BUYER [Signature] BUYER [Signature] SELLER [Signature] SELLER HAVE READ THIS PAGE

16 **DEFAULT** If Buyer or Seller fails to perform any covenant of this Agreement the other may elect to seek any remedy provided by law including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17 **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18 **SURVEY, TITLE EXAMINATION, AND INSURANCE** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19 **CONDITION OF PROPERTY**

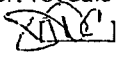



(A) **Seller's Property Condition Disclosure Statement** (check one)

- Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13)
- Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10 et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understand and agree that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by June 8 2007. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection the Seller agrees to maintain the heating, air conditioning, plumbing and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession whichever occurs first.

(D) **Wood Infestation Report** If the property to be sold has been previously occupied, The Buyer The Seller shall at their expense have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator on or before June 22 2007. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above but fails to have the property inspected by this date Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy

 BUYER  BUYER  SELLER  SELLER HAVE READ THIS PAGE

such deficiencies subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing

If the property to be sold has not been previously occupied Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer at closing a written certification from a licensed pest control operator

(E) **Repairs** The cost of all repairs to heating system, air conditioning plumbing, and electrical system to be conveyed and to make the roof free of leaks to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any required by section (B) and (D) above to be paid by Seller If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7 The repairs to any other items are the sole responsibility of Buyer The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first

(F) **Residential Dwellings Built before 1978** (check one of the following)

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, _____ (Intact lead-based paint that is in good condition is not necessarily a hazard See EPA pamphlet 'Protect Your Family From Lead in Your Home' for more information) This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed together with a copy of the inspection and/or risk assessment report The Seller may at the Seller's option, within _____ days after Delivery of the addendum elect in writing whether to correct the condition(s) prior to settlement If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement If the Seller does not elect to make the repairs or if the Seller makes a counter-offer the Buyer shall have _____ days to respond to the counter offer or remove this contingency and take the property in as is condition or this contract shall become void Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder The Buyer may remove this contingency at any time without cause, or

Buyer waives the opportunity to conduct a risk assessment or inspection for lead based paint and/or lead based paint hazards

(G) **Megan's Law** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials

(H) **Disclaimer** The Buyer acknowledges the Seller, except as provided in subparagraphs (B) (C), (D), and (E) of this section gives no guarantee or warranty of any kind expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto or as to merchantability or fitness for a particular purpose as to the property or improvements thereof and any implied warranty is hereby disclaimed by the Seller

Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved

20 **APPRAISED VALUE** (check one)

This agreement is not contingent on the lot or parcel with building and improvements thereon if any appraising according to the lender's appraisal or other appraisal as agreed for the selling price

This agreement is contingent on the lot or parcel with building and improvements thereon if any appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value In such case the Buyer agrees to proceed with the consummation of this sale at the reduced price

XXX BUYER XXX BUYER XXX SELLER LLMA SELLER HAVE READ THIS PAGE

However if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty

21 DISCLAIMER BY BROKERS AND AGENTS The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s) (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems and to the structure (2) Give no warranty express or implied as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed (3) Give no warranty as to title, (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property (b) any matters which would be reflected by current survey of the property and (c) the accuracy of the published square footage of the property, (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals, (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer

22 COASTAL TIDELANDS & WETLANDS ACT In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39 10, et seq, South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at Buyer's Seller's expense

23 MEDIATION CLAUSE Any dispute or claim arising out of or relating to this Agreement the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS® Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment misrepresentation negligence and/or fraud Any agreement signed by the parties pursuant to the mediation conference shall be binding This mediation clause shall survive for a period of 120 days after the date of the closing

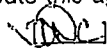



The following matters are excluded from mediation hereunder (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or land contract, (b) an unlawful detainer action, (c) the filing or enforcement of a mechanic's lien, (d) any matter which is within the jurisdiction of a probate court (e) the filing of an interpleader action to resolve earnest money disputes The filing of a judicial action to enable the recording of a notice of pending action for order of attachment receivership injunction or other provisional remedies shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate

24 SURVIVAL If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed

25 ENTIRE BINDING AGREEMENT This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants and warranties between the Buyer and Seller It can be changed only by a subsequently written instrument signed by both parties Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors or administrators Whenever used, singular includes plural, and use of any gender shall include all

26 FACSIMILE AND OTHER ELECTRONIC MEANS The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party

27 NON RELIANCE CLAUSE Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein If not contained herein, such statements representations, promises or agreements shall be of no force or effect This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents

 BUYER  BUYER  SELLER  SELLER HAVE READ THIS PAGE

FORM 300 PAGE 5 of 6

except as set forth herein Parties have fully read and understand this Agreement and the meaning of its provisions Parties are legally competent to enter into this agreement and to fully accept responsibility Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so

28 CONTINGENCIES These stipulations shall preempt printed matter herein (attach and reference addendum if necessary) _____

THIS IS A LEGALLY BINDING AGREEMENT BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION S AGENCY DISCLOSURE FORM

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties

X BUYER Dudley N Carpenter Date 5-16-07 Time 3:30
WITNESS _____ Date _____ Time _____

X BUYER Jane G Carpenter Date 5/16/07 Time 3:30
WITNESS _____ Date _____ Time _____

SELLER Charles L Measter Date 5/18/07 Time 5:00pm
WITNESS _____ Date _____ Time _____

SELLER Barbara P Measter Date 5/18/07 Time 5:00pm
WITNESS _____ Date _____ Time _____

LISTING AGENT AND COMPANY Jamie Franklin Seabrook Island Real Estate
SELLING AGENT AND COMPANY Cooper Williams Kiawah Bohicket Real Estate

SELLING AGENT IS PRESENTING THIS OFFER AS A BUYER'S AGENT OR SUBAGENT OF THE SELLER

ESCROW AGENT ACKNOWLEDGMENT [Signature]
Kiawah Bohicket Real Estate

The foregoing form is available for use by the entire real estate industry The use of the form is not intended to identify the user as a REALTOR® REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics Expressly prohibited is the duplication or reproduction of such form or the use of the name South Carolina Association of REALTORS® in connection with any written form without the prior written consent of the South Carolina Association of REALTORS® The foregoing form may not be edited revised or changed without the prior written consent of the South Carolina Association of REALTORS®



STATE OF SOUTH CAROLINA RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article I requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.
2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.
 - a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.
 - c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.
 - d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. ~~By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.~~
4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: SKM Seller Date: 3/15/07 Buyer Date: 3/16/07
 Rev 1/04

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING

Form with 12 numbered questions regarding property issues like foundation, roof, water seepage, electrical, plumbing, heating, water supply, septic system, appliances, and pest infestation. Includes checkboxes for Yes, No, and No Representation, with handwritten answers and signatures.

Initials Seller Date Buyer Date
3/15/07
6/4/07

REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY.

	Yes*	No	No Representation
13. Room additions or other structural changes?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Previous damage caused by fire?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Violations or variances of building codes or zoning ordinances?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18. Restrictions to property use? (covenants or deed)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. Lawsuits, foreclosures, bankruptcy, tax liens, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
21. Owners' association fees or "common area" expenses or assessments?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22. Flood hazards or that the property is in a federally-designated flood plain?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

13. *Reconfirmed* *Inspection (2004)*
Forwarded to Mediation & Arbitration

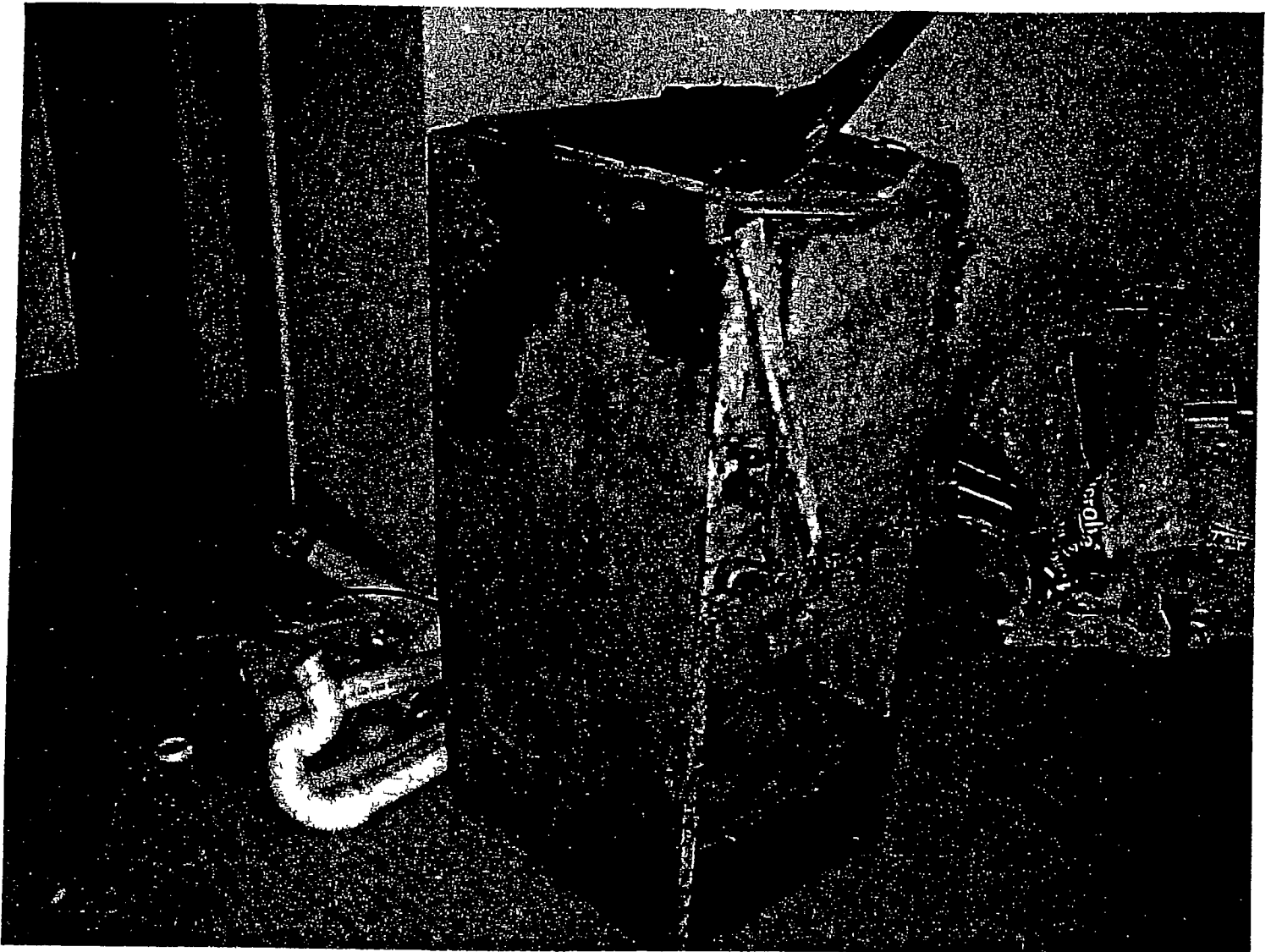
18. *Confession - Bylaws*

19. *395/ no* *Check with seller before submitting offer*

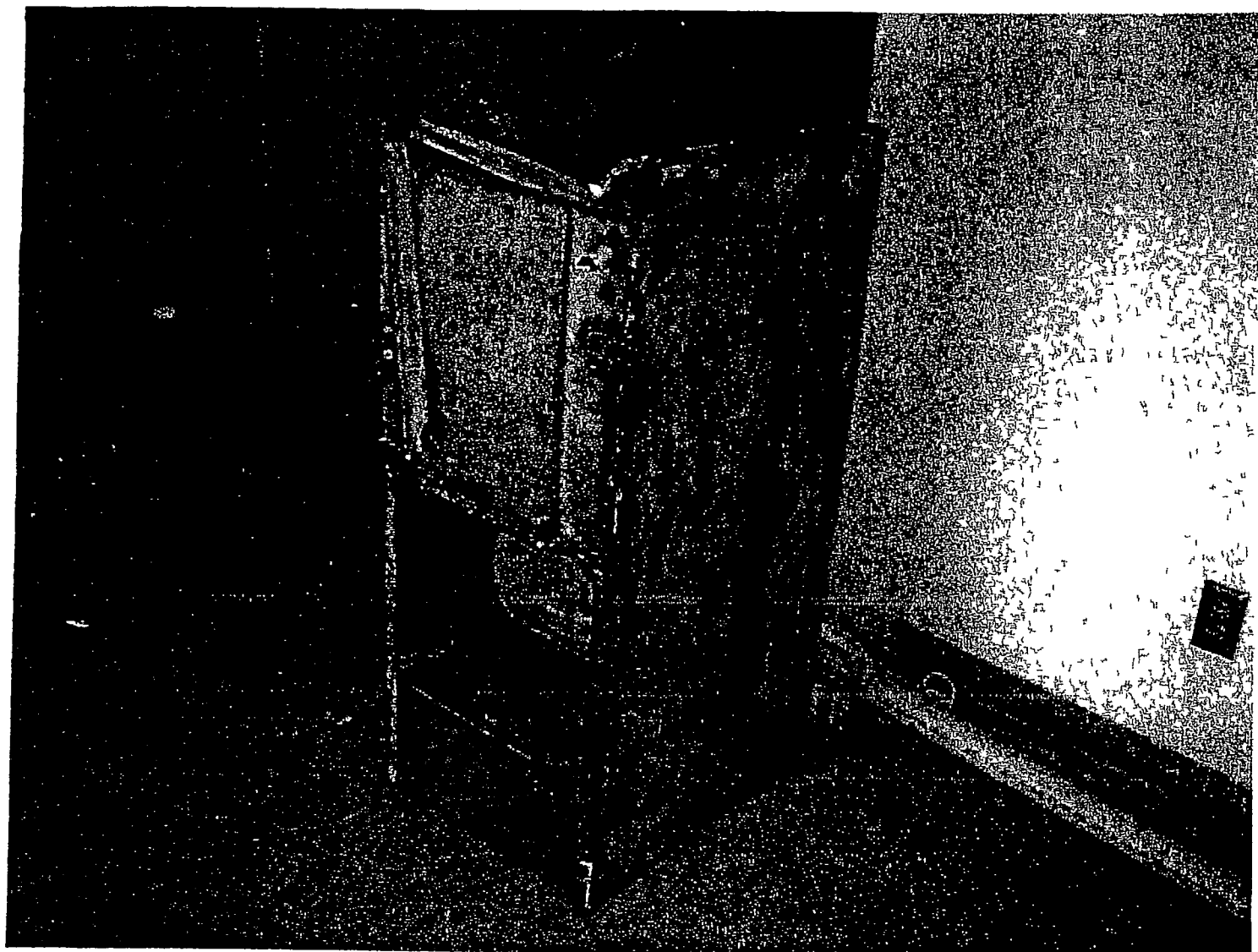
22. *Flood zone*

Initials: *BPM* Seller *[Signature]* Buyer *[Signature]* Date *5/16/01*

ALL STATE LEGAL®
PLAINTIFF'S
EXHIBIT
6



ALL STATE LEGAL®
PLAINTIFF'S
EXHIBIT
7



BOHICKET MARINA VILLAGE COUNCIL OF CO OWNERS
Annual Meeting
June 2, 2007

The Bohicket Marina Village Council of Co-Owners Annual Meeting was held at 9am on Saturday, June 2, 2007 at the Town of Seabrook Hall. At such time forty (40) of the seventy (70) property owners were present or represented by proxy. Mr. Floyd DeAndrade, Chairman, called the meeting to order at 9am.

AS TO THE FIRST ITEM OF BUSINESS: The 2006 Annual Meeting Minutes were approved as written.

AS TO THE SECOND ITEM OF BUSINESS: Mr. Oliver Mathewes, Manager, went over the 2006 financial statements with the group. Mr. Mathewes explained, discussed, and answered questions from the floor concerning the different line items.

AS TO THE THIRD ITEM OF BUSINESS: The 2007 Annual Budget previously approved by the Board of Directors was presented to the group. A motion was made and seconded to approve the Annual Budget as presented. This motion was unanimously approved by the floor. The approved 2007 Annual Budget is hereby attached to and made a part of these minutes.

AS TO THE FOURTH ITEM OF BUSINESS: Mr. Frank Villano, Board Director, made his report on the pool. Mr. Villano was thanked by the Board and the group for all his work on the pool.

AS TO THE FIFTH ITEM OF BUSINESS: Mr. Floyd DeAndrade, Chairman, made a report on the landscaping. Discussion was held concerning owners instructing the landscape crews to do or not do something. After much discussion it was agreed that only in a situation that an owner deems dangerous to regume property or pets could that owner stop landscape personnel from doing something. It was further agreed that the owner would immediately call the Property Management Company or a Board Director to report the incident.

AS TO THE SIXTH ITEM OF BUSINESS: Mr. Ken Feagin, Treasurer, reported that to design and build a website for Bohicket Marina Village Council of Co-Owners it would cost between \$1500 and \$1800. Mr. Feagin also stated that someone would have to maintain and monitor the site.

AS TO THE SEVENTH ITEM OF BUSINESS: It was agreed that an updated owners' list would be mailed to all owners. That list is hereby attached to and made a part of these minutes.

AS TO THE EIGHTH ITEM OF BUSINESS: The Architectural Review Board consisting of Mr. Charles Lingerfelt, Mr. William Lehr and Mr. Kenneth Schneider made

their reports Each spoke about our ARB which was established in September, 2006 They stressed that at this time, due to the age and adverse conditions of our buildings and the many upgrades and renovations taking place, it is essential to have this entity to protect the value and integrity of all of our properties Its function is to manage repairs and upkeep that are the regime's responsibility and to approve renovations by owners, these jobs requiring many volunteer hours It selects contractors for the regime and approves contractors for private work as they must be licensed and insured and must post a bond The ARB does not select contractors for owners and will never enter private premises without permission The simultaneous activities being undertaken by the ARB at this time are repair of the leaking and rot in the carport buildings, repair of the sagging, sinking 3-bedroom stacked buildings and taking action as needed in response to owners' calls In addition, at a rate of two buildings per year (this rate determined by available funds) each building in turn (at present #8) will have all needed repairs completed before work moves to the next Mr Schneider said their greatest difficulty is having no drawings to work with and that their priority is to get all the leaks stopped chimneys, roofs, flashing, windows It was suggested from the floor that the ARB protocols do not conform to the Master Deed and that any Amendment to the Master Deed must be recorded The Board of Directors agreed to look into this Mr Charles Lingerfelt, Director and ARB Chairman, thanked Mr William Lehr and Mr Kenneth Schneider for their work on the ARB At this time it was announced that Mr Michael Kistner (1901 & 1956) would be Co-Chairman of the ARB

AS TO THE NINTH ITEM OF BUSINESS Mr Kenneth Schneider, owner and Class Representative, reported that the class had prevailed in the Lawsuit and that a judge would decide on how the proceeds would be distributed

AS TO THE TENTH ITEM OF BUSINESS Board elections were held Mr Michael Kistner (1901 & 1956) was nominated This nomination was duly seconded and unanimously approved

AS TO THE ELEVENTH ITEM OF BUSINESS Ms Linda Benedict owner (1903), made a presentation about property destruction and disruptive behavior by short-term renters Ms Benedict lives under such a rental and has had property damage by burning cigarettes, garbage thrown down from above and other problems She has met with Kiawah and has copies of their rental regulations and is planning to meet with Seabrook Ms Benedict requested that the Board review the Kiawah material and enact our own regulations and ordinances requiring owner responsibility for renter behavior and the Board agreed to consider this

AS TO THE TWELTH ITEM OF BUSINESS Mr Floyd DeAndrade, Chairman, reported on the cable wires run on the outside of the buildings at Bohicket Marina Village Mr DeAndrade went on to say that he was meeting with Comcast to discuss the issue

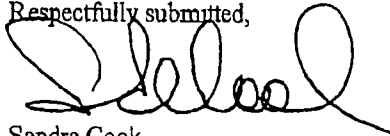
AS TO THE FOURTEENTH ITEM OF BUSINESS Mr Floyd DeAndrade, Chairman spoke regarding Hurricane Preparedness Mr DeAndrade said that residents should

completely clear their decks The Regime will not remove these items or cover windows and doors

AS TO THE FIFTEENTH ITEM OF BUSINESS Mr and Mrs Kenneth Schneider requested and received permission to purchase a new live oak at their expense and for it to be planted on the water side of 1933 (Building 5) in memory of Mr Downs Byrd (1933) who passed away earlier this year

There being no further business, the meeting was adjourned at 11 06am

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sandra Cook', written in a cursive style.

Sandra Cook
Secretary

BOHICKET MARINA VILLAGE COUNCIL OF CO-OWNERS
2007 Approved Annual Budget

Operating Expenses	2007 Approved Budget
Administrative	\$1,500 00
Building Maintenance/Repairs	\$20,000 00
Common Electricity	\$6,500 00
Gate Maintenance	\$3,000 00
Gate Telephone	\$600 00
Insurance All Risk/Umbrella	N/A
Flood	\$15,000 00
Landscaping	\$33,000 00
Miscellaneous	\$1,000 00
Pest Control	\$3,900 00
Pool Maintenance/Repairs	\$8,500 00
Pool Telephone	\$860 00
Professional Accounting	\$800 00
Legal	\$5,000 00
Professional	\$2,500 00
Security Lights	\$2,500 00
Taxes Federal	\$33 00
State	\$39 00
Termite Bonds	\$4,760 00
Total Operating Expenses	\$109,492 00
Fixed Expenses	
Management Fees	\$14,280 00
Garbage Service	\$8,100 00
Security Services (twice/year)	\$1,200 00
SIPOA Fees	\$34,352 00
Water/Sewer	\$60,000 00
Total Fixed Expenses	\$117,932 00
Total Operating/Fixed Expenses	\$227,424 00
Capital Contribution	\$71,118 00
TOTAL EXPENSES	\$298,542 00



Invoice

Sellers Transfer, LLC
PO Box 71103
Charleston, SC 29415

Date 4/1/2008 Invoice # 513

Phone # 843-744-5000

Fax # 843-744-7280

PAID

Bill To
Jane Carpenter
1964 Marsh Oak Lane
Johns Island, SC
29455

Tax ID #

26-0817780

It's been a pleasure working with you!

Rep Customer Name Terms
B & S

Item	Quantity	Description	Rate	Amount
March 2008		Cost of repack and reload and delivery	1,492.75	1,492.75

Total \$1,492.75

Payments/Credits \$ 1,492.75

Balance Due \$0.00



Invoice

Sellers Transfer, LLC
PO Box 71103
2800 King St, Ext
Charleston, SC 29415

Phone # 843-744-5000

Fax # 843-744-7280

Date 10/4/2007 Invoice # 188

Bill To

Jane Carpenter
1964 Marsh Oak Lane
Johns Island, SC
29455

Thank you for your business

Rep P O No Terms

Item	Quantity	Description	Rate	Amount
Sep 2007		Storage Fees	263 40	263 40

Total \$263 40

PRITCHARD CONSTRUCTION CO , INC

P O Box 12151
Charleston, SC 29422
Phone (843)442 6434
Fax (843)762 7240
pritchardconst@comcast.net

8/26/2008

Chip & Jane Carpenter
1964 Marsh Oak Lane
Bohicket Marina
Seabrook Island, SC 29455

Here is the breakdown on the cost of the work completed at 1964 Marsh Oak Lane that you requested

1	Replace Air handler and Condenser unit	\$ 5,655 00
2	Replace sub flooring	\$ 2,961 00
3	Replace Carpets	\$ 5,755 00
4	Replace Ceramic Tile with Hardwood Floors	\$ 5,451 00

If you need any other cost breakdown please don't hesitate to ask

Sincerely,

John H Pritchard, Jr
Owner

Amount \$7,515 00
Account 223002228751
Bank Number 05390448

Sequence Number 6100020081
Capture Date 11/13/2007
Check Number 1004

DUDLEY N CARPENTER 07-07
JANE G. CARPENTER 1004
843-937-3556
2913 DEER POINT DR
SEABROOK ISLAND, SC 29455-6232
Date Oct 29, 2007 87-448, 539 SC 2940

Pay to the Order of Behicket Marina Village \$ 7,515 00
Seven thousand five hundred fifteen & 00/100 Dollars

Bank of America

Money Market Savings
ACCT # 053904483
For 2008 Assessment Jane G Carpenter

⑆053904483⑆ 223002228751⑆ 1004 ⑆0000751500⑆

FOR COURT ONLY

BANK OF AMERICA NA CAS
93774156 65231 81 Pet
11/13/07

STATE OF SOUTH CAROLINA)
)
 Charleston COUNTY)
)
 Kenneth G. Schneider, Jr., et)
 al., Plaintiff)
)
 vs)
 Bohicket Marina Village Council)
 of Co-Owners, et al. Defendant)
)
)

IN THE CIRCUIT COURT FOR THE
 9th JUDICIAL CIRCUIT

02-CP-10-1671
 COVER SHEET FOR
 CIVIL ACTIONS

Docket No. ~~00 CP 10 4041~~

The cover sheet and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this Cover Sheet must be served on the defendant(s) along with the Summons and Complaint.

- NATURE OF ACTION (check one category for the main cause of action)
- | | |
|--|--|
| <input type="checkbox"/> TORT - Motor Vehicle | <input type="checkbox"/> CONTRACT - Debt Collection |
| <input type="checkbox"/> TORT - Professional Malpractice | <input type="checkbox"/> CONTRACT - Employment |
| <input checked="" type="checkbox"/> TORT - Unfair Trade Practices,
Other Economic or Business
Related Wrongs | <input type="checkbox"/> CONTRACT - Construction |
| <input type="checkbox"/> TORT Products Liability | <input type="checkbox"/> CONTRACT - Wrongful Breach |
| <input type="checkbox"/> TORT - General or Other | <input type="checkbox"/> CONTRACT - General or Other |
| <input type="checkbox"/> PCR | <input type="checkbox"/> REAL PROPERTY |
| <input type="checkbox"/> GOV/ADM Workers Comp | <input type="checkbox"/> MINOR SETTLEMENTS |
| <input type="checkbox"/> GOV/ADM - General or Other | <input type="checkbox"/> DOMESTIC FOREIGN JUDGMENT |
| | <input type="checkbox"/> OTHER (Please Describe) |

FILED
 JUL 18 2000
 AUG 18 PM 2 12
 CLERK OF COURT
 BY _____

JURY DEMAND YES () NO

Note: Information requested on this form is preliminary in nature, and for administrative purposes only. The response to this request for information on jury demand merely indicates a likelihood that a jury trial will or will not be requested and does not constitute a demand for or a waiver of trial by jury pursuant to applicable rules or statutes.

DOCKETING INFORMATION (Check one box)

- This case is subject to arbitration (all cases with monetary damages less than \$25,000 are subject to arbitration, unless otherwise exempt)
- This case is subject to mediation (all cases not subject to arbitration must be mediated, unless otherwise exempt)
- This case is exempt from ADR, and certificate is attached

Date 8/17/00 _____

SEE REVERSE SIDE FOR FURTHER IMPORTANT INFORMATION

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS UNLESS OTHERWISE EXEMPT

You are required to take the following action(s)

1 The parties shall select a neutral within 210 days of the filing of this action and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court approved mediator/arbitrator list.

2 The initial ADR conference must be held within 300 days after the filing of this action.

3 Cases are exempt from ADR only upon the following grounds:

- (a) Special proceeding or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition.
- (b) Cases which are appellate in nature such as appeals or writs of certiorari.
- (c) Post conviction relief matters.
- (d) Contempt of Court proceedings.
- (e) Forfeiture proceedings brought by the State.
- (f) Cases involving mortgage foreclosures and
- (g) Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4 Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten days after the ADR conference has been concluded.

Please note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CIVIL ACTION NO

Kenneth G Schneider, Jr ,)
on behalf of himself and others)
similarly situated)

~~00 CP 10-4011~~

02-CP-10-1471


Plaintiff,)

SUMMONS
(Jury Trial Requested)

vs)

Bohicket Marina Village Council of)
Co-owners, Inc , Boards of)
Administration for the Bohicket)
Marina Village Council of)
Co-owners, Inc , for the years 1990)
to the present, Members of the)
Boards of Administration for the)
Bohicket Marina Village Council of)
Co-owners, Inc , for the years 1990)
to the present, First Palmetto, Inc ,)
First Coastal Properties, and)
Oliver H Mathewes,)

Defendants)

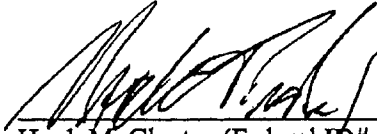
BY  JULIE J. STRONG
CLERK OF COURT
2000 AUG 18 PM 2 12
611 PD

2000-4579

YOU ARE HEREBY SUMMONED AND REQUIRED TO ANSWER THE COMPLAINT in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their offices at Post Office Box 5478, Florence, South Carolina 29502-5478, within thirty (30) days after the service thereof, exclusive of the date of such service, and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P A



Hugh M. Claytor (Federal ID# 4787)
Turner, Padget, Graham & Laney, P A
Post Office Box 5478
Florence, South Carolina 29502-5478
(843) 667-0828

Mark B. Tinsley (Federal ID# 7160)
Turner, Padget, Graham & Laney, P A
Post Office Box 1473
Columbia, South Carolina 29202
(803) 254-2200

ATTORNEYS FOR THE PLAINTIFFS

August 17, 2000
Columbia, South Carolina


STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Kenneth G Schneider, Jr ,)
 on behalf of himself and others)
 similarly situated)
)
 Plaintiff,)
)
 vs)
)
 Bohicket Marina Village Council of)
 Co-owners, Inc , Boards of)
 Administration for the Bohicket)
 Marina Village Council of)
 Co-owners, Inc , for the years 1990)
 to the present, Members of the)
 Boards of Administration for the)
 Bohicket Marina Village Council of)
 Co-owners, Inc , for the years 1990)
 to the present, First Palmetto, Inc ,)
 First Coastal Properties, and)
 Oliver H Mathewes,)
)
 Defendants)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO

~~00-CP-10-4011~~
 02-CP-10-1671

COMPLAINT
(Jury Trial Requested)

BY 
 DEBRA J. HARRIS
 CLERK OF COURT
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CLASS ACTION COMPLAINT

Plaintiff, Kenneth G Schneider, Jr , by and through his undersigned counsel, brings this action on behalf of himself and all others similarly situated as a voluntary class action under Rule 23 of the South Carolina Rules of Civil Procedure, and alleges

PARTIES, CAPACITY AND JURISDICTION

1 Plaintiff Kenneth G Schneider, Jr is a resident and owner of two apartments in the Bohicket Marina Village Horizontal Property Regime (hereinafter "Regime") located at Marsh Oak Lane, Johns Island, Charleston County, South Carolina Moreover, by virtue of Mr Schneider's ownership interest of his two apartments in the Regime, under the Master Deed of the Bohicket

Marina Village Horizontal Property Regime (hereinafter "Master Deed") and the By-laws for the Bohicket Marina Village Council of Co-owners, Inc (hereinafter "By-laws"), he is a member or shareholder of the incorporated association of owners charged with administering the property which constitutes the Regime, known as Bohicket Marina Village Council of Co-owners, Inc (hereinafter "Council")

2 Defendant Bohicket Marina Village Council of Co-owners, Inc is South Carolina incorporated association consisting of all persons who own apartments in the Regime. The Council, under the Master Deed and By-laws, is charged with the maintenance and repair of the general and limited common elements of the Regime, as well as with the administration of the Regime's affairs, all of which is governed by the Master Deed and By-laws. Accordingly, jurisdiction over this defendant is proper in this Court under South Carolina Code Ann §36-2-802 (1976)

3 Defendants Boards of Administration for the Bohicket Marina Village Council of Co-owners, Inc , for the years 1990 to the present, were and are the body charged under the By-laws with the management of the affairs of the Council (collectively hereinafter "Board") The Board, at all times relevant, was and is a South Carolina entity, continuously and systematically transacting business in this State. Accordingly, jurisdiction over these defendants is proper in this Court under South Carolina Code Ann §36-2-802 (1976)

4 Defendants Members of the Boards of Administration for the Bohicket Marina Village Council of Co-owners, Inc , for the years 1990 to the present, were and are the officers of and members who collectively made-up the Board (collectively hereinafter "Members of the Board") Upon information and belief, the Members of the Board, at all times relevant, were and are South Carolina residents, continuously and systematically transacting business in this State

Accordingly, jurisdiction over these defendants is proper in this Court under South Carolina Code Ann §36-2-802 (1976)

5 Defendant First Palmetto, Inc , upon information and belief, is a South Carolina corporation, licensed to do business in South Carolina and engaging in the business of managing horizontal property regimes, that was hired by the Board or Members of the Board to discharge the duties of management and maintenance of the Regime or undertook such duties at the direction of the defendants or on its on behalf Accordingly, jurisdiction over this defendant is proper in this Court under South Carolina Code Ann §36-2-802 (1976)

6 Defendant First Coastal Properties, upon information and belief, was, at all times relevant, a South Carolina association or some other legal entity, licensed to do business in South Carolina and engaged in the business of managing horizontal property regimes, that was hired by the Board or Members of the Board to discharge the duties of management and maintenance of the Regime or undertook such duties at the direction of the defendants or on its on behalf Accordingly, jurisdiction over this defendant is proper in this Court under South Carolina Code Ann §36-2-802 (1976)

7 Defendant Oliver H Mathewes, upon information and belief, is a South Carolina resident engaged in the business of managing horizontal property regimes and hired by the Board or Members of the Board to discharge the duties of management and maintenance of the Regime or undertook such duties at the direction of the defendants or on his on behalf Moreover, upon information and belief, Defendant Mathewes is the president, sole-shareholder, and controlling person of Defendant First Palmetto, Inc and was, at all times relevant, the controlling person of Defendant First Coastal Properties Additionally, at all times relevant, Defendant Mathewes has

acted as a *de facto* member and controlling person of the Board. Accordingly, jurisdiction over this defendant is proper in this Court under South Carolina Code Ann. §36-2-802 (1976)

8 The class of plaintiffs consists of all person, corporations, partnerships, unincorporated associations or other entities that own in whole or in part any apartment in the Regime

CLASS ACTION ALLEGATIONS

9 This is a class action is brought by Plaintiff as representative of the Class defined herein, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, to recover monetary damages from the defendants for breaches of implied warranties, breaches of contracts, breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, wilfulness, intentional wrongful acts and omissions, bad faith, mismanagement, waste, fraud and punitive damages with respect to their collective duty of administration, care and maintenance of the Regime property and their duty to protect the interests and rights of the members of the Council with respect to the Regime property

10 As described in ¶ 8, above, the class of plaintiffs consists of all individuals, corporations, partnerships, unincorporated associations or other entities that currently or in the future will own, in whole or in part, any apartment in the Regime (hereinafter "Class")

11 The Class does not include any former owner of apartment in the Regime

12 The Class is sufficiently numerous that joinder of all the members is impracticable

13 Plaintiff Kenneth G. Schneider, Jr. will fairly and adequately protect the interests of the class as Class representative. The interests of the Class representative are coincident with, and not antagonistic to, those of the other class members and Plaintiff is represented by experienced and

able counsel who have previously litigated class actions and similar types of cases

14 There are questions of law and fact common to the Class. Common questions of law include the liability of defendants for, among other things as more particularly described below, nonfeasance, misfeasance, and malfeasance in the administration, care and maintenance of the Regime property and in safeguarding the rights of the Class with respect to the Regime property. Common questions of fact include, as more particularly described below, whether the wrongful acts and omissions of the defendants with respect to the administration, care and maintenance of the Regime property constitute negligent, gross negligent, reckless, wilful, wanton, bad faith, or fraudulent behavior and whether these wrongful acts or omissions of the defendants caused or will cause the Class to suffer damages.

15 Plaintiff's claims are typical of the Class members' claims and derive from a common nucleus of operative facts in that defendants, at all times relevant, are or were either charged with a duty of administration, care and maintenance of the Regime property and the interests and rights of the members of the Council or undertook such duties. Each Class member has been or will be similarly injured by the defendants' wrongful acts or omissions in the administration, care and maintenance of the Regime property and the interests and rights of the members of the Council, such that the interests of the Plaintiff, as Class representative, are consistent with those of the members of the Class.

16 For the reasons described above and further explained below, a class action is especially appropriate in this case to promote judicial efficiency and to protect Class members' interests and rights as common questions of law and fact clearly predominate over individual issues.

17 Moreover, class treatment is a superior method for the fair and efficient adjudication

of the issues in dispute because it permits a large number of injured parties, joinder of who is impracticable, to prosecute their common claims in a single forum simultaneously. In addition, it does not infringe upon the rights of those Regime owners who wish to litigate their claims separately. The class action provides an efficient method whereby the relative rights of the Class members and defendants can be fairly managed without unnecessary expense or duplication.

18 If Class members were to pursue individual litigation, it would be unduly burdensome to the South Carolina courts within which the individual litigation would proceed. Individual litigation would magnify the delay and expense to all parties in the court system of resolving the controversy engendered by defendants' course of conduct with respect to the administration, care and maintenance of the Regime property and in safeguarding the rights of the Class with respect to the Regime property. By contrast, the class action device presents far fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court. Concentrating this litigation in one forum will aid judicial economy and efficiency, promote parity among the claims of the individual Class members, and result in judicial consistency. Notice of the pendency and any resolution of this action can be provided to all Class members by first class mail.

19 The expense and burden of individual litigation of a case of this magnitude makes it impractical for individual Class members to seek redress for the wrongs done to them and, therefore, requires consolidation of all such claims in one action.

20 Given the scope of harm inflicted by defendants and the egregiousness of their misconduct, the prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical

matter, be dispositive of the interests of the other member who are not parties to the adjudication, or substantially impair or impede their ability to protect their interests

21 Prosecution of this matter as an opt-out class action will significantly reduce the possibility of repetitious litigation, while providing redress for Class members who would not or could not prosecute this complex litigation on an individual basis

22 Plaintiff and Class members envision no unusual difficulty in the management of this action as a class action

23 Certification of this action as a class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate

SUBSTANTIVE ALLEGATIONS

24 Defendants were or are charged with a duty of administration, care and maintenance of the Regime property and with safe guarding the interests and rights of the members of the Council or they undertook such duties Nevertheless, defendants have acted or failed to act such that defendants have committed breaches of implied warranties, breaches of contracts, breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, wilfulness, intentional wrongful acts and omissions, bad faith, mismanagement, waste, and fraud with respect to their collective duty of administration, care and maintenance of the Regime property and their duty to protect the interests and rights of the members of the Council with respect to the Regime property These wrongful acts and omissions have caused and will cause the Plaintiff and the Class to incur and continue to incur substantial money damages

Factual Background

25 On or about October 7, 1997, Plaintiff owned two adjoining apartments in the

Regime, Units 1909 and 1910 of Building #2 At or about that time, Plaintiff advised defendants of his intent to combine these two Units pursuant to the Master Deed and subject to the applicable By-laws and administrative rules and regulations adopted pursuant thereto

26 On or about November 11, 1997, the Board approved Plaintiff's request to combine his Units

27 Thereafter, Plaintiff undertook efforts to combine his two Units into one Unit

28 On or about March 17, 2000, during the combination of the two Units, Plaintiff discovered structural defects in the floors, walls, ceiling and structural supports throughout the structure of Building #2 Upon consulting with a structural engineer, Plaintiff was advised that due to the serious deterioration and structural deficiencies present in Building #2, collapse of the building was imminent Due to the exigency of the circumstances, Plaintiff immediately implemented a plan to shore or support the structure and level the affected walls, floors and ceilings Thereafter, Plaintiff notified defendants of the conditions he discovered To date, nothing has been done by any defendant to correct these significant and dangerous problems

29 Thereafter, visual inspections of the remaining apartment buildings of the Regime indicated that substantially the same conditions were present in those building as was found in Plaintiff's building

30 Upon information and belief, it will require in excess of fifteen million (\$15,000,000 00) dollars to correct and repair the significant structural problems with the apartment buildings of the Regime and to compensate the Class for loss the resulting loss of use of the apartments during said repairs

Defendants Wrongful Acts and Omissions

31 During the combination of Plaintiff's two units, a disagreement arose between Plaintiff and several of the defendants regarding certain alleged changes to the exterior appearance of the Regime. Ultimately, the Board filed suit, in an action captioned Bohicket Marina Village Council of Co-owners, Inc v Kenneth G. Schneider, Jr, Civil Action Number 99-CP-10-4266, against Plaintiff for equitable relief so as to make Plaintiff correct these alleged changes to the exterior appearance. That lawsuit is still ongoing.

32 During discovery in the above referenced lawsuit the following facts were revealed:

a On or about November 18, 1993, some of the defendants brought suit in an action captioned Bohicket Marina Village Council of Co-owners, Inc v Diederich Architects & Associates, Inc, Civil Action Number 93-CP-10-4751 (hereinafter "Diederich Suit")

b The Diederich Suit alleged that Diederich Architects & Associates, Inc was engaged to perform architectural design services for the developer of the property which became known as the Regime, and which included the Regime's real property, with buildings and improvements thereon.

c The Diederich Suit alleged that Diederich Architects & Associates, Inc was engaged to prepare plans, drawings and written specifications for the purpose of guiding construction of building on the property in accordance with applicable building codes and laws.

d The Diederich Suit alleged that in or about May of 1990 the plaintiff to the suit discovered substantial structural defects in the construction of its buildings, including but not limited to defects in the area of girders, or headers, supporting the flooring adjacent to masonry block firewalls, wherein the girders or headers spanned excessive distances, without intermediate support.

e The Diedrich Suit alleged that upon further investigation the plaintiff discovered that the drawings, plans and specification prepared by Diedrich Architects & Associates, Inc did not reflect the detail by which the girder systems should have been supported and that the girder system detail represents a material structural component of element of the design documents prepared by Diedrich Architects & Associates, Inc

f Finally, the Diedrich Suit alleges that as a result of the breaches, acts, and omissions by Diedrich Architects & Associates, Inc, the plaintiff's buildings are deteriorating, floors and walls are sagging, cabinetry doors and trim are out of line, and conditions are worsening, all to the plaintiff's great loss

33 Upon information and belief, the defendants compromised the claims in the Diedrich Suit for substantially less than was required to correct the structural deficiencies

34 Upon information and belief, the defendants failed to conduct a sufficient and proper inspection of the Regime's apartment buildings so as to identify all of the structural deficiencies of the said buildings. Alternatively, defendants ignored the many, if not most of, the structural problems in the Regime's apartment building when compromising the Diedrich Suit

35 Upon information and belief, the defendants failed to pursue claims against other parties responsible for the structural deficiencies of the Regime's apartment buildings, even though such parties, claims and deficiencies were known to the defendants

36 Upon information and belief, the funds collected from the compromise of the Diedrich Suit were never used to correct the structural deficiencies of the Regime's apartment buildings and were not invested so as to provide sufficient returns to cover the costs currently required to make such repairs

37 Upon information and belief, defendants have failed to provide for any way to adequately fund the correction or repair the substantial deficiencies found in the Regime's apartment buildings

38 Upon information and belief, the failure of the defendants to correct, repair, mitigate or stay the structural deficiencies has caused, is causing, and will continue to cause substantial deflections in and collapse of the Regime's apartment buildings which has, is, and will continue to cause damage to the Regime's buildings themselves and individual property of the Plaintiff and the Class

39 As a direct and proximate result of the consequences of the numerous construction or design defects, deficiencies and problems the Plaintiff and the Class has and will continue to spend substantial sums of money for the extraordinary repairs and reconstruction of major portions of the Regime's common elements and the individual apartments

FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence, And Recklessness Against All Defendants)

40 Plaintiff hereby incorporates by reference Paragraphs 1 through 39 above, inclusive, as if fully set forth herein

41 All defendants owed a duty to the Plaintiff and the Class to exercise that degree of skill necessary to insure that the Regime property was properly maintained and to keep the owners informed of serious defects found or discovered, and protect the owners' property interests in conformity with the customary and ordinary standards of the condominium management industry

42 As a direct and proximate result and consequence of the aforementioned negligent, grossly negligent, and reckless acts or omissions of all defendants, the Plaintiff and the Class has and will continue to spend substantial sums of money for the extraordinary repairs and reconstruction

of major portions of the Regime's common elements and the individual apartments. The Plaintiff and the Class was made responsible for the repairs as a result of the aforementioned negligence, gross negligence, and recklessness of the defendants, including but not limited to one or more of the following particulars:

a In failing to properly inform the property owners of the conditions known or which should have been known so that the Regime apartment buildings and the individual apartments could be repaired and protected from the damage due to the construction and design defects,

b In failing to properly oversee the Regime in order to insure that all defects were reported to the property owners so that repairs could proceed in accordance with the customary and ordinary standards of the construction and condominium management industries,

c In allowing and failing to report non-conforming or defective conditions,

d In failing to inform the property owners of the true nature of the defective condition of the Regime property,

e In failing to and improperly pursuing or obtaining adequate remedies as a result of the defective condition of the Regime property,

f In failing to use available funds to mitigate the substantial damage which was and is resulting from the aforementioned significant, structural design or construction defects or deficiencies, and in failing to invest the available funds or otherwise prepare adequate reserves so as to fund the now required extraordinary repairs as described above

g In allowing any claims that the Regime property owners may have had against any potentially responsible party to be barred by the applicable statute of limitation or repose or by

res judicata, such that the Regime property owners will be forced to expend substantial amounts of money to repair, replace, and reconstruct substantial portions of the Regime's common elements and their individual apartments

43 As a direct and proximate result and consequence of the negligent, grossly negligent, or reckless acts or omissions of all defendants, the Plaintiff and the Class has suffered and will suffer injuries in the amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the Regime structures, and damages for the resulting loss of use of their apartments during said reconstruction or repairs, which is believed to be in excess of fifteen million dollars (\$15,000,000 00), and such punitive damages as may be appropriate

FOR A SECOND CAUSE OF ACTION
FRAUD, FRAUDULENT CONCEALMENT AND FRAUD IN THE INDUCEMENT

44 Plaintiff incorporates by reference Paragraphs 1 through 43 above, inclusive, as if fully set out herein

45 The defendants owed Plaintiff and the Class a duty to disclose the true state and conditions of the Regime's apartment buildings, the repairs and maintenance required, the scope and nature of the investigation taken with respect to the Regime's apartment buildings, and the management of funds to account for the need for extraordinary repairs, as described above, by virtue of the facts that such a duty arose from the fiduciary relationship between the Plaintiff and the Class and the defendants, that such a duty arose because Plaintiff and the Class expressly and clearly reposed a trust and confidence in the defendants with reference to the management of the Regime property so as necessarily imply a special duty of trust and confidence, and that the very nature of fact that the management of the Regime property by the defendants, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard

to any particular intention of the parties

46 The active, willful participation by all defendants in the scheme, acts and omissions as alleged above and elsewhere in this Complaint involved false representations or the failure to speak where such a duty existed on the part the defendants, which may be imputed to all other defendants through a theory of *respondeat superior* or some other agency principle, the truth of these representations was at all times known to the defendants, but fraudulently and intentionally was concealed by them from the Plaintiff and the Class, the truth of these representations was, at all times relevant, unknown to the Plaintiff and the Class, and the falsity of said representations, at all times, was known to the defendants, but fraudulently and intentionally concealed by them from and unknown to Plaintiff and the Class

47 The defendants specifically intended for the Plaintiff and the Class to rely upon their false and fraudulent representations and their silence, and they specifically intended to induce Plaintiff and the Class to enter into the contract to manage the Regime property, to continue to allow the defendants to manage the affairs of the Regime so as to benefit themselves, and to conceal the defective condition of the Regime's apartment buildings from the Plaintiff and the Class so as to protect themselves from liability as a result of their mismanagement of the Regime, waste of the Regime property, and waiver of the rights of the Plaintiff and the Class, and the defendants, from the outset of the contract or relationship and throughout the duration of the governance of the Regime's affairs by the defendants, had no intention of performing their obligations thereunder, in that they never intended to actively protect the Regime property from waste or to safeguard the rights and interests of the Plaintiff and the Class and never intended to inform the Plaintiff or the Class of the same

48 Plaintiff and the Class justifiably and reasonably relied to their detriment and damage upon the defendants' false and fraudulent representations and silence, the concealment and the falsity of which Plaintiff and the Class now has discovered

49 At all times alleged, Plaintiff and the Class were entitled to reasonably rely upon defendants' representations and promises. Moreover, the defendants had a duty to disclose the facts they concealed, and their silence or nondisclosure tended to affirmatively suppress the truth of the actual state of the Regime's affairs and the welfare of the rights and interests of the Plaintiff and the Class, or to withdraw or distract the Plaintiff's and the Class' attention or observation from the real facts such that the concealment became fraudulent

50 The defendants' concealment of facts and their false and fraudulent representations of facts were material to the Plaintiff and the Class in allowing the defendants to handle, control, govern and manage the Regime's affairs, because these representations would have been important to an objective, reasonable person and would have been viewed as sufficiently important and significant such that their truth would have played a role in the decision to enter into the contractual relationship with defendants and to allow the defendants to continue to manage the affairs of the Regime. Plaintiff and the Class viewed these representations as sufficiently important and significant in making the decision to enter into the contract to manage the Regime's affairs and to allow defendants to continue to so manage the Regime, such that had the Plaintiff and the Class known the falsity of these statements, they never would have entered into or allowed the continuance of the transactions with the defendants. These material, false representations of fact and the concealment of these misrepresentations were material to the inducement of the Plaintiffs to enter into the contract to manage the Regime's affairs and to allow the continuance of the management

of the Regime by the defendants

51 Further, defendants knew the falsity of their statements and non-disclosures or were in reckless disregard of the truth or falsity of these assertions and non-disclosures and could reasonably have foreseen or expected that Plaintiff and the Class would make their decisions in ignorance of facts which constituted material omissions

52 As a direct and proximate result of the false and fraudulent scheme, acts and conduct of the defendants, Plaintiff and the Class have incurred damages and, as described above, are entitled to recover from defendants an amount in excess of fifteen million dollars (\$15,000,000 00), the precise amount of which is presently unknown and will be proved at trial, and punitive damages in an amount commensurate with the fraud of the defendants Moreover, Plaintiff and the Class are entitled to and pray that this Court impose a constructive trust on all monies unjustly received by the defendants in favor of Plaintiff and the Class, such that Plaintiffs are entitled to trace these proceeds, if converted into a new form or transferred by the person owing the debt of restitution to Plaintiff and the Class

FOR A THIRD CAUSE OF ACTION
BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT

53 Plaintiff incorporates by reference Paragraphs 1 through 52 above, inclusive, as if fully set out herein

54 The active, willful participation by defendants in the scheme, acts, and conduct as alleged above constitutes breaches of the contracts entered into between Plaintiff and the Class and the defendants accompanied by fraudulent acts as herein alleged

55 As a direct and proximate result of the breaches of the contracts between the parties and the fraudulent scheme, acts, and conduct of the defendants, Plaintiff and the Class have suffered

actual damages and, as described above, are entitled to recover from defendants an amount in excess of fifteen million dollars (\$15,000,000 00), the precise amount of which is presently unknown and will be proved at trial, and punitive damages in an amount commensurate with the fraudulent scheme of the defendants. Moreover, Plaintiff and the Class are entitled to and pray that this Court impose a constructive trust on all monies unjustly received by the defendants in favor of Plaintiff and the Class, such that Plaintiff and the Class are entitled to trace these proceeds, if converted into a new form or transferred by the person owing the debt of restitution to Plaintiff and the Class.

FOR A FOURTH CAUSE OF ACTION
COMMON LAW AIDING AND ABETTING

56 Plaintiff incorporates by reference the allegations complained of in Paragraphs 1 through 55, inclusive, as if fully set out herein.

57 All of the defendants committed tortious acts in concert with one another, with full knowledge, by and through supplying substantial assistance in the wrongful conduct perpetrated by them against Plaintiff and the Class.

58 All defendants had knowledge of the true state and condition of the Regime property, the insufficient and improper nature of the inspections thereof, the lack of and improper maintenance efforts undertaken to maintain the property, and the substantial prejudice that was being effected with regard to the rights of the Plaintiff and the Class, as more particularly described above. Defendants failed to inform Plaintiff or the Class of the defects or the improper acts or omissions as described above, thus substantially assisting in the perpetration of a fraud on Plaintiff and the Class. Hence, each defendant aided and abetted all other defendants in committing the fraud and other wrongful acts or omissions.

59 All defendants were active participants in the scheme or artifice to defraud or

tortiously injure Plaintiff and the Class by conveying false and intentionally misleading information to Plaintiff and the Class or to intentionally not disclose the truth about the false information upon which the defendants knew the Plaintiff and the Class were relying. At all times relevant, all defendants were fully aware of the nature and extent of the scheme or artifice to defraud or tortiously injure the Plaintiff and the Class.

60 All defendants, through their wrongful conduct and the above described acts evidencing each defendant's substantial assistance in the scheme or artifice to defraud or tortiously injure the Plaintiff and the Class, performed tortious acts in concert with one another pursuant to a common design and gave substantial assistance to each other in accomplishing these tortious activities. As such, each defendant is subject to joint and several liability for aiding and abetting the scheme or artifice to defraud or injure Plaintiff and the Class.

61 Each defendant profited from his or her misrepresentation, silence or failure to disclose the fraud on Plaintiff or the Class, by improperly using funds belonging to the Plaintiff and the Class, by shielding themselves from liability for their wrongful acts and omissions, and by governing and handling the management of the Regime and its affairs so as to benefit themselves only. All defendants planned to and did share in the fruits of this fraud by exploiting the trust and confidence reposed in them by the Plaintiff and the Class.

62 As a direct and proximate result of aiding and abetting the wrongs perpetrated against Plaintiff and the Class, Plaintiff and the Class have incurred damages, and, as described above, are entitled to recover an amount in excess of fifteen million dollars (\$15,000,000.00), the precise amount of which is presently unknown and will be proved at trial.

63 As the defendants' actions were intentional and made with knowing or reckless

disregard for the rights, welfare, and property of Plaintiff or the Class, Plaintiff and the Class pray for punitive damages in the amount the Court deems just and equitable

FOR A FIFTH CAUSE OF ACTION
CIVIL CONSPIRACY

64 Plaintiff incorporates by reference the allegations complained of in Paragraphs 1 through 63, inclusive, as if fully set out herein

65 All defendants maliciously conspired or entered into a concerted design to defraud Plaintiff and the Class without legal justification or excuse and performed acts with the intent of injuring Plaintiff and the Class, as described above

66 The natural and necessary consequence of the acts of all defendants resulted in the harm to and oppression of Plaintiff and the Class as described above

67 All defendants had knowledge of the objective and purpose of the conspiracy to defraud Plaintiff and the Class and of the dishonest nature of their and their co-conspirators actions. Moreover, each defendant agreed to the commission of these wrongs with the intention to share in the fruits of the fraud

68 As a direct and proximate result of this conspiracy Plaintiff and the Class have incurred special damages, and, as described above, are entitled to recover from Defendant, for the joint and several liability of this conspiracy, an amount in excess of fifteen million dollars (\$15,000,000 00), the precise amount of which is presently unknown and will be proved at trial

FOR A SIXTH CAUSE OF ACTION
CONVERSION

69 Plaintiff incorporates by reference the allegations complained of in Paragraphs 1 through 68, inclusive, as if fully set out herein

70 Upon information and belief, Defendants have exercised control over funds, which were collected from the Plaintiff and the Class or for their benefit and were deposited in one of the defendant's bank account or some other account for the benefit of the Plaintiff and the Class so as to be used to make repairs to the Regime property

71 Upon information and belief, defendants never intended to use substantial amounts of the deposited for their intended purpose and in fact never did so use said funds. As such, the defendants converted the funds of the Plaintiff and the Class through the unauthorized assumption and exercise of ownership over the money belonging to Plaintiff and the Class so as to exclude Plaintiff and the Class from said money or funds

72 Without receiving the required maintenance or proper authorization to use the funds for some other reason, title to and the right to possession of the funds remained with the Plaintiff and the Class

73 As a direct and proximate result of defendants' wrongful exercise of dominion and control over property of the Plaintiff and the Class, in denial of and inconsistent with the rights of the Plaintiff and the Class thereto, Plaintiff and the Class have incurred damages, and, as described above, are entitled to recover from defendants an amount equal to the funds so converted, the precise amount of which is presently unknown and will be proved at trial

74 All defendants' actions were intentional and made with knowing or reckless disregard for the rights, welfare, and property of Plaintiff or the Class. Consequently, Plaintiff and the Class pray for punitive damages in the amount the Court deems just and equitable

75 Moreover, Plaintiff and the Class are entitled to and pray that this Court impose a constructive trust on all monies unjustly received by the defendants in favor of Plaintiff and the

Class, such that Plaintiff and the Class are entitled to trace these proceeds, if converted into a new form or transferred by the person owing the debt of restitution to Plaintiff and the Class

FOR A SEVENTH CAUSE OF ACTION
CONSTRUCTIVE FRAUD

76 Plaintiff incorporates by reference the allegations complained of in Paragraphs 1 through 75, inclusive, as if fully set out herein

77 The defendants owed Plaintiff and the Class duties of good faith and fair dealing inherent in every contract as well as fiduciary duties as described elsewhere in this Complaint

78 Defendants breached their duties by making deceptive, material misrepresentations of past or existing facts or remaining silent when a duty to speak existed, and advancing their own interests at the expense of the interests of the Plaintiff and the Class

79 Plaintiff and the Class reasonably relied on said defendants' deceptive, material misrepresentations of past or existing facts or silence to their detriment and injury, and had a right to so rely

80 As a direct and proximate result of the reliance of the Plaintiff and the Class, Plaintiff and the Class have incurred damages and, as described above, are entitled to recover from said defendants an amount in excess of fifteen million dollars (\$15,000,000.00), the precise amount of which is presently unknown and will be proved at trial. Moreover, Plaintiff and the Class are entitled to pray that this Court impose a constructive trust on all monies unjustly received by the defendants in favor of Plaintiff and the Class, such that Plaintiff and the Class are entitled to trace these proceeds, if converted into a new form or transferred by the person owing the debt of restitution to them

FOR AN EIGHTH CAUSE OF ACTION
GROSS NEGLIGENCE AND GROSS NEGLIGENT MISREPRESENTATION

81 Plaintiff incorporates by reference each of the allegations complained of in Paragraphs 1 through 80, inclusive, as if fully set forth herein

82 Each of the wrongful acts, as described above, that occurred in connection with the management of the Regime property and affairs were more than momentary thoughtlessness, inadvertence, or error of judgment on the part of all of the defendants with regard to the representations, consisting of either affirmative statements or silence when there was a duty to speak, made to the Plaintiff and the Class. Instead, these wrongful acts or omissions constitute an entire want of care and conscious indifference to the rights, welfare, or property of the Plaintiff and the Class and were intended to cause financial harm to the Plaintiff and the Class such that these acts constituted gross negligence

83 Said wrongful acts and conduct were the direct and proximate cause of the damages suffered by Plaintiff and the Class, such that Plaintiff and the Class are entitled to recover from all defendants an amount, as described above, in excess of fifteen million dollars (\$15,000,000.00), the precise amount of which is presently unknown and will be proved at trial

84 Moreover, Plaintiffs are entitled to recover judgment against all defendants for punitive/exemplary damages for such gross negligence and heedless, careless, and reckless disregard for the rights, welfare, and property of the Plaintiff and the Class, in a sum as this Court deems just and equitable

FOR A NINTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

85 Plaintiff incorporates by reference each of the allegations complained of in

Paragraphs 1 through 84, inclusive, as if fully set forth herein

86 All defendants, in the course of their scheme or artifice to defraud Plaintiff and the Class, as above described, and in the course of inducing the Plaintiff and the Class to enter into and allow the continuance of the defendants' management of the Regime property and affairs – transactions in which the defendants had pecuniary interests – supplied false information, either by silence or affirmative statements, for the guidance of Plaintiff and the Class in making decisions about these transactions, namely, those misrepresentations stated above

87 All defendants individually, owed a duty of care to see that he or she communicated truthful information to Plaintiff and the Class with regard to the aforementioned transactions

88 All defendants failed to exercise reasonable care or competence to obtain or communicate true information thereby breaching their duty of care to communicate truthful information. Said false information, under the circumstances, was justifiably and reasonably relied upon by Plaintiff and the Class to their detriment in deciding to enter into and to allow the continuance of the aforementioned transactions

89 At all times, all defendants knew or should have known that the information supplied to Plaintiff and the Class would be and was actually relied upon by Plaintiff and the Class, and that Plaintiff and the Class intended to rely upon said information in making business decisions. Moreover, all defendant had actual knowledge of the reliance on said misrepresentations by Plaintiff and the Class

90 As a direct and proximate result of the reliance by the Plaintiff and the Class upon the defendants' misrepresentations, Plaintiff and the Class have incurred substantial pecuniary loss and property damage, and, as described above, are entitled to recover from the defendants an amount

in excess of fifteen million dollars (\$15,000,000 00), the precise amount of which is presently unknown and will be proved at trial, and such other relief as the court deems necessary or proper

FOR A TENTH CAUSE OF ACTION
BREACH OF CONTRACT AND BREACH OF WARRANTIES

91 Plaintiff incorporates by reference each of the allegations complained of in Paragraphs 1 through 90, inclusive, as if fully set forth herein

92 Upon information and belief, defendants entered into various management contracts with and for the benefit of the Plaintiff and the Class pursuant to their scheme or artifice to defraud Plaintiff and the Class By failing to deliver the services contracted for by the parties and by failing to ensure that the Regime property was properly maintained and that adequate funds would be available for the required maintenance, defendants breached these contracts By failing to protect the Regime property and the interests of the Plaintiff and the Class, defendants breached their express warranty that the same would be done, upon which Plaintiff and the Class relied as a basis of their bargain Moreover, by failing to protect the Regime property and the interests of the Plaintiff and the Class, defendants breached the implied warranty of workmanlike service with respect to the management of the Regime property and affairs of the Regime

93 As a direct and proximate result of the actions of all defendants and said breaches, described above, Plaintiff and the Class were deprived of and lost the benefit of their bargain and suffered actual damages in excess of fifteen million dollars (\$15,000,000 00) as described above, the precise amount of which is presently unknown and will be proved at trial, and such other relief as the court deems necessary or proper

FOR AN ELEVENTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTIES

94 Plaintiff incorporates by reference each of the allegations complained of in Paragraphs 1 through 93, inclusive, as if fully set forth herein

95 The cost of the above described extraordinary repairs and maintenance necessitated by the above described construction or design defects and the defendants neglect of the problems caused thereby is so great that Plaintiff and the Class are without means to bear the financial burden thereof, even though it may ultimately be their liability and responsibility under the Master Deed and By-laws

96 The defendants, as described above, had and have fiduciary relationships and owed fiduciary duties and obligations to the Plaintiff and the Class. The defendants, as described above, at all times relevant were or should have been aware of the extensive and severe construction or design defects and problems, their failure to properly investigate the extent of these defects and problems, their failure to properly mitigate damaging effects of these problems and defects, their failure to adequately invest for or otherwise fund for the financial burden of the above described extraordinary repairs and required maintenance, and their failure to properly safeguard the rights and interests of the Plaintiff and the Class, as described above

97 Upon information and belief, the defendants purposely withheld their knowledge of the above described from the Plaintiff and the Class to the extreme detriment of the Plaintiff and the Class, in that by so failing to notify the Plaintiff and the Class the defendants knowingly caused the Plaintiff and the Class to become responsible and liable for the above described needed extraordinary repairs and reconstruction expenses far in excess of the Plaintiff's or the Class' ability to pay, such that the defendants breached their fiduciary duties owed to the Plaintiff and the Class, including but

not limited to the duty to perform the contract, the duty of care and skill, the duty of good conduct, the duty to give information, the duty to keep and render accounts, the duty to act only as authorized, the duty to make a profit, the duty to account for profits, the duty of service and obedience, the duty to obey, the duty not to act as or for an adverse party, and the duty of loyalty, all of these said breaches have, are and will actually and proximately cause the above described injuries and damages to the Plaintiff and the Class such that the Plaintiff and the Class are entitled to recover from the defendants an amount in excess of fifteen million dollars (\$15,000,000 00), the precise amount of which is presently unknown and will be proved at trial, and such other relief as the court deems necessary or proper

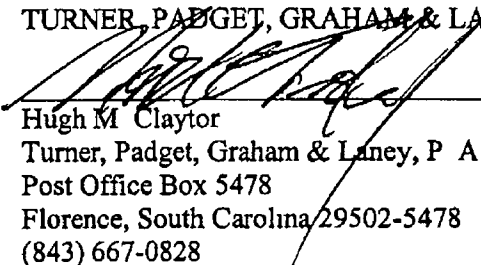
Relief Requested

WHEREFORE, Plaintiff and the Class respectfully pray this Court certify this action as an opt-out Class Action under Rule 23 of the South Carolina Rules of Civil Procedure, hold the defendants liable for the conduct complained of herein, enter a judgment against the defendants and in favor of the Plaintiff and the Class for the relief as requested in this Complaint, and award the Plaintiff and the Class their costs and attorneys' fees, and such other and further relief as may be appropriate

Plaintiff and the Class further demand a jury trial with respect to all issues so triable

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P A



Hugh M. Claytor
Turner, Padget, Graham & Laney, P A
Post Office Box 5478
Florence, South Carolina 29502-5478
(843) 667-0828

Mark B Tinsley
Turner, Padgett, Graham & Laney, P A
Post Office Box 1473
Columbia, South Carolina 29202
(803) 254-2200

ATTORNEYS FOR THE PLAINTIFFS

August 17, 2000
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) CASE NO 02-CP-10-1671
 COUNTY OF CHARLESTON)

KENNETH G SCHNEIDER JR , on)
 behalf of himself and others similarly)
 situated)

Plaintiffs)

vs)

BOARD OF DIRECTORS FOR THE)
 BOHICKET MARINA VILLAGE)
 COUNCIL OF CO-OWNERS, INC ,)
 for the years 1990 to the present)
 FIRST PALMETTO, INC)

Defendants)

**FOURTH
 AMENDED COMPLAINT
 (Jury Trial Requested)**

FILED
 2009 FEB 15 AM 9 31
 CLERK OF COURT
 BY _____

CLASS ACTION COMPLAINT

Plaintiff Kenneth G Schneider, Jr , by and through his undersigned counsel, brings this action on behalf of himself and all others similarly situated as a voluntary class action under Rule 23 of the South Carolina Rules of Civil Procedure, and alleges

PARTIES, CAPACITY AND JURISDICTION

1 Plaintiff Kenneth G Schneider Jr , is a resident and owner of two apartments in the Bohicket Marina Village Horizontal Property Regime (hereinafter "Regime") located at Marsh Oak Lane Johns Island, Charleston County, South Carolina Moreover, by virtue of Mr Schneider's ownership interest of his two apartments in the Regime, under the Master Deed of the Bohicket Manna Village

Horizontal Property Regime (hereinafter "Master Deed") and the By-laws for the Bohicket Marina Village Council of Co-Owners Inc (hereinafter "By-laws"), he is a member or shareholder of the incorporated association of owners known as the Bohicket Marina Village Council of Co-Owners, Inc (hereinafter the "Council")

2 Defendant Board of Directors of the Bohicket Marina Village Council of Co-Owners, Inc , for the years 1990 to the present (hereinafter the "Board"), was and is the body charged under the By-Laws with the management of the affairs of the Council, the Board does not own the real property at issue nor does it occupy or rent any of the property at issue here The Board, at all times relevant, was and is a South Carolina entity, continuously and systematically transacting business in this State Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann §36-2-802 (1976)

3 Defendant First Palmetto, Inc , upon information and belief is a South Carolina corporation licensed to do business in South Carolina and is engaged in the business of managing horizontal property regimes, and was hired by the Board or Members of the Board to discharge the duties of management and maintenance of the Regime or undertook such duties at the direction of the Defendants or on its own behalf Accordingly, jurisdiction over this Defendant is proper in this Court under South Carolina Code Ann §36-2-802 (1976)

4 Defendant, Oliver H Mathewes, upon information and belief, is a South Carolina resident engaged in the business of managing horizontal property regimes

and was hired by the Board or Members of the Board to discharge the duties of management and maintenance of the Regime or undertook such duties at the direction of the Defendants or on his own behalf. Moreover, upon information and belief, Defendant Mathewes is the president, sole shareholder, and controlling person of Defendant First Palmetto, Inc. and was at all times relevant, the controlling person of Defendant First

5 The class of Plaintiffs consists of all persons, corporations, partnerships, unincorporated associations or other entities that own in whole or in part any apartment in the Regime

CLASS ACTION ALLEGATIONS

6 This class action is brought by Plaintiff as representative of the Class defined herein pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, to recover monetary damages from the Defendants for breaches, fiduciary duties, negligence, gross negligence, recklessness, wantonness, willfulness, bad faith, mismanagement, and waste with respect to its duty of administration, care and maintenance of the Regime property and its duty to protect the interests and rights of the members of the Council with respect to the Regime property

7 As described in Paragraph 6, above, the class of Plaintiffs consists of individuals, corporations, partnerships, unincorporated associations or other entities that currently or in the future will own, in whole or in part, any apartment in the Regime (hereinafter "Class")

8 The Class does not include any former owner of apartment in the Regime

9 The Class is sufficiently numerous that joinder of all the members is impracticable

10 Plaintiff Kenneth G Schneider Jr will fairly and adequately protect the interests of the class as Class representative The interests of the Class representative are coincident with and not antagonistic to, those of the other class members and Plaintiff is represented by experienced and able counsel who have previously litigated class actions and similar types of cases

11 There are questions of law and fact common to the Class Common questions of law include the liability of Defendants for among other things as more particularly described below nonfeasance, misfeasance, and malfeasance in the administration, care and maintenance of the Regime property and is safeguarding the rights of the Class with respect to the Regime property Common questions of fact include as more particularly described below, whether the wrongful acts and omissions of the Defendants with respect to the administration, care and maintenance of the Regime property constitute negligent, gross negligent, reckless willful, wanton or bad faith behavior and whether these wrongful acts or omissions of the Defendants caused or will cause the Class to suffer damages

12 Plaintiff's claims are typical of the Class members' claims and derive from a common nucleus of operative facts in that Defendants, at all times relevant, are or were either charged with a duty of administration care and maintenance of the

Regime property and the interests and rights of the members of the Council or undertook such duties. Each Class member has been or will be similarly injured by the Defendants' wrongful acts or omissions in the administration, care and maintenance of the Regime property and the interests and rights of the members of the Council, such that the interests of the Plaintiff, as Class representative, are consistent with those of the members of the Class.

13 For the reasons described above and further explained below, a class action is especially appropriate in this case to promote judicial efficiency and to protect Class members' interests and rights as common questions of law and fact clearly predominate over individual issues.

14 Moreover, class treatment is a superior method for the fair and efficient adjudication of the issues in dispute because it permits a large number of injured parties, joinder of who is impracticable, to prosecute their common claims in a single forum simultaneously. Moreover, the class action provides an efficient method whereby the relative rights of the Class members and Defendants can be fairly managed without unnecessary expense or duplication.

15 If Class members were to pursue individual litigation, it would be unduly burdensome to the South Carolina courts within which the individual litigation would proceed. Individual litigation would magnify the delay and expense to all parties in the court system of resolving the controversy engendered by Defendants' course of conduct with respect to the administration, care and maintenance of the

Regime property and in safeguarding the rights of the Class with respect to the Regime property. By contrast, the class action device presents far fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court. Concentrating this litigation in one forum will aid judicial economy and efficiency, promote parity among the claims of the individual Class members, and result in judicial consistency. Notice for the pendency and any resolution of this action can be provided to all Class members by first class mail.

16. The expense and burden of individual litigation of a case of this magnitude makes it impractical for individual Class members to seek redress for the wrongs done to them and, therefore, requires consolidation of all such claims in one action.

17. Given the scope of harm inflicted by Defendants and the egregiousness of their misconduct, the prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members who are not parties to the adjudication or substantially impair or impede their ability to protect their interests.

18. Prosecution of this matter as a class action will most likely eliminate the possibility of repetitious litigation and provide redress for Class members who would not or could not prosecute this complex litigation on an individual basis.

19 Plaintiff Kenneth G Schneider Jr and Class members envision no unusual difficulty in the management of this action as a class action

20 Certification of this action as a class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate

SUBSTANTIVE ALLEGATIONS

21 Defendants were or are charged with a duty of administration, care and maintenance of the Regime property and with safeguarding the interests and rights of the members of the Council or they undertook such duties Nevertheless Defendant have acted or failed to act such that Defendants have committed breaches of fiduciary duties, negligence gross negligence, recklessness, wantonness, willfulness, bad faith, mismanagement and waste with respect to their duty of administration care and maintenance of the Regime property and their duty to protect the interests and rights of the members of the Council with respect to the Regime property These wrongful acts and omissions have caused and will cause the Plaintiff and the Class members to incur and continue to incur substantial money damages

FACTUAL BACKGROUND

22 On or about October 7, 1997, Plaintiff Kenneth G Schneider, Jr , owned two adjoining apartments in the Regime, Units 1909 and 1910, Building #2 At or about that time Plaintiff advised Defendants of his intent to combine these two

Units pursuant to the Master Deed and subject to the applicable By-laws and administrative rules and regulations adopted pursuant thereto

23 On or about November 11, 1997, the Board approved Plaintiff's request to combine his Units

24 Thereafter Plaintiff undertook efforts to combine his two Units into one Unit

25 On or about March 17, 2000, during the combination of his two Units Plaintiff discovered structural defects in the floors, walls, ceiling and structural supports throughout the structure of Building #2 Upon consulting with a structural engineer, Plaintiff was advised that due to the serious deterioration and structural deficiencies present in Building #2 collapse of the building was imminent Due to the exigency of the circumstances Plaintiff immediately implemented a plan to shore or support the structure and level the affected walls, floors and ceilings He thereafter notified the Board and urged it to investigate and to perform destructive testing in June of 2000 As a result of the refusal of the Board, suit was instituted on August 18, 2000 and prior to filing suit any further meetings with the Board would have been futile After institution of the suit, he sought permission for the Board to initiate destructive testing by Marshall Clarke, AIA, such permission was refused On November 13 2000, the Board permitted only limited intrusive testing which was interrupted by the Board Only in January 12, 2004 did the Board permit invasive testing of Building

2, 3 and 6 At all times above he sought to have the Board investigate, repair or at least permit investigation of the problems

26 Thereafter, visual inspections of the remaining apartment buildings of the Regime indicated that substantially the same conditions were present in those buildings as was found in Plaintiff's building

27 Upon information and belief, it will require in excess of Fifteen Million Dollars (\$15,000,000 00) to correct and repair the significant structural problems with the apartment buildings of the Regime and to compensate the Class for the resulting loss of use of the apartments during said repairs

FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence and Recklessness
as to all Defendants)

28 Plaintiff repeats and realleges Paragraphs 1 through 28 above as if fully set forth herein verbatim

29 All Defendants owed a duty to the Plaintiff and the Class to exercise that degree of skill necessary to insure that the Regime property was properly maintained and to keep the owners informed of serious defects found or discovered, and protect the owners' property interests in conformity with the customary and ordinary standards of the condominium management industry

30 As a direct and proximate result and consequence of the aforementioned negligent, grossly negligent, and reckless acts or omissions of all Defendants, the Plaintiff and the Class have and will continue to spend substantial

sums of money for the extraordinary repairs and reconstruction of major portions of the Regime's common elements and the individual apartments. The Plaintiff and the Class were made responsible for the repairs as a result of the aforementioned negligence, gross negligence and recklessness of the Defendants including, but not limited to, one or more of the following particulars, to-wit:

(a) In failing to properly inform the property owners of the conditions known or which should have been known so that the Regime apartment buildings and the individual apartments could be repaired and protected from the damage due to the construction and design defects,

(b) In failing to properly oversee the Regime in order to insure that all defects were reported to the property owners so that repairs could proceed in accordance with the customary and ordinary standards of the construction and condominium management industries,

(c) In allowing and failing to report non-conforming or defective conditions,

(d) In failing to inform the proper owners of the true nature of the defective conditions of the Regime property,

(e) In failing to and improperly pursuing or obtaining adequate remedies as a result of the defective condition of the Regime property,

(f) In failing to use available funds to mitigate the substantial damage which was and is resulting from the aforementioned significant, structural design or construction defects or deficiencies, and in failing to invest the available funds or

otherwise prepare adequate reserves so as to fund the now required extraordinary repairs as described above

(g) In allowing any claims that the Regime property owners may have had against any potentially responsible party to be barred by the applicable statute of limitation or repose or by *res judicata* such that the Regime property owners will be forced to expend substantial amounts of money to repair replace and reconstruct substantial portions of the Regime's common elements and their individual apartments

31 The Defendants' acts as set out above caused no physical injury to tangible property nor did these acts result in a loss of use of that property Plaintiffs will be subject to money damages, not property damage, due to required budget deficits and special assessments directly resulting from Defendants' negligence and recklessness as a direct and proximate result thereof, together with such punitive damages as may be appropriate These money damages are a direct and proximate result of the Defendant's errors, omissions and breaches of duty directly related to the management of the premises

FOR A SECOND CAUSE OF ACTION

(Gross Negligence and Gross Negligent Misrepresentation
as to all Defendants)

32 Plaintiff repeats and realleges Paragraphs 1 through 32, above, as if fully set forth herein verbatim

33 Each of the wrongful acts as described above that occurred in connection with the management of the Regime property and affairs were more than momentary thoughtlessness inadvertence, or error in judgment on the part of all of the Defendants with regard to the representations, consisting of either affirmative statements or silence, when there was a duty to speak made to the Plaintiff and the Class Instead, these wrongful acts or omissions constitute an entire want of care and conscious indifference to the rights, welfare, or property of the Plaintiff and the Class and were intended to cause financial harm to the Plaintiff and the Class such that these acts constituted gross negligence

34 Said wrongful acts and conduct were the direct and proximate cause of the damages suffered by Plaintiff and the Class such that Plaintiff and the Class are entitled to recover from all Defendants an amount, as described above in excess of Fifteen Million Dollars (\$15,000,000.00), the precise amount of which is presently unknown and will be proved at trial

35 Moreover Plaintiff and the Class are entitled to recover judgment against all Defendants for punitive/exemplary damages for such gross negligence and heedless, careless, and reckless disregard for the rights, welfare, and property of the Plaintiff and the Class, in a sum as this Court deems just and equitable

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation as to all Defendants)

36 Plaintiff repeats and realleges Paragraphs 1 through 36, above, as if fully set forth herein verbatim

37 All Defendants in the course of their actions to negligently mislead Plaintiff and the Class as above-described and in the course of inducing the Plaintiff and the Class to enter into and allow the continuance of the Defendants' management of the Regime property and affairs (transactions in which the Defendants had pecuniary interests) supplied false information either by silence or affirmative statements for the guidance of Plaintiff and the Class in making decisions about these transactions namely, those misrepresentations stated above

38 All Defendants, individually, owed a duty of care to see that he or she communicated truthful information to Plaintiff and the Class with regard to the aforementioned transactions

39 All Defendants failed to exercise reasonable care or competence to obtain or communicate true information thereby breaching their duty of care to communicate truthful information Said false information, under the circumstances, was justifiably and reasonably relied upon by Plaintiff and the Class to their detriment in deciding to enter into and to allow the continuance of the aforementioned transactions

40 At all times, all Defendants knew or should have known that the information supplied to Plaintiff and the Class would be and was actually relied upon by Plaintiff and the Class, and that Plaintiff and the Class intended to rely upon information in making business decisions Moreover, all Defendants had

actual knowledge of the reliance on said misrepresentations by Plaintiff and the Class

41 As a direct and proximate result of the reliance by Plaintiff and the Class upon the Defendants' misrepresentations, Plaintiff and the Class have incurred or will incur substantial pecuniary loss and, as described above are entitled to recover from the Defendants an amount in excess of Fifteen Million Dollars (\$15,000,000 00), the precise amount of which is presently unknown and will be proved at trial, and for such other relief as the Court deems necessary or proper

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duties as to all Defendants)

42 Plaintiff repeats and realleges Paragraphs 1 through 42, above, as if fully set forth herein verbatim

43 The cost of the above-described extraordinary repairs and maintenance necessitated by the above-described construction or design defects, and the Defendants' neglect of the problems caused thereby, is so great that Plaintiff and the Class are without means to bear the financial burden thereof, even though it may ultimately be their liability and responsibility under the Master Deed and By-laws

44 The Defendants, as described above, had and have fiduciary relationships and owed fiduciary duties and obligations to Plaintiff and the Class. The Defendants, as described above, at all times relevant were or should have been aware of the extensive and severe construction or design defects and

problems, their failure to properly investigate the extent of these defects and problems, their failure to properly investigate the extent of these defects and problems their failure to properly mitigate damaging effects of these problems and defects, their failure to adequately invest for or otherwise find for the financial burden of the above-described extraordinary repairs and required maintenance and their failure to properly safeguard the rights and interests of Plaintiff and the Class, as described above

45 Upon information and belief, the Defendants purposely withheld their knowledge of the above-described from Plaintiff and the Class to the extreme detriment of Plaintiff and the Class, in that by so failing to notify Plaintiff and the Class the Defendants knowingly caused Plaintiff and the Class to become responsible and liable for the above-described needed extraordinary repairs and reconstruction expenses far in excess of the Plaintiff's or the Class' ability to pay such that the Defendants breached their fiduciary duties owed to the Plaintiff and the Class including, but not limited to, the duty to perform the contract, the duty of care and skill, the duty of good conduct, the duty to give information, the duty to keep and render accounts, the duty to act only as authorized, the duty to make a profit, the duty to account for profits, the duty of service and obedience, the duty to obey, the duty not to act as or for an adverse party and the duty of loyalty, of these said breaches have, are and will actually and proximately cause the above-described injuries and damages to the Plaintiff and the Class such that the Plaintiff

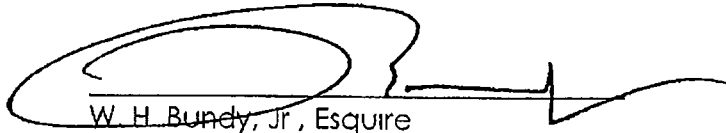
and the Class are entitled to recover from the Defendants an amount in excess of Fifteen Million Dollars (\$15 000 000 00), the precise amount of which is presently unknown and will be proved at trial, and such other relief as the Court deems necessary or proper

RELIEF REQUESTED

WHEREFORE, Plaintiff and the Class respectfully pray this Court certify this action as a Class Action under Rule 23 of the South Carolina Rules of Civil Procedure, hold the Defendants liable for the conduct complained of herein, enter a judgment against the Defendants and in favor of the Plaintiff and the Class for the relief as requested in this Complaint, and award the Plaintiff and the Class their costs and attorneys' fees, and such other and further relief as may be deemed appropriate

Plaintiff and the Class further demand a jury trial with respect to all issues so triable

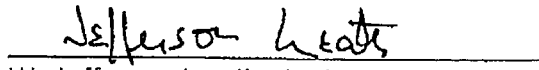
SMITH, BUNDY, BYBEE & BARNETT, P C



W. H. Bundy, Jr, Esquire
Post Office Box 1542
Mt Pleasant South Carolina 29465-1542
Telephone (843) 881-1623

-and-

LEATH, BOUCH & CRAWFORD LLP



W Jefferson Leath, Jr, Esquire
134 Meeting Street, 5th Floor
Charleston South Carolina 29401
Telephone (843) 937-8811

ATTORNEYS FOR PLAINTIFFS

Charleston, South Carolina

Dated

2/15/05

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO 02-CP-10-1671

KENNETH G SCHNEIDER, JR , on
behalf of himself and others similarly
situated,)

Plaintiffs,)

-versus-)

BOARD OF DIRECTORS FOR THE
BOHICKET MARINA VILLAGE
COUNCIL OF CO-OWNERS, INC ,
for the years 1990 to the present,
FIRST PALMETTO, INC)

Defendants)

VERIFICATION

FILED
2005 FEB 15 AM 9 38
JULIEN OF COURT
BY _____

Personally appeared before me Kenneth G Schneider, Jr , who being first duly sworn, deposes and states as follows

That he is the Plaintiff in the above-captioned matter and the owner of property located at Bohicket Marina Village, and, as such, it is an integral part of his ownership of property at Bohicket Maria Village to be familiar with the allegations contained in the Amended Complaint against the Defendants Further, he has personally reviewed the allegations contained in the Amended Complaint which represent the amounts due and owing the Plaintiff by the Defendants Further, all of the other allegations in the Amended Complaint are true and correct based upon his information and belief, and further the Affiant sayeth not

Kenneth G. Schneider Jr.
Kenneth G Schneider, Jr
Plaintiff

SWORN TO before me this 15th
Day of February, 2005
[Signature]
Notary Public for the State of South Carolina
My Commission Expires 1-31-2010



Post Office Box 1504 • Summerville, SC 29484 1504

843 871-7549 • Fax. 843-875 5779

ht472@hometeaminspection.com

E mail rgoodman5@sc.rr.com

June 5, 2007

Chip Carpenter

RE 1964 Bohicket Marina
Seabrook Island, SC 29455
Inspection # 472-062007-0257

Dear Mr & Mrs Carpenter

On 6/5/2007 The HomeTeam Inspection Service made a visual inspection of the property referenced above. Enclosed please find a written, narrative report of our findings in accordance with the terms of our Home Inspection Agreement. Although maintenance items may have been addressed verbally at the time of the inspection, they may not be included in the enclosed report.

I trust the enclosed information is helpful and I hope you enjoy every aspect of your new home. If I can be of any assistance, please feel free to call me at the above telephone number.

Sincerely,

The HomeTeam Inspection Service

Roger Goodman



File Number 472-062007-0257
Address of Inspection 1964 Bohicket Marina

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GENERAL DESCRIPTION.

Throughout this report, the terms "right" and "left" are used to describe the home as viewed from the street. The term "major visual defect" is defined in the Home Inspection Agreement, the terms of which are incorporated into this report. The HomeTeam inspects for evidence of structural failure and safety concerns only. The cosmetic condition of the paint, wall covering, carpeting, window coverings, etc., or deficiencies that would be apparent to the average person are not addressed. All conditions are reported as they existed at the time of the inspection.

This inspection is limited to the readily accessible, visible components of the home and does not address the insurability of the property. This is not a code inspection. Zoning, easements, setbacks, restrictions, or home owner's association rules, by laws or codes are not within the scope of this inspection.

Routine maintenance and safety items are not within the scope of this inspection unless they otherwise constitute major, visually observable defects as defined in the Home Inspection Agreement. Although some maintenance and/or safety items may be disclosed, this report does not include all maintenance or safety items, and should not be relied upon for such items. Some components that are inspected and found to be functional may not necessarily appear in the report, simply because we do not wish to waste our client's time by having them read unnecessarily lengthy report about components that do not need to be serviced.

The inspected property consisted of a 1st floor condominium wood-framed structure with stucco and wood that was occupied at the time of the inspection. There were visual defects on the visible portions of the siding (cracking in stucco and moisture damage to wood siding/trim). The approximate temperature at the time of the inspection was 80 to 85 degrees Fahrenheit, and the weather was sunny and clear. The utilities were on at the time of the inspection. The buyer was present during the inspection.

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The home was situated on a lightly sloped lot. The general grade around the home appeared to be adequate to direct rain water away from the foundation. The age of the home, as reported by the buyer's Agent, was said to be twenty to twenty five years old.

There was a brick walkway leading to brick front entry way in the front of the home. There were no major visual defects observed in the walkway or the front entry way.

There was an asphalt driveway in the front of the home which led to the home. There were no major visual defects observed in the driveway.

PATIO

There was a brick patio located in the back and front of the home. There were no major visual defects observed to the patio.

ROOF STRUCTURE

The roof was a gable design covered with asphalt/fiberglass shingles. Observation of the roof surfaces and flashing was performed from ground level or roof edge. The age of the roof covering, as reported by the buyers Agent, was approximately (unknown) years. There was one layer of shingles on the roof at the time of the inspection.

There was light curling and moderate surface wear observed on the roof shingles at the time of the inspection. These conditions indicate the roof shingles were in the second half of their useful life.

This visual roof inspection is not intended as a warranty or an estimate on the remaining life of the roof. Any roof metal, especially the flashing and valleys, must be kept well painted with a paint specially formulated for the use. There were no major visual defects detected on the exterior of the roof.

The roof drainage system consisted of aluminum gutters and downspouts which appeared to be functional at the time of the inspection. Gutters and downspouts should receive routine maintenance to prevent premature failure. There were no major visual defects observed on the visible portions of the gutters or downspouts.

There was one chimney. Observation of the chimney exterior was made from the ground, with the aid of binoculars. There were no major visual defects observed on the exterior.

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FOUNDATION

The foundation appears to be constructed of poured concrete. There were no major visual defects observed on the visible portions of the foundation.

CRAWL SPACE

The crawl space was accessible at the time of the inspection, and was damp. Because of its configuration, it was not possible to inspect all areas of the crawl space. A crawl space should have a polyvinyl vapor barrier covering the surface and should be adequately vented at all times. There were visual defects observed in the crawl space.

DEBRIS IN CRAWLSPACE

There was debris in crawlspace that should be removed to prevent moisture damage and rodents in crawlspace.

FLOOR STRUCTURE

The visible floor structure consisted of a plywood subfloor, supported by two-inch by eight-inch wood joists spaced sixteen inches on center. There was 8x16-inch concrete block walls, posts or piers for load bearing support. There were no major visual defects observed in the visible portions of the floor structure.

FLOOR INSULATION

Home had floor insulation between joists. Floor insulation limits inspection of flooring system. There were defects observed in the insulation of the flooring system. There was insulation down or is deteriorating and falling down.

PLUMBING

The visible water supply lines throughout the home were copper, polybutylene and pex pipe. The water was supplied by a public water supply. The visible waste lines consisted of PVC pipe. The home was connected to a public sewer system. All plumbing fixtures not permanently attached to a household appliance were operated and inspected for visible leaks. Water flow throughout the home was average. There were no major visual defects observed in the visible portions of the plumbing system.

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PLUMBING AGE.

Although there appeared to be no leaks or problems with the plumbing at the time of this inspection Buyer should expect repairs because age of plumbing and fixtures

POLYBUTYLENE SUPPLY PIPE .

Polybutylene water supply pipes were found at the time of inspection Polybutylene water lines have had a history of failure

Polybutylene supply lines are usually grey in color although some are black The larger diameter yard service line has been made in gray, black and blue

Fittings for polybutylene systems are either compression-nut or crimp-ring-and-insert The insert fittings are acetal plastic, or copper or brass

Polybutylene was competitively priced and very easy to work with The lines were very flexible, many turns could be made without the use of elbow fittings, just by bending the pipe

Polybutylene supply lines have proved vulnerable to chlorine exposure in concentrations above 2ppm, typical of most municipal water supplies Also, the acetal plastic insert fittings have proved even more sensitive to chlorine degradation than polybutylene The chlorine leaches polymers from the polybutylene (and the acetal inserts) over time, making it brittle Private well water is rarely chlorinated and has not been known to pose a threat to polybutylene

The sale of fittings for use with polybutylene was discontinued near the end of 1986 Polybutylene piping was removed from the Uniform Plumbing Code as an approved water distribution material in 1989 Early in 1995 Shell Chemical announced they would no longer sell polybutylene to U S pipe manufacturers

Polybutylene systems installed on non-chlorinated well-water systems using compression fittings have no known history of problems But, polybutylene systems installed on chlorinated municipal supplies have a known history of problems, especially when crimped insert fittings were used

The settlement of a class-action law suite may provide some compensation to homeowners with polybutylene systems Call the Consumer Plumbing Recovery Center at 1-800-356-3496 or pbpipe.com

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BACKFLOW PREVENTER & EXPANSION TANKS

Most modern homes may have a backflow preventer installed at or near the meter. Many municipalities require them to be added on older homes when work on the plumbing system is performed, or if an irrigation system is present. Backflow preventer should be tested annually. In systems with a backflow preventer, an expansion tank should be present to avoid overpressure conditions created by water expansion in a closed system. Expansion tanks are typically located at the cold water supply to the water heater.

The water meter was located in the front. The main water shutoff valve for the home was located adjacent to the water service entry point at meter.

There was a 50 gallon capacity, electric water heater located in the storage room. The water heater was manufactured by A O Smith. A temperature and pressure relief valve (T & P) was present. Because of the lime build-up typical of T & P valves, we do not test them. An overflow leg was present. It did terminate close to the floor. Your safety depends on the presence of a T & P valve and an overflow leg terminating close to the floor. Water heaters are not checked for adequacy or efficiency, function only.

The water heater was functional.

The life expectancy of a domestic water heater is 10 to 15 years. Water heaters generally are not replaced unless they leak. The heating element in an electric heater may require replacing prior to the end of life expectancy of the heater itself. It is very important that water heaters have a properly installed relief valve and discharge piping, the valve discharge should point downward and within 6" of floor or ground.

ELECTRIC SERVICE

The underground electric service wire entered the home on the front wall. The electric meter was located on the exterior wall. The service wire entered a General Electric service panel, located on the Utility room wall with a 150 amp and 120/240 volt rated capacity. The branch circuits within the panel were copper. These branch circuits and the circuit breaker to which they were attached appeared to be appropriately matched. The visible house wiring consisted primarily of the Romex type and appeared to be in good condition.

A representative number of installed lighting fixtures, switches, and receptacles located throughout the home were inspected and were found to be functional. The grounding and polarity of receptacles within six feet of plumbing fixtures, and those attached to ground fault circuit interrupters (GFCI), if present, were also tested. All GFCI receptacles and GFCI circuit breakers should be tested monthly. There were GFCI protected circuits located in the bathroom(s). The present and tested GFCI's were not functional. A non-functional GFCI should be replaced with functional GFCI's.

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ARC FAULT BREAKERS

The system does not include arc-fault circuit interrupter, which effective January 2002 are mandated by electrical code to protect 15 and 20 amp branch circuits serving bedrooms, and you may wish to upgrade these circuits

GFCI (GROUND FAULT CIRCUIT INTERRUPTERS)

GFCI's are required by modern code on all outlet circuits in bathrooms, kitchens, garages and exterior. If system does not have GFCI protection on the outlets in the following areas, (bathrooms, kitchen, garage and exterior) Inspector recommends upgrading these circuits to GFCI protected circuits

The electrical service appeared to be adequate. Alarms, electronic keypads, remote control devices, landscape lighting, telephone and television, and all electric company equipment were beyond the scope of this inspection. There were no major visual defects observed in the electrical system

CLOSET LIGHTS

Safety Note: The home has closets that have overhead lights installed. Objects should be kept 12 to 18 inches away from the lights to avoid a potential fire hazard

SMOKE ALARMS

There were smoke alarms found in the house. For safety reasons, the smoke alarms should be tested upon occupancy. The batteries (if any) should be replaced with new ones when you move into the house, and tested on a monthly basis thereafter

WINDOWS, DOORS, WALLS AND CEILINGS

All exterior doors were operated and found to be functional. The exterior door locks should be changed or rekeyed upon occupancy. Possible problem areas may not be identified if the windows or doors have been recently painted. There were defects observed in the windows or doors (moisture damage to door casing/trim)

The interior wall and ceiling surfaces were finished with drywall. Possible problem areas may not be identified if the interior wall and ceiling surfaces have been recently painted. There were no major visual defects observed in the interior walls or ceilings

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INTERIOR WALL AND CEILING CRACKING

There was cracking or loose drywall tape in the home. Cracking or loose tape appeared to be from minor movement of drywall. All cracking and loose drywall tape appeared to be non-structural in nature.

LIVING LEVEL

The living level consisted of living room, kitchen, bathrooms, bedrooms, office. The HomeTeam inspects for evidence of structural failure and safety concerns only. The cosmetic condition of the paint, wall covering, carpeting, window coverings, etc., are not addressed. There were no major visual defects observed on the living level.

The visible portions of the cabinets and counter tops were in good condition. The appliances were turned on to check operational function only. No warranty, express or implied, is given for the continued operational integrity of the appliances or their components. The kitchen contained the following appliances:

The Frigidaire electric range was inspected and did appear to be functional. The accuracy of the clock, timers and settings on ovens are not within the scope of this inspection.

The Frigidaire refrigerator was inspected and did appear to be functional. The temperature setting and ice maker, if present, are not within the scope of the inspection.

The Frigidaire dishwasher was observed through a complete cycle and did appear to be functional when set on the "wash" and "drain" cycle.

The Badger disposal was inspected and did appear to be functional. The efficiency rating is not within the scope of the inspection.

The General Electric microwave oven was inspected and did appear to be functional. The accuracy of the clocks, timers and settings are not within the scope of this inspection.

CLOTHES WASHER AND DRYERS

Clothes washer and dryers are not inspected. Overflow pans under washer, with a drain line routed to the exterior, are always recommended, especially when laundry area is on the second level or above. When hooking up a dryer, it must be kept vented to the exterior to prevent moisture from building up in the house. Dryer vent lines require periodic inspection and cleaning to avoid a lint buildup that may cause a fire.

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FIREPLACE

There was one fireplace in the home. The visual condition at the time of the inspection is indicated as follows:

A wood-burning fireplace was located in the living room. The damper did appear to be functional. There was visual evidence of creosote buildup in the firebox and/or chimney. There were no cracks observed in the firebox or visible portions of the chimney.

For safety reasons, a fireplace and the chimney or pipe to which it is vented should be cleaned and re-inspected as there may be hidden defects, not fully visible at the time of the inspection. The fireplace was not tested for operation or function.

ATTIC STRUCTURE

The attic was not accessed. 1st floor unit.
Because of the configuration of the structure, which limited access all 1st floor access.

HEATING AND COOLING

The electric outdoor heat and cooling condensing unit was Trane, Model Number 2TWR2030B100AA and Serial Number 3442KGL4F Mfd 10/2003. The unit is located in front of the home. The air handler unit is located in the crawl space. Periodic preventive maintenance is recommended to keep this unit in good working condition. System or systems are not checked for adequacy or efficiency, function only.

The cooling system did appear to be functional (54)

Heat Pumps operate at maximum efficiency when serviced at least once a year. Adequate air flow is important and keeping the filter clean will help system. It is not advisable to shut off supply grilles to rooms except as required to balance heat and cooling. The total heating or cooling capacity of a heat pump system varies on outside temperature conditions.

The major components of an air conditioning condensing unit are the compressor and the condensing coil. The estimated age of a condensing unit is taken from the equipment nameplate. Sometimes the compressor, which is not visible, may have been replaced since the original installation. Air conditioners cannot be checked if the outside temperature is below 60 degrees F.

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There will be normal temperature variations from room to room and level to level, most noticeable between levels

DUCTWORK

Airflow throughout the house may be balanced by adjusting any dampers in the supply ducts, or by adjusting the supply registers

FILTER TYPE

The disposable filter(s) should be replaced on a regular basis to maintain the efficiency of the system or systems. The efficiency rating is not within the scope of this inspection

CONTROLS.

The control(s) for the heating and air conditioning system or systems were 24 volt thermostat(s) located on the interior wall(s) of the home. The thermostat(s) were manufactured by Bryant and were found to be in working order

The Summary should not be solely relied upon and the full report should be read in its entirety. The summary is not intended to be all-inclusive or contain detail, which can be found in the narrative. Categorization of items is subjective in nature, and the client(s) should reach their own determination of priorities

Major Concerns

Maintenance Concerns

- 1) Moisture damage rear living room sliding door casing /trim ,rear kitchen doors casing/ trim and both front bedroom sliding door casing/trim
- 2) Debris under home needs removal
- 3) Insulation down in crawl space
- 4) Vapor Barrier under home needs replacement
- 5) Dryer vented to rear crawl vent , not completely to exterior
- 6) Air unit condensation line dripping rear of crawl space not to exterior