

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

James C. Williams, Circuit Court Judge sitting as Special Referee

Trial Case No. 2011-CP-10-2232

Appellate Case No. 2014-001915

The Bristol Condominium
Property Owners Association.....Respondent,

v.

John T. Lucas St. as Trustee of the John T. Lucas Revocable
Trust Dated November 10, 2004, and Carolyn C. Lucas [as Trustee of the Carolyn C. Lucas
Revocable Trust Dated November 10, 2004.....Defendants/Counterclaim Plaintiffs,

Of Whom John T. Lucas, Sr. is the Appellant,

v.

The Bristol Condominium
Property Owners Association.....Counterclaim Defendant.

RECORD ON APPEAL
Volume One

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

THE BRISTOL CONDOMINIUMS
PROPERTY OWNERS ASSOCIATION,

Plaintiff,

vs.

BRITTLEBANK CONDOMINIUMS, LLC,
THE BEACH COMPANY, BEACH
BRITTLEBANK, LLC, FSP
DEVELOPMENT, LLC, GULF STREAM
CONSTRUCTION COMPANY, INC., NILES
BOLTON ASSOCIATES, INC., ANDERSEN
WINDOWS, INC., BUCK LUMBER AND
BUILDING SUPPLY, INC., FERST
PLASTERING, INC., CISSON INTERIORS,
INC., SUPERIOR STRUCTURES, INC.,
ABG CAULKING CONTRACTORS, INC.,
GLASGOW ROOFING COMPANY, AND
DONALD BARR D/B/A BARR & BARR
SERVICES, GERALD WATFORD,
WATFORD TILE COMPANY, WATFORD
TILE, INC., AND ALUMTECH CO., INC.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2007-CP-10-0612-
607

ORDER

FILED
2009 MAR 10 PM 1:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY BB

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JANICE L. LANDRY, DAVID B. LANDRY,
JOHN M. JORDAN, JR. MARY J. JORDAN,
DANIEL LONGFELLER WARNER, CO-
TRUSTEE AND DEREK LONGFELLOW
WARNER, CO-TRUSTEE OF THE DAVID
W. WARNER AND JUNE J. WARNER,
QUALIFIED PERSONAL RESIDENCE
TRUSTS, JACK A. DILL, KAREN A. DILL,
OLGA VALLDEJULI-PUIG, ELIZABETH
ASHLEY MIDDLETON, DANIEL B. CARR,
JUSTINE M. CARR, EMILY B. MOHR AS
TRUSTEE OF THE EMILY B. MOHR
REVOCABLE TRUST, BRADLEY DEAN

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2007-CP-10-0607

SHERLOCK, JOHN C. HAMMA, PEGGY P.)
NEALE, CHARLES EDWARD DEROSE AS)
TRUSTEE OF THE CHARLES EDWARD)
DEROSE FAMILY TRUST U/A, BETTY L,)
RHYE, LARRY M. RYHE, TROY W.)
HERNDON, LINDA H. HERNDON,)
CONSTANCE K. FRANZBLAU, SAMUEL)
N. COBLE, ROSALIE S. ORVIN, ANN M.)
PETERSON, CRAIG R. TALLBERG,)
GERALD E. NEWKIRK, GAIL E.)
NEWKIRK, NORRIS PREYER, LUCY)
PREYER, WILLIAM M. TUNNO, ELISA O.)
TUNNO, ALEX COLE EBERT AND)
ELIZABETH HARK EBERT AS TRUSTEES)
OF THE ALEX COLE EBERT REVOCABLE)
TRUST, MORRIS D. ROSEN,)
CHRISTOPHER G. CLEMENT, ERNEST L.)
ZINKOWSKI, ROBERT B. MILLER, JANE)
M. MILLER, LORETTA W. NICKEL AS)
TRUSTEE OF THE LORETTA W. NICKEL)
LIVING TRUST, JAYNE D. HARMON,)
JAMES H. FREY, AND JACQUELINE)
FREY AS TRUSTEES OF THE FREY)
FAMILY REVOCABLE TRUST, W. ALLEN)
WOODS, REBECCA C. HYER, JAMES)
DARRELL KELLEY, CAROLE P. KELLEY,)
ACCESS CHARLESTON OFFICE, LLC,)
FRANK EASTMAN, JOANNES G.M.)
PRINS, MARIA T.M. SINDRAM, FRANCES)
LIEBER, MARIA VON VIVIS PANELLA,)
DAVIS WEAKS SCATES, DENNIS E.)
HOUSE, STEVEN L. HYATT, H.B.)
CAMPBELL, JANET B. TURNER AND H.J.)
TURNER, III,)

Plaintiffs,)

vs.)

BRITTLEBANK CONDOMINIUMS, LLC,)
THE BEACH COMPANY, BEACH)
BRITTLEBANK, LLC, FSP)
DEVELOPMENT, LLC, GULF STREAM)
CONSTRUCTION COMPANY, INC., NILES)
BOLTON ASSOCIATES, INC., ANDERSEN)
WINDOWS, INC., BUCK LUMBER AND)
BUILDING SUPPLY, INC., FERST)
PLASTERING, INC., CISSON INTERIORS,)

cn
2 of 5

INC., SUPERIOR STRUCTURES, INC.,)
ABG CAULKING CONTRACTORS, INC.,)
GLASGOW ROOFING COMPANY, AND)
DONALD BARR D/B/A BARR & BARR)
SERVICES, GERALD WATFORD,)
WATFORD TILE, INC., AND ALUMTECH)
CO., INC.,)
Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)
CASE NO. 2005-CP-10-3029)

KENNETH HANGER, MORTON ELLISON)
AND PATRICIA ELLISON, AND BUTLER)
DERRICK, individually and derivatively as)
acting on behalf of THE BRISTOL)
CONDOMINIUMS HOMEOWNERS)
ASSOCIATION,)
Plaintiffs,)

vs.)

BRITTLEBANK CONDOMINIUMS, LLC,)
THE BEACH COMPANY, FSP)
DEVELOPMENT, LLC, GULF STREAM)
CONSTRUCTION COMPANY, INC., NILES)
BOLTON ASSOCIATES, INC., ANDERSEN)
WINDOWS, INC., BUCK LUMBER AND)
BUILDING SUPPLY, INC., FERST)
PLASTERING, INC., AND SUPERIOR)
SURFACES OF CHARLESTON, INC.,)
Defendants.)

This matter came before the Court on February 26, 2009, on Defendant Beach
Company's Motion for Summary Judgment. Jesse A. Kirchner, Esquire appeared on
behalf of the Beach Company and H. Brewton Hagood, Esquire, Michael S. Seekings,

CW
Page 3 of 5

Esquire, and W. Jefferson Leath, Jr., Esquire appeared on behalf of the various above-captioned Plaintiffs.

Based upon The Beach Company's motion and the applicable law set forth therein, as well as arguments of counsel, I hereby make the following findings of fact and conclusions of law:

The Plaintiffs have sued The Beach Company alleging, *inter alia*, that The Beach Company provided an implied warranty of habitability and breached said implied warranty. South Carolina has recognized that the implied warranty of habitability springs from the sale of a new residence. *Smith v. Breedlove*, 377 S.C. 415, 422, 661 S.E.2d 67, 71 (2008) (citing *Kennedy v. Columbia Lumber & Mfg. Co., Inc.*, 299 S.C. 335, 344, 384 S.E.2d 730, 736 (1989)). The implied warranty of habitability "springs from the sale of a new house." *Kirkman v. Parex, Inc.*, 369 S.C. 477, 483 n.2, 632 S.E.2d 854, 857 n.2 (2006). In *Rutledge v. Dodenhoff*, 175 S.E.2d 792 (S.C. 1970), the South Carolina Supreme Court held that the seller of a new house provides "an implied warranty that the house was built in a reasonably workman-like manner and is reasonably suitable for habitation." *Id.* at 795 (emphasis added). Later, in *Lane v. Trenholm Building Company*, 229 S.E.2d 728 (1976), the Supreme Court went on to recognize that the implied warranty of habitability "is not founded upon fault, but because (the seller) has profited by receiving a fair price, and as between it and an innocent purchaser, the innocent purchaser should be protected from latent defects." *Id.* at 731. More recently, the Supreme Court distinguished the implied warranty of workmanlike service from the implied warranty of habitability by clarifying that the warranty of habitability "arises solely out of the sale of the home." *Smith*, 377 S.C. at 422, 661 S.E.2d at 71.

an
March 4, 2009

Because the implied warranty of habitability arises **solely** out of the sale of a new home, the key factual question in the present case is whether or not The Beach Company was the seller of the new condominium units. Based upon the record before the Court, I find that The Beach Company was the not the seller of any of the new units. There is no genuine issue of material fact as to who sold the new condominium units. The developer of record, Brittlebank Condominiums, LLC, was the seller of each of the new units. Having not sold any of the new condominium units in this case, The Beach Company, as a matter of law, cannot be liable for breach of the implied warranty of habitability.

CONCLUSION

Based upon the foregoing findings of fact and conclusions of law, Defendant Beach Company's motion for summary judgment as to the Plaintiffs' cause of action for breach of the implied warranty of habitability is **GRANTED**.

IT IS SO ORDERED!



Honorable Clifton B. Newman

This 10th day of March, 2009.

Charleston, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

John T. Lucas, Sr. as Trustee of the John T.,)
Lucas Revocable Trust and Carolyn C.)
Lucas, as Trustee of the Carolyn C. Lucas)
Revocable Trust,)

Plaintiffs,)

vs.)

The Bristol Condominium Property)
Owners Association,)

Defendant.)

Civil Action No.: 2010-CP-10-3240

ORDER

AND

The Bristol Condominium Property)
Owners' Association,)

Plaintiff,)

vs.)

John T. Lucas, Sr., as Trustee of the John T.)
Lucas Revocable Trust dated November 10,)
2004, and Carolyn C. Lucas as Trustee of)
the Carolyn C. Lucas Revocable Trust)
dated November 10, 2004,)

Defendants/Counterclaim Plaintiffs)

vs.)

The Bristol Condominium Property)
Owners' Association,)

Counterclaim Defendants.)

Civil Action No.: 2011-CP-10-2232

ORDER

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JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before the court on the Plaintiff's Consent Motion to Consolidate these matters for trial.

It appears that the cases arise from a common fact pattern, and that judicial economy and the ends of justice suggest that they be consolidated.

IT IS THEREFORE THE ORDER OF THIS COURT that these cases be, and they hereby are, consolidated in C.A. No.: 2010-CP-10-3240 for both the completion of discovery and for trial.

AND IT IS SO ORDERED.

Charleston, South Carolina

July 26, 2011

S/ Kristi Harrington
Honorable Kristi Lea Harrington
Presiding Judge, Ninth Judicial Circuit

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., Q.S. & F.C.
By [Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

2013-CP-10-1066
IN THE COURT OF COMMON PLEAS
Civil Action No.: ~~2011-CP-10-2232~~

~~2010-CP-10-3240~~

John T. Lucas, Sr. as Trustee of the
John T. Lucas Revocable Trust and
Carolyn C. Lucas Revocable Trust,

Plaintiffs,

-vs-

The Bristol Condominium Property
Owners Association,

Defendant.

FINAL ORDER

-and-

The Bristol Condominium Property
Owners' Association,

Plaintiff,

John T. Lucas, Sr. as Trustee of the
John T. Lucas Revocable Trust
Dated November 10, 2004, and
Carolyn C. Lucas Revocable Trust
Dated November 10, 2004,

Defendants/
Counterclaim Plaintiffs,

-vs-

The Bristol Condominium Property
Owners Association,

Counterclaim Defendant.

FILED
2013 AUG 19 AM 8:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter was tried before me sitting as a Special Referee on May 22nd and 23rd,

2013. In addition to two days of live testimony from the plaintiff John Lucas, Jan

Landry, John DeWitt and Lona Vest, the Court reviewed the deposition transcripts of

[Handwritten signature]

numerous witnesses including the plaintiff John Lucas, and reviewed numerous exhibits consisting of, among other things, the defendant's Master Deed, correspondence between the defendant and homeowners, the minutes of board meetings, repair estimates, cost estimates for windows and doors, and other documentation offered by each party in support of their respective positions, as more fully would appear in the record of the proceeding.

PROCEDURAL HISTORY

This matter was initially filed by the plaintiff Dr. John Lucas as Trustee for the John T. Lucas Sr. Revocable Trust and Carolyn C. Lucas as Trustee of the Carolyn C. Lucas Revocable Trust. The Case Number for the original action was 2010-CP-10-3240. Thereafter, the defendant, Bristol Condominium Property Owner's Association, filed a separate action to foreclose on the plaintiffs' condo for unpaid assessments and fees. That action bore case number 2011-CP-10-2232. The Lucases counterclaimed in that matter by asserting all of the same causes of action as they had brought in the earlier filed case. In addition, they asserted counterclaims for abuse of process, alleging that the foreclosure was merely retaliation for filing suit against the Association.

With the consent of both parties, the two actions were consolidated into one under the case number of the earlier filed case, 2010-CP-10-3240. As of the trial, the plaintiffs' surviving causes of action were for negligence, breach of fiduciary duty, fraud/constructive fraud and abuse of process.

With regard to the foreclosure, the plaintiffs do not dispute that they have not paid certain fees and assessments. Rather, at the trial, they set forth substantive arguments why they believed the fees and assessments were imposed improperly and argued that

p2 [signature]

they should not be required to pay those fees and assessments. In light of the plaintiffs' position, the parties consented to the Association's presenting its foreclosure case via written submissions to the Court, subject to the Court's determination of the other issues before it, including the validity and appropriateness of the fees and assessments at issue and whether the filing of the foreclosure action was in fact an abuse of process.

As a preliminary matter, the defendant made two pre-trial motions, which the Court took under advisement at that time and again at the directed verdict phase. The first motion was premised on the argument that all of the plaintiffs' claims should have been brought as a shareholder derivative suit because the plaintiffs were not claiming independent individual harm such that they would have standing to sue in their individual capacities. The second motion was premised on the argument that, absent a motion to amend the pleadings, the plaintiffs, were regulated to seeking the relief that was requested in their Amended Complaint. The defendant argued that because the factual underpinnings for all of the plaintiffs surviving causes of action dealt with the physical removal of the original windows from the plaintiffs' condo, that the entire case was essentially moot.

The Court finds it unnecessary to rule on these motions at this juncture because it prefers to address the substance of the case head on, giving full deference to the plaintiffs with regard to these procedural issues. Taking that approach, the Court finds in favor of the Defendant on all counts.

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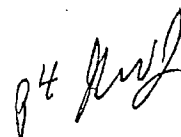
FINDINGS OF FACT

This matter arises out of the plaintiffs' ownership of a condo at the Bristol Condominiums in Charleston, South Carolina. The Bristol was developed by the Beach Company and built by Gulf Stream Construction, an affiliated entity.

Around 2004, residents at the Bristol began to notice problems with water intrusion into the building. While the Bristol Property Owners Assoc was still under the developer's control, certain unit owners hired experts to conduct investigations into the source of the water intrusion. These experts opined that there were numerous construction defects contributing to the problems.

Several owners filed suit against the Beach Company, Gulfstream and others in July 2005. One year later, control of the project was turned over the unit owners who constituted a new board of directors. Shortly thereafter, the Bristol Association filed its own suit against the Beach Company Gulfstream and others in February 2007. The third lawsuit was filed simultaneously by another sub-set of homeowners, who were represented by the same attorneys who filed suit on behalf of the Association. All three cases were subsequently consolidated for purposes of discovery and trial.

During the pendency of the litigation, the court ruled that the Bristol Property Owners Association could not bring an action on behalf of the homeowners for damages to the windows and doors of individual units because those items were property of the individual owners and not common property. Additionally, the Bristol Board was advised by several insurance professionals that because the exterior doors and windows at the Bristol were the property of the unit owners and not common elements under the Master



Deed, complications could arise such as gaps in coverage or inconsistent coverage in the event of a catastrophic storm that did extensive damage to the building.

The insurance professionals recommended that the Association amend the Master Deed to redefine the windows and doors as common elements. The Board acted on this advice by invoking a streamlined procedure for amending the Master Deed for occasions in which the regular procedures would be too slow or inefficient under the circumstances. Pursuant to the Master Deed, the Board sent notice of its recommendations to change the status of the windows and doors to all unit owners. The notice stated that any objections or questions should be submitted to the Board within 20 days or the amendment would automatically pass. Plaintiff John Lucas testified that he received this notice by certified mail, but that he was on vacation when the envelope arrived at his home in Travelers Rest, South Carolina. Although he received the letter within the twenty days, he did not bother to read it until after the 20 days had passed. In fact, no objections were received and the Master Deed Amendment took effect.

In March 2009, the judge assigned to the Association's construction design defect case granted summary judgment against the Association as to any claims related to the exterior doors and windows, finding that at the time the suit was filed, the Association did not have standing to raise claims to those components because they were not yet common elements. Most unit owners elected to assign their claims to the Association or to join the cases as individual plaintiffs. Not being aware of any leaking issues with their own windows and doors, the Lucases did neither. Dr. Lucas testified that he initially did not actively follow the litigation but that he did so once settlement and reconstruction issues arose. The Association and Landry suits were settled on March 19, 2009, the day

p5 [signature]

the trial was set to start. The settlement was approved by the Board using the requisite procedures set forth in the Bristol's governing documents. Following the settlement, the Board solicited bids from various repair contractors and eventually hired Cooper River Construction.

The Board then created a repair committee to oversee the repairs to the building. The scope of repair was defined by expert architects and engineers retained by the Association. At their recommendation, the Board, through its subcommittee, determined that it was necessary to replace all of the exterior windows and doors in order to meet all applicable building codes and to have a full new warranty. The committee chose to replace all the windows and doors with new ones instead of treating damaged windows to solve the issue. The unit owners were given several opportunities to ask questions about the various replacement windows that were under consideration and to give their input on the decision. The plaintiffs did not participate in those question and answer sessions. After the decisions regarding the repair had been made, the Board determined that a special assessment would be necessary to cover the costs of replacing the windows and doors throughout the building.

The plaintiffs claimed to have no damage to their windows and doors. Additionally, the plaintiffs requested through their attorney information regarding the settlement. Furthermore, the plaintiffs claimed they were never provided the requested documentation until they filed their lawsuit. The plaintiffs refused to pay their portion of the special assessment. Even though the plaintiffs contended that their windows did not need to be replaced, their expert's report, which is part of the record of this case, shows that at least two of the plaintiffs' windows did have a leakage issue.



In addition to these criticisms of the Bristol's leadership, the Plaintiffs argued that the Board of the Bristol failed to communicate with the members of the Association regarding the progress of the litigation while it was pending. However, the record of this case is replete with emails, memos and letters from the Board and its committees doing just that. In fact, the only specific example pointed to by the Plaintiffs in support of this position, was that the Board did not inform the members that Andersen Windows had presented the option of retrofitting the original exterior windows with kits to make them code compliant as an alternative to full window replacement. However, the record shows that the Board with consultation from its outside expert advisors had already determined that the retrofit option did not represent significant cost savings or sufficiently address the prospect of future water intrusion.

Additionally, the Plaintiffs disagreed with the Board's decision as to how to use a refund of flood insurance premiums to the Association. Specifically, the Board opted to replenish the Association's capital reserve fund, otherwise depleted by the cost of litigation with the refund. While Dr. Lucas testified that he believed that the refund should have been divided amongst the unit owners, he also testified that he took issue with the fact that the capital reserve fund was underfunded for a time. The Court finds these positions inconsistent with one another. However, they are generally indicative of the plaintiffs' disagreement with the leadership of the Association.

CONCLUSIONS OF LAW

As stated above, the Court chooses not to address the questions of the plaintiffs standing to sue or the propriety of suing the Bristol Association rather than individual

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Board members. However, while the named defendant is the Bristol Association, the entirety of this case deals with the propriety of the actions of several boards of directors who have made decisions with which plaintiff has disagreed. As such, the Court finds that the law that sets the standard for the conduct of directors of non-profit entities is applicable here.

S. C. Code Ann. § 33-31-830 reads as follows:

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner the director reasonably believes to be in the best interests of the corporation.

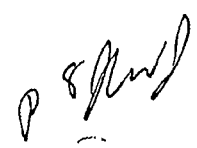
(b) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the corporation who the director reasonably believes is reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(3) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(4) in the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and who the director believes is reliable and competent in the matters presented.

 8

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable to the corporation, a member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

(f) An action against a director asserting the director's failure to act in compliance with this section and consequent liability must be commenced before the sooner of (i) three years after the failure complained of or (ii) two years after the harm complained of is, or reasonably should have been, discovered. This limitations period does not apply if the failure to act in compliance with this section has been fraudulently concealed.

It is within this context that the Court finds:

1. The plaintiffs do not appear to understand that the members of horizontal property regime give up certain individual rights in order to enjoy the benefits of shared ownership. They seem to have the belief that every issue which came before the Bristol Board should have been submitted to a vote by the homeowners.

2. The plaintiffs have not met their burden of proof that:

(a) The Board has demonstrated bad faith in its management of The Bristol's business;

(b) There has been an attempt to hide the actions of the Board or to keep the homeowners ignorant of The Bristol's business. (To the contrary, the evidence shows a concerted effort to keep the homeowners informed);

(c) There has been fraud committed by the Board directed toward anyone;

(d) There has been a breach of any duty by the Board;

pg 9

- (e) There has been mismanagement of The Bristol's affairs by the Board.

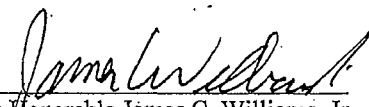
The uncontradicted testimony shows that the individual acts complained of by the plaintiffs, including: (1) the amendment of the Master Deed; (2) The decision to litigate; (3) The manner in which the litigation was handled; (4) The assessments made and (5) The disposition of the insurance refund, were (1) all based on decisions made after considering other options; (2) were made after consulting with counsel, and (3) affected all homeowners equally according to their circumstances.

There is no evidence that there was ever demonstrated, by any person at any time, any bias or prejudice toward the plaintiffs.

The foreclosure against the plaintiffs was filed lawfully, after the plaintiffs refused to pay certain assessments. Other homeowner arrearages which did not result in foreclosure were adequately explained by witnesses for the defense. There is no evidence that the plaintiffs were singled out for retaliatory treatment.

It certainly appears that the plaintiffs are sincere in their disagreement with the management of The Bristol. However, sincerity does not excuse their failure to abide by the written rules which they voluntarily accepted when they elected to purchase at The Bristol. Their only remedy is to participate in the governance of the association by exercising their right to vote.

August 1, 2013


The Honorable James C. Williams, Jr.
Special Referee

p10 flw 10

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2011-CP-10-2232

John T. Lucas, Sr. as Trustee of the
John T. Lucas Revocable Trust and
Carolyn C. Lucas Revocable Trust,

Plaintiffs,

-vs-

The Bristol Condominium Property
Owners Association,

Defendant.

**ORDER DENYING PLAINTIFFS'
MOTION FOR A NEW TRIAL**

-and-

The Bristol Condominium Property
Owners' Association,

Plaintiff,

John T. Lucas, Sr. as Trustee of the
John T. Lucas Revocable Trust
Dated November 10, 2004, and
Carolyn C. Lucas Revocable Trust
Dated November 10, 2004,

Defendants/
Counterclaim Plaintiffs,

-vs-

The Bristol Condominium Property
Owners Association,

Counterclaim Defendant.

The Court, having reviewed the arguments of the plaintiffs in support of their
~~motion for a new trial in this matter, respectfully denies that motion.~~ Plaintiffs have

failed to raise any new issues or arguments that were not already thoroughly argued at

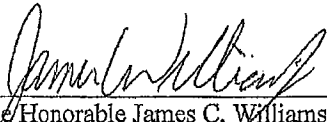
Lucas v. Bristol Condominium Property Owners' Association, et al.
2011-CP-10-2232
Order Denying Plaintiffs' Motion for a New Trial

pl/mw

trial. As such, the court stands by its prior rulings for the reasons articulated in its final judgment entered on August 19, 2013.

IT IS SO ORDERED.

Nov-24, 2013


The Honorable James C. Williams, Jr.
Special Referee

Lucas v. Bristol Condominium Property Owners' Association, et al.
2011-CP-10-2232
Order Denying Plaintiffs' Motion for a New Trial
436796

per [unclear]

2

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-10-2232

The Bristol Condominium Property
Owners' Association,

Plaintiff,

v.

John T. Lucas, Sr., as Trustee of the
John T. Lucas Revocable Trust Dated
November 10, 2004, and Carolyn C.
Lucas as Trustee of the Carolyn C.
Lucas Revocable Trust Dated
November 10, 2004,

Defendants/Counterclaim Plaintiffs,

v.

The Bristol Condominium Property
Owners' Association,

Counterclaim Defendant.

ORDER

This matter is before the Court on post-trial motions filed by John and Carolyn Lucas, after the Court, sitting as a special referee and at the conclusion of a nonjury trial, found that the foreclosure action brought against the Lucases by the Bristol Condominium Property Owners' Association, was not filed in bad faith, and after the Court awarded attorneys' fees and costs to the Property Owners' Association, and authorized the foreclosure action to proceed.

Pursuant to Rule 52, *SCRCP* 52, the Lucases moved for the alteration or amendment of the judgment on the grounds that the uncontradicted testimony of the sole witness for the foreclosure plaintiff testified at trial that the amounts set forth in the complaint were incorrect, and in particular that the award of attorneys' fees was incorrect.



Further, the Lucases moved for a new trial absolute on the grounds that greater weight of the evidence supported their position that the foreclosure action was filed in bad faith, in an attempt to force them to dismiss or compromise the claims that were pending against the Property Owners Association at the time of the filing of the foreclosure.

After due re-consideration of the all the evidence presented in the case, I find that the previously awarded attorney fees should be reduced as set forth below.

Therefore, the relief sought by the Lucases is granted in part, and denied in part.

Specifically, the Order previously entered in this matter and filed for record on September 6, 2013, is amended as follows:

1. The paragraph in the body of the Order on page 5, awarding \$3,500.00 in attorneys' fees to counsel for the Homeowner's Association, is amended to reduce that award to \$1,500.00;

2. Paragraph 1, on page 5 and page 6 of the Order, whereby the "Total Debt" owed by the Lucases is calculated, is amended to reduce the attorneys' fees awarded from \$3,500.00 to \$1,500.00, and therefore the total indebtedness referenced in that paragraph is reduced from \$68,081.82 to \$66,081.82.

In all other respects, the Order previously entered in this matter as it relates to the foreclosure action filed as Case No.: 2011-CP-10-2232 shall remain the Order of this Court, with all findings and rulings from that Order adopted hereby and made a part hereof by reference.

AND IT IS SO ORDERED.

James C. Williams, Jr.
Special Referee, Charleston County

August 4, 2014

Seneca, South Carolina



FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-3240; file under

consolidated case no. 2013- CP-10-1066

John T. Lucas, et al.

The Bristol Condominium Property
Owners' Association

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: **The Defendant Bristol Condominium Property Owners' Association's Motion for Summary Judgment, filed on July 1, 2011, was heard by this Court on August 16, 2012. At the hearing, the Court made an oral ruling granting the motion for summary judgment in favor of the Defendant as to the Plaintiff's causes of action for conversion, trespass, and improper entry. This Court denied the Defendant's motion as to the cause of action for violation of the fiduciary duty. This order will supplement the oral ruling.**

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

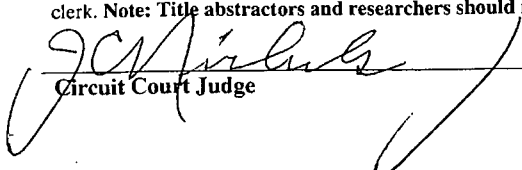
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2117
Judge Code

2/18/14
Date

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 11-CP-10-02232

John T. Lucas, Sr., as Trustee of the John T. Lucas
Revocable Trust and Carolyn C. Lucas as Trustee
of the Carolyn C. Lucas Revocable Trust

The Bristol Condominium Property Owners'
Association

2013 SEP -6 PM 2:50
FILED
JULIE J. ARNOLD, CLERK
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David B. Wheeler

Attorney for : ☐ Plaintiff ☒ Defendant
The Bristol Condominium Property
Owners' Association
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information
- ☐ **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.

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Foreclosure

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
The Bristol Condominium Property Owners' Association	John T. Lucas, Sr., as Trustee of the John T. Lucas Revocable Trust dated Nov. 10, 2004	\$ 68,081.82
The Bristol Condominium Property Owners' Association	Carolyn C. Lucas, as Trustee of the Carolyn C. Lucas Revocable Trust dated Nov. 10, 2004	\$ 68,081.82

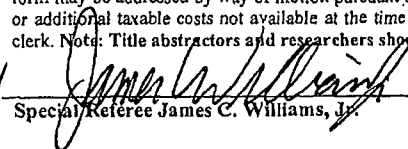
SCRPC Form 4C (03/2013)

CHARLESTON544182v21

		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

✓  _____ Judge Code _____ Date _____
Special Referee James C. Williams, Jr.

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____, to attorneys of record or to parties (when appearing pro se) as follows:

Joe Mooneyham
Mooneyham Berry, LLC
Post Office Box 8359
Greenville, South Carolina 29604
864.421.0036 Fax 864.421.9060
joe@upstatetriallawyers.com

K. Michael Barfield
288 Meeting St., Ste 200 (29401)
Post Office Drawer H
Charleston, SC 29402
Email: mbarfield@barnwell-whaley.com
Phone: 843-577-7700
Facsimile: 843-577-7708

David B. Wheeler
Joseph T. Belton
Moore & Van Allen PLLC
PO Box 22828
Charleston, SC 29413-2828

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: _____

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOHN T. LUCAS, SR., AS TRUSTEE OF THE
JOHN T. LUCAS REVOCABLE TRUST AND
CAROLYN C. LUCAS AS TRUSTEE OF THE
CAROLYN C. LUCAS REVOCABLE TRUST,

Plaintiff,

v.

THE BRISTOL CONDOMINIUM PROPERTY
OWNERS' ASSOCIATION,

Defendant.

AND

THE BRISTOL CONDOMINIUM PROPERTY
OWNERS' ASSOCIATION,

Plaintiff,

v.

JOHN T. LUCAS, SR., AS TRUSTEE OF THE
JOHN T. LUCAS REVOCABLE TRUST DATED
NOVEMBER 10, 2004, AND CAROLYN C.
LUCAS AS TRUSTEE OF THE CAROLYN C.
LUCAS REVOCABLE TRUST DATED
NOVEMBER 10, 2004,

Defendants/Counterclaim Plaintiffs

v.

THE BRISTOL CONDOMINIUM PROPERTY
OWNERS' ASSOCIATION,

Counterclaim Defendant.

IN COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

~~CASE NO. 2010-CP-10-3240~~

2013 SEP - 6 PM 2:50
FILED
JULIE J. ARMSTRONG
CLERK OF COURT
2013 SEP - 3 AM 10:10
FILED
JULIE J. ARMSTRONG
CLERK OF COURT
Clerked in date 09/03/13

CASE NO. 2011-CP-10-2232

SPECIAL REFEREE'S DECREE
(DEFICIENCY DEMANDED)

THIS MATTER came before me, James C. Williams, Jr., as Special Referee, appointed under Section 15-31-150 et seq., South Carolina Code of Laws (1976), on May 22, 2013 through May 24, 2013, to take testimony, hear arguments of counsel for the parties, and to render final judgment. All parties were given notice of the final Hearing. I have held a final Hearing, and the

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record of which, together with the exhibits, are filed herewith.

This action was brought for foreclosure of that certain condominium regime lien recorded in Book 0173, Page 669 in the RMC Office for Charleston County, South Carolina (the "Lien").

This foreclosure action, initially designated as Charleston County Case No.: 2011-CP-10-2232, was initiated by the filing of a Civil Action Coversheet, Certificate of Exemption from ADR, Lis Pendens, Summons and Complaint with the Court of Common Pleas, County of Charleston, on March 25, 2011.

John T. Lucas, Sr., as Trustee of the John T. Lucas Revocable Trust, and Carolyn C. Lucas, as Trustee of the Carolyn C. Lucas Revocable Trust (the "Unit Owners") were properly served with process by The Bristol Condominium Property Owners' Association (the "POA" and/or the "Association") in its foreclosure action against the Unit Owners. The Unit Owners subsequently filed an Answer and Counterclaim to the POA's foreclosure Complaint on May 9, 2011. The POA then filed a Reply to the Counterclaim of the Unit Owners on May 26, 2011.

By Order of the Hon. Kristi Lea Harrington, Judge, Ninth Judicial Circuit, the foreclosure action initially designated as Charleston County Case No.: 2011-CP-10-2232 was consolidated with Charleston County Case No.: 2010-CP-10-3240.

The Association is now and was at the times hereinafter mentioned an eleemosynary corporation organized and existing under the laws of the State of South Carolina, with its principal place of business in Charleston County, South Carolina.

The Unit Owners are residents of Greenville County, South Carolina, but are also the fee simple owners of that certain property located within the Regime, known as Unit 313, also referred to as 3013 (the "Property"), which property is located in Charleston County, South Carolina and is more fully described as follows:

ALL that certain apartment known as UNIT NUMBER 3013, also referred to as UNIT NUMBER 313, in THE BRISTOL HORIZONTAL PROPERTY REGIME as shown on the plans and specifications attached to that certain Master Deed and By-Laws attached thereto, dated August 30, 2002, and recorded in Book D417, at Page 001, in the R.M.C. Office for Charleston County, S.C., as amended by First Amendment to Master Deed of The Bristol Horizontal Property Regime dated November 13, 2002 and recorded in the R.M.C. Office aforesaid in Book M426, at Page 296; as amended by Second Amendment to Master Deed of The Bristol Horizontal Property Regime dated February 28, 2003 and recorded in the R.M.C. Office aforesaid in Book P439, at Page 828; as amended by Third Amendment to

CHARLESTON\539109v2

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Master Deed of The Bristol Horizontal Property Regime dated February 20, 2004 and recorded in the R.M.C. Office aforesaid in Book Y485, at Page 178, together with all that certain undivided interest in the common elements and limited common elements as set forth in the above-referred to Master Deed.

This being the property conveyed to John T. Lucas, Sr., as Trustee of the John T. Lucas Revocable Trust dated November 10, 2004, and Carolyn C. Lucas as Trustee of the Carolyn C. Lucas Revocable Trust dated November 10, 2004 by deed of John T. Lucas and Carolyn C. Lucas recorded January 27, 2005 in the Office of the Register of Mesne Conveyances for Charleston County in Book W-523, page 207. This being the same property conveyed to John T. Lucas and Carolyn C. Lucas by deed of Brittlebank Condominium, LLC, dated April 23, 2004, and recorded April 26, 2004, in Book Y-491 at Page 779 in the Office of the Register of Mesne Conveyances for Charleston County. TMS # 460-10-01-021

That the Unit Owners took title to the Property subject to the terms and conditions of that certain Master Deed of the Association (the "Master Deed"), recorded in the Office of the R.M.C. for Charleston County in Book D-417, Page 001, as amended. The Master Deed is incorporated herein by reference.

That the Master Deed, including the Association Bylaws incorporated therein, provides that the Association has the right to file a notice of lien against the Property and enforce its lien rights according to South Carolina law, in order to secure payment of delinquent Association assessments.

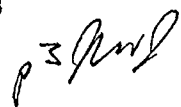
That the Master Deed, including the Association Bylaws incorporated therein, provide, inter alia, that all property owners are members of the Association, that they are obligated to pay assessments levied by the Association on the units owned by them, that members of the Association are obligated to pay late charges and interest at the rate established by the Board of Directors of the Association (the "Board") for assessments that are not paid by the due date, as well as reasonable attorneys' fees incurred in the collection of same, all as may be seen by reference to the pertinent sections of the Master Deed.

That assessments levied by the Association against the Unit Owners remain unpaid through the date of the Final Hearing.

That due demand was made for the payment of the outstanding assessments, and the Unit Owners have refused to make same.

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{Client Matter\002116\0103\ORD\00419193.DOC}3



As of May 13, 2013, after being credited with all payments received, the Unit Owners are obligated to the Association in the sum of \$64,581.82, plus any and all accruing interest, late fees, costs, expenses, and attorneys' fees.

The Counterclaims asserted by the Unit Owners, which correspond with the claims asserted thereby in Case No. 2010-CP-10-3240, are more specifically addressed in the Order being filed in that case simultaneously herewith. Suffice it to say however, that the Unit Owners failed to present sufficiently probative testimony that: (a) the Association and its Board demonstrated bad faith in its management of Association's business affairs; (b) there has been an attempt to hide the actions of the Board, or to keep the Association's property owners ignorant of Association's business affairs (c) there has been any fraud committed by the Association's Board directed toward the Unit Owners or anyone else; (d) there has been a breach of any duty by the Association's Board; (e) there has been mismanagement of the Association's business affairs by the Board.

The greater weight of the testimony demonstrates that the individual acts complained of by the Unit Owners, including: (1) the amendment of the Master Deed by the Association's Board; (2) the decision to litigate by the Association's Board; (3) the manner in which the litigation was handled by the Association, the Board, and the Association's legal counsel; (4) the assessments made by the Association's Board; and (5) the disposition of the insurance refund by the Association, were all: (A) based on decisions made by the Association's Board in compliance with the Association's Master Deed and other governing documents and after considering all reasonable options; (B) made by the Association's Board after consulting with legal counsel; and (C) affected all of the Association's property owners equally and were not made with any bias or prejudice towards the Unit Owners.

The foreclosure action against the Unit Owners was filed lawfully and on a good faith basis on account of the Unit Owners' refusal to pay certain assessments lawfully levied in compliance with the Association's Master Deed and other governing documents. There is no evidence that the Unit Owners were singled out by the Association for any dissimilar or retaliatory treatment.

p4 JMD

Pursuant to §27-31-10 of the S.C. Code of Laws and by virtue of the Association's Master Deed, other governing documents and the Lien, the Association holds a valid fully perfected sustaining lien on the Property, which secures payment of the assessments levied against the Unit Owners and the Property, plus costs of collection.

The Association has not waived any deficiency arising from the foreclosure sale. However, the Association reserves its right to withdraw its demand for deficiency judgment up to one week prior to the foreclosure sale herein.

The Association is entitled to have the Property sold by public auction in order to satisfy the amounts due and owing by the Unit Owners.

The Association's counsel has proffered his affidavit with respect to the attorney's fees sought to be recovered in this matter. The Affidavit indicates that prior to the final Hearing, approximately 82.60 hours have been spent on this matter, with an additional 6-8 hours expected before this matter is brought to a conclusion. The remaining factors to be considered by the Court are the nature, extent and difficulty of the legal services rendered, the professional standing of counsel and the beneficial results obtained. The Court notes counsel's good professional standing in this area of practice. Finally, this case has been pending since March 25, 2011, and the outcome is favorable to the Association.

Upon due consideration to the statement regarding attorneys' fees, the record before this Court, and the terms of the Master Deed, including the Association Bylaws incorporated therein, that in addition to awarding the fees and costs already incurred and paid by the Association, so as to reimburse it, the further fee for accrued-but-unbilled fees and estimated fees to complete in the amount of \$3,500.00, is both reasonable and appropriate in this case.

The Property is not owner occupied and furthermore the relief being sought herein does not arise out of the foreclosure of a real estate mortgage and, therefore, is not subject to the S. C. Supreme Court Admin. Order 2011-05-02-01.

NOW, THEREFORE,

IT IS ORDERED that:

1. There is due to the Association under the obligations of the Master's Deed,

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ps [signature]

including the Association Bylaws incorporated therein set forth in the Complaint the sum of:

a.	<u>Regular Regime Fees:</u>	\$28,093.75
b.	<u>Capital Reserve Contributions:</u>	\$ 4,496.25
c.	<u>Insurance Assessments:</u>	\$ 8,726.98
d.	<u>Special Assessments:</u>	\$42,354.90
e.	<u>Late Fees:</u>	<u>\$14,104.08</u>
	SUB-TOTAL:	\$97,775.96
	LESS: Payments Received:	<u>\$(49,184.92)</u>
	SUB-TOTAL	\$48,591.04
	Interim Collection Costs:	\$15,990.78
	DEBT:	\$64,581.82
	Awarded Attorneys' Fees:	\$ 3,500.00
	TOTAL DEBT:	<u>\$ 68,081.82</u>

representing the "Total Debt" due Plaintiff as set forth herein, *supra*, together with interest therein from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth herein, *supra*, and later accrued interest) shall constitute the total judgment debt due the Association and shall bear interest hereafter. After compliance with the bid, any deficiency balance shall accrue interest.

3. The Unit Owners are liable for the Total Debt. The Unit Owners shall on or before the date of sale of the Property hereinafter described, pay to the Association, or the Association's attorneys, the amount due of the Association's debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be canceled.

4. On default of payment at or before the time herein indicated, the Property described in the Complaint, and as hereinafter set forth, shall be sold by the Undersigned as Special Referee for Charleston County, or his agent under the direction of the Special Referee, at public auction, at the Charleston County Judicial Center, 100 Broad Street, Charleston, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a holiday, then and in such event, the sales day shall be on the business day next succeeding

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P6 [Signature]

such holiday), on the following terms:

(A) FOR CASH: the Special Referee will require a deposit of 5% on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within 30 days, the deposit may be forfeited without further hearing and applied to the costs and Association's debt.

(B) The sale shall be subject to taxes and assessments, existing liens, easements and restrictions of record and determined to be valid.

(C) Purchaser to pay for deed preparation and costs of recording the Deed and transfer taxes.

5. If the Association is the successful bidder at the sale, for a sum not exceeding the amount of costs, disbursements and expenses and the indebtedness of the Association in full, the Association may pay to the Special Referee only the amount of the costs, disbursements and expenses crediting the balance of the bid on Association's indebtedness.

6. The Special Referee will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Association, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the Special Referee may advertise the Property for sale on the next or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

7. Should the Association or the Association's attorney, or the Association's agent fail to appear on the day of sale, the Property shall not be sold, and in that event any such sale shall be null and void and of no force and effect. The Property shall be readvertised and sold at some convenient sales day thereafter when the Association, the Association's attorney, or the Association's agent is present.

8. **IT IS FURTHER ORDERED** that, in addition to all parties deemed by law to have received constructive notice of the action, the Unit Owners named herein and all persons whomsoever claiming under said Unit Owners, be forever barred and foreclosed of all right, title, interest and equity of redemption in the Property so sold, or any part hereof.

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(Client Matter\002116\0103\ORD\00419193.DOC) 7

9. **IT IS FURTHER ORDERED** that the deed of conveyance made pursuant to the sale shall contain the names of only the Association and the names of the titleholders (the Unit Owners) of the Property at the time of filing of the notice of pendency of the within action, and the name of the grantee, and the Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

10. **IT IS FURTHER ORDERED** that the Special Referee will retain jurisdiction to do all necessary acts incident to this foreclosure including but not limited to, issuing a Writ of Assistance and hearing any issued involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended.

11. The Association does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject property.

12. The Special Referee shall direct the Clerk of Court to release of record the Lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed.

13. The following is a description of the Property herein ordered to be sold:

ALL that certain apartment known as UNIT NUMBER 3013, also referred to as UNIT NUMBER 313, in THE BRISTOL HORIZONTAL PROPERTY REGIME as shown on the plans and specifications attached to that certain Master Deed and By-Laws attached thereto, dated August 30, 2002, and recorded in Book D417, at Page 001, in the R.M.C. Office for Charleston County, S.C., as amended by First Amendment to Master Deed of The Bristol Horizontal Property Regime dated November 13, 2002 and recorded in the R.M.C. Office aforesaid in Book M426, at Page 296; as amended by Second Amendment to Master Deed of The Bristol Horizontal Property Regime dated February 28, 2003 and recorded in the R.M.C. Office aforesaid in Book P439, at Page 828; as amended by Third Amendment to Master Deed of The Bristol Horizontal Property Regime dated February 20, 2004 and recorded in the R.M.C. Office aforesaid in Book Y485, at Page 178, together with all that certain undivided interest in the common elements and limited common elements as set forth in the above-referred to Master Deed.

This being the property conveyed to John T. Lucas, Sr., as Trustee of the John T. Lucas Revocable Trust dated November 10, 2004, and Carolyn C. Lucas as Trustee of the Carolyn C. Lucas Revocable Trust dated November 10, 2004 by deed of John T. Lucas and Carolyn C. Lucas recorded January 27, 2005 in the Office of the Register of Mesne Conveyances for Charleston County in Book W-523, page 207. This being the same property conveyed to John T. Lucas and Carolyn C. Lucas by deed of Brittlebank Condominium, LLC, dated April 23,

CHARLESTON\539109v2

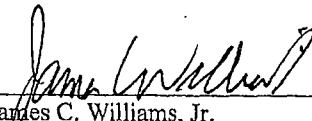
(Client Matter\002116\0103\ORD\00419193.DOC)8

p 8 [signature]

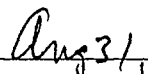
2004, and recorded April 26, 2004, in Book Y-491 at Page 779 in the Office of the Register of Mesne Conveyances for Charleston County. TMS # 460-10-01-021

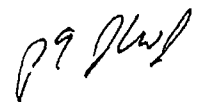
14. **IT IS FURTHER ORDERED** that the final amount of the deficiency judgment to be entered against the Unit Owners will be determined at the conclusion of the second sale (the "Deficiency Sale") after any bid amount is credited to the debt due and owing under the Association documents.

IT IS SO ORDERED.


James C. Williams, Jr.
Special Referee, Charleston County


CHARLESTON, SOUTH CAROLINA


Aug 31, 2013



11-CP-10-2232

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PARTIAL RELEASE OF JUDGEMENT
AND NOTICE OF LIEN

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the sum of Sixty Eight Thousand Eighty-One and 82/100 Dollars (\$68,081.82), the receipt of which is hereby acknowledged THE BRISTOL CONDOMINIUM PROPERTY OWNERS' ASSOCIATION, the owner and holder of the judgment hereinafter referred to, does hereby release from the lien of that certain judgment obtained by THE BRISTOL CONDOMINIUM PROPERTY OWNERS' ASSOCIATION against JOHN T. LUCAS, SR. AS TRUSTEE OF THE JOHN T. LUCAS REVOCABLE TRUST DATED November 10, 2004 and CAROLYN C. LUCAS AS TRUSTEE OF THE CAROLYN C. LUCAS REVOCABLE TRUST DATED November 10, 2004 filed September 6, 2013 in the Office of the Clerk of Court for Charleston County in Case No. 2011-CP-10-2232, as well as the associated Notice of Lien recorded in the RMC Office for Charleston County in Book 0173, Page 669, the following described property, to-wit:

All that certain apartment known as UNIT NUMBER 313, also referred to as Unit 3013, in THE BRISTOL HORIZONTAL PROPERTY REGIME as shown on the plans and specifications attached to that certain Master Deed and By-Laws attached thereto, dated August 30, 2002 and recorded in Book D417 at Page 001 in the RMC Office for Charleston County, S.C. as amended by First Amendment to Master Deed of The Bristol Horizontal Property Regime dated November 13, 2002 and recorded in the RMC Office aforesaid in Book M426 at Page 296; as amended by Second Amendment to Master Deed of The Bristol Horizontal Property Regime dated February 28, 2003 and recorded in the RMC Office aforesaid in Book P439 at Page 828; as amended by Third Amendment to Master Deed of The Bristol Horizontal Property Regime dated February 20, 2004 and recorded in the RMC Office aforesaid in Book Y485 at Page 178; as amended by Fourth Amendment to Master Deed of The Bristol Horizontal Property Regime dated April 17, 2007 and recorded in the RMC Office aforesaid in Book Y622 at Page 392, together with all that certain undivided interest in the common elements and limited common elements as set forth in the above- referred to Master Deed.

Being the same property conveyed to JOHN T. LUCAS, SR. AS TRUSTEE OF THE JOHN T. LUCAS REVOCABLE TRUST DTD 11/10/04 and CAROLYN C. LUCAS AS TRUSTEE OF THE CAROLYN C. LUCAS REVOCABLE TRUST DTD 11/10/04 by deed of JOHN T. LUCAS and CAROLYN C. LUCAS dated January 24, 2005 and recorded January 27, 2005 in the RMC Office for Charleston County in Book W-523 Page 207. Also being the same property conveyed to John T. Lucas and Carolyn C. Lucas by deed of Brittlebank Condominium, LLC dated April 23, 2004 and recorded April 26, 2004 in Book Y491 at Page 779 in the RMC Office for Charleston County.

TMS No: 460-10-01-021

PROVIDED, HOWEVER, that the lien of THE BRISTOL CONDOMINIUM PROPERTY OWNERS' ASSOCIATION as provided by the aforementioned judgment shall in all respects, except as to the premises hereinabove described, be preserved and protected and that the lien of the said judgment, except as hereby released and discharged, shall remain in full force and effect pending entry of a final satisfaction of judgment in the case.

IN WITNESS EHEREOF, it has hereunto set its Hand and Seal this 19 day of February, 2014.

SIGNED, SEALED AND DELIVERED IN
THE PRESENCE OF:

Coleen Shaluley
WLL

THE BRISTOL CONDOMINIUM
PROPERTY OWNERS' ASSOCIATION

BY:

Its:

[Signature]
KEIME MGR

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

I hereby certify that The Bristol Condominium Property Owners' Association, by and through LONA R VEST its RESIDENT, personally appeared before me this 19 day of February, 2014 and acknowledged the due execution of the foregoing instrument.

Coleen Shalaby
Notary Public for South Carolina
My Commission Expires: 9-14-22



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 05-CP-10- 3029

KENNETH HANGER,
MORTON ELLISON and
PATRICIA ELLISON,
Individually, and Derivatively as acting
on behalf of the THE BRISTOL
CONDOMINIUM HOMEOWNERS
ASSOCIATION,

Plaintiffs,

vs.

THE BEACH COMPANY, FENNELL
HOLDINGS, INC. and GULF STREAM
CONSTRUCTION COMPANY, INC.,

Defendants.

COMPLAINT

(Negligence, Negligent Misrepresentation,
Breach of Implied Warranty of Habitability,
Breach of Fiduciary Duty, Constructive
Trust and Unfair Trade Practices)

(Jury Trial Demanded)

FILED
2005 JUL 26 PM 2:30
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiffs, complaining of the Defendants above named, would allege and show unto
this Honorable Court as follows:

1. Plaintiffs are owners of condominium units at The Bristol, located at 3000 Old
Bridgeview Lane, Charleston, Charleston County, South Carolina, and are proceeding on their
own behalf and derivatively on behalf of The Bristol Condominium Homeowners Association.

FACTUAL AVERMENTS

2. The Defendants, The Beach Company and Fennell Holdings, Inc., upon
information and belief are corporations organized and existing under the laws of the State of
South Carolina and are authorized to conduct business in this State. These Defendants are the

developers and sellers of the condominium units at The Bristol and at all times have been and are in control of The Bristol Condominium Homeowners Association.

3. As such, these Defendants, The Beach Company and Fennell Holdings, Inc., commenced to sell condominium units to, among others, the Plaintiffs in this action and are continuing to market and sell units at The Bristol, despite the fact that these Defendants have been put on notice of numerous construction and design defects of the subject Building, and without disclosing these defects to new homeowners.

4. The Defendant, Gulf Stream Construction Company, Inc. (hereinafter "Gulf Stream") is, upon information and belief, a corporation organized and existing under the laws of the State of South Carolina and is authorized to conduct business in this State. Gulf Stream was the general contractor of The Bristol Condominiums and was responsible for the proper construction of this project in strict accordance with the Contract documents and with all applicable building codes and within industry standards of good and workmanlike practice.

5. The Bristol is a four-story structure built in 2002 and is a combination of Portland cement plaster stucco (stucco) and cementitious board siding, with brick veneer at the grade level around the park under garage. Due to water intrusion/leaking problems experienced by several homeowners, an engineering investigation was performed on the subject Buildings to determine all construction deficiencies and/or unsatisfactory performance conditions in the exterior cladding or exterior wall components which would lead to this water intrusion and deterioration of the exterior wall envelopes.

6. By the investigation of the subject Buildings and subsequent report provided by the engineer, the homeowners and/or Plaintiffs learned that the subject Buildings have been deficiently designed and have significant construction defects, particularly the stucco cladding system which

was improperly installed and will have to be completely removed and replaced. In addition, the engineer noted other construction, design and stucco deficiencies to the subject Buildings, including, but not limited to, the following:

- (a) Improper stucco installation in that no mechanism for weep had been installed at any location in the four-story wall, which is a violation of Industry Standard ASTM C926 and ASTM C1063;
- (b) Improper and/or no installation of sealant joints;
- (c) No head Flashings at any of the window or door installations;
- (d) Improper control joint installation around windows;
- (e) Cracking at window corners due to lack of proper stress relief which will promote water intrusion;
- (f) Water accumulation at crack line;
- (g) Improper installation of the Metal Cap Flashing on top of the cementitious board siding;
- (h) Improper installation of all of the exterior architectural trim at the sill of windows which will promote water intrusion;
- (i) Improper installation of the exterior cladding system by evidence of staining and damage to interior trim;
- (j) Improper Construction of the Arbors and Posts on the Balconies which have evidence of water intrusion;
- (k) Improper Installation of the exterior cladding that is not in accordance with the IBC and code referenced industry standards;
- (l) Water Intrusion Damage Resulting from improper installation of the exterior

cladding; and

- (m) Deterioration of the subject Buildings due to water intrusion from the failed Exterior Cladding System.

7. As a direct and proximate result and consequence of the numerous stucco installation, construction and design problems and defects as noted above, the Plaintiffs have and will continue to spend substantial sums of money for the repairs and reconstruction of their condominium units and will be subject to loss of use, enjoyment, and depreciation of value of property.

8. In addition to the construction defects, the Defendants, The Beach Company and Fennell Holdings, Inc., in their capacity as head of The Bristol Homeowners Association have:

- (a) Failed and omitted to act in a fiduciary capacity towards the owners of the condominium units;
- (b) Negligently maintained the property;
- (c) Failed to act as competent managers;
- (d) Acted at all times in their own interests and in contravention of their fiduciary duty towards the condominium unit owners;
- (e) Covered up and concealed defects and damage from the unit owners, and
- (f) Acted in violation of all fiduciary duty concepts.

9. Due to the actions of The Beach Company and Fennell Holdings, Inc., as stated above, the Plaintiffs are facing significant damage repairs, deteriorating property, significant immediate expenses for investigation, destructive testing, and an analysis of construction defects, repairs defects, damages, rot deterioration, and a generally overall dilapidated condition which is the direct and proximate result of defective construction, management, maintenance, and

abandonment of generally accepted fiduciary principles on the part of The Beach Company and Fennell Holdings, Inc.

FOR A FIRST CAUSE OF ACTION
(Negligence-Developers)

10. The Plaintiffs repeat and reallege their allegations in Paragraphs One through Nine set forth above as if set forth herein verbatim.

11. The damages and injuries caused to the Plaintiffs, their property, and derivatively on behalf of The Bristol Condominium Homeowners Association, are the direct and proximate result of the negligence, willfulness, wantonness, carelessness and recklessness of the Defendants The Beach Company and Fennell Holdings, Inc. in one or more of the following particulars to wit:

- (a) In their capacity as developers in defectively overseeing the construction of the subject Buildings;
- (b) In failing to inspect, repair and maintain the Buildings;
- (c) In negligently effecting repairs to the Buildings;
- (d) In failing and omitting to exercise that degree of care and caution of a reasonably prudent manager of a homeowners association;
- (e) In failing and omitting to retain proper experts and to effectively inspect and repair the premises; and
- (f) In placing their interests ahead of the owners and thereby, breaching their fiduciary duty.

12. As a direct and proximate result of the above stated negligent actions on behalf of the Defendants The Beach Company and Fennell Holdings, Inc., the Plaintiffs will have to spend

substantial sums of money for the repairs and reconstruction of their condominium units and will be subject to loss of use, enjoyment, and depreciation of value of property.

FOR A SECOND CAUSE OF ACTION
(Negligence/Contractor)

13. The Plaintiffs repeat and reallege their allegations in Paragraphs One through Twelve set forth above as if set forth herein verbatim.

14. The construction of the subject Buildings by Defendant Gulf Stream Construction Company, Inc. deviated from the normal standards of good and workmanlike practice in the construction field in the following particulars, to-wit:

- (a) In failing and omitting to construct the subject Buildings in conformity with the plans and specifications and construction documents;
- (b) In failing and omitting to construct the subject Buildings pursuant to good and workmanlike construction practices;
- (c) In failing and omitting to properly install the exterior cladding system on the subject Buildings to ensure that water intrusion would not occur;
- (d) In failing and omitting to install proper flashing throughout the subject Buildings;
- (e) In failing and omitting to properly seal the subject Buildings' exterior to prevent water infiltration and intrusion; and
- (f) By additional improper construction practices as outlined above.

15. As a direct, foreseeable and proximate result of Gulf Stream's negligence, the Plaintiffs have suffered damages in the amount equal to the extraordinary, repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, diminution in value of the condominium units and loss of use.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation/Developers)

16. The Plaintiffs repeat and reallege their allegations in Paragraphs One through Fifteen set forth above as if set forth herein verbatim.

17. The Defendants, The Beach Company and Fennell Holdings, Inc., through advertisements, sales brochures and other marketing literature, website advertisements and by statements and actions of their agents, made numerous representations to the Plaintiffs, including, but not limited to, the quality and luxury of the condominium units at The Bristol that incorporates the best of traditional design, development and construction.

18. The above-described representations made by these Defendants and their agents to the Plaintiffs were untrue and were negligent misrepresentations of material facts.

19. The Beach Company and Fennell Holdings, Inc. made the above-described representations in a business or commercial capacity.

20. The Beach Company and Fennell Holdings, Inc. made the above-described statements at a time when, in the exercise of reasonable and ordinary care, they should have known that they were false, and these Defendants knew or should have known that reasonably foreseeable purchasers of the condominium units would rely on their representations made in their advertising and sales and marketing literature, and by their agents. These Defendants, therefore, failed to exercise reasonable care or competence in making the above-described statements.

21. The Plaintiffs relied on this false information supplied by The Beach Company and Fennell Holdings, Inc. when they purchased their condominium units at The Bristol.

22. Such reliance by the Plaintiffs was reasonable and justifiable based on the knowledge available to them and the circumstances at the time.

23. The Beach Company and Fennell Holdings, Inc. breached their duties by failing to exercise due care when making these representations.

24. The Plaintiffs reasonably and justifiably relied on these Defendants' representations, to their detriment.

25. As a direct, foreseeable and proximate result of The Beach Company's and Fennell Holdings, Inc.'s negligent misrepresentations, the Plaintiffs have suffered physical damage to their condominium units as well as loss of use and diminution in value.

26. The Beach Company's and Fennell Holdings, Inc.'s breach of its duty to exercise due care in making representations about the condominium units constitutes gross negligence, entitling Plaintiffs to recover punitive damages.

FOR A FOURTH CAUSE OF ACTION

(Breach of Implied Warranty of Habitability/Developers and Contractor)

27. The Plaintiffs repeat and reallege the allegations contained in Paragraphs One through Twenty-six as set forth above as if set forth herein verbatim.

28. The Defendants impliedly warranted as a matter of law that the subject Buildings at The Bristol which they developed and built was habitable and fit for its intended use.

29. That this implied warranty was breached by the Defendants in that the work performed by Defendant Gulf Stream Construction Company, Inc. was in a manner below ordinary workmanship and the subject Buildings at The Bristol were neither habitable nor fit for their intended use causing damage to Plaintiffs.

30. As a direct, foreseeable and proximate result of the Defendants breach of implied

warranty of habitability, the Plaintiffs have suffered physical damage to their condominium units as well as loss of use and diminution in value.

FOR A FIFTH CAUSE OF ACTION
(Breach of Implied Warranty of Good and Workmanlike Service/Contractor)

31. The Plaintiffs repeat and reallege the allegations contained in Paragraphs One through Thirty as set forth above as if set forth herein verbatim.

32. In undertaking to complete its construction work on the subject Buildings at The Bristol, the Defendant Gulf Stream Construction Company, Inc. impliedly warranted that all work would be of good quality, free from faults and defects, of good and workmanlike quality, and in conformance with the contract documents and industry standards.

33. That this implied warranty of good and workmanlike service was breached by Gulf Stream in that the work was performed in a manner below ordinary workmanlike quality causing damage to the Plaintiffs.

34. That as a direct and proximate result of the breach of implied warranty of good and workmanlike service, the Plaintiffs have suffered physical damage to their condominium units as well as loss of use and diminution in value.

FOR A SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty-Developers)

35. The Plaintiffs repeat and reallege the allegations contained in Paragraphs One through Thirty-four as set forth above as if set forth herein verbatim.

36. In their capacity as developers of the condominium project at The Bristol and as head of The Bristol Condominium Homeowners Association, the Defendants The Beach Company and Fennell Holdings, Inc., as a matter of law, undertook a fiduciary duty towards the Plaintiffs and The Bristol Condominium Homeowners Association.

37. The Defendants, in their capacity set forth above, breached their duty as fiduciaries towards the Plaintiffs and towards The Bristol Condominium Homeowners Association in failing to act in a reasonable prudent manner, and in placing their interests ahead of the interests of those to whom they owed a clear fiduciary duty. Rather than acting in the highest possible degree of good faith and fair dealing concerning the Plaintiffs and The Bristol Condominium Homeowners Association, these Defendants acted exactly to the contrary in acting in their own interests at all times, in all aspects of the development and sales of the condominium units, maintenance, and showed lack of concern of the construction defects and failed to disclose these construction defects to new homeowners.

38. As a direct and proximate result of these breaches of fiduciary duty, the Plaintiffs and The Bristol Condominium Homeowners Association have suffered damages in the amount equal to the extraordinary, repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, diminution in value of the condominium units and loss of use.

FOR A SEVENTH CAUSE OF ACTION
(Constructive Trust-Developers)

39. The Plaintiffs repeat and reallege the allegations contained in Paragraphs One through Thirty-eight as set forth above as if set forth herein verbatim.

40. The activities of the Defendants, The Beach Company and Fennell Holdings, Inc., herein in failing to properly manage and maintain the subject Property and in failing to properly manage The Bristol Condominium Homeowners Association have placed the Plaintiffs and the homeowners association in a precarious position, requiring an immediate change in management.

41. As a result of these Defendants' failure to manage properly, their breach of

fiduciary duty, and the ongoing lack of management and maintenance, the Plaintiffs and The Bristol Condominium Homeowners Association are entitled to this Court's placing a constructive trust over and Receiver in place of the current Defendants as manager of The Bristol Condominium Homeowners Association.

FOR AN EIGHTH CAUSE OF ACTION
(Unfair Trade Practices/Developers)

42. The Plaintiffs repeat and reallege the allegations contained in Paragraphs One through Forty-one as set forth above as if repeated verbatim herein.

43. The Plaintiffs, The Beach Company and Fennell Holdings, Inc. are "persons" within the meaning of S.C. Code § 39-5-10(a).

44. The Beach Company and Fennell Holdings, Inc., by developing, selling and marketing the condominium units at The Bristol, were engaged in commerce within the meaning of S.C. Code § 39-5-10(b).

45. The Beach Company's and Fennell Holdings, Inc.'s actions, described hereinabove, constitute unfair and deceptive practices within the meaning of S.C. Code § 39-5-20(a).

46. The Beach Company's and Fennell Holdings, Inc.'s acts are capable of repetition, and, upon information and belief, have been repeated.

47. The Beach Company's and Fennell Holdings, Inc.'s conduct affects the public interest of South Carolina.

48. The Beach Company and Fennell Holdings, Inc., knew, or reasonably should have known, that their conduct violated the Unfair Trade Practices Act.

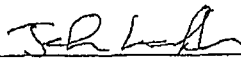
49. As a direct foreseeable and proximate result of The Beach Company's and Fennell Holdings, Inc.'s unfair and deceptive practices, the Plaintiffs have suffered an ascertainable loss of money and property.

50. The Plaintiffs are entitled to recover their actual damages, which amount should be trebled, together with interest and attorney's fees.

WHEREFORE, the Plaintiffs pray that this Court issue an Order granting judgment for the Plaintiffs against the Defendants, jointly and severally, for the following relief:

- (a) for actual damages in an amount to be proven at trial;
- (b) for trebled damages under S.C. Code § 39-5-110;
- (c) for punitive damages;
- (d) for prejudgment and postjudgment interest on Plaintiffs' damages,
- (e) for a constructive trust to install new management of receiver to take over and manage the assets of The Bristol Condominium Homeowners Association;
- (f) for attorney's fees and costs; and
- (g) for such other and further relief as this Court may deem just and proper.

LEATH, BOUCH & CRAWFORD, LLP

By: 
W. Jefferson Leath, Jr.
134 Meeting Street, 5th Floor, P.O. Box 59
Charleston, SC 29402
(843) 937-8811

Attorneys for the Plaintiffs

Charleston, South Carolina

Dated: 7/26/05

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
THE BRISTOL CONDOMINIUMS)
PROPERTY OWNERS ASSOCIATION)

Plaintiff,)
)
)

vs.)
)
)

BRITTLEBANK CONDOMINIUMS, LLC,)
THE BEACH COMPANY, BEACH)
BRITTLEBANK, LLC, FSP)
DEVELOPMENT, LLC., GULF STREAM)
CONSTRUCTION COMPANY, INC.,)
NILES BOLTON ASSOCIATES, INC.)
ANDERSEN WINDOWS, INC., BUCK)
LUMBER & BUILDING SUPPLY, INC.)
FERST PLASTERING, INC.,)
SUPERIOR SURFACES OF)
CHARLESTON, INC., CISSON)
INTERIORS, INC., SUPERIOR)
STRUCTURES, INC., ABG)
CAULKING & WATERPROOFING OF)
MORRISTOWN, INC., GLASGOW)
ROOFING COMPANY, INC., and)
DONALD BARR D/B/A BARR &)
BARR SERVICES,)

Defendants.)
)
)

COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 07-CP-10- 612

COMPLAINT

(Construction Defect Claims)
(Declaratory Judgment)
(Negligence)
(Breach of Express and Implied Warranties)
(Negligent Misrepresentation)
(Breach of Fiduciary Duties)
(Accounting)
(Unfair Trade Practices)

Jury Trial Demanded

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2007 FEB -9 PM 4:50

FILED

The Bristol Condominiums Property Owners Association ("Plaintiff"), by and through their undersigned attorneys, complaining of the Defendants states and alleges as follows:

1. The Plaintiff is a non-profit corporation organized and existing under the laws of South Carolina.
2. The Plaintiff is comprised of the owners of all of the condominium units located at 3000 Old Bridgeview Lane, Charleston, Charleston County, South Carolina, known as The Bristol ("Bristol"), and is governed by a Board of Directors.

3. The Bristol is a five story building containing fifty-four condominium units.
4. The Board of Directors is composed of five duly elected members of the property owners' association who own units in the Bristol.
5. At a duly held special meeting of the Bristol Condominium Property Owners Association held on December 10, 2006, the Bristol unit owners voted by over ninety percent of their members to authorize the Board of Directors to pursue claims relative to water intrusion and other construction defects within the Bristol, including but not limited to, the building, facilities and individual units.
6. The Board of Directors is bringing this lawsuit on behalf of the Bristol Condominium Property Owners Association, pursuant to the authority given by the vote at the December 10, 2006, special meeting of the property owners and pursuant to its legal authority.
7. In addition to its legally defined obligations, the duties and responsibilities of the Plaintiff are set forth in the Master Deed of the Bristol Horizontal Property Regime ("Master Deed") dated August 30, 2002 and filed in Book D417, Page 1 of the office of the Register Mesne Conveyance ("RMC") for Charleston County, South Carolina.
8. The Master Deed provides in Section 3.4 that the common elements of the Bristol Condominiums are fractionally owned by all unit owners as tenants in common. The Master Deed further provides in Section 8.1 that "...the Association will maintain the Common Elements in first class condition in accordance with proper maintenance procedures applicable thereto and will enforce all warranties with respect to the Common Area."

9. The Plaintiff is charged with the responsibility of maintaining the common elements and with enforcing all warranties relating to the common elements.
10. Defendant Brittlebank Condominiums, LLC ("Brittlebank") is a limited liability company organized and existing under the laws of South Carolina with its principal place of business in Charleston County. Upon information and belief, Brittlebank was organized for the sole purpose of developing the Bristol.
11. Defendant Beach Brittlebank, LLC ("BB") is a limited liability company organized and existing under South Carolina laws and doing business in Charleston County. Upon information and belief, BB is a member and the manager of Brittlebank.
12. Defendant FSP Development, LLC ("FSP") is a limited liability company organized and existing under South Carolina laws. Upon information and belief, FSP is a member of Brittlebank.
13. The Beach Company ("Beach Company") is a corporation organized and existing under the laws of South Carolina with its principal place of business in Charleston County. Upon information and belief, the Beach Company is the manager of Beach Brittlebank, LLC, which is the manager of Brittlebank Condominiums, LLC.
14. Upon information and belief, Brittlebank, BB, Beach Company, and FSP (hereinafter collectively referred to as "Developers") collectively developed the Bristol.

15. Prior to, during, and after construction, the Developers marketed the condominiums as a luxury condominium development and sold the individual condominium units to the Plaintiffs and others.
16. The Developers' representatives drafted and filed the Master Deed dated August 30, 2002, and all amendments thereto.
17. From the time the Bristol Condominium Property Owners Association was formed and up until the late summer of 2006, the Developers controlled the Board of Directors through its appointment of the members of the Board.
18. Defendant Beach Company served as the property manager of the Bristol while the Board of Directors was being controlled by the Developers.
19. Defendant Gulf Stream Construction Company, Inc. ("Gulf Stream") is a corporation organized and existing under the laws of South Carolina with its principal place of business in Charleston County. Gulf Stream, pursuant to a contract with Brittlebank dated October 5, 2000, served as the general contractor for the construction of the Bristol and agreed to construct the project in accordance with the applicable contract documents, including but not limited to the plans and specifications prepared by Defendant Niles Bolton Associates, Inc. Upon information and belief, Gulf Stream is an affiliate of the Beach Company.
20. Defendant Niles Bolton Associates, Inc. ("Niles Bolton") is a corporation organized under Georgia law and registered to do business in South Carolina. Upon information and belief, Niles Bolton maintains its principal place of business in Georgia. Niles Bolton, by contract with the Developers, served as the architect for the design of the Bristol and agreed to provide professional

architectural and engineering services for the design of the Bristol, specifically including but not limited to the issuance of the plans and specifications for construction. These documents and/or instruments of service were required to be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards. Upon information and belief, Defendant Niles Bolton agreed to make periodic visits to the project during construction to observe whether the construction was in accordance with the plans and specifications and all applicable building codes.

21. Andersen Windows Inc. ("Andersen") is a corporation organized under the laws of Minnesota and is registered and authorized to do business in South Carolina. At all times pertinent to this lawsuit, Andersen was engaged in the business of manufacturing and selling windows, window systems, and exterior doors for use in construction projects. Andersen presently sells windows, window systems, and exterior doors for use in South Carolina construction projects. Andersen manufactured and sold the windows, window systems, and exterior doors that were installed at the Bristol.
22. Buck Lumber & Building Supply, Inc. ("Buck") is a corporation organized, existing, and authorized to do business in South Carolina. Buck has its principal place of business in Charleston County, South Carolina. Upon information and belief, Buck was the supplier of the windows, window systems, and exterior doors installed at the Bristol.
23. Ferst Plastering, Inc. ("Ferst") is a corporation organized, existing, and authorized to do business in South Carolina. Upon information and belief, Ferst maintains its

principal place of business in Charleston County, South Carolina. Ferst, pursuant to its subcontracts with Gulf Stream dated September 19, 2001 and October 25, 2001, agreed to furnish and install all items and incidental items of work required to perform the hardiplank, furring, lathing, and stucco scope of work for the Bristol project in accordance with the contract documents, manufacturer's requirements, including flashings and tie-ins, joints, sealants, and caulking as specified, expansion joints and reveals as required.

24. Superior Surfaces of Charleston, Inc. ("Superior Surfaces") is a corporation organized, existing, and authorized to do business in South Carolina. Upon information and belief, Superior Surfaces maintains its principal place of business in Charleston County, South Carolina. Superior Surfaces, pursuant to a subcontract with Gulf Stream dated May 15, 2002, agreed to providing and installing the exterior brick on the Bristol.
25. Cisson Interiors, Inc. ("Cisson") is a corporation organized, existing, and authorized to do business under the laws of South Carolina. Cisson, pursuant to a subcontract with Gulf Stream dated December 13, 2000, agreed to provide field engineering and layout, labor and materials and equipment, and all incidentals to complete aluminum stud framing, drywall, Dens Glass sheathing, thermal insulation, and exterior door and window installation on the Bristol project in accordance with the contract drawings and specifications.
26. Superior Structures, Inc. ("Superior Structures") is a corporation organized, existing, and authorized to do business under South Carolina law. Upon information and belief, Superior Structures maintains its principal place of

business in Charleston County, South Carolina. Superior Structures, pursuant to a subcontract with Gulf Stream dated December 6, 2001, agreed to furnish and install all items and incidental items of work to perform the exterior windows, doors, and flashing installation on the Bristol project in strict accordance with Andersen window and door installation requirements and the contract plans and specifications by Niles Bolton.

27. ABG Caulking & Waterproofing of Morristown, Inc. ("ABG") is a Tennessee corporation that is registered and authorized to do business in South Carolina. ABG, pursuant to a subcontract with Gulf Stream dated February 5, 2001, agreed to furnish and install all waterproofing at all exterior balconies in accordance with the contract drawings and specifications for the project.
28. Glasgow Roofing Company, Inc. ("Glasgow") is a corporation organized, existing, and authorized to do business in South Carolina. Upon information and belief, Glasgow maintains its principal place of business in South Carolina. Glasgow, pursuant to a subcontract with Gulf Stream dated May 28, 2002, agreed to provide all labor, materials, and all incidentals as required to complete installation of the metal flashing and sealant at all third floor balconies in accordance with all contract drawings, specifications, and approved design and submittals including all necessary mounting hardware and sealant to waterproof the balcony edges.
29. Donald Barr d/b/a Barr & Barr Services ("Barr") is a sole proprietor who was a resident of Charleston County and was performing construction related services in Charleston County during the construction of the Bristol. Upon information and

belief, Barr is a resident of Oconee County. Barr, pursuant to a subcontract with Gulf Stream dated January 16, 2002, agreed to furnish and install all items and incidental items of work required to perform exterior doors, windows, and flashing installation in accordance with the contract drawings and specifications and Andersen requirements.

30. The certificate of occupancy was issued for the Bristol prior to July 2005.
31. During Hurricane/Tropical Storm Gaston, which occurred on or about August 29, 2004, numerous instances of water intrusion occurred to the interior of the condominium units, the common areas, and the limited common areas at the Bristol.
32. The water damage to common elements and condominium units is a result of defects and deficiencies in the design and construction of the Bristol, specifically including but not limited to the following
 - a. No weep screed or weeping mechanism was installed along the stucco wall bases at the perimeter of the balcony slabs as required by building codes and proper construction practices;
 - b. There is a lack of adequate weeps in masonry;
 - c. The failure of weep or water management systems to manage seepage water, which gets past the façade cladding, has resulted in wetting of exterior sheathing behind moisture barriers and into the wall cavity and metal framework within the wall cavity;

- d. Gaps are existing between bottom edges of balcony decks and hard coat stucco;
- e. EIFS trim banding element is backwrapped without base coat;
- f. Metal copings are not terminated into hard coat stucco or flashing;
- g. Improper installation and sealing of metal coping joinery on the roof parapet;
- h. Gaps in exterior sheathing;
- i. No joints are installed between EIFS trim band and dissimilar materials;
- j. No separation joints are installed between brick masonry and EIFS;
- k. Gaps exist between brick and floor slab and between sheathing and floor slab;
- l. Window jambs have gaps behind nailing fin and next to wood nailer;
- m. Gaps exist between window frames and wall framing below trellis band board;
- n. Gaps between wood bands and hard coat stucco;
- o. Tyvek wrap is not continuous in areas;
- p. Project specified metal through wall flashing shown on the project drawings is not installed at wall bases, heads, and below window sill bases;

- q. No horizontal joint or through wall flashing is installed between brick masonry and stucco immediately above masonry around building;
- r. There is improper installation of sealants around windows, doors, and cladding terminations;
- s. Improper installation of deck coatings has resulted in cracks or splits allowing surface water runoff to seep under metal copings;
- t. Head and sill flashing called for in plans and specifications was not installed;
- u. Failure to seal and flash terminations and gaps at bottom of window and door jambs installed on concrete slabs;
- v. Failure to install proper sealant joints around penetrations in exterior cladding;
- w. Metal cap flashings have been installed with a negative slope;
- x. Exterior architectural trim has been installed with little or no slope; and
- y. Balcony decks are not properly sloped.

33. Plaintiff is informed and believes that the exterior windows and doors installed at the condominium units, the limited common areas, and the common areas of the building are not in compliance with the building codes and standards which were applicable to this project at the time of design and construction and will have to

be replaced with new exterior windows and doors which comply with current building codes and standards applicable to this project.

34. The Plaintiff has been and will continue to be proximately damaged by the design and construction defects existing at the Bristol.
35. Due to the design and construction defects and resulting property damage, Plaintiff has, and in the future, will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies, and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.
36. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.

I. FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

37. The allegations contained in paragraphs 1-36 are realleged and restated as if repeated verbatim herein.
38. Plaintiff brings this cause of action against Defendants the Developers, Gulf Stream, Niles Bolton, and all other Defendants who performed work on the Bristol pursuant to section 15-53-10, et seq., of the South Carolina Code seeking a declaration that certain provisions of the Master Deed and sales contracts are void and unenforceable against Plaintiffs.

39. The Master Deed is dated August 30, 2002, and is signed by John A. Darby, President of the Beach Company, and Dana R. Mager, Corporate Secretary of the Beach Company, serving as the Manager of Beach Brittlebank, LLC, which was and is a member of Brittlebank Condominiums, LLC.
40. The Master Deed was filed in Book D417, Page 1 of the office of the Register Mesne Conveyance ("RMC") for Charleston County, South Carolina. The Master Deed is comprised of seventy five pages including six exhibits, the cover page, and the table of contents, and is incorporated by reference.
41. Exhibit E to the Master Deed is the Bylaws of the Bristol Condominium Property Owners' Association ("Bylaws").
42. The Master Deed was amended on at least three occasions prior to transition of the authority to elect or appoint members of the Board of Directors of the Bristol Condominium Property Owners Association from the Developers to the owners of the condominium units.
43. In selling the units, the Developers used form contracts which were prepared by their representatives and agents.
44. The Master Deed, the exhibits to the Master Deed, the amendments to the Master Deed and the sales contracts collectively contain various clauses, provisions, and terms which are oppressive, one sided, unconscionable, overreaching, and contrary to the law and public policy of South Carolina. The provisions for which Plaintiff seeks a declaratory judgment from this Court that these terms are void, invalid, and unenforceable include, but are not limited to the purported disclaimer of warranty of habitability, limitation of warranties and remedies, and waiver and

release of claims if certain procedures are not followed by Plaintiffs in the pursuit of lawful and valid claims.

Warranty of Habitability

45. Section 3.6 of the Master Deed states:

FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF COMPLETION OF CONSTRUCTION (BEING THE LATER OF SUBSTANTIAL COMPLETION UNDER THE CONSTRUCTION CONTRACT, OR THE DATE A CERTIFICATE OF OCCUPANCY IS ISSUED THEREFOR), THE DEVELOPER SHALL AT NO COST TO THE ASSOCIATION REPAIR OR REPLACE (IN THE DEVELOPER'S DISCRETION) ANY PORTIONS OF THE COMMON AREA (EXCEPT FIXTURES, ACCESSORIES AND APPLIANCES COVERED BY SEPARATE WARRANTIES OF THEIR RESPECTIVE MANUFACTURERS) WHICH ARE DEFECTIVE AS TO MATERIALS OR WORKMANSHIP. THIS LIMITED WARRANTY IS IN PLACE OF ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND THE DEVELOPER DISCLAIMS ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, THE LIABILITY OF THE DEVELOPER SHALL BE LIMITED TO SUCH REPAIR OR REPLACEMENT AND THE DEVELOPER SHALL NOT BE LIABLE FOR DAMAGES OF ANY NATURE, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, REGARDLESS OF WHETHER SUCH DAMAGES ARE CLAIMED TO ARISE OUT OF THE LAW OF CONTRACT, TORT OR OTHERWISE, OR PURSUANT TO STATUTE OF ADMINISTRATIVE REGULATION. Each Owner in accepting a deed from the Developer or any other party to a Unit, expressly acknowledges and agrees that this Section 3.6 establishes the sole liability of the Developer to the Association and the Owners related to defects in the Common Area and the remedies available with regard thereto. At the end of the one (1) year warranty period referred to hereinabove in this Section 3.6, the Developer will assign to the Association in writing all of its rights, claims, causes of action and demands which it has or which may thereafter accrue against all other people who may be responsible for the design and/or construction of the Common Area.

46. Section 3.6 was inserted in the Master Deed by the Developers.

47. The Defendants did not specifically bargain for Section 3.6 of the Master Deed with any of the condominium unit owners or any of the purchasers of the condominium units.
48. Section 3.6 of the Master Deed was not conspicuous to prospective purchasers of the condominiums at the time they negotiated their contracts to purchase condominium units from the Developers.
49. The owners of the condominium units were unaware of the disclaimer of the warranty of habitability language contained in Section 3.6 of the Master Deed.
50. By inserting such a provision in the Master Deed, the Developers sought to insulate themselves from liability for design and construction defects for which the Developers and other Defendants are liable under the laws of South Carolina.
51. The only parties to benefit from the insertion of such a provision in the Master Deed are the Developers of the Bristol and the other Defendants.

"Real Estate Purchase Agreements"

52. The Developers and their agents prepared standard form contracts to be used for the sale of condominium units at the Bristol.
53. Upon information and belief, the contracts were used for the sale of every unit, with slight modifications in certain instances.
54. The real estate sales contracts prepared by the Developers were identified at the top of each document as a "Real Estate Purchase Agreement."
55. Upon information and belief, each Real Estate Purchase Agreement contained a provision entitled "Warranty." This provision was materially misleading because rather than granting Plaintiff rights, it was designed to limit, waive, and forfeit the

rights which Plaintiff has under the law of South Carolina as purchasers of an interest in real estate.

56. Upon information and belief, the "Warranty" provision is found in either Section 8 or Section 11 of the contracts depending on the version of the contract for sale used by the Developers.
57. Upon information and belief, the "Warranty" provision is materially the same in all of the Real Estate Purchase Agreements.
58. The "Warranty" provision reads as follows:

FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF CLOSING, THE COMPANY WILL, AT NO COST TO THE PURCHASER, REPAIR OR REPLACE ANY PORTION OF THE UNIT, EXCEPT FOR FIXTURES AND APPLIANCES COVERED BY A MANUFACTURER'S WARRANTY, WHICH ARE DEFECTIVE AS TO MATERIALS OR WORKMANSHIP. FURTHERMORE, PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER WILL PERFORM SUCH ROUTINE MAINTENANCE AS IS SET FORTH IN ANY WRITTEN MANUAL, INSTRUCTION BOOKLET OR OTHER WRITING AS MAY BE PROVIDED TO PURCHASER BY THE COMPANY OR ANY SUCH MANUFACTURER. THE FAILURE OF PURCHASER TO OBSERVE AND PERFORM ANY SUCH RECOMMENDED MAINTENANCE MAY INVALIDATE ANY WARRANTY WITH RESPECT TO THE ITEM FOR WHICH THE MAINTENANCE WAS NOT PERFORMED. THE COMPANY'S LIABILITY IS EXPRESSLY LIMITED TO SUCH REPAIR OR REPLACEMENT, AND THE COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED. THE COMPANY IS NOT RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES PROXIMATELY CAUSED BY A BREACH OF WARRANTY, THE COMPANY'S TOTAL LIABILITY BEING THE COST OF REPLACEMENT OR REPAIR, AND THE PURCHASER WILL NOT BE ENTITLED TO ANY COMPENSATION FOR LOST RENTAL OR INCONVENIENCE.

59. The "Warranty" provisions contained in the Real Estate Purchase Agreements do not specifically state that the Developers are disclaiming the warranty of habitability.

60. The "Warranty" provisions found in the Real Estate Purchase Agreements were not specifically bargained for between the Developers and the purchasers.
61. Upon information and belief, many of the current owners of the condominiums at the Bristol did not sign a sales contract with the Developers.
62. The "Warranty" provisions are not conspicuous in the contracts.

Release of Liability for Failure to Submit Claims to Mandatory Alternative Dispute Resolution Procedures

63. Section 16 of the Master Deed is entitled, "Alternative Dispute Resolution."
64. Subsection 16.1 of Section 16 states

[t]he Developer, Association, Owners, and any Parties not otherwise subject to the Regime who agrees to submit to this Section 16 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes between and among themselves involving the Regime or the Project, and to avoid the emotional and financial costs of litigation. For purposes hereof, the architect and contractor for a Building and the Units constructed therein shall constitute Bound Parties hereunder. Accordingly, each Bound Party covenants and agrees that all claims, grievances and disputes (including those in the nature of counterclaims or cross-claims) between Bound Parties involving the Regime or the Project, including without limitation, claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 16.2, are subject to the procedures set forth in 16.3.
65. Section 16.3 of the Master Deed purports to prescribe the manner in which claims against "Bound Parties" can be made.
66. According to Section 16.3, a Plaintiff with a "Claim" against a bound party cannot initiate legal proceedings unless it complies with procedures outlined by Exhibit F to the Master Deed.
67. Exhibit F to the Master Deed purports to establish a mandatory procedure for the resolution of claims. However, the provisions are materially misleading in that the Developers buried within the procedure, in paragraph 1.3(b), an attempt to have

the Plaintiff forfeit its legal rights and release the Developers and other Defendants from any and all liability.

68. Paragraph 1.3(b) of Exhibit F to the Master Deed provides that

In the event Claimant does not submit the Claim to binding arbitration as aforesaid, the Claim is deemed abandoned, and Respondent is released and discharged from any and all liability to Claimant arising out of the Claim; provided, nothing herein will release or discharge Respondent from any liability to a Person not a Party to the foregoing proceedings, or the mandatory requirements of this Paragraph 1.3 with respect to any subsequently arising new dispute or claim by the Claimant which is identical or similar to the Claim previously deemed abandoned under this Paragraph 1.3(b).

69. Under the dispute resolution provision, the Developers also attempted to create a forfeiture of Plaintiff's rights to recover punitive damages by purporting to provide that an arbitrator cannot award punitive damages.

70. Exhibit F to the Master Deed was prepared and filed by the Developers.

71. The owners of condominium units at the Bristol did not negotiate the terms of Exhibit F with the Developers and did not vote to include the provisions in the Master Deed.

72. The Developers included Exhibit F to the Master Deed to have control over the manner in which condominium purchasers pursue claims against them.

REQUESTED DECLARATIONS

73. The Plaintiff requests that the Court declare Section 3.6 of the Master Deed to be invalid and unenforceable under the laws of South Carolina.

74. Alternatively, Plaintiff requests the Court to declare that the portions of Section 3.6 purporting to disclaim the implied warranty of habitability and the portion purporting to limit the liability of the developer to the cost to repair and replace

defective work invalid for such purpose and unenforceable under the laws of South Carolina.

75. The Plaintiff requests that the Court declare the entire provisions in the original contracts for sale of the condominium units entitled warranty to be invalid and unenforceable under the laws of South Carolina.
76. Alternatively, the Plaintiff requests the Court to declare that the portion of the warranty provisions in the original contracts for sale of the condominiums purporting to disclaim liability for defective work are insufficient to disclaim the implied warranty of habitability given at law by the developer and the portion of the sales contracts purporting to limit the liability of the developer to the cost to repair and replace defective work be deemed invalid and unenforceable under the laws of South Carolina.
77. The Plaintiff requests that Section 16 of the Master Deed be declared inapplicable to the claims of Plaintiff and/or unenforceable and invalid under the laws of South Carolina.
78. The Plaintiff requests that Section 16.3 of the Master Deed be declared inapplicable to the claims of Plaintiff and/or invalid and unenforceable under the laws of South Carolina.
79. The Plaintiff requests that Exhibit F to the Master Deed, specifically including, but not limited to Paragraph 1.3(b), be declared inapplicable to the claims of Plaintiff and/or unenforceable and invalid under the laws of South Carolina.

II. FOR A SECOND CAUSE OF ACTION
(Breach of Warranty of Habitability as to the Developers)

80. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-79.
81. The Developers provided an implied warranty of habitability under South Carolina law to the purchasers and owners of the Bristol condominium units by controlling the design and ultimate cost of construction, by using its affiliate Gulf Stream as the general contractor to control the means and methods of construction, offering the units for sale to the public, and entering into contracts of sale to the Plaintiffs and other members of the class. This warranty of habitability extends to subsequent purchasers who were the foreseeable beneficiaries of this warranty.
82. The attempts by the Developers to disclaim the warranty of habitability are void and unenforceable under law of South Carolina as interpreted by the South Carolina Supreme Court in that the purported disclaimer was not conspicuous and was not specifically bargained for during negotiations for the sale of the units.
83. The numerous design and construction defects and resulting property damage to the individual condominium units of the Bristol constitutes a breach of the warranty of habitability under the laws of South Carolina.
84. Due to the design and construction defects and resulting property damage, Plaintiff has and in the future will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct

the design and construction deficiencies and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.

85. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.
86. Plaintiff is entitled to a judgment against the Developers in an amount to be proven at trial for all damages proximately caused by the Developers' breach of the warranty of habitability.

III. FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty as to the Developers)

87. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-86.
88. During the time that the Developers controlled the actions of the Board of Directors for the Bristol Condominiums Property Owners Association, the Developers through their appointed agents on the Board, owed the Plaintiff a fiduciary duty to place the interests of the Plaintiff above the interests of the Developers and their affiliates, such as Gulf Stream. This fiduciary duty included a duty to conduct a good faith investigation of all possible design and construction deficiencies at the Bristol without regard to whether the Developers or its affiliates, including Gulf Stream, were ultimately liable for all damages arising from the deficiencies in design and construction.
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89. The Developers also owed a non-delegable duty to the Plaintiff to make certain that all of the common elements of the Bristol were either in good repair and in

compliance with all applicable building codes or that sufficient funds had been provided to the Bristol Condominiums Property Owners Association by the Developers to make any necessary repairs at the time that transition of control of the Board of Directors by the Developers to the owners of the Bristol condominium units.

90. As of the date of transition of control of the Board of Directors by the Developers to the owners of the Bristol condominium units in the late summer of 2006, the Developers knew that the construction and design defects and deficiencies in the common elements and other exterior components of the Bristol had caused and would in the future cause property damage to the units and personal property of the condominium unit owners.
91. The Developers failed to pursue claims against responsible parties and failed to make the needed repairs to the common elements and other exterior components before transition of control of the Board of Directors from the Developers to the owners of the Bristol condominium units and failed to mitigate continuing damage to the Bristol and the Plaintiff.
92. The Developers failed to adequately fund the Bristol Condominiums Property Owners Association so that it could make the necessary repairs. Further, to the extent the Developers took any steps to investigate the design and construction deficiencies at the Bristol, they used funds belonging to the Bristol Condominiums Property Owners Association, the source of which was assessments paid by the condominium unit owners rather than using Developers own funds.

93. By failing to repair the common elements and exterior components, failing to pursue claims against responsible parties, and failing to properly fund the Bristol Condominiums Property Owners Association for the purpose of making such repairs, the Developers breached their fiduciary duties and other non-delegable duties owed to Plaintiffs and members of the class.
94. As a proximate and direct result of Brittlebank, BB, Beach Company, and FSP's breach of its fiduciary duties, Plaintiff has and in the future will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.
95. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.
96. The Plaintiff is entitled to a judgment against the Developers for the breach of their fiduciary and other non-delegable duties in an amount to be proven at trial.

IV. FOR A FOURTH CAUSE OF ACTION
(Negligence as to the Developers)

97. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-96.

98. As the developers of the Bristol, Brittlebank, BB, Beach Company, and FSP owed a duty of due care in overseeing the construction, management, and operation of the Bristol to purchasers of condominium units.
99. The Developers breached the duty of due care it owed to Plaintiffs and members of the class as the purchasers of condominium units in one or more of the following particulars:
- a) by failing to properly select the architect, general contractor, and materials used in the construction of the Bristol;
 - b) by failing to properly oversee the design and construction, including the selection of subcontractors, of the Bristol when it planned to sell the condominium units to members of the public for profit;
 - c) by failing to properly and prudently to fund and effect repairs to the common elements of the Bristol and the exterior windows and doors while it was in control of the property owners' association;
 - d) by failing to properly and prudently fund the property owners' association before transition of control of the Board of Directors to the individual condominium unit owners; and
 - e) by engaging in self dealing and self interested transactions without properly evaluating other alternatives.

100. The negligent acts and omissions of the Developers are the proximate causes of construction and design deficiencies which have resulted in property damage and financial damages to Plaintiff.
101. The acts and omissions of Brittlebank, BB, Beach Company, and FSP have proximately caused the Plaintiff to be damaged in that Plaintiff has and, in the future, will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies, and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.
102. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.
103. As a result of the negligence of the Developers, the Plaintiff is entitled to a judgment against said Defendants in an amount to be determined at the trial of this case.

V. FOR A FIFTH CAUSE OF ACTION
(Accounting at to the Developers)

104. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-103.
105. Management and control of the Bristol Condominiums Property Owners

Association was formerly vested in a Board of Directors appointed and controlled by the Developers.

106. Before transitioning control of the Board of Directors from the Developers to the owners of the Bristol condominium units in late summer 2006, the Developers made various transfers of money from the operating account of the Bristol Condominiums Property Owners Association.
107. Plaintiff is not currently aware of all the money and assets belonging to the Bristol Condominiums Property Owners Association that may have been misappropriated.
108. The Developers failed to render a proper accounting as to the funds, operations, assets, and property of the property owners' association.
109. Plaintiff is entitled to an order requiring a complete accounting as to expenses of the property owners' association and further requiring the Defendants to hold as trustee for the Plaintiff any property or benefit improperly obtained by the Defendants.
110. The Plaintiff has no adequate remedy at law for this grievance.

VI. FOR A SIXTH CAUSE OF ACTION

(Negligence as to Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, Glasgow, ABG, and Superior Structures)

111. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-110.
112. By undertaking construction work on the Bristol, Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures owed a duty to Plaintiff to use reasonable care during the performance of their respective work on the building and to perform their scope of work in accordance with all applicable building codes, applicable industry standards, and to ensure that

construction conformed to the design documents when such documents reflected good design practice, the applicable standard of care, and industry standards.

113. Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures breached the duty of care they owed to Plaintiff.

114. Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures were negligent, grossly negligent, willful, and reckless in numerous aspects of the construction of the buildings, including, but not limited to, the following:

- a. Failing to properly supervise subcontractors and laborers during the construction of the Bristol;
- b. Failing to follow plans and specifications of the architect and design professionals;
- c. Failing to follow manufacturers' installation instructions and recommendations;
- d. Failing to perform construction work in accordance with applicable building codes and proper workmanlike practices; and
- e. Failing to select proper materials and capable subcontractors.

115. As a direct and proximate result of the negligence and recklessness of Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures as hereinabove set forth, the condominium units, the common elements, and the limited common elements of the Plaintiff have been damaged

by the intrusion of water.

116. Plaintiff has been proximately damaged by Defendants in that it has and in the future will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.
117. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.
118. As a result of the negligence of Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures, the Plaintiff is entitled to a judgment against said Defendants in an amount to be determined at the trial of this case.

VII. FOR A SEVENTH CAUSE OF ACTION

(Negligence Per Se as to Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures)

119. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-118.
120. By undertaking construction work on the Bristol, Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures owed a duty to Plaintiff to use reasonable care during the performance of their work on the building and to perform their scope of work in accordance with all applicable building codes, applicable industry standards, and to ensure that construction

conformed to the design documents when such documents reflected good design practice, conformed to the applicable standard of care, and conformed to industry standards.

121. Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures breached the duty of care it owed to Plaintiff.
122. Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures' work violated the applicable building codes in effect at the time of construction, specifically including, but not limited to the following
 - a. Failure to install weep mechanisms;
 - b. Failure to furnish and install exterior windows and doors which were in compliance with all applicable building codes and industry standards;
 - c. Failure to install head flashings;
 - d. Failure to properly install exterior cladding; and
 - e. Such additional building code violations which may be discovered during ongoing investigations of design and construction deficiencies.
123. The violation of the building codes by the contractors amounts to negligence per se.
124. Plaintiff has been proximately damaged by Defendants in that it has and in the future will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and

construction deficiencies and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.

125. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.
126. As a result of the negligence per se of Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures, the Plaintiff is entitled to a judgment against said Defendants in an amount to be determined at trial.

VIII. FOR AN EIGHTH CAUSE OF ACTION

(Breach of Implied Warranty of Workmanlike Service as to Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures)

127. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-126.
128. By performing construction work on the Bristol, Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures impliedly warranted that their work product would be quality workmanship equal to or greater than industry standards.
129. The above referenced construction defects and deficiencies show that Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures breached their implied warranties by failing to provide quality workmanship.

130. Plaintiff has been proximately damaged by Defendants in that it has and in the future will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.
131. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.
132. Plaintiff is entitled to a judgment against Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures, in an amount to be determined at trial, as a result of the Defendants breach of its implied warranties.

IX. FOR A NINTH CAUSE OF ACTION

(Breach of Express Warranty as to Gulf Stream, Niles Bolton, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures)

133. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-132.
134. Gulf Steam, pursuant to the Section 3.5.1 of the General Conditions of its contract with Brittlebank to serve as the general contractor for the construction of the Bristol, expressly warranted that its work would be of good quality, free from defects, and would conform to the contract documents.

135. Niles Bolton, pursuant to its contract with Brittlebank, expressly warranted that its plans, specifications, and other instruments of service would be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards.
136. Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures, pursuant to section 4.5.1 of their respective subcontracts with Gulf Stream, expressly warranted that their work would be of good quality, free from defects, and would conform to the contract documents.
137. As the ultimate and foreseeable owners of the Bristol condominium units, the Plaintiff and members of the class are beneficiaries of the express warranties provided by these Defendants.
138. These Defendants have breached their express warranties by failing to design and construct the Bristol such that it would be free from defects and in compliance with the applicable building codes and industry standards.
139. Plaintiff has been proximately damaged by Defendants in that it has and in the future will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.
140. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.

141. The Plaintiff is entitled to a judgment against these Defendants for the breach of their express warranties for an amount to be proven at trial.

X. FOR A TENTH CAUSE OF ACTION
(Breach of Express Warranties as to Andersen and Buck)

142. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-141.
143. Andersen and Buck warranted that the products they manufactured and sold for use in the Bristol would be of good quality, free from defects, and suitable for use and in compliance with applicable building codes in the City of Charleston as it relates to a five story riverfront condominium project.
144. The products manufactured and marketed by Andersen and sold by Andersen and Buck and incorporated into the Bristol have failed and are allowing water to intrude into the building. Further, upon information and belief, the exterior windows and doors are not in compliance with the applicable building codes and industry standards as it relates to the Bristol project.
145. The failures of the products manufactured and marketed by Andersen and sold by Buck and Andersen have resulted in damage to the various components of the building and will require extensive repair and restoration by the Plaintiff. Additionally, the exterior windows and doors, which are not in compliance with the applicable building codes, must be removed and replaced with exterior windows and doors which will be in compliance with the current building codes applicable to the Bristol project.
-
146. The Plaintiff will suffer loss of use of the common elements and the limited common elements of the Bristol, interference with the use and enjoyment of the

common elements and limited common elements during the time in which construction repairs are undertaken to the individual units, to the limited common elements, and to the common elements of the Bristol.

147. The failures of these products constitute a breach of the express warranties made by Andersen and Buck.
148. Plaintiff is entitled to a judgment against Andersen and Buck, in an amount to be determined at trial, as a result of the breach of their express warranties.

XI. FOR AN ELEVENTH CAUSE OF ACTION

(Breach of Implied Warranty of Merchantability against Andersen and Buck)

149. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-148.
150. By selling its products for use in the Bristol, Andersen and Buck impliedly warranted that the products would be fit for their intended purposes.
151. The products sold by Andersen and Buck and incorporated into the Bristol have failed and are allowing water to intrude into the building.
152. The failures of the products marketed and sold by Andersen and Buck have resulted in damage to various components of the building and will require extensive repair and restoration by the Plaintiff including, but not limited to, removal of the exterior windows and doors and replacement with exterior windows and doors which comply with the building codes currently applicable to the Bristol project.
153. The Plaintiff will suffer loss of use of the common elements and limited common elements, the interference with the use and enjoyment of their units during the

time in which construction repairs are undertaken to the common elements and the limited common elements of the Bristol.

154. The failures of these products constitute a breach of the implied warranty of merchantability.
155. Plaintiff is entitled to a judgment against Andersen and Buck, in an amount to be determined at trial, as a result of their breach of the implied warranties of merchantability.

XII. FOR A TWELFTH CAUSE OF ACTION

(Breach of Implied Warranty of Fitness for a Particular Purpose as to Buck and Andersen)

156. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-155.
 157. Andersen and Buck were aware that their exterior windows and doors were being considered for use as building components for the Bristol project which is a five story riverfront building located in the City of Charleston.
 158. Upon information and belief, Andersen and Buck recommended their products for the particular purposes stated by the contractors, the developers, and the architect.
 159. Andersen and Buck knew or reasonably should have known that the purchasers were relying on their skill or judgment to select suitable goods which are in compliance with applicable building codes.
 160. By selling the exterior windows and doors for a particular use in the Bristol, Andersen and Buck impliedly warranted that their products would be fit for their intended purpose in a five story riverfront condominium project.
-
161. The products sold by Andersen and Buck and incorporated into the Bristol have failed and are allowing water to intrude into the building.

162. The failure of the products has resulted in damage to the various components of the building and will require extensive repair and restoration by the Plaintiff including removal of all exterior windows and doors which are not in compliance with applicable building codes.
163. The Plaintiff will suffer loss of use of the common elements and the limited common elements, the interference with the use and enjoyment of the common elements and limited common elements during the time in which construction repairs are undertaken to the common elements and limited common elements of the Bristol.
164. The failure of these products amount to a breach of the implied warranty of fitness for a particular purpose.
165. Plaintiff is entitled to a judgment against Andersen and Buck, in an amount to be determined at trial, as a result of their breach of the implied warranties of merchantability.

XIII. FOR A THIRTEENTH CAUSE OF ACTION
(Strict Liability in Tort against Andersen and Buck)

166. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-165.
167. Andersen and Buck are in the business of selling building products for use in construction projects in South Carolina, specifically windows, window systems, and doors.
168. Andersen manufactured and sold and Buck sold exterior windows, window systems, and doors that were incorporated into the Bristol during construction.

169. The exterior windows, window systems, and doors were expected to and were incorporated into the Bristol without substantial change from the condition in which they were originally manufactured and sold.
170. The exterior windows, window systems, and doors have failed and are allowing water to enter the condominium units and other portions of the common elements from the exterior during rain events.
171. The failure of the exterior windows, window systems, and doors is causing property of the Plaintiff to be damaged.
172. The failure of the exterior windows, window systems, and doors will result in danger to the Plaintiff and their guests and invitees if these products are unable to withstand the design wind loads of 125 miles per hour required by the applicable building codes.
173. The exterior windows, window systems, and doors that were sold for use in the Bristol are defective and unreasonably dangerous to the condominium owners.
174. As a proximate result of the defective windows, window systems, and doors, Plaintiff have and continue to suffer damages, including but not limited to removal of all exterior windows and doors and replacement with exterior windows and doors which comply with the local applicable building codes.
175. The Plaintiff will suffer loss of use of the common elements and limited common elements, the interference with the use and enjoyment of the common elements and limited common elements during the time in which construction repairs are undertaken to the individual units and to the common elements and limited common elements of the Bristol.

176. Due to the damages caused by the defective products, Plaintiff is entitled to a judgment against Andersen and Buck for an amount to be determined at the trial of this case.

XIV. FOR A FOURTEENTH CAUSE OF ACTION

(Negligence as to Niles Bolton)

177. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-176.
178. Niles Bolton agreed to provide professional architectural and engineering services for the design of the Bristol, specifically including but not limited to the issuance of the plans and specifications for construction. These documents and/or instruments of service were required to be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards. Upon information and belief, Defendant Niles Bolton agreed to make periodic visits to the project during construction to observe whether the construction was in accordance with the plans and specifications and all applicable building codes.
179. It was foreseeable that the Plaintiff, as the ultimate purchasers of the Bristol condominium units, would be damaged if the Niles Bolton breached the above duties.
180. Niles Bolton breached its duty of care as follows
- a. By failing to properly design and prepare specifications for the Bristol which were compliant with all applicable building codes and professional standards;
 - b. Failing to specify products, specifically including but not limited to, exterior windows and doors, which were in

compliance with applicable building codes for a five story riverfront condominium project in the City of Charleston;

- c. Failing to design and specify an exterior cladding system for the Bristol condominium project with required details for flashing, sealant joints, control joints, weep systems, metal coping to prevent water from intruding into the interior of the condominium units or the wall cavities of the building;
- d. Failing to properly administer, observe and inspect the construction of the building for compliance with the plans and specifications and applicable building codes; and
- e. Such other breaches of the standard of care which are determined during the ongoing investigation of design deficiencies at the Bristol project.

- 181. Due to the design and construction defects and resulting property damage, Plaintiff has and in the future will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.
- 182. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.

183. Plaintiff is entitled to a judgment against Niles Bolton in an amount to be determined at the trial of the case.

XV. FOR A FIFTEENTH CAUSE OF ACTION

(Breach of Implied Warranty of Workmanlike Service as to Niles Bolton)

184. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-183.
185. By performing design services for the construction of the Bristol, Niles Bolton impliedly warranted that its work product would be of good quality, equal to or greater than industry standards.
186. Niles Bolton breached its duty to provide workmanlike service as follows:
- a. By failing to properly design and prepare specifications for the Bristol which were compliant with all applicable building codes and professional standards;
 - b. Failing to specify products, specifically including but not limited to, exterior windows and doors, which were in compliance with applicable building codes for a five story riverfront condominium project in the City of Charleston;
 - c. Failing to design and specify an exterior cladding system for the Bristol condominium project with required details for flashing, sealant joints, control joints, weep systems, metal coping to prevent water from intruding into the interior of the condominium units or the wall cavities of the building;

- d. Failing to properly administer, observe and inspect the construction of the building for compliance with the plans and specifications and applicable building codes; and
- e. Such other breaches of the standard of care which are determined during the ongoing investigation of design deficiencies at the Bristol project.

187. Due to the design and construction defects and resulting property damage, Plaintiff has and in the future will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.
188. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.
189. Plaintiff is entitled to a judgment against Niles Bolton, in an amount to be determined at trial, as a result of the breach of its implied warranty.

XVI. FOR A SIXTEENTH CAUSE OF ACTION

(Breach of Warranty of Plans and Specifications as to Niles Bolton)

190. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-189.

- ~~191.~~ Niles Bolton warranted the sufficiency of the design, plans, and specifications for the Bristol. Plaintiffs and members of the class, as the ultimate purchasers of the

Bristol condominium units, were the foreseeable beneficiaries of this implied warranty.

192. By failing to properly design the building and prepare appropriate plans and specifications, Niles Bolton breached its warranty as follows:

- a. By failing to properly design and prepare specifications for the Bristol which were compliant with all applicable building codes and professional standards;
- b. Failing to specify products, specifically including but not limited to, exterior windows and doors, which were in compliance with applicable building codes for a five story riverfront condominium project in the City of Charleston;
- c. Failing to design and specify an exterior cladding system for the Bristol condominium project with required details for flashing, sealant joints, control joints, weep systems, metal coping to prevent water from intruding into the interior of the condominium units or the wall cavities of the building;
- d. Failing to properly administer, observe and inspect the construction of the building for compliance with the plans and specifications and applicable building codes; and
- e. Such other breaches of the standard of care which are determined during the ongoing investigation of design deficiencies at the Bristol project.

193. Due to the design and construction defects and resulting property damage, Plaintiff has and in the future will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.
194. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.
195. Plaintiff is entitled to a judgment against Niles Bolton, in an amount to be determined at trial, as a result of the breach of its warranty.

XVII. FOR A SEVENTEENTH CAUSE OF ACTION
(Negligent Misrepresentation as to the Developers)

196. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-195.
197. The Developers, through advertisements, sales brochures and other marketing literature, website advertisements and by statements and actions of their agents, made numerous representations to the purchasers of condominiums, including, but not limited to the quality and luxury of the condominium units at the Bristol.
198. The representations made by the Developers and their agents to the purchasers of the condominiums were untrue and were misrepresentations of material facts.
199. The representations were made for the purpose of selling condominium units.

200. The individual condominium units owners comprising the Plaintiff, as purchasers of the condominium units, relied upon the representations of the Developers when deciding to purchase the units.
201. In the exercise of reasonable care, the Developers knew or should have known that their representations were false and that the prospective purchasers would rely on the representations.
202. The Developers failed to exercise reasonable care in making the representations.
203. The purchasers of the condominium units reasonably and justifiably relied on the representations of the Developers.
204. The Developers profited from the sale of the condominium units.
205. Due to the design and construction defects and resulting property damage, Plaintiff has and in the future will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.
206. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.
207. The conduct of the Developers amounts to gross negligence and entitles Plaintiff to recover punitive damages.

XVIII. FOR AN EIGHTEENTH CAUSE OF ACTION

(Unfair Trade Practices against Brittlebank, Beach Brittlebank, FSP, and Beach Company)

208. Plaintiff reasserts and realleges the allegations contained in the above paragraphs 1-207.
209. The Plaintiff and the Developers are persons within the meaning of the South Carolina Unfair Trade Practices Act.
210. By developing, marketing, and selling the condominium units at the Bristol, the Developers were engaged in commerce.
211. The actions of the Developers in developing, marketing, and selling the condominium units at the Bristol constitute unfair and deceptive practices.
212. The actions are capable of repetition and affect the public interest of South Carolina.
213. Upon information and belief, the actions of the Developers have been repeated.
214. Due to the design and construction defects and resulting property damage, Plaintiff has and in the future will be forced to expend funds to repair damage that has already occurred, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to the units, the limited common areas, and to the common areas of the building.
215. Additionally, Plaintiff will suffer loss of use of the common areas and the limited common areas, and the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to individual units and to the common elements of the Bristol.

216. The Plaintiff is entitled to its actual damages, treble damages, interest, and attorneys' fees.

WHEREFORE, the Plaintiff prays as follows:

- a. That the Court issue a Declaratory Judgment with respect to the first cause of action against the Developers, Gulf Stream, and Niles Bolton
 - i. To declare Section 3.6 of the Master Deed invalid and unenforceable under the laws of South Carolina; Alternatively, to declare that the portions of Section 3.6 purporting to disclaim the implied warranty of habitability and the portion purporting to limit the liability of the developer to the cost to repair and replace defective work invalid for such purpose and unenforceable under the laws of South Carolina;
 - ii. To declare the entire provisions in the original contracts for sale of the condominium units entitled Warranty to be invalid and unenforceable under the laws of South Carolina; Alternatively, to declare the portion of the warranty provisions in the original contracts for sale of the condominiums purporting to disclaim

liability for defective work to be insufficient to disclaim the implied warranty of habitability given at law by the developer and the portion of the sales contracts purporting to limit the liability of the developer to the cost to repair and replace defective work be deemed invalid and unenforceable under the laws of South Carolina.

iii. To declare that Section 16 of the Master Deed is inapplicable to the claims of Plaintiff and/or unenforceable and invalid under the laws of South Carolina;

iv. To declare that Section 16.3 of the Master Deed is inapplicable to the claims of Plaintiff and/or invalid and unenforceable under the laws of South Carolina.

v. To declare Exhibit F to the Master Deed to be inapplicable to the claims of Plaintiff and/or unenforceable and invalid under the laws of South Carolina.

b. Judgment for actual damages against the Defendants jointly and severally with regard to causes of action II, III, IV, VI, VII,

VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII;

- c. Punitive damages against the Developers under cause of action XVII, against Gulf Steam, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures for cause of action VII;
- d. Treble damages against the Developers pursuant to section 39-5-110, et seq. for the violation of the South Carolina Unfair Trade Practices Act under cause of action XVIII;
- e. An Order requiring a complete accounting as to receipts and expenses of the property owners' association and further requiring the Defendants to hold as trustee for the Plaintiff any property or benefit improperly obtained by the Defendants;
- f. Costs and attorneys' fees against the Defendants; and
- g. Such further relief as the Court deems appropriate.

ROSEN, ROSEN & HAGOOD, LLC

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ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
February 9, 2007

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

JANICE L. LANDRY, JOHN M.)
JORDAN, JR, DAVID W. WARNER,)
RAYMOND G. JOHNSON, and)
CHARLES EDWARD DeROSE,)
in their individual capacity and as duly)
elected members of the Board of Directors)
of the Bristol Condominium Property)
Owners Association, and STEVEN L.)
HYATT and HAROLD B. CAMPBELL,)
in their individual capacity and)
collectively with the other named)
Plaintiffs as class representatives of)
all owners and residents of the)
condominium units in the Bristol)
Condominium Property Owners')
Association who are similarly situated)

Plaintiffs,)

vs.)

BRITTLEBANK CONDOMINIUMS, LLC,)
THE BEACH COMPANY, BEACH)
BRITTLEBANK, LLC, FSP)
DEVELOPMENT, LLC., GULF STREAM)
CONSTRUCTION COMPANY, INC.,)
NILES BOLTON ASSOCIATES, INC.)
ANDERSEN WINDOWS, INC., BUCK)
LUMBER & BUILDING SUPPLY, INC.)
FERST PLASTERING, INC.,)
SUPERIOR SURFACES OF)
CHARLESTON, INC., CISSON)
INTERIORS, INC., SUPERIOR)
STRUCTURES, INC., ABG)
CAULKING & WATERPROOFING OF)
MORRISTOWN, INC., GLASGOW)
ROOFING COMPANY, INC., and)
DONALD BARR D/B/A BARR &)
BARR SERVICES,)

Defendants.)

COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 07-CP-10- 607

FILED
2007 FEB -9 PM 3:08
JULIE J. ARMSTRONG
CLERK OF COURT

COMPLAINT

(Construction Defect Claims)
(Declaratory Judgment)
(Negligence)
(Breach of Express and Implied Warranties)
(Negligent Misrepresentation)
(Breach of Fiduciary Duties)
(Unfair Trade Practices)

Jury Trial Demanded

The Plaintiffs, above named, complaining of the Defendants, would respectfully show unto this Honorable Court:

1. The Plaintiffs are owners and residents of condominium units of the Bristol Condominiums ("Bristol"), located at 3000 Old Bridgeview Lane, Charleston, Charleston County, South Carolina, and bring this action in their names and pursuant to Rule 23 of the South Carolina Rules of Civil Procedure as representatives of a class of similarly situated property owners comprised of each and every condominium unit owner in the Bristol.
2. Janice L. Landry, John M. Jordan, Jr., David W. Warner, Raymond G. Johnson, and Charles Edward DeRose are duly elected members of the Board of Directors of the Bristol Condominium Property Owners Association, are owners of condominium units at the Bristol, and are residents of Charleston County, South Carolina.
3. At a duly held special meeting of the Bristol Condominium Property Owners Association held on December 10, 2006, the Bristol unit owners voted by over ninety percent of their members to authorize the Board of Directors to pursue claims relative to water intrusion and other construction defects within the Bristol, including but not limited to, the building, facilities and individual units.
4. The individual members of the Board of Directors are bringing this lawsuit in their individual capacity and as duly elected members of the Board of Directors, pursuant to the authority given by the vote at the December 10, 2006, special

meeting of the property owners, and collectively with the other named Plaintiffs on behalf of the individual condominium unit owners who are similarly situated.

5. Plaintiff Steven L. Hyatt is an owner of Bristol unit 5014, which he purchased from Brittlebank Condominiums, LLC on or about March 28, 2004. Mr. Hyatt's unit has experienced water intrusion resulting in damage and loss of use of his unit. Attempts to repair his unit by the Defendants have been unsuccessful.
6. Plaintiff Harold B. Campbell is the owner of Bristol unit 5013, which he purchased from Brittlebank Condominiums, LLC on or about September 3, 2004. Mr. Campbell's unit has experienced water intrusion resulting in damage to his unit.
7. The Bristol is a five story building containing fifty-four condominium units.
8. The Plaintiffs would further allege and show:
 - i. The class is so numerous that joinder of all members is impracticable;
 - ii. There are questions of law and fact common to the class;
 - iii. The claims of the Plaintiffs are typical of the claims of the class;
 - iv. The Plaintiffs will fairly and adequately protect the interest of the class; and
 - v. The amount in controversy exceeds One Hundred Dollars (\$100.00) for each member of the class.
9. Pursuant to the Master Deed of the Bristol Horizontal Property Regime ("Master Deed") dated August 30, 2002 and filed in Book D417, Page 1 of the office of the Register Mesne Conveyance ("RMC") for Charleston County, South Carolina, individual condominium unit owners have exclusive ownership and possession of their units.
10. The Master Deed provides in Section 3.4 that the common elements of the Bristol Condominiums are fractionally owned by all unit owners as tenants in common.

The Master Deed further provides in Section 8.1 that "... the Association will maintain the Common Elements in first class condition in accordance with proper maintenance procedures applicable thereto and will enforce all warranties with respect to the Common Area."

11. The property rights of the owners are outlined in section 3 of the Master Deed.
12. Section 3.2(c) provides that the windows, glass surfaces, and doors (including window and door frames and the hardware thereof) serving the unit are considered part of each individual unit.
13. Pursuant to section 8.3 of the Master Deed, individual condominium unit owners are responsible for maintaining, repairing, and replacing all portions of their own units, specifically including doors, windows, screen window, and door hardware.
14. Likewise, the individual condominium unit owners are responsible for maintaining, repairing, and replacing all property within the walls of the condominium units.
15. Defendant Brittlebank Condominiums, LLC ("Brittlebank") is a limited liability company organized and existing under the laws of South Carolina with its principal place of business in Charleston County. Upon information and belief, Brittlebank was organized for the sole purpose of developing the Bristol.
16. Defendant Beach Brittlebank, LLC ("BB") is a limited liability company organized and existing under South Carolina laws and doing business in Charleston County. Upon information and belief, BB is a member and the manager of Brittlebank.

17. Defendant FSP Development, LLC ("FSP") is a limited liability company organized and existing under South Carolina laws. Upon information and belief, FSP is a member of Brittlebank.
18. The Beach Company ("Beach Company") is a corporation organized and existing under the laws of South Carolina with its principal place of business in Charleston County. Upon information and belief, the Beach Company is the manager of Beach Brittlebank, LLC, which is the manager of Brittlebank Condominiums, LLC.
19. Upon information and belief, Brittlebank, BB, Beach Company, and FSP (hereinafter collectively referred to as "Developers") collectively developed the Bristol.
20. Prior to, during, and after construction, the Developers marketed the condominiums as a luxury condominium development and sold the individual condominium units to the Plaintiffs and others.
21. The Developers' representatives drafted and filed the Master Deed dated August 30, 2002 and all amendments thereto.
22. From the time the Bristol Condominium Property Owners Association was formed and up until the late summer of 2006, the Developers controlled the Board of Directors through its appointment of the members of the Board.
23. Defendant Beach Company served as the property manager of the Bristol while the Board of Directors was being controlled by the Developers.
24. Defendant Gulf Stream Construction Company, Inc. ("Gulf Stream") is a corporation organized and existing under the laws of South Carolina with its

principal place of business in Charleston County. Gulf Stream, pursuant to a contract with Brittlebank dated October 5, 2000, served as the general contractor for the construction of the Bristol and agreed to construct the project in accordance with the applicable contract documents, including but not limited to the plans and specifications prepared by Defendant Niles Bolton Associates, Inc. Upon information and belief, Gulf Stream is an affiliate of the Beach Company.

25. Defendant Niles Bolton Associates, Inc. ("Niles Bolton") is a corporation organized under Georgia law and registered to do business in South Carolina. Upon information and belief, Niles Bolton maintains its principal place of business in Georgia. Niles Bolton, by contract with the Developers, served as the architect for the design of the Bristol and agreed to provide professional architectural and engineering services for the design of the Bristol, specifically including but not limited to the issuance of the plans and specifications for construction. These documents and/or instruments of service were required to be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards. Upon information and belief, Defendant Niles Bolton agreed to make periodic visits to the project during construction to observe whether the construction was in accordance with the plans and specifications and all applicable building codes.

26. Andersen Windows Inc. ("Andersen") is a corporation organized under the laws of Minnesota and is registered and authorized to do business in South Carolina. At all times pertinent to this lawsuit, Andersen was engaged in the business of manufacturing and selling windows, window systems, and exterior doors for use

in construction projects. Andersen presently sells windows, window systems, and exterior doors for use in South Carolina construction projects. Andersen manufactured and sold the windows, window systems, and exterior doors that were installed at the Bristol.

27. Buck Lumber & Building Supply, Inc. ("Buck") is a corporation organized, existing, and authorized to do business in South Carolina. Buck has its principal place of business in Charleston County, South Carolina. Upon information and belief, Buck was the supplier of the windows, window systems, and exterior doors installed at the Bristol.
28. Ferst Plastering, Inc. ("Ferst") is a corporation organized, existing, and authorized to do business in South Carolina. Upon information and belief, Ferst maintains its principal place of business in Charleston County, South Carolina. Ferst, pursuant to subcontracts with Gulf Stream dated September 19, 2001 and October 25, 2001, agreed to furnish and install all items and incidental items of work required to perform the hardiplank, furring, lathing, and stucco scope of work for the Bristol project in accordance with the contract documents, manufacturer's requirements, including flashings and tie-ins, joints, sealants, and caulking as specified, expansion joints and reveals as required.
29. Superior Surfaces of Charleston, Inc. ("Superior Surfaces") is a corporation organized, existing, and authorized to do business in South Carolina. Upon information and belief, Superior Surfaces maintains its principal place of business in Charleston County, South Carolina. Superior Surfaces, pursuant to a

subcontract with Gulf Stream dated May 15, 2002, agreed to providing and installing the exterior brick on the Bristol.

30. Cisson Interiors, Inc. ("Cisson") is a corporation organized, existing, and authorized to do business under the laws of South Carolina. Cisson, pursuant to a subcontract with Gulf Stream dated December 13, 2000, agreed to provide field engineering and layout, labor and materials and equipment, and all incidentals to complete aluminum stud framing, drywall, Dens Glass sheathing, thermal insulation, and exterior door and window installation on the Bristol project in accordance with the contract drawings and specifications.
31. Superior Structures, Inc. ("Superior Structures") is a corporation organized, existing, and authorized to do business under South Carolina law. Upon information and belief, Superior Structures maintains its principal place of business in Charleston County, South Carolina. Superior Structures, pursuant to a subcontract with Gulf Stream dated December 6, 2001, agreed to furnish and install all items and incidental items of work to perform the exterior windows, doors, and flashing installation on the Bristol project in strict accordance with Andersen window and door installation requirements and the contract plans and specifications by Niles Bolton.
32. ABG Caulking & Waterproofing of Morristown, Inc. ("ABG") is a Tennessee corporation that is registered and authorized to do business in South Carolina. ABG, pursuant to a subcontract with Gulf Stream dated February 5, 2001, agreed to furnish and install all waterproofing at all exterior balconies in accordance with the contract drawings and specifications for the project.

33. Glasgow Roofing Company, Inc. ("Glasgow") is a corporation organized, existing, and authorized to do business in South Carolina. Upon information and belief, Glasgow maintains its principal place of business in South Carolina. Glasgow, pursuant to a subcontract with Gulf Stream dated May 28, 2002, agreed to provide all labor, materials, and all incidentals as required to complete installation of the metal flashing and sealant at all third floor balconies in accordance with all contract drawings, specifications, and approved design and submittals including all necessary mounting hardware and sealant to waterproof the balcony edges.
34. Donald Barr d/b/a Barr & Barr Services ("Barr") is a sole proprietor who was a resident of Charleston County and was performing construction related services in Charleston County during the construction of the Bristol. Upon information and belief, Barr is a resident of Oconee County. Barr, pursuant to a subcontract with Gulf Stream dated January 16, 2002, agreed to furnish and install all items and incidental items of work required to perform exterior doors, windows, and flashing installation in accordance with the contract drawings and specifications and Andersen requirements.
35. The certificate of occupancy was issued for the Bristol prior to July 2005.
36. During Hurricane/Tropical Storm Gaston, which occurred on or about August 29, 2004, numerous instances of water intrusion occurred to the interior of the condominium units, the common areas, and the limited common areas at the Bristol.

37. The water damage to common elements and condominium units is a result of defects and deficiencies in the design and construction of the Bristol, specifically including but not limited to the following

- a. No weep screed or weeping mechanism was installed along the stucco wall bases at the perimeter of the balcony slabs as required by building codes and proper construction practices;
- b. There is a lack of adequate weeps in masonry;
- c. The failure of weep or water management systems to manage seepage water, which gets past the façade cladding, has resulted in wetting of exterior sheathing behind moisture barriers and into the wall cavity and metal framework within the wall cavity;
- d. Gaps are existing between bottom edges of balcony decks and hard coat stucco;
- e. EIFS trim banding element is backwrapped without base coat;
- f. Metal copings are not terminated into hard coat stucco or flashing;
- g. Improper installation and sealing of metal coping joinery on the roof parapet;
- h. Gaps in exterior sheathing;
- i. No joints are installed between EIFS trim band and dissimilar materials;

- j. No separation joints are installed between brick masonry and EIFS;
- k. Gaps exist between brick and floor slab and between sheathing and floor slab;
- l. Window jambs have gaps behind nailing fin and next to wood nailer;
- m. Gaps exist between window frames and wall framing below trellis band board;
- n. Gaps exist between wood bands and hard coat stucco;
- o. Tyvek wrap is not continuous in areas;
- p. Project specified metal through wall flashing shown on the project drawings is not installed at wall bases, heads, and below window sill bases;
- q. No horizontal joint or through wall flashing is installed between brick masonry and stucco immediately above masonry around building;
- r. There is improper installation of sealants around windows, doors, and cladding terminations;
- s. Improper installation of deck coatings has resulted in cracks or splits allowing surface water runoff to seep under metal copings;
- t. Head and sill flashing called for in plans and specifications was not installed;

- u. Failure to seal and flash terminations and gaps at bottom of window and door jambs installed on concrete slabs;
 - v. Failure to install proper sealant joints around penetrations in exterior cladding;
 - w. Metal cap flashings have been installed with a negative slope;
 - x. Exterior architectural trim has been installed with little or no slope; and
 - y. Balcony decks are not properly sloped.
38. Plaintiffs and members of the class are informed and believe that the exterior windows and doors installed at their units, the limited common areas, and the common areas of the building are not in compliance with the building codes and standards which were applicable to this project at the time of design and construction and will have to be replaced with new exterior windows and doors which comply with current building codes and standards applicable to this project.
39. The Plaintiffs and members of the class have been and will continue to be proximately damaged by the design and construction defects existing at the Bristol.
40. Due to the design and construction defects and resulting property damage, Plaintiffs and members of the class have, and in the future, will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners Association to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction

deficiencies, and to implement the remediation plan to their units and to the building.

41. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.

I. FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

42. The allegations contained in paragraphs 1-41 are realleged and restated as if repeated verbatim herein.
43. Plaintiffs and members of the class bring this cause of action against Defendants the Developers, Gulf Stream, Niles Bolton, and all other Defendants that performed construction work on the Bristol pursuant to section 15-53-10, et seq., of the South Carolina Code seeking a declaration that certain provisions of the Master Deed and sales contracts are void and unenforceable against Plaintiffs.
44. The Master Deed is dated August 30, 2002, and is signed by John A. Darby, President of the Beach Company, and Dana R. Mager, Corporate Secretary of the Beach Company, serving as the Manager of Beach Brittlebank, LLC, which was and is a member of Brittlebank Condominiums, LLC.
45. The Master Deed was filed in Book D417, Page 1 of the office of the Register Mesne Conveyance ("RMC") for Charleston County, South Carolina. The Master Deed is comprised of seventy five pages including six exhibits, the cover page, and the table of contents, and is incorporated by reference.

46. Exhibit E to the Master Deed is the Bylaws of the Bristol Condominium Property Owners' Association ("Bylaws").
47. The Master Deed was amended on at least three occasions prior to transition of the authority to elect or appoint members of the Board of Directors of the Bristol Condominium Property Owners Association from the Developers to the owners of the condominium units.
48. In selling the units, the Developers used form contracts which were prepared by their representatives and agents.
49. The Master Deed, the exhibits to the Master Deed, the amendments to the Master Deed and the sales contracts collectively contain various clauses, provisions, and terms which are oppressive, one sided, unconscionable, overreaching, and contrary to the law and public policy of South Carolina. The provisions which Plaintiffs seek a declaratory judgment from this Court that these terms are void, invalid, and unenforceable include, but are not limited to the purported disclaimer of warranty of habitability, limitation of warranties and remedies, and waiver and release of claims if certain procedures are not followed by Plaintiffs in the pursuit of lawful and valid claims.

Warranty of Habitability

50. Section 3.6 of the Master Deed states:

FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF COMPLETION OF CONSTRUCTION (BEING THE LATER OF SUBSTANTIAL COMPLETION UNDER THE CONSTRUCTION CONTRACT, OR THE DATE A CERTIFICATE OF OCCUPANCY IS ISSUED THEREFOR), THE DEVELOPER SHALL AT NO COST TO THE ASSOCIATION REPAIR OR REPLACE (IN THE DEVELOPER'S DISCRETION) ANY PORTIONS OF THE COMMON AREA (EXCEPT FIXTURES, ACCESSORIES AND APPLIANCES COVERED BY SEPARATE

WARRANTIES OF THEIR RESPECTIVE MANUFACTURERS) WHICH ARE DEFECTIVE AS TO MATERIALS OR WORKMANSHIP. THIS LIMITED WARRANTY IS IN PLACE OF ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND THE DEVELOPER DISCLAIMS ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, THE LIABILITY OF THE DEVELOPER SHALL BE LIMITED TO SUCH REPAIR OR REPLACEMENT AND THE DEVELOPER SHALL NOT BE LIABLE FOR DAMAGES OF ANY NATURE, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, REGARDLESS OF WHETHER SUCH DAMAGES ARE CLAIMED TO ARISE OUT OF THE LAW OF CONTRACT, TORT OR OTHERWISE, OR PURSUANT TO STATUTE OF ADMINISTRATIVE REGULATION. Each Owner in accepting a deed from the Developer or any other party to a Unit, expressly acknowledges and agrees that this Section 3.6 establishes the sole liability of the Developer to the Association and the Owners related to defects in the Common Area and the remedies available with regard thereto. At the end of the one (1) year warranty period referred to hereinabove in this Section 3.6, the Developer will assign to the Association in writing all of its rights, claims, causes of action and demands which it has or which may thereafter accrue against all other people who may be responsible for the design and/or construction of the Common Area.

51. Section 3.6 was inserted in the Master Deed by the Developers.
52. The Defendants did not specifically bargain for Section 3.6 of the Master Deed with any of the condominium unit owners or any of the purchasers of the condominium units.
53. Section 3.6 of the Master Deed was not conspicuous to prospective purchasers of the condominiums at the time they negotiated their contracts to purchase condominium units from the Developers.
54. The owners of the condominium units were unaware of the disclaimer of the warranty of habitability language contained in Section 3.6 of the Master Deed.

55. By inserting such a provision in the Master Deed, the Developers sought to insulate themselves from liability for design and construction defects for which the Developers and other Defendants are liable under the laws of South Carolina.
56. The only parties to benefit from the insertion of such a provision in the Master Deed are the Developers of the Bristol and the other Defendants.

“Real Estate Purchase Agreements”

57. The Developers and their agents prepared standard form contracts to be used for the sale of condominium units at the Bristol.
58. Upon information and belief, the contracts were used for the sale of every unit, with slight modifications in certain instances.
59. The real estate sales contracts prepared by the Developers were identified at the top of each document as a “Real Estate Purchase Agreement.”
60. Upon information and belief, each Real Estate Purchase Agreement contained a provision entitled “Warranty.” This provision was materially misleading because rather than granting Plaintiffs rights, it was designed to limit, waive, and forfeit the rights which Plaintiffs have under the law of South Carolina as purchasers of an interest in real estate
61. Upon information and belief, the “Warranty” provision is found in either Section 8 or Section 11 of the contracts depending on the version of the contract for sale used by the Developers.
62. Upon information and belief, the “Warranty” provision is materially the same in all of the Real Estate Purchase Agreements.
63. The “Warranty” provision reads as follows:

FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF CLOSING, THE COMPANY WILL, AT NO COST TO THE PURCHASER, REPAIR OR REPLACE ANY PORTION OF THE UNIT, EXCEPT FOR FIXTURES AND APPLIANCES COVERED BY A MANUFACTURER'S WARRANTY, WHICH ARE DEFECTIVE AS TO MATERIALS OR WORKMANSHIP. FURTHERMORE, PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER WILL PERFORM SUCH ROUTINE MAINTENANCE AS IS SET FORTH IN ANY WRITTEN MANUAL, INSTRUCTION BOOKLET OR OTHER WRITING AS MAY BE PROVIDED TO PURCHASER BY THE COMPANY OR ANY SUCH MANUFACTURER. THE FAILURE OF PURCHASER TO OBSERVE AND PERFORM ANY SUCH RECOMMENDED MAINTENANCE MAY INVALIDATE ANY WARRANTY WITH RESPECT TO THE ITEM FOR WHICH THE MAINTENANCE WAS NOT PERFORMED. THE COMPANY'S LIABILITY IS EXPRESSLY LIMITED TO SUCH REPAIR OR REPLACEMENT, AND THE COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED. THE COMPANY IS NOT RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES PROXIMATELY CAUSED BY A BREACH OF WARRANTY, THE COMPANY'S TOTAL LIABILITY BEING THE COST OF REPLACEMENT OR REPAIR, AND THE PURCHASER WILL NOT BE ENTITLED TO ANY COMPENSATION FOR LOST RENTAL OR INCONVENIENCE.

- 64. The "Warranty" provisions contained in the Real Estate Purchase Agreements do not specifically state that the Developers are disclaiming the warranty of habitability.
- 65. The "Warranty" provisions found in the Real Estate Purchase Agreements were not specifically bargained for between the Developers and the purchasers.
- 66. Upon information and belief, many of the current owners of the condominiums at the Bristol did not sign a sales contract with the Developers.
- 67. The "Warranty" provisions are not conspicuous in the contracts.

Release of Liability for Failure to Submit Claims to Mandatory Alternative Dispute Resolution Procedures

- 68. Section 16 of the Master Deed is entitled "Alternative Dispute Resolution."
- 69. Subsection 16.1 of Section 16 states

[t]he Developer, Association, Owners, and any Parties not otherwise subject to the Regime who agrees to submit to this Section 16 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes between and among themselves involving the Regime or the Project, and to avoid the emotional and financial costs of litigation. For purposes hereof, the architect and contractor for a Building and the Units constructed therein shall constitute Bound Parties hereunder. Accordingly, each Bound Party covenants and agrees that all claims, grievances and disputes (including those in the nature of counterclaims or cross-claims) between Bound Parties involving the Regime or the Project, including without limitation, claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 16.2, are subject to the procedures set forth in 16.3.

70. Section 16.3 of the Master Deed purports to prescribe the manner in which claims against "Bound Parties" can be made.
71. According to Section 16.3, a Plaintiff with a "Claim" against a bound party cannot initiate legal proceedings unless it complies with procedures outlined by Exhibit F to the Master Deed.
72. Exhibit F to the Master Deed purports to establish a mandatory procedure for the resolution of claims. However, the provisions are materially misleading in that the Developers buried within the procedure, in paragraph 1.3(b), an attempt to have the Plaintiffs forfeit their legal rights and release the Developers and other Defendants from any and all liability.
73. Paragraph 1.3(b) of Exhibit F to the Master Deed provides that

In the event Claimant does not submit the Claim to binding arbitration as aforesaid, the Claim is deemed abandoned, and Respondent is released and discharged from any and all liability to Claimant arising out of the Claim; provided, nothing herein will release or discharge Respondent from any liability to a Person not a Party to the foregoing proceedings, or the mandatory requirements of this Paragraph 1.3 with respect to any subsequently arising new dispute or claim by the Claimant which is identical or similar to the Claim previously deemed abandoned under this Paragraph 1.3(b).

74. Under the dispute resolution provision, the Developers also attempted to create a forfeiture of Plaintiffs' rights to recover punitive damages by purporting to provide that an arbitrator cannot award punitive damages.
75. Exhibit F to the Master Deed was prepared and filed by the Developers.
76. The owners of condominium units at the Bristol did not negotiate the terms of Exhibit F with the Developers and did not vote to include the provisions in the Master Deed.
77. The Developers included Exhibit F to the Master Deed to have control over the manner in which condominium purchasers pursue claims against them.

REQUESTED DECLARATIONS

78. The Plaintiffs and members of the class request that the Court declare Section 3.6 of the Master Deed to be invalid and unenforceable under the laws of South Carolina.
79. Alternatively, Plaintiffs and members of the class request the Court to declare that the portions of Section 3.6 purporting to disclaim the implied warranty of habitability and the portion purporting to limit the liability of the developer to the cost to repair and replace defective work invalid for such purpose and unenforceable under the laws of South Carolina.
80. The Plaintiffs and members of the class request that the Court declare the entire provisions in the original contracts for sale of the condominium units entitled Warranty to be invalid and unenforceable under the laws of South Carolina.
81. Alternatively, the Plaintiffs and members of the class request the Court to declare that the portion of the warranty provisions in the original contracts for sale of the

condominiums purporting to disclaim liability for defective work are insufficient to disclaim the implied warranty of habitability given at law by the developer and the portion of the sales contracts purporting to limit the liability of the developer to the cost to repair and replace defective work be deemed invalid and unenforceable under the laws of South Carolina.

82. The Plaintiffs and members of the class request that Section 16 of the Master Deed be declared inapplicable to the claims of Plaintiffs and/or unenforceable and invalid under the laws of South Carolina.
83. The Plaintiffs and members of the class request that Section 16.3 of the Master Deed be declared inapplicable to the claims of Plaintiffs and members of the class and/or invalid and unenforceable under the laws of South Carolina.
84. The Plaintiffs and members of the class request that Exhibit F to the Master Deed, specifically including, but not limited to Paragraph 1.3(b), be declared inapplicable to the claims of Plaintiffs and members of the class and/or unenforceable and invalid under the laws of South Carolina.

II. FOR A SECOND CAUSE OF ACTION

(Breach of Warranty of Habitability as to the Developers)

85. Plaintiffs reassert and reallege the allegations contained in the above paragraphs 1-84.
86. The Developers provided an implied warranty of habitability under South Carolina law to the purchasers and owners of the Bristol condominium units by controlling the design and ultimate cost of construction, by using its affiliate Gulf Stream as the general contractor to control the means and methods of construction, offering the units for sale to the public, and entering into contracts

of sale to the Plaintiffs and other members of the class. This warranty of

habitability extends to subsequent purchasers who were the foreseeable beneficiaries of this warranty.

87. The attempts by the Developers to disclaim the warranty of habitability are void and unenforceable under law of South Carolina as interpreted by the South Carolina Supreme Court in that the purported disclaimer was not conspicuous and was not specifically bargained for during negotiations for the sale of the units.
88. The numerous design and construction defects and resulting property damage to the individual condominium units of the Bristol constitutes a breach of the warranty of habitability under the laws of South Carolina.
89. As a direct and proximate cause of the Developers' breach of the warranties of habitability, the Plaintiffs and all members of the class have been damaged in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners Association to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.
90. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.

91. Plaintiffs and the members of the class are entitled to a judgment against the Developers in an amount to be proven at trial for all damages proximately caused by the Developers' breach of the warranty of habitability.

III. FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty as to the Developers)

92. Plaintiffs reassert and reallege the allegations contained in the above paragraphs 1-91.
93. During the time that the Developers controlled the actions of the Board of Directors for the Bristol Condominiums Property Owners Association, the Developers, through their appointed agents on the Board, owed the Plaintiffs and members of the class a fiduciary duty to place the interests of the Plaintiffs and the members of the class above the interests of the Developers and their affiliates, such as Gulf Stream. This fiduciary duty included a duty to conduct a good faith investigation of all possible design and construction deficiencies at the Bristol without regard to whether the Developers or its affiliates, including Gulf Stream, were ultimately liable for all damages arising from the deficiencies in design and construction.
94. The Developers also owed a non-delegable duty to the Plaintiffs and the members of the class to make certain that all of the common elements of the Bristol were either in good repair and in compliance with all applicable building codes or that sufficient funds had been provided to the Bristol Condominiums Property Owners Association by the Developers to make any necessary repairs at the time that transition of control of the Board of Directors by the Developers to the owners of the Bristol condominium units.

95. As of the date of transition of control of the Board of Directors by the Developers to the owners of the Bristol condominium units in the late summer of 2006, the Developers knew that the construction and design defects and deficiencies in the common elements and other exterior components of the Bristol had caused and would in the future cause property damage to the units and personal property of the Plaintiffs and members of the class.
96. The Developers failed to pursue claims against responsible parties and failed to make the needed repairs to the common elements and other exterior components before transition of control of the Board of Directors from the Developers to the owners of the Bristol condominium units and failed to mitigate continuing damage to the Bristol and the Plaintiffs and other members of the class.
97. The Developers failed to adequately fund the Bristol Condominiums Property Owners Association so that it could make the necessary repairs. Further, to the extent the Developers took any steps to investigate the design and construction deficiencies at the Bristol, they used funds belonging to the Bristol Condominiums Property Owners Association, the source of which was assessments paid by the Plaintiffs and members of the class rather than using Developers own funds.
98. By failing to repair the common elements and exterior components, failing to pursue claims against responsible parties, and failing to properly fund the Bristol Condominiums Property Owners Association for the purpose of making such repairs, the Developers breached their fiduciary duties and other non-delegable duties owed to Plaintiffs and members of the class.

99. As a proximate and direct result of the Developers' breach of their fiduciary duties and other non-delegable duties, the Plaintiffs and members of the class have suffered damages in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners Association to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.
100. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.
101. The Plaintiffs and members of the class are entitled to a judgment against the Developers for the breach of their fiduciary and other non-delegable duties in an amount to be proven at trial.

IV. FOR A FOURTH CAUSE OF ACTION
(Negligence as to the Developers)

102. Plaintiffs reassert and reallege the allegations contained in the above paragraphs 1-101.
103. As the developers of the Bristol, Brittlebank, BB, Beach Company, and FSP owed a duty of due care in overseeing the construction, management, and operation of the Bristol to purchasers of condominium units.

104. The Developers breached the duty of due care it owed to Plaintiffs and members

of the class as the purchasers of condominium units in one or more of the following particulars:

- i. by failing to properly select the architect, general contractor, and materials used in the construction of the Bristol;
- ii. by failing to properly oversee the design and construction, including the selection of subcontractors, of the Bristol when it planned to sell the condominium units to members of the public for profit;
- iii. by failing to properly and prudently to fund and effect repairs to the common elements of the Bristol and the exterior windows and doors while it was in control of the property owners' association;
- iv. by failing to properly and prudently fund the property owners' association before transition of control of the Board of Directors to the individual condominium unit owners; and
- v. by engaging in self dealing and self interested transactions without properly evaluating other alternatives.

105. The negligent acts and omissions of the Developers are the proximate causes of construction and design deficiencies which have resulted in property damage and financial damages to the Plaintiffs and members of the class.

106. The acts and omissions of the Developers have proximately caused the Plaintiffs and members of the class to suffer damages in that they have, and in the future, will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners

Association to pay for professional fees to investigate the full extent of the

problems, to design remediation plans and specifications to correct the design and construction deficiencies, and to implement the remediation plan to their units and to the building.

107. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.
108. As a result of the negligence of the Developers, the Plaintiffs and members of the class are entitled to a judgment against said Defendants in an amount to be determined at the trial of this case.

V. FOR A FIFTH CAUSE OF ACTION

(Negligence as to Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, Glasgow, ABG, and Superior Structures)

109. Plaintiffs and the members of the class reassert and reallege the allegations contained in the above paragraphs 1-108.
110. By undertaking construction work on the Bristol, Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures owed a duty to Plaintiffs to use reasonable care during the performance of their respective work on the building and to perform their scope of work in accordance with all applicable building codes, applicable industry standards, and to ensure that construction conformed to the design documents when such documents reflected good design practice, the applicable standard of care, and industry standards.

111. Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures breached the duty of care they owed to Plaintiffs and members of the class.
112. Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures were negligent, grossly negligent, willful, and reckless in numerous aspects of the construction of the building, including, but not limited to, the following:
- a. Failing to properly supervise subcontractors and laborers during the construction of the Bristol;
 - b. Failing to follow plans and specifications of the architect and design professionals;
 - c. Failing to follow manufacturers' installation instructions and recommendations;
 - d. Failing to perform construction work in accordance with applicable building codes and proper workmanlike practices; and
 - e. Failing to select proper materials and capable subcontractors.
113. The deficiencies set forth above violate the applicable standard building code, manufacturer's requirements and recommendations, industry standards, and good construction practices.
114. As a direct and proximate result of the negligence and recklessness of Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures as hereinabove set forth, the condominium units and the

personal property of the Plaintiffs and members of the class have been damaged by the intrusion of water.

115. The Plaintiffs and members of the class have suffered damages in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners Association to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.
116. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.
117. As a result of the negligence of Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures, the Plaintiffs and members of the class are entitled to a judgment against said Defendants in an amount to be determined at the trial of this case.

VI. FOR A SIXTH CAUSE OF ACTION

(Negligence Per Se as to Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures)

118. Plaintiffs and members of the class reassert and reallege the allegations contained in the above paragraphs 1-117.

119. By undertaking construction work on the Bristol, Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures owed a duty to Plaintiffs and members of the class to use reasonable care during the performance of their work on the building and to perform their scope of work in accordance with all applicable building codes, applicable industry standards, and to ensure that construction conformed to the design documents when such documents reflected good design practice, conformed to the applicable standard of care, and conformed to industry standards.
120. Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures breached the duty of care it owed to Plaintiffs and members of the class.
121. Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures' work violated the applicable building codes in effect at the time of construction, specifically including, but not limited to the following
- a. Failure to install weep mechanisms;
 - b. Failure to furnish and install exterior windows and doors which were in compliance with all applicable building codes and industry standards;
 - c. Failure to install head flashings;
 - d. Failure to properly install exterior cladding; and
 - e. Such additional building code violations which may be discovered during ongoing investigations of design and construction deficiencies.

122. The violation of the building codes by the general contractor and subcontractors constitutes negligence per se.
123. As a direct and proximate result of the contractors' violation of the applicable building codes, the Plaintiffs and members of the class have suffered damages in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners Association to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.
124. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.
125. As a result of the negligence per se of Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures, the Plaintiffs and members of the class are entitled to a judgment against said Defendants in an amount to be determined at trial.

VII. FOR A SEVENTH CAUSE OF ACTION

(Breach of Implied Warranty of Workmanlike Service as to Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures)

126. Plaintiffs and members of the class reassert and reallege the allegations contained in the above paragraphs 1-125.

127. By performing construction work on the Bristol, Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures impliedly warranted that their work product would be quality workmanship equal to or greater than industry standards.
128. The above referenced construction defects and deficiencies show that Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures breached their implied warranties by failing to provide quality workmanship.
129. As a direct and proximate cause of the breach of Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures' implied warranties, the Plaintiffs and members of the class have suffered damages in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners Association to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.
130. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.

131. Plaintiffs and members of the class are entitled to a judgment against Gulf Stream, Buck, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures, in an amount to be determined at trial, as a result of the Defendants breach of their implied warranties.

VIII. FOR AN EIGHTH CAUSE OF ACTION

(Breach of Express Warranty as to Gulf Stream, Niles Bolton, Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures)

132. Plaintiffs and the members of the class reassert and reallege the allegations contained in the above paragraphs 1-131.
133. Gulf Steam, pursuant to the Section 3.5.1 of the General Conditions of its contract with Brittlebank to serve as the general contractor for the construction of the Bristol, expressly warranted that its work would be of good quality, free from defects, and would conform to the contract documents.
134. Niles Bolton, pursuant to its contract with Brittlebank, expressly warranted that its plans, specifications, and other instruments of service would be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards.
135. Ferst, Superior Surfaces, Cisson, Barr, ABG, Glasgow, and Superior Structures, pursuant to section 4.5.1 of their respective subcontracts with Gulf Stream, expressly warranted that their work would be of good quality, free from defects, and would conform to the contract documents.
136. As the ultimate and foreseeable owners of the Bristol condominium units, the Plaintiffs and members of the class are beneficiaries of the express warranties provided by these Defendants.

137. These Defendants have breached their express warranties by failing to design and construct the Bristol such that it would be free from defects and in compliance with the applicable building codes and industry standards.
138. Because of the Defendants breaches of their express warranties have proximately suffered damages in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners Association to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.
139. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.
140. The Plaintiffs and members of the class are entitled to a judgment against these Defendants for the breach of their express warranties for an amount to be proven at trial.

IX. FOR A NINTH CAUSE OF ACTION

(Breach of Express Warranties as to Andersen and Buck)

141. Plaintiffs and the members of the class reassert and reallege the allegations contained in the above paragraphs 1-140.

142. Andersen and Buck warranted that the products they manufactured and sold for use in the Bristol would be of good quality, free from defects, and suitable for use and in compliance with applicable building codes in the City of Charleston as it relates to a five story riverfront condominium project.
143. The products manufactured and marketed by Andersen and sold by Andersen and Buck and incorporated into the Bristol have failed and are allowing water to intrude into the building. Further, upon information and belief, the exterior windows and doors are not in compliance with the applicable building codes and industry standards as it relates to the Bristol project.
144. The failures of the products manufactured and marketed by Andersen and sold by Buck and Andersen have resulted in damage to the various components of the building and will require extensive repair and restoration by the Plaintiffs and members of the class. Additionally, the exterior windows and doors, which are not in compliance with the applicable building codes, must be removed and replaced with exterior windows and doors which will be in compliance with the current building codes applicable to the Bristol project.
145. The Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.
146. The failures of these products constitute a breach of the express warranties made by Andersen and Buck.

147. Plaintiffs and members of the class are entitled to a judgment against Andersen and Buck, in an amount to be determined at trial, as a result of the breach of their express warranties.

X. FOR A TENTH CAUSE OF ACTION

(Breach of Implied Warranty of Merchantability against Andersen and Buck)

148. Plaintiffs and members of the class reassert and reallege the allegations contained in the above paragraphs 1-147.
149. By selling its products for use in the Bristol, Andersen and Buck impliedly warranted that the products would be fit for their intended purposes.
150. The products manufactured and marketed by Andersen and sold by Buck and Andersen and incorporated into the Bristol have failed and are allowing water to intrude into the building.
151. The failures of the products marketed and sold by Andersen and Buck have resulted in damage to various components of the building and will require extensive repair and restoration by the Plaintiffs and members of the class including but not limited to removal of the exterior windows and doors and replacement with exterior windows and doors which comply with the building codes currently applicable to the Bristol project.
152. The Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.

153. The failures of these products constitute a breach of the implied warranty of merchantability.

154. Plaintiffs and members of the class are entitled to a judgment against Andersen and Buck, in an amount to be determined at trial, as a result of their breach of the implied warranties of merchantability.

XI. FOR AN ELEVENTH CAUSE OF ACTION

(Breach of Implied Warranty of Fitness for a Particular Purpose as to Buck and Andersen)

155. Plaintiffs and members of the class reassert and reallege the allegations contained in the above paragraphs 1-154.

156. Andersen and Buck were aware that their exterior windows and doors were being considered for use as building components for the Bristol project which is a five story riverfront building located in the City of Charleston.

157. Upon information and belief, Andersen and Buck recommended their products for the particular purposes stated by the contractors, the developers, and the architect.

158. Andersen and Buck knew or reasonably should have known that the purchasers were relying on their skill or judgment to select suitable goods which are in compliance with applicable building codes.

159. By selling the exterior windows and doors for a particular use in the Bristol, Andersen and Buck impliedly warranted that their products would be fit for their intended purpose in a five story riverfront condominium project.

160. The products sold by Andersen and Buck and incorporated into the Bristol have failed and are allowing water to intrude into the building.

161. The failure of the products has resulted in damage to the various components of the building and will require extensive repair and restoration by the Plaintiffs and

members of the class including removal of all exterior windows and doors which are not in compliance with applicable building codes.

162. The Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.
163. The failure of these products amount to a breach of the implied warranty of fitness for a particular purpose.
164. Plaintiffs and members of the class are entitled to a judgment against Andersen and Buck, in an amount to be determined at trial, as a result of their breach of the implied warranties of fitness for a particular purpose.

XII. FOR A TWELFTH CAUSE OF ACTION
(Strict Liability in Tort against Andersen and Buck)

165. Plaintiffs reassert and reallege the allegations contained in the above paragraphs 1-164.
166. Andersen and Buck are in the business of selling building products for use in construction projects in South Carolina, specifically windows, window systems, and doors.
167. Andersen manufactured and sold and Buck sold exterior windows, window systems, and doors that were incorporated into the Bristol during construction.
168. The exterior windows, window systems, and doors were expected to and were incorporated into the Bristol without substantial change from the condition in which they were originally manufactured and sold.

169. The exterior windows, window systems, and doors have failed and are allowing water to enter the condominium units and other portions of the common elements from the exterior during rain events.
170. The failure of the exterior windows, window systems, and doors is causing property of the Plaintiffs and members of the class to be damaged.
171. The failure of the exterior windows, window systems, and doors will result in danger to the Plaintiffs and members of the class and their guests and invitees if these products are unable to withstand the design wind loads of 125 miles per hour required by the applicable building codes.
172. The exterior windows, window systems, and doors that were sold for use in the Bristol are defective and unreasonably dangerous to the condominium owners.
173. As a proximate result of the defective windows, window systems, and doors, Plaintiffs and members of the class have and continue to suffer damages, including but not limited to removal of all exterior windows and doors and replacement with exterior windows and doors which comply with the local applicable building codes.
174. The Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.

175. Due to the damages caused by the defective products, Plaintiffs and members of the class are entitled to a judgment against Andersen and Buck for an amount to be determined at the trial of this case.

XIII. FOR A THIRTEENTH CAUSE OF ACTION
(Negligence as to Niles Bolton)

176. Plaintiffs and members of the class reassert and reallege the allegations contained in the above paragraphs 1-175.
177. Niles Bolton agreed to provide professional architectural and engineering services for the design of the Bristol, specifically including but not limited to the issuance of the plans and specifications for construction. These documents and/or instruments of service were required to be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards. Upon information and belief, Defendant Niles Bolton agreed to make periodic visits to the project during construction to observe whether the construction was in accordance with the plans and specifications and all applicable building codes.
178. It was foreseeable that the Plaintiffs and members of the class, as the ultimate purchasers of the Bristol condominium units, would be damaged if the Niles Bolton breached the above duties.
179. Niles Bolton breached its duty of care as follows
- a. By failing to properly design and prepare specifications for the Bristol which were compliant with all applicable building codes and professional standards;
 - b. Failing to specify products, specifically including but not limited to, exterior windows and doors, which were in

compliance with applicable building codes for a five story

riverfront condominium project in the City of Charleston;

- c. Failing to design and specify an exterior cladding system for the Bristol condominium project with required details for flashing, sealant joints, control joints, weep systems, metal coping to prevent water from intruding into the interior of the condominium units or the wall cavities of the building;
- d. Failing to properly administer, observe and inspect the construction of the building for compliance with the plans and specifications and applicable building codes; and
- e. Such other breaches of the standard of care which are determined during the ongoing investigation of design deficiencies at the Bristol project.

180. As a result of Niles Bolton's breach of its standard of care, the Plaintiffs and members of the class have suffered damages in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners Association to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.

181. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their

units during the time in which construction repairs are undertaken to their

individual units and to the common elements of the Bristol, and diminution in the value of their property.

182. Plaintiffs and members of the class are entitled to a judgment against Niles Bolton in an amount to be determined at the trial of the case.

XIV. FOR A FOURTEENTH CAUSE OF ACTION

(Breach of Implied Warranty of Workmanlike Service as to Niles Bolton)

183. Plaintiffs and members of the class reassert and reallege the allegations contained in the above paragraphs 1-182.
184. By performing design services for the construction of the Bristol, Niles Bolton impliedly warranted that its work product would be of good quality, equal to or greater than industry standards.
185. Niles Bolton breached its duty to provide workmanlike service as follows:
- a. By failing to properly design and prepare specifications for the Bristol which were compliant with all applicable building codes and professional standards;
 - b. Failing to specify products, specifically including but not limited to, exterior windows and doors, which were in compliance with applicable building codes for a five story riverfront condominium project in the City of Charleston;
 - c. Failing to design and specify an exterior cladding system for the Bristol condominium project with required details for flashing, sealant joints, control joints, weep systems, metal

coping to prevent water from intruding into the interior of the

condominium units or the wall cavities of the building;

- d. Failing to properly administer, observe and inspect the construction of the building for compliance with the plans and specifications and applicable building codes; and
- e. Such other breaches of the standard of care which are determined during the ongoing investigation of design deficiencies at the Bristol project.

186. As a direct and proximate cause of the breach of the implied warranty, the Plaintiffs and members of the class have suffered damages in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners Association to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.
187. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.

188. Plaintiffs and members of the class are entitled to a judgment against Niles

Bolton, in an amount to be determined at trial, as a result of the breach of its implied warranty.

XV. FOR A FIFTEENTH CAUSE OF ACTION

(Breach of Warranty of Plans and Specifications as to Niles Bolton)

189. Plaintiffs and members of the class reassert and reallege the allegations contained in the above paragraphs 1-188.

190. Niles Bolton warranted the sufficiency of the design, plans, and specifications for the Bristol. Plaintiffs and members of the class, as the ultimate purchasers of the Bristol condominium units, were the foreseeable beneficiaries of this implied warranty.

191. By failing to properly design the building and prepare appropriate plans and specifications, Niles Bolton breached its warranty as follows:

- a. By failing to properly design and prepare specifications for the Bristol which were compliant with all applicable building codes and professional standards;
- b. Failing to specify products, specifically including but not limited to, exterior windows and doors, which were in compliance with applicable building codes for a five story riverfront condominium project in the City of Charleston;
- c. Failing to design and specify an exterior cladding system for the Bristol condominium project with required details for flashing, sealant joints, control joints, weep systems, metal

coping to prevent water from intruding into the interior of the
condominium units or the wall cavities of the building;

- d. Failing to properly administer, observe and inspect the
construction of the building for compliance with the plans and
specifications and applicable building codes; and
- e. Such other breaches of the standard of care which are
determined during the ongoing investigation of design
deficiencies at the Bristol project.

192. The Plaintiffs and members of the class have been damaged as a result of Niles Bolton's breach of its warranty in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners Association to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.

193. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.

194. Plaintiffs and members of the class are entitled to a judgment against Niles Bolton, in an amount to be determined at trial, as a result of the breach of its warranty.

XVI. FOR A SIXTEENTH CAUSE OF ACTION
(Negligent Misrepresentation as to the Developers)

195. Plaintiffs and members of the class reassert and reallege the allegations contained in the above paragraphs 1-194.
196. The Developers, through advertisements, sales brochures and other marketing literature, website advertisements and by statements and actions of their agents, made numerous representations to the purchasers of condominiums, including, but not limited to the quality and luxury of the condominium units at the Bristol.
197. The representations made by the Developers and their agents to the purchasers of the condominiums were untrue and were misrepresentations of material facts.
198. The representations were made for the purpose of selling condominium units.
199. Plaintiffs and members of the class, as purchasers of the condominium units, relied upon the representations of the Developers when deciding to purchase the units.
200. In the exercise of reasonable care, the Developers knew or should have known that their representations were false and that the prospective purchasers would rely on the representations.
201. The Developers failed to exercise reasonable care in making the representations.
202. The purchasers of the condominium units reasonably and justifiably relied on the representations of the Developers.
203. The Developers profited from the sale of the condominium units.

204. As a proximate and direct result of the misrepresentations, the owners of the condominium units have suffered damages in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners Association to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.
205. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.
206. The conduct of the Developers amounts to gross negligence and entitles Plaintiffs and members of the class to recover punitive damages.

XVII. FOR A SEVENTEENTH CAUSE OF ACTION
(Unfair Trade Practices against the Developers)

207. Plaintiffs and members of the class reassert and reallege the allegations contained in the above paragraphs 1-206.
208. The Plaintiffs, members of the class, and the Developers are all persons within the meaning of the South Carolina Unfair Trade Practices Act.
209. By developing, marketing, and selling the condominium units at the Bristol, the Developers were engaged in commerce.

210. The actions of the Developers in developing, marketing, and selling the condominium units at the Bristol constitute unfair and deceptive practices.
211. The actions are capable of repetition and affect the public interest of South Carolina.
212. Upon information and belief, the actions of the Developers have been repeated.
213. As a direct and proximate result of these acts, Plaintiffs and members of the class have suffered an ascertainable loss of money and property in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Bristol Condominium Property Owners Association to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.
214. Additionally, the Plaintiffs and members of the class will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Bristol, and diminution in the value of their property.
215. The Plaintiffs and members of the class are entitled to its actual damages, treble damages, interest, and attorneys' fees.

WHEREFORE, the Plaintiffs and members of the class pray as follows:

a. That the Court issue a Declaratory Judgment with respect to the first cause of action against the Developers, Gulf Stream, and Niles Bolton

- i. To declare Section 3.6 of the Master Deed invalid and unenforceable under the laws of South Carolina; Alternatively, to declare that the portions of Section 3.6 purporting to disclaim the implied warranty of habitability and the portion purporting to limit the liability of the developer to the cost to repair and replace defective work invalid for such purpose and unenforceable under the laws of South Carolina;
- ii. To declare the entire provisions in the original contracts for sale of the condominium units entitled Warranty to be invalid and unenforceable under the laws of South Carolina; Alternatively, to declare the portion of the warranty provisions in the original contracts for sale of the condominiums purporting to disclaim liability for defective work to be insufficient to disclaim the implied warranty of habitability given at law by the developer and the portion of the sales contracts purporting to limit the

- liability of the developer to the cost to repair
and replace defective work be deemed invalid
and unenforceable under the laws of South
Carolina.
- iii. To declare that Section 16 of the Master Deed is
inapplicable to the claims of Plaintiffs and
members of the class and/or unenforceable and
invalid under the laws of South Carolina;
- iv. To declare that Section 16.3 of the Master Deed
is inapplicable to the claims of Plaintiffs and
members of the class and/or invalid and
unenforceable under the laws of South Carolina.
- v. To declare Exhibit F to the Master Deed to be
inapplicable to the claims of Plaintiffs and
members of the class and/or unenforceable and
invalid under the laws of South Carolina.
- b. Judgment for actual damages against the Defendants jointly
and severally with regard to causes of action
IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, and XV;
- c. Punitive damages against the Developers under causes of
action XVI, against Gulf Steam, Buck, Ferst, Superior
Surfaces, Cisson, Barr, ABG, Glasgow, and Superior
Structures for cause of action VI;

- d. Treble damages against the Developers pursuant to section 39-5-110, et seq. for the violation of the South Carolina Unfair Trade Practices Act;
- e. Costs and attorneys' fees against the Defendants; and
- f. Such further relief as the Court deems appropriate.

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ATTORNEYS FOR PLAINTIFFS

Charleston, South Carolina
February 9, 2007

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

THE BRISTOL CONDOMINIUM)
PROPERTY OWNERS' ASSOCIATION,)

Plaintiff,)

v.)

JOHN T. LUCAS, SR., AS TRUSTEE OF)
THE JOHN T. LUCAS REVOCABLE)
TRUST DATED NOVEMBER 10, 2004,)
AND CAROLYN C. LUCAS AS)
TRUSTEE OF THE CAROLYN C.)
LUCAS REVOCABLE TRUST DATED)
NOVEMBER 10, 2004,)

Defendants.

IN COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-10-2232

FORECLOSURE COMPLAINT

(NON JURY)

FILED
2011 MAR 25 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY

NOW COMES the Plaintiff, Bristol Condominium Property Owners' Association ("Plaintiff" or "Association"), as the governing body of the Bristol Horizontal Property Regime ("Regime"), by and through its undersigned attorneys and pursuant to South Carolina Rules of Civil Procedure, the Regime Master Deed described hereinbelow and Section 27-31-210 of the S.C. Code of Laws, complaining of the Defendants and alleges and shows unto this court as follows:

1. That Association is an eleemosynary corporation, organized and existing under the laws of the State of South Carolina, with its principal place of business in Charleston County, South Carolina.

2. That upon information and belief, the Defendants are the fee simple owners of that certain property located within the Regime, known as Unit Number 313, also referred to as 3013 (the "Property"), which property is located in Charleston County, South Carolina and is more fully described as follows:

CHARLESTON438617v1

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ALL that certain apartment known as UNIT NUMBER 3013, also referred to as UNIT NUMBER 313, in THE BRISTOL HORIZONTAL PROPERTY REGIME as shown on the plans and specifications attached to that certain Master Deed and By-Laws attached thereto, dated August 30, 2002, and recorded in Book D417, at Page 001, in the R.M.C. Office for Charleston County, S.C., as amended by First Amendment to Master Deed of The Bristol Horizontal Property Regime dated November 13, 2002 and recorded in the R.M.C. Office aforesaid in Book M426, at Page 296; as amended by Second Amendment to Master Deed of The Bristol Horizontal Property Regime dated February 28, 2003 and recorded in the R.M.C. Office aforesaid in Book P439, at Page 828; as amended by Third Amendment to Master Deed of The Bristol Horizontal Property Regime dated February 20, 2004 and recorded in the R.M.C. Office aforesaid in Book Y485, at Page 178, together with all that certain undivided interest in the common elements and limited common elements as set forth in the above-referred to Master Deed.

3. Jurisdiction and venue in Charleston County is proper because the subject property is located in Charleston County.

4. That the Defendants took title to the Property subject to the terms and conditions of that certain Master Deed of the Bristol Horizontal Regime (the "Master Deed"), recorded in the Office of the R.M.C. for Charleston County in Book D-417, Page 001, as amended. The Master Deed is incorporated herein by reference.

5. That the Master Deed, including the Association Bylaws incorporated therein, provides that the Association has the right to file a notice of lien against the Property and enforce its lien rights according to South Carolina law, in order to secure payment of delinquent Association assessments.

6. That the Master Deed provides, inter alia, that all property owners are members of the Association, that they are obligated to pay assessments levied by the Association on the units owned by them in the Regime, that members of the Association are obligated to pay late charges and interest at the rate established by the Board of Directors of the Association for assessments that are not paid by the due date, as well as reasonable attorneys' fees incurred in

the collection of same, all as may be seen by reference to the pertinent sections of the Master Deed.

7. That the assessments levied by the Association on behalf of the Regime remain unpaid through the date of this Complaint.

8. That due demand has been made for the payment of the outstanding assessments, and that the Defendants have refused to make same.

FOR A FIRST CAUSE OF ACTION

9. That the total due as of February 16, 2011, for the regime fees/assessments for the Property, including late charges, interest and lien filing fees, is Twenty-Three Thousand Two Hundred Twenty Nine and 16/100 Dollars (\$23,229.16), plus late charges accruing subsequent thereto, along with subsequently accruing interest at the rate of 18% per annum, until paid, plus reasonable attorneys' fees and costs.

10. On or about February 24, 2011, the Association filed a Notice of Lien on the Property for the amounts due and owing by the Defendants on the Property, said Notice of Lien recorded at Book 0173, Page 669, RMC Office, Charleston County, South Carolina (the "Lien" attached hereto as Exhibit "A").

11. The Master Deed provides for recovery by the Association of a reasonable sum as attorneys' fees from Defendants and the Lien has been placed in the hands of Moore & Van Allen PLLC, Attorneys for Plaintiff, for collection and/or foreclosure.

12. Plaintiff is entitled to an order of foreclosure of its Lien on the Property for the amount of its account and costs and requiring that the Property be sold and the proceeds of the sale after deducting all lawful charges and expenses be applied to the debt owed to the Association, including reasonable attorneys' fees and costs incurred.

13. Said foreclosure should be subject to and shall not extinguish or otherwise effect or compromise any and all prior liens, mortgages, or other encumbrances on the Property, including that certain South Carolina Tax Lien #2010-23001 and County of Charleston Magistrate's Court Judgment 2005-JG-10-834.

14. Plaintiff has performed any and all conditions precedent to the enforcement of its Lien and recovery of the claims alleged herein.

15. Plaintiff does not waive any deficiency arising from the foreclosure sale. However, Plaintiff reserves its right to withdraw its demand for deficiency judgment at any time prior to the foreclosure sale herein.

FOR A SECOND CAUSE OF ACTION

16. Plaintiff realleges Paragraphs 1 through 15 as fully as if set forth verbatim herein.

17. Pursuant to §27-31-210 of the S.C. Code of Laws, the Defendants are obligated to pay a reasonable rental for the Property after the commencement of a foreclosure action.

18. The within action is a foreclosure action and Plaintiff is entitled to recovery of a reasonable rental in an amount determined by the Court.

WHEREFORE, Plaintiff prays that:

UNDER ITS FIRST CAUSE OF ACTION:

(a) It have immediate judgment of foreclosure against the Defendants John T. Lucas, Sr., as Trustee of the John T. Lucas Revocable Trust dated November 10, 2004, and Carolyn C. Lucas as Trustee of the Carolyn C. Lucas Revocable Trust dated November 10, 2004 in the amount of Twenty-Three Thousand Two Hundred Twenty Nine and 16/100 Dollars (\$23,229.16) plus late charges accruing subsequent to February 16, 2011, along with

subsequently accruing interest at the rate of 18% per annum, until paid, plus reasonable attorney fees and costs.

(b) Said judgment of foreclosure be subject to any and all prior and/or superior liens and encumbrances and any foreclosure sale be had subject to said liens and encumbrances.

(c) The Property described hereinabove be sold at public auction by the Master according to the statutes governing such sale, and the proceeds of sale, after paying the costs and expenses of this suit, and of sale, be applied to the payment of the Lien, costs and attorneys' fees, and the balance, if any, be held subject to the further Order of this Court.

(d) It be granted an immediate money judgment against Defendants John T. Lucas, Sr., as Trustee of the John T. Lucas Revocable Trust dated November 10, 2004, and Carolyn C. Lucas as Trustee of the Carolyn C. Lucas Revocable Trust dated November 10, 2004, for the amount due under the Lien, plus late charges accruing subsequent to February 16, 2011, along with subsequently accruing interest at the rate of 18% per annum, until paid, plus reasonable attorneys' fees and costs, with such amount to be subject to credit after application of the proceeds from any sale of the Property provided for hereunder.

(e) In the event the successful bidder shall be other than the Defendants John T. Lucas, Sr., as Trustee of the John T. Lucas Revocable Trust dated November 10, 2004, and Carolyn C. Lucas as Trustee of the Carolyn C. Lucas Revocable Trust dated November 10, 2004, the Sheriff be ordered and directed to eject and remove from the premises the occupant or occupants of the Property sold, together with all personal property located thereon, and to put the successful bidder or his assigns in the full, quiet and peaceable possession of the premises without delay, and to keep the successful bidder or his assigns, in such possession.

UNDER ITS SECOND CAUSE OF ACTION:

- (a) The award of a reasonable rental amount as determined by the Court during the pendency of this foreclosure action.

AS TO ALL CAUSES OF ACTION:

- (a) For such other and further relief as may seem just and proper to the Court.



David B. Wheeler, SC Bar #6055
Joseph T. Belton, SC Bar# 71993
MOORE & VAN ALLEN, PLLC
40 Calhoun Street, Suite 300
Post Office Box 22828
Charleston, SC 29413-2828
(843) 579-7000

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

March 24, 2011

CHARLESTONV438617v1

6



BP0173669

RMC Bk 0173 Pg 669 : pg 1 *

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

NOTICE OF LIEN

YOU WILL PLEASE TAKE NOTICE that Bristol Condominium Property Owners Association does hereby file the within Notice of Lien in connection with the unpaid assessments in the sum of \$ 23,229.16 (including \$10.00 in filing fees), plus interest and costs, plus any other assessments accruing after February 8, 2011, which amount is justly due and owed Bristol Condominium Property Owners Association and has not been paid, upon the premises described hereinbelow and carried on the records of the undersigned in the name of John T. Lucas, Sr., as Trustee of the John T. Lucas Revocable Trust dated November 10, 2004, and Carolyn C. Lucas as Trustee of the Carolyn C. Lucas Revocable Trust dated November 10, 2004.

The premises affected by the lien are described as follows:

Unit Number 313 also referred to as 3013 Old Bridgeview Lane, Charleston, SC 29403
~~The Bristol WPR~~
T.M.S. # 460-10-01-021

IN WITNESS WHEREOF, Bristol Condominium Property Owners Association has hereunto set its hand and seal this 10th day of February, 2011.

x Haven Harris
Witness

Bristol Condominium Property Owners Association
By: [Signature]
Its: Management Agent

[Signature]
Witness

CHARLESTON\438603v1



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned, who states that s/he saw the within
Bristol Condominium Property Owners Association, by its Management Agent,
LONA VEST, sign, seal and deliver the within Notice of Lien and that s/he with
the other witness witnessed the execution thereof.

Haven Harris

SWORN to before me this
16 day of February, 2011.

Charles
Notary Public for South Carolina
My Commission Expires: 12/09/13

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

MOORE & VAN ALLEN

P.O. BOX 22828
CHARLESTON SC 29413

RECORDED

Date: February 24, 2011

Time: 11:49:33 AM

Book	Page	DocType
0173	669	Notice/Ln

Charlie Lybrand, Register
Charleston County, SC

MAKER:

LUCAS JOHN T SR TR AL

of Sats:

of Pages: 3

of References:

RECIPIENT:

BRISTOL CONDO POA

Note:

Recording Fee \$ 10.00

Extra Reference Cost \$ -

Extra Pages \$ -

Postage \$ -

Chattel \$ -

TOTAL \$ 10.00

Original Book:

Original Page:

DRAWER
CLERK



0173
Book



669
Page



02/24/2011
Recorded Date



3
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Original Book



Original Page



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Doc Type



11:49:33
Recorded Time

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

John T. Lucas and Carolyn C. Lucas,)

Plaintiff,)

vs.)

The Bristol Condominium Property)
Owners Association,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-10 - 3240

COMPLAINT

Jury Trial Demanded

FILED
2010 APR 20 PM 2:31
JULIE J. ARMS, CLERK
CLERK OF COURT

The Plaintiffs would respectfully show this honorable Court that:

1. Plaintiffs are citizens and residents of Greenville County, South Carolina.
2. Defendant is an association organized and doing business under the laws of the State of South Carolina, with its principal place of business being Charleston County, South Carolina.
3. Plaintiffs own property in Charleston County, specifically unit 313 at The Bristol condominium complex.
4. Jurisdiction and venue are proper.

GENERAL FACTUAL ALLEGATIONS

5. In February 2007, a lawsuit was filed by Defendant for construction defects, including construction issues with the windows and doors of the condominiums located at The Bristol.
6. On April 23, 2007, Defendant made a fourth amendment to the Master Deed of Bristol Condominiums Property Owners' Association giving it the authority to maintain, repair and replace the windows and exterior doors to every unit.
7. The Court ruled that the Defendant did not have standing to bring a lawsuit concerning defects with the windows and doors of each unit because the Defendant did not own the windows and doors of each unit.
8. Following this ruling, the Defendant organized a meeting with all condominium owners and encouraged each of them to the lawsuit.

9. Over time, many owners joined the lawsuit. The Plaintiffs did not.

10. On March 13, 2009, the Defendant forwarded a letter to all homeowners explaining what had taken place with the litigation and acknowledged that not all property owners had joined the lawsuit individually.

11. Defendant informed the homeowners that those who had not individually joined the lawsuit could sign a document assigning their right to sue to the Defendant. Therefore, the Defendant would pursue the action on the homeowner's behalf.

12. Plaintiffs never executed an assignment.

13. Subsequently, the lawsuit was settled. The Plaintiffs did not consent to the settlement.

14. Following the settlement, there were special assessments made on the homeowners for attorney's fees and anticipated repair costs that would not be covered by the proceeds of the settlement.

15. Plaintiffs did not agree to the special assessments.

16. Construction on the remodeling process is set to begin shortly.

FIRST CAUSE OF ACTION
(Conversion)

17. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.

18. Plaintiffs own unit 313 at The Bristol in Charleston, South Carolina.

19. Defendant converted Plaintiffs' property for its own use and gain by amending the Master Deed.

20. Plaintiffs' did not grant Defendant permission to use their property.

21. As a proximate result of Defendant's conversion of Plaintiffs' property, Plaintiffs have suffered damages that may be ascertained during the discovery and trial of this matter.

SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

22. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.

23. Plaintiffs use unit 313 at The Bristol as a second home. The Defendant association was formed for several reasons, one being to protect the interests of property owners.

24. A fiduciary relationship existed between the Plaintiffs and Defendant.

25. Defendant breached this duty when it failed to act in good faith.

26. As a proximate result of Defendant's breach, Plaintiffs have suffered and will suffer damages that may be ascertained during the discovery and trial of this matter.

THIRD CAUSE OF ACTION
(Forcible Entry and Detainer)

27. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.

28. Defendant made decisions regarding Plaintiffs' windows and doors without the consent of the Plaintiffs.

29. Defendant has made preparations to remove the windows and doors of all units in the remodeling process.

30. Defendant does not have and has never had permission to make decisions regarding the windows and doors of Plaintiffs' property.

31. Defendant has moved forward with remodeling despite numerous protests by the Plaintiffs.

32. As a proximate result of Defendant's entry and detainer of Plaintiffs' property, Plaintiffs have suffered and will suffer actual, consequential and special damages that may be ascertained during the discovery and trial of this matter.

FOURTH CAUSE OF ACTION
(Constructive Fraud)

33. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.

34. Defendant represented to Plaintiffs that their consent would be obtained before any actions would be taken by Defendant on behalf of Plaintiffs regarding any use of their windows and doors. Plaintiffs relied on the information provided to them by Defendant.

35. Defendant proceeded to take action that affected the interest in the Plaintiffs' property

despite prior notice from Plaintiffs to Defendant that Defendant did not have permission to make decisions or any repairs to Plaintiffs' windows and doors.

36. As a direct and proximate result of Defendant's fraudulent action, Plaintiffs have suffered and will suffer actual, consequential and special damages that may be ascertained during the discovery and trial of this matter.

FIFTH CAUSE OF ACTION
(Fraud and Misrepresentation)

37. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
38. Defendant represented to Plaintiffs that their consent would be obtained before any actions could be taken by Defendant on behalf of Plaintiffs regarding any use of their windows and doors.
39. Defendant knew that it would be making decisions that affected the Plaintiffs' property without the consent of the Plaintiffs.
40. Defendant intended for the Plaintiffs to rely upon the representations the Defendant made regarding the Plaintiffs' property.
41. Plaintiffs' had a right to rely upon the representations of Defendant and did in fact rely upon the representations made by Defendant.
42. Defendant knew that it was going to proceed to make decisions that affected the property interests of the Plaintiffs, with or without the consent of Plaintiffs.
43. As a proximate result of Defendant's fraudulent misrepresentations, Plaintiffs have suffered and will suffer damages that may be ascertained during the discovery and trial of this matter.

SIXTH CAUSE OF ACTION
(Negligence)

44. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
45. Defendant owed a duty of care to the Plaintiffs to act in a reasonable manner regarding the property owned by Plaintiffs at The Bristol.
46. Defendant breached that duty when it proceeded to take actions that affected Plaintiffs' property without the consent of Plaintiffs.

47. As a proximate result of Defendant's negligence, Plaintiffs have suffered and will suffer damages that may be ascertained during the discovery and trial of this matter.

SEVENTH CAUSE OF ACTION
(Trespass)

48. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
49. Plaintiffs are the legal owners of unit 313 at The Bristol.
50. Defendant has voluntarily entered upon Plaintiffs' property and taken actions inconsistent with Plaintiffs' property interest. Furthermore, Defendant knew or should have known that it did not have permission to enter Plaintiffs' property.
51. As a proximate result of Defendant's trespass, Plaintiffs have suffered and will suffer damages that may be ascertained during the discovery and trial of this matter.

EIGHTH CAUSE OF ACTION
(Nuisance)

52. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
53. Defendant has created an unreasonable interference with Plaintiffs' ability to use their property, including but not limited to, the reconstruction that is to take place regarding Plaintiffs' windows and doors.
54. The nuisance that will be created by Defendant caused by the reconstruction of the windows and doors of Plaintiffs' property will interfere with the Plaintiffs' use and enjoyment of their property.
55. As a direct and proximate result of Defendant's nuisance, Plaintiffs have suffered and will suffer actual, consequential and special damages that may be ascertained during the discovery and trial of this matter.

NINTH CAUSE OF ACTION
(Unjust Enrichment)

56. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.

~~57. Defendant has taken possession of the windows and doors to Plaintiffs' property, unit 313 at The Bristol. Plaintiffs' never granted ownership rights of the windows and doors to the Defendant. Defendant has failed to compensate Plaintiffs for the taking of their windows and doors and has refused to do so.~~

58. Defendant has been unjustifiably enriched at the expense of Plaintiffs and has enjoyed the benefit of said enrichment without compensating Plaintiffs.

59. As a direct and proximate result of Defendant's unjust enrichment, Plaintiffs have suffered and will suffer actual, consequential and special damages that may be ascertained during the discovery and trial of this matter.

TENTH CAUSE OF ACTION
(Declaratory Judgment)

60. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.

61. Plaintiffs have never granted ownership to Defendant of the windows and doors to their property, unit #313 of The Bristol.

62. Defendant has made decisions regarding Plaintiffs' property without consent to do so. Defendant has acted in a manner in which it portrays itself as owner of Plaintiffs' windows and doors.

63. Plaintiffs seek a judgment from this Court pursuant to the S.C. Uniform Declaratory Judgments Act, S.C. Code §15-53-10 *et seq.* for a declaration of the rights, status and other legal relations of the parties declaring the windows and doors of unit 313 of The Bristol are property of the Plaintiffs and not Defendant.

ELEVENTH CAUSE OF ACTION
(Injunctive Relief)

64. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.

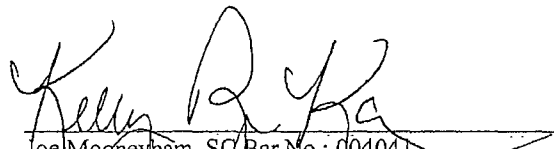
65. Upon information and belief, Defendant has plans to begin remodeling on the condominiums at The Bristol, including Plaintiffs' property.

66. Some of the remodeling efforts that are to take place relate to the windows and doors of each condominium.

67. Plaintiffs are asking the Court to issue an injunction pursuant to South Carolina Rules of Civil Procedure 65, prohibiting any remodeling, repairs and construction from taking place at The Bristol until issues raised in this action can be resolved.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for the following:

1. Actual, consequential and punitive damages;
2. A judgment pursuant to the S.C. Uniform Declaratory Judgments Act, S.C. Code §15-53-10 *et seq.* declaring the windows and doors of unit # 313 at The Bristol are owned by Plaintiffs;
3. An injunction prohibiting any remodeling, repairs and construction from taking place on any condominiums at The Bristol until issues raised in this action can be resolved;
4. Cost and attorney fees associated with this action; and
5. Such other and further relief as the Court deems just and proper.


Joe Mooneyham, SC Bar No.: 004041
Kelly Pope Karow, SC Bar No.: 69569
MOONEYHAM BERRY & KAROW, LLC
Post Office Box 8359
Greenville, South Carolina 29604
864 421.0036, fax 864 421.9060
kellyk@upstatetriallawyers.com
Attorneys for the Plaintiff

Greenville, South Carolina
Dated: April 16, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

John T. Lucas, Sr. as Trustee of the John T.,)
Lucas Revocable Trust and Carolyn C.)
Lucas, as Trustee of the Carolyn C. Lucas)
Revocable Trust,)

Plaintiffs,)

vs.)

The Bristol Condominium Property)
Owners Association,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-10-3240

AMENDED COMPLAINT
Jury Trial Demanded

2011 APR -4 PM 11:42
JULIE J. STRONG
CLERK OF COURT

The Plaintiffs would respectfully show this honorable Court that:

1. Plaintiffs are citizens and residents of Greenville County, South Carolina.
2. Defendant is an association organized and doing business under the laws of the State of South Carolina, with its principal place of business being Charleston County, South Carolina.
3. Plaintiffs own property in Charleston County, specifically unit 313 at The Bristol condominium complex.
4. Jurisdiction and venue are proper.

GENERAL FACTUAL ALLEGATIONS

5. In February 2007, a lawsuit was filed by Defendant for construction defects, including construction issues with the windows and doors of the condominiums located at The Bristol.
6. On April 23, 2007, Defendant made a fourth amendment to the Master Deed of Bristol Condominiums Property Owners' Association giving it the authority to maintain, repair and replace the windows and exterior doors to every unit.
7. The Court ruled that the Defendant did not have standing to bring a lawsuit concerning defects with the windows and doors of each unit because the Defendant did not own the windows and doors of each unit.

8. Following this ruling, the Defendant organized a meeting with all condominium owners and encouraged each of them to the lawsuit.
9. Over time, many owners joined the lawsuit. The Plaintiffs did not.
10. On March 13, 2009, the Defendant forwarded a letter to all homeowners explaining what had taken place with the litigation and acknowledged that not all property owners had joined the lawsuit individually.
11. Defendant informed the homeowners that those who had not individually joined the lawsuit could sign a document assigning their right to sue to the Defendant. Therefore, the Defendant would pursue the action on the homeowner's behalf.
12. Plaintiffs never executed an assignment.
13. Subsequently, the lawsuit was settled. The Plaintiffs did not consent to the settlement.
14. Following the settlement, there were special assessments made on the homeowners for attorney's fees and anticipated repair costs that would not be covered by the proceeds of the settlement.
15. Plaintiffs did not agree to the special assessments.
16. Construction on the remodeling process is set to begin shortly.

FIRST CAUSE OF ACTION
(Conversion)

17. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
18. Plaintiffs own unit 313 at The Bristol in Charleston, South Carolina.
19. Defendant converted Plaintiffs' property for its own use and gain by amending the Master Deed.
20. Plaintiffs' did not grant Defendant permission to use their property.
21. As a proximate result of Defendant's conversion of Plaintiffs' property, Plaintiffs have suffered damages that may be ascertained during the discovery and trial of this matter.

SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

22. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
23. Plaintiffs use unit 313 at The Bristol as a second home. The Defendant association was formed for several reasons, one being to protect the interests of property owners.
24. A fiduciary relationship existed between the Plaintiffs and Defendant.
25. Defendant breached this duty when it failed to act in good faith.
26. As a proximate result of Defendant's breach, Plaintiffs have suffered and will suffer damages that may be ascertained during the discovery and trial of this matter.

THIRD CAUSE OF ACTION
(Forcible Entry and Detainer)

27. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
28. Defendant made decisions regarding Plaintiffs' windows and doors without the consent of the Plaintiffs.
29. Defendant has made preparations to remove the windows and doors of all units in the remodeling process.
30. Defendant does not have and has never had permission to make decisions regarding the windows and doors of Plaintiffs' property.
31. Defendant has moved forward with remodeling despite numerous protests by the Plaintiffs.
32. As a proximate result of Defendant's entry and detainer of Plaintiffs' property, Plaintiffs have suffered and will suffer actual, consequential and special damages that may be ascertained during the discovery and trial of this matter.

FOURTH CAUSE OF ACTION
(Constructive Fraud)

33. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.

34. Defendant represented to Plaintiffs that their consent would be obtained before any actions would be taken by Defendant on behalf of Plaintiffs regarding any use of their windows and doors. Plaintiffs relied on the information provided to them by Defendant.
35. Defendant proceeded to take action that affected the interest in the Plaintiffs' property despite prior notice from Plaintiffs to Defendant that Defendant did not have permission to make decisions or any repairs to Plaintiffs' windows and doors.
36. As a direct and proximate result of Defendant's fraudulent action, Plaintiffs have suffered and will suffer actual, consequential and special damages that may be ascertained during the discovery and trial of this matter.

FIFTH CAUSE OF ACTION
(Fraud and Misrepresentation)

37. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
38. Defendant represented to Plaintiffs that their consent would be obtained before any actions could be taken by Defendant on behalf of Plaintiffs regarding any use of their windows and doors.
39. Defendant knew that it would be making decisions that affected the Plaintiffs' property without the consent of the Plaintiffs.
40. Defendant intended for the Plaintiffs to rely upon the representations the Defendant made regarding the Plaintiffs' property.
41. Plaintiffs' had a right to rely upon the representations of Defendant and did in fact rely upon the representations made by Defendant.
42. Defendant knew that it was going to proceed to make decisions that affected the property interests of the Plaintiffs, with or without the consent of Plaintiffs.
43. As a proximate result of Defendant's fraudulent misrepresentations, Plaintiffs have suffered and will suffer damages that may be ascertained during the discovery and trial of this matter.

SIXTH CAUSE OF ACTION
(Negligence)

44. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.

45. Defendant owed a duty of care to the Plaintiffs to act in a reasonable manner regarding the property owned by Plaintiffs at The Bristol.
46. Defendant breached that duty when it proceeded to take actions that affected Plaintiffs' property without the consent of Plaintiffs.
47. As a proximate result of Defendant's negligence, Plaintiffs have suffered and will suffer damages that may be ascertained during the discovery and trial of this matter.

SEVENTH CAUSE OF ACTION

(Trespass)

48. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
49. Plaintiffs are the legal owners of unit 313 at The Bristol.
50. Defendant has voluntarily entered upon Plaintiffs' property and taken actions inconsistent with Plaintiffs' property interest. Furthermore, Defendant knew or should have known that it did not have permission to enter Plaintiffs' property.
51. As a proximate result of Defendant's trespass, Plaintiffs have suffered and will suffer damages that may be ascertained during the discovery and trial of this matter.

EIGHTH CAUSE OF ACTION

(Nuisance)

52. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
53. Defendant has created an unreasonable interference with Plaintiffs' ability to use their property, including but not limited to, the reconstruction that is to take place regarding Plaintiffs' windows and doors.
54. The nuisance that will be created by Defendant caused by the reconstruction of the windows and doors of Plaintiffs' property will interfere with the Plaintiffs' use and enjoyment of their property.
55. As a direct and proximate result of Defendant's nuisance, Plaintiffs have suffered and will suffer actual, consequential and special damages that may be ascertained during the discovery and trial of this matter.

NINTH CAUSE OF ACTION
(Unjust Enrichment)

56. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
57. Defendant has taken possession of the windows and doors to Plaintiffs' property, unit 313 at The Bristol. Plaintiffs' never granted ownership rights of the windows and doors to the Defendant. Defendant has failed to compensate Plaintiffs for the taking of their windows and doors and has refused to do so.
58. Defendant has been unjustifiably enriched at the expense of Plaintiffs and has enjoyed the benefit of said enrichment without compensating Plaintiffs.
59. As a direct and proximate result of Defendant's unjust enrichment, Plaintiffs have suffered and will suffer actual, consequential and special damages that may be ascertained during the discovery and trial of this matter.

TENTH CAUSE OF ACTION
(Declaratory Judgment)

60. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
61. Plaintiffs have never granted ownership to Defendant of the windows and doors to their property, unit #313 of The Bristol.
62. Defendant has made decisions regarding Plaintiffs' property without consent to do so. Defendant has acted in a manner in which it portrays itself as owner of Plaintiffs' windows and doors.
63. Plaintiffs seek a judgment from this Court pursuant to the S.C. Uniform Declaratory Judgments Act, S.C. Code §15-53-10 *et seq.* for a declaration of the rights, status and other legal relations of the parties declaring the windows and doors of unit 313 of The Bristol are property of the Plaintiffs and not Defendant.

ELEVENTH CAUSE OF ACTION
(Injunctive Relief)

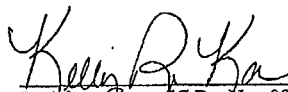
64. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
65. Upon information and belief, Defendant has plans to begin remodeling on the

condominiums at The Bristol, including Plaintiffs' property.

66. Some of the remodeling efforts that are to take place relate to the windows and doors of each condominium.
67. Plaintiffs are asking the Court to issue an injunction pursuant to South Carolina Rules of Civil Procedure 65, prohibiting any remodeling, repairs and construction from taking place at The Bristol until issues raised in this action can be resolved.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for the following:

1. Actual, consequential and punitive damages;
2. A judgment pursuant to the S.C. Uniform Declaratory Judgments Act, S.C. Code §15-53-10 *et seq.* declaring the windows and doors of unit # 313 at The Bristol are owned by Plaintiffs;
3. An injunction prohibiting any remodeling, repairs and construction from taking place on any condominiums at The Bristol until issues raised in this action can be resolved;
4. Cost and attorney fees associated with this action; and
5. Such other and further relief as the Court deems just and proper.



Joe Mooneyham, SC Bar No.: 004041
Kelly Pope/Karow, SC Bar No.: 69569
MOONEYHAM BERRY & KAROW, LLC
Post Office Box 8359
Greenville, South Carolina 29604
864 421.0036, fax 864 421.9060
kellyk@upstatetriallawyers.com
Attorneys for the Plaintiff

Greenville, South Carolina
Dated: April 1, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
The Bristol Condominium Property)
Owners' Association,)
Plaintiff,)
vs.)
John T. Lucas, Sr., as Trustee of the John T.)
Lucas Revocable Trust dated November 10,)
2004, and Carolyn C. Lucas as Trustee of)
the Carolyn C. Lucas Revocable Trust)
dated November 10, 2004,)
Defendants/Counterclaim Plaintiffs)
vs.)
The Bristol Condominium Property)
Owners' Association,)
Counterclaim Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-10-2232

ANSWER AND COUNTERCLAIM

Jury Trial Demanded

The Defendants, answering the Plaintiff herein, would respectfully show unto this

Honorable Court :

1. Upon information and belief, this paragraph is admitted.
2. This paragraph is admitted.
3. This paragraph is admitted.
4. Upon information and belief this paragraph is admitted.
5. Upon information and belief this paragraph is admitted.
6. Defendants admit that property owners are members of the Association. Defendants admit that members are obligated to pay any assessments that are properly assessed under South Carolina law, in compliance with the by-laws, not in violation of any rulings from court proceedings related to The Bristol Condominiums and not based on fraudulent or misleading information.

7. Denied. Defendants have previously filed an action against the Plaintiff questioning the validity of the assessment, which is the subject of this action.
8. Denied. Defendants have previously filed an action against the Plaintiff questioning the validity of the assessment, which is the subject of this action.
9. Denied. Defendants have previously filed an action against the Plaintiff questioning the validity of the assessment, which is the subject of this action.
10. Upon information and belief this paragraph is admitted.
11. Upon information and belief Defendants admit that Plaintiff has obtained the services of Moore & Van Allen, PLLC. Defendants deny that the Master Deed provides for recovery by the Association for a reasonable sum as attorneys' fees or any other fees when such legal representation is related to the collection of alleged outstanding fees that Defendants have claimed in a previously filed lawsuit were assessed on fraudulent and/or misleading information.
12. Denied.
13. Denied.
14. Denied.
15. Defendants are without sufficient information to admit or deny.
16. Defendants reiterate denials as applicable.
17. Denied. The foreclosure action is improper as the debt claimed by Plaintiff is doubtful and disputed as outlined in an action previously filed by Defendants against Plaintiff.
18. Denied. The foreclosure action is improper as the debt claimed by Plaintiff is doubtful and disputed as outlined in an action previously filed by Defendants against Plaintiff.

COUNTERCLAIM

The Defendants, by and through their undersigned counsel, for their Counterclaim against the above-named Plaintiff, do hereby allege as follows:

Parties

19. The Defendants are citizens and residents of Greenville County, State of South Carolina.

20. The Defendants are informed and believe that the Plaintiff, is an eleemosynary corporation, organized and existing under the laws of the State of South Carolina, with its principal place of business in Charleston County, South Carolina.

Facts

21. In February 2007, a lawsuit was filed by Plaintiff for construction defects, including construction issues with the windows and doors of the condominiums located at The Bristol.
22. On April 23, 2007, Plaintiff made a fourth amendment to the Master Deed of Bristol Condominiums Property Owners' Association giving it the authority to maintain, repair and replace the windows and exterior doors to every unit.
23. The Court ruled that Plaintiff did not have standing to bring a lawsuit concerning defects with the windows and doors of each unit because Plaintiff did not own the windows and doors of each unit.
24. Following this ruling, Plaintiff organized a meeting with all condominium owners and encouraged each of them to join the lawsuit.
25. Over time, many owners joined the lawsuit. The Defendants did not.
26. On March 13, 2009, Plaintiff forwarded a letter to all homeowners explaining what had taken place with the litigation and acknowledged that not all property owners had joined the lawsuit individually.
27. Plaintiff informed the homeowners that those who had not individually joined the lawsuit could sign a document assigning their right to sue to the Plaintiff. Therefore, the Plaintiff could pursue the action on the homeowner's behalf.
28. Defendants never executed an assignment.
29. Subsequently, the lawsuit was settled. Defendants did not consent to the settlement.
30. Following the settlement, there were special assessments made on the homeowners for attorney's fees and anticipated repair costs that were supposed to be covered by the proceeds of the settlement. However, the settlement amount was not enough to cover repairs, change orders and remodeling additions approved by committee members.
31. Defendants objected to the special assessments.
32. Plaintiff proceeded with construction despite being over budget and having inadequate funding.

FIRST CAUSE OF ACTION
(Conversion)

- 33. Defendants incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
- 34. Defendants own unit 313 at The Bristol in Charleston, South Carolina.
- 35. Plaintiffs converted Defendants' property for its own use and gain by amending the Master Deed.
- 36. Defendants did not grant Plaintiff permission to use their property.
- 37. As a proximate result of Plaintiff's conversion of Defendants' property, Defendants have suffered damages that may be ascertained during the discovery and trial of this matter.

SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

- 38. Defendants incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
- 39. Defendants use unit 313 at The Bristol as a second home. The Bristol Condominium Property Owners' Association was formed for several reasons, one being to protect the interests of property owners.
- 40. A fiduciary relationship existed between the Plaintiff and Defendants.
- 41. Plaintiff breached this duty when it failed to act in good faith.
- 42. As a proximate result of Plaintiff's breach, Defendants have suffered and will suffer damages that may be ascertained during the discovery and trial of this matter.

THIRD CAUSE OF ACTION
(Forcible Entry and Detainer)

- 43. Defendants incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
- 44. Plaintiff made decisions regarding Defendants' windows and doors without consent of the Defendants.
- 45. Plaintiff made preparations and did in fact remove the windows and doors of all units during the remodeling process.

46. Plaintiff has never had permission to make decisions regarding the windows and doors of Plaintiffs' property.
47. Plaintiff has moved forward with remodeling of The Bristol despite numerous protests by the Defendants.
48. As a proximate result of Plaintiff's entry and detainer of Defendants' property, Defendants have suffered and will suffer actual, consequential and special damages that may be ascertained during the discovery and trial of this matter.

FOURTH CAUSE OF ACTION
(Constructive Fraud)

49. Defendants incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
50. Plaintiff represented to Defendants that their consent would be obtained before any actions would be taken by Plaintiff on behalf Defendants regarding any use of their windows and doors. Defendants relied on the information provided to them by Plaintiff.
51. Plaintiff proceeded to take action that affected the interest in the Defendants' property despite prior notice from Defendants to Plaintiff that it did not have permission to make decisions regarding Defendants' windows and doors.
52. As a direct and proximate result of Plaintiff's fraudulent action, Defendants have suffered and will suffer actual, consequential and special damages that may be ascertained during the discovery and trial of this matter.

FIFTH CAUSE OF ACTION
(Fraud and Misrepresentation)

53. Defendants incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
54. Plaintiff represented to Defendants that their consent would be obtained before any actions could be taken by Plaintiff on behalf of Defendants regarding any use of their windows and doors.
55. Plaintiff knew that it would be making decisions that affected the Defendants' property without the consent of the Defendants.
56. Plaintiff intended for the Defendants to rely upon the representations the Plaintiff made regarding the Defendants' property.

57. Defendants' had a right to rely upon the representations of Plaintiff and did in fact rely upon the representations made by Plaintiff.
58. Plaintiff knew that it was going to proceed in making decisions that affected the property interest of the Defendants, with or without consent of Defendants.
59. As a proximate result of Plaintiff's fraudulent misrepresentations, Defendants have suffered and will suffer damages that may be ascertained during the discovery and trial of this matter.

SIXTH CAUSE OF ACTION
(Negligence)

60. Defendants incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
61. Plaintiff owed a duty of care to the Defendants to act in a reasonable manner regarding the property owned by Defendants at The Bristol.
62. Plaintiff breached that duty when it proceeded to take actions that affected Defendants' property without the consent of Defendants.
63. As a proximate result of Plaintiff's negligence, Defendants have suffered and will suffer damages that may be ascertained during the discovery and trial of this matter.

SEVENTH CAUSE OF ACTION
(Trespass)

64. Defendants incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
65. Defendants are the legal owners of unit 313 at The Bristol.
66. Plaintiff has voluntarily entered upon Defendants' property and taken actions inconsistent with Defendants' property interest. Furthermore, Plaintiff knew or should have known that it did not have permission to enter Defendants' property.
67. As a proximate result of Plaintiff's trespass, Defendants have suffered and will suffer damages that may be ascertained during the discovery and trial of this matter.

EIGHTH CAUSE OF ACTION

(Nuisance)

68. Defendants incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
69. Plaintiff has created an unreasonable interference with Defendants' ability to use their property, including but not limited to, the reconstruction that took place regarding Defendants' windows and doors.
70. The nuisance that was created by Plaintiff during the reconstruction of the windows and doors of Defendants' property and the final product has interfered with the Defendants' use and enjoyment of their property.
71. As a direct and proximate result of Plaintiff's nuisance, Defendants have suffered and will suffer actual, consequential and special damages that may be ascertained during the discovery and trial of this matter.

NINTH CAUSE OF ACTION

(Unjust Enrichment)

72. Defendants incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
73. Plaintiff took possession of the windows and doors to Defendants' property, unit 313 at The Bristol. Defendants' never granted ownership rights of the windows and doors to the Plaintiff. Plaintiff has failed to compensate Defendants for the taking of their windows and doors and has refused to do so.
74. Plaintiff has been unjustifiably enriched at the expense of Defendants and has enjoyed the benefit of said enrichment without compensating Defendants.
75. As a direct and proximate result of Plaintiff's unjust enrichment, Defendants have suffered and will suffer actual, consequential and special damages that may be ascertained during the discovery and trial of this matter.

TENTH CAUSE OF ACTION

(Declaratory Judgment)

76. Defendants incorporate the allegations of the foregoing paragraphs as if fully repeated herein.

77. Defendants have never granted ownership to Plaintiff of the windows and doors to their property, unit 313 of The Bristol.
78. Plaintiff has made decisions regarding Defendants' property without consent to do so. Plaintiff has acted in a manner in which it portrays itself as owner of Defendants' windows and doors.
79. Defendants seek a judgment from this Court pursuant to the S.C. Uniform Declaratory Judgments Act, S.C. Code §15-53-10 *et seq.* for a declaration of the rights, status and other legal relations of the parties declaring the windows and doors of unit 313 of The Bristol are property of the Defendants and not Plaintiff.

ELEVENTH CAUSE OF ACTION
(Slander of Title)

80. Defendants incorporate the allegations of the foregoing paragraphs as if fully repeated herein.
81. Plaintiff filed a Lis Pendens and a Foreclosure Complaint against Defendants with the County of Charleston. Such filings are public.
82. The Lis Pendens and Foreclosure Complaint are based on allegations that Defendants have failed to pay "regime fees/assessments" for property Defendants own at The Bristol, specifically unit 313. Defendants have never been late with regime fee payments. Defendants contested special assessments placed on homeowners and filed a lawsuit regarding those issues some time before Plaintiff filed the Lis Pendens and Foreclosure Complaint.
83. By Plaintiff filing a Lis Pendens and Foreclosure Complaint against Defendants' property Plaintiff has disparaged and diminished the quality of Defendants' property.
84. Plaintiff filed a Lis Pendens and Foreclosure Complaint in reckless and wanton disregard of the rights of Defendants. Defendants some time ago filed an action against Plaintiff disputing the validity of the assessments, which Plaintiff claims is part of the basis for the Lis Pendens and Foreclosure Complaint.
85. Defendants have incurred special damages because of the public filing of the Lis Pendens and Foreclosure Complaint by Plaintiff against Defendants.

WHEREFORE, the Defendant prays for judgment against the Plaintiff for the following:

1. Actual, consequential and punitive damages;
2. A judgment pursuant to the S.C. Uniform Declaratory Judgments Act, S.C. Code §15-53-10 *et seq.* declaring the windows and doors of unit 313 at The Bristol are owned by Plaintiffs;
3. Costs and attorney fees associated with this action; and
4. Such other and further relief as the Court deems just and proper.



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Greenville, South Carolina 29604
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Attorneys for the Plaintiff

Greenville, South Carolina

Dated: 5/5/11

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

THE BRISTOL CONDOMINIUM)
PROPERTY OWNERS' ASSOCIATION,)

Plaintiff,)

v.)

JOHN T. LUCAS, SR., AS TRUSTEE OF)
THE JOHN T. LUCAS REVOCABLE)
TRUST DATED NOVEMBER 10, 2004,)
AND CAROLYN C. LUCAS AS)
TRUSTEE OF THE CAROLYN C.)
LUCAS REVOCABLE TRUST DATED)
NOVEMBER 10, 2004,)

Defendants.)

IN COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-10-2232

PLAINTIFF'S REPLY TO
COUNTERCLAIMS OF DEFENDANTS

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2011 MAY 26 AM 10:56

FILED

The Plaintiff, The Bristol Condominium Property Owners' Association (the "Plaintiff"), replying to the Counterclaims of the Defendants, John T. Lucas, Sr., as Trustee of the John T. Lucas Revocable Trust dated November 10, 2004, and Carolyn C. Lucas as Trustee of the Carolyn C. Lucas Revocable Trust dated November 10, 2004 (the "Defendants") herein, states as follows that:

1. Plaintiff denies each and every allegation of the Counterclaims not hereinafter specifically admitted.
2. The Plaintiff admits the allegations of paragraphs 19 through 21 of the Defendants Answer and Counterclaim.
3. Answering paragraph 22 of Defendants Answer and Counterclaim, the Plaintiff admits that on April 23, 2007, pursuant to Section 17.2(d) of the Master Deed of Bristol Condominiums Property Owners' Association ("Master Deed"), the Plaintiff promulgated the Fourth Amendment to the Master Deed, wherein the exterior windows and doors of every unit were added to the definition of "limited common elements" under the Master Deed. The Plaintiff further admits that by right of this Amendment, the Plaintiff now has the authority to

maintain, repair and replace exterior windows and doors as well as all other limited common elements.

4. The order of the Court of Common Pleas referenced in paragraph 23 of the Defendants Answer and Counterclaim is a document that speaks for itself. Therefore, the Plaintiff craves reference to it. To the extent that the allegations of paragraph 23 are inconsistent therewith, they are hereby denied.

5. The Plaintiff admits the allegations of paragraph 24 only insofar as said paragraph alleges that a meeting of the Association was organized wherein the Board of the Association advised homeowners of their right to join in one or more pending lawsuits pertaining to water intrusion problems at The Bristol Condominiums. The remaining allegations of paragraph 24 hereby denied.

6. The allegations of paragraph 25 are admitted insofar as said paragraph alleges that a number of homeowners joined one or more lawsuits pertaining to water intrusion problems at The Bristol Condominiums Association and that the Defendants were not among them. The remaining allegations of paragraph 25 are hereby denied.

7. The allegations contained in paragraphs 26, 27 and 28 of Defendants Answer and Counterclaim are admitted.

8. Answering paragraph 29, it is admitted that its lawsuit regarding The Bristol was settled, but denies that the Defendants did not consent to the terms of the settlement.

9. The allegations of paragraph 30 are admitted insofar as said paragraph alleges that special assessments were made on the homeowners for anticipated repair costs. The remaining allegations of paragraph 30 are hereby denied.

10. The allegations contained in paragraph 31 are denied.

11. The allegations contained in paragraph 32 are denied.

AS TO THE DEFENDANTS FIRST CAUSE OF ACTION

12. Answering paragraph 33, the Plaintiff repeats and realleges paragraphs 1 through 11 hereinabove.

13. The allegations contained in paragraph 34 are admitted.

14. The allegations contained in paragraph 35 through 37 are denied.

AS TO THE DEFENDANTS SECOND CAUSE OF ACTION

15. Answering paragraph 38, the Plaintiff repeats and realleges paragraphs 1 through 14 hereinabove.

16. The allegations contained in paragraph 39 are denied.

17. Paragraph 40 requires no response and states conclusions of law. To the extent that a response may be required, the allegations of paragraph 40 are hereby denied.

18. Paragraph 41 requires no response and states conclusions of law. To the extent that a response may be required, the allegations of paragraph 41 are hereby denied.

19. The allegations contained in paragraph 42 are denied.

AS TO THE DEFENDANTS THIRD CAUSE OF ACTION

20. Answering paragraph 43, the Plaintiff repeats and realleges paragraphs 1 through 19 hereinabove.

21. The Plaintiff has acted in accordance with the terms and conditions of the Master Deed and Bylaws and denies the allegations contained in paragraph 44.

22. The allegations contained in paragraph 45 are admitted.

23. The allegations contained in paragraph 46 are denied.

24. Answering paragraph 47, the Plaintiff admits that it has moved forward with remodeling certain components of The Bristol. Defendant lacks knowledge and information concerning the protests to which the Defendant refers, but craves reference to any and all protests referenced in paragraph 47 of the Defendants Answer and Counterclaim and admits that the Defendants have voiced objections to work commencing in and outside their unit.

25. The allegations contained in paragraph 48 are denied.

AS TO THE DEFENDANTS FOURTH CAUSE OF ACTION

26. Answering paragraph 49, the Plaintiff repeats and realleges paragraphs 1 through 25 hereinabove.

27. The allegations contained in paragraph 50 through 52 are denied.

AS TO THE DEFENDANTS FIFTH CAUSE OF ACTION

28. Answering paragraph 53, the Plaintiff repeats and realleges paragraphs 1 through 27 hereinabove.

29. The allegations contained in paragraphs 54 through 59 are denied.

AS TO THE DEFENDANTS SIXTH CAUSE OF ACTION

30. Answering paragraph 60, the Plaintiff repeats and realleges paragraphs 1 through 29 hereinabove.

31. Paragraph 61 requires no response and states conclusions of law. To the extent that a response may be required, the allegations of paragraph 61 are hereby denied.

32. Paragraph 62 requires no response and states conclusions of law. To the extent that a response may be required, the allegations of paragraph 62 are hereby denied.

33. The allegations contained in paragraph 63 are denied.

AS TO THE DEFENDANTS SEVENTH CAUSE OF ACTION

34. Answering paragraph 64, the Defendant repeats and realleges paragraphs 1 through 33 hereinabove.

35. The allegations contained in paragraph 65 are admitted.

36. The allegations contained in paragraphs 66 and 67 are denied.

AS TO THE DEFENDANTS EIGHTH CAUSE OF ACTION

37. Answering paragraph 68, the Plaintiff repeats and realleges paragraphs 1 through 36 hereinabove.

38. The allegations contained in paragraphs 69 through 71 are denied.

AS TO THE DEFENDANTS NINTH CAUSE OF ACTION

39. Answering paragraph 72, the Plaintiff repeats and realleges paragraphs 1 through 38 hereinabove.

40. The Plaintiff has acted in accordance with the terms and conditions of the Master Deed and Bylaws and denies the allegations contained in paragraph 73.

41. The allegations contained in paragraphs 74 and 75 are denied.

AS TO THE DEFENDANTS TENTH CAUSE OF ACTION

42. Answering paragraph 76, the Plaintiff repeats and realleges paragraphs 1 through 41 hereinabove.

43. The allegations contained in paragraphs 77 through 79 are denied.

AS TO THE DEFENDANTS ELEVENTH CAUSE OF ACTION

44. Answering paragraph 80, the Plaintiff repeats and realleges paragraphs 1 through 43 hereinabove.

45. Paragraph 81 requires no response and states conclusions of law. To the extent that a response may be required, the allegations of paragraph 81 are hereby denied.

46. The allegations contained in paragraphs 82 through 85 are denied.

AFFIRMATIVE DEFENSE
(Contributory/Comparative Negligence)

47. Any damage suffered by the Defendants is the direct and proximate result of their comparative and contributory negligence and Defendants recovery should be barred or, alternatively, reduced proportionately to Defendants comparative negligence.

AFFIRMATIVE DEFENSE
(Failure to Mitigate)

48. Defendants failed to mitigate its damages as required by law.

AFFIRMATIVE DEFENSE
(Business Judgment Rule)

49. The Defendants are barred from recovery pursuant to the Business Judgment Rule.

AFFIRMATIVE DEFENSE
(Statutory Immunity)

50. The Defendants are barred from recovery pursuant to the S.C. Code which provides immunity for Boards of non-profit corporations.

AFFIRMATIVE DEFENSE
(Compliance with Master Deed and Bylaws)

51. The Defendants are barred from recovery because the Plaintiff acted in good faith and acted in accordance with the terms and conditions of the Master Deed and Bylaws.

WHEREFORE, having fully replied to the Defendants' Answer and Counterclaim, the Plaintiff prays that the same be dismissed with the cost of this action and for such other and further relief as this Honorable Court may deem just and proper.

ATTORNEYS FOR PLAINTIFF

May 24, 2011

Wendy S. Stockhausen
Wendy S. Stockhausen

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2010-CP-10-3240

John T. Lucas, Sr. as Trustee of the
John T. Lucas Revocable Trust and
Carolyn C. Lucas Revocable Trust,

Plaintiffs,

-vs-

The Bristol Condominium Property
Owners Association,

Defendant.

MOTION FOR
SUMMARY JUDGMENT

FILED
2011 JUL -1 PM 1:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

-and

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2011-CP-10-2232

The Bristol Condominium Property
Owners' Association,

Plaintiff,

John T. Lucas, Sr. as Trustee of the
John T. Lucas Revocable Trust
Dated November 10, 2004, and
Carolyn C. Lucas Revocable Trust
Dated November 10, 2004,

Defendants/
Counterclaim Plaintiffs,

-vs-

The Bristol Condominium Property
Owners' Association,

Counterclaim Defendant.

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the
Defendant will move before the presiding judge of the Court of Common Pleas, ten days

{Client Matter#0021160103MTN00312016.DOC}

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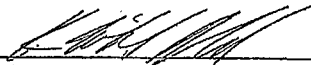
after service hereof, or as soon thereafter as counsel may be heard, for an order granting to said Defendant summary judgment as to all of the Plaintiff's claims in this matter.

This Defendant believes that it is entitled to judgment as a matter of law based on the premise that the Board of The Bristol Condominium Property Owners' Association, a non-profit corporation, is protected from all of the Plaintiffs' claims by the Business Judgment Rule. The Plaintiffs have no evidence that would tend to lift the protections of the Business Judgment Rule from any of the actions of the Board in conjunction with its management of the property or its handling and settlement of any prior litigation involving construction defects at the subject property, all of which form the basis of the Plaintiff's claims.

This motion shall be supported by pleadings, discovery responses, deposition testimony, affidavits, as well as a memorandum of law which will be filed with the Court prior to the hearing of this matter.

It is so moved.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 

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Owners' Association*

Charleston, South Carolina
June 30, 2011

{Client Matter\002116\0103\MTN\00312016.DOC}

Page 2 of 3

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-10-2232

The Bristol Condominium Property
Owners' Association,)

Plaintiff,)

v.)

John T. Lucas, Sr., as Trustee of the
John T. Lucas Revocable Trust Dated
November 10, 2004, and Carolyn C.
Lucas as Trustee of the Carolyn C.
Lucas Revocable Trust Dated
November 10, 2004,)

Defendants/Counterclaim Plaintiffs,)

v.)

The Bristol Condominium Property
Owners' Association,)

Counterclaim Defendant.)

MOTION TO ALTER or AMEND
Pursuant to *SCRCP* Rule 52
and
MOTION FOR NEW TRIAL
Pursuant to *SCRCP* Rule 59(a)

John Lucas and Carolyn Lucas hereby move the Court for a reconsideration of the award of money owed in foreclosure in this action, pursuant to *SCRCP* 52. Specifically, the Lucases move for the alteration or amendment of the judgment on the grounds that the uncontradicted testimony of the sole witness for the foreclosure plaintiff testified at trial that the amounts set forth in the complaint were incorrect.

Further, the Lucases move for a new trial absolute on the grounds that greater weight of the evidence supports their position that the foreclosure action was filed in bad faith, in an attempt to force them to dismiss or compromise the claims that were pending against the Bristol Condominium Property Owners Association at the time of the filing of the foreclosure.

The plaintiff hereby avers that notice of the judgment to which this motion is addressed was received August 26, 2013, when a copy of the filed judgment was received by mail at the offices of counsel. Pursuant to Rule 6 and Rule 59(b), counsel therefore avers that filing of this motion is timely.

This matter originated as a foreclosure action, designated as Case No.: 2011-CP-10-2232. That case was later consolidated with Charleston County Case No.: 2010-CP-10-3240 for both discovery and trial purposes. Since the Court has entered separate Orders and therefore separate verdicts, the plaintiff has filed two motions.

Facts and Procedural History of the Foreclosure Action

On March 25, 2011, The Bristol Property Owners Association, or BPOA, filed a foreclosure action against John and Carolyn Lucas, (hereafter, "Lucas") alleging failure to pay special assessments that Lucas had refused to pay as the result of his objections to the mismanagement of construction litigation brought by the BPOA to address leaks and other construction defects in the Bristol condominium development, where Lucas owned a unit.

Specifically, on April 20, 2010, Lucas had filed an action against the BPOA alleging mismanagement of the condominium regime and disputing the debt that the BPOA claimed it was owed for various assessments. A year later, the BPOA filed this action against Lucas for debts, more particularly set out in the foreclosure complaint, that were clearly in dispute. On May 9, 2011, Lucas counterclaimed, asserting the claims previously raised in his mismanagement lawsuit. The Court ultimately concluded that the foreclosure was proper. Lucas disagrees, and argues that the Court should reconsider its decision and either grant him a new trial or reduce the amount awarded.

Discussion

The law governing the BPOA's right to foreclose is the Horizontal Property Act, specifically:

§ 27-31-210. Lien for unpaid assessments; right of mortgage or purchaser acquiring title at foreclosure sale

(a) All sums assessed by the administrator, or the board of administration, or other form of administration specified in the bylaws, but unpaid, for the share of common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (i) tax liens on the apartment in favor of any assessing unit, and (ii) mortgage and other liens, duly recorded, encumbering the apartment. Such lien may be foreclosed by suit by the administrator, or the board of administration, or other form of administration specified in the bylaws, acting on behalf of the council of co-owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment after the commencement of the foreclosure action and the plaintiff in such foreclosure shall be entitled to the appointment of the receiver to collect such rents. The administrator, or the board of administration, or other form of administration specified in the bylaws, acting on behalf of the council of co-owners, shall have the power to bid in the apartment at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. *Suit to recover a money judgment for unpaid common expenses may be maintainable without instituting foreclosure proceedings.* (emphasis added).

The BPOA therefore had a clear remedy to allow resolution of the dispute with Lucas that was less draconian than foreclosure. The evidence showed Lucas was timely in all payments owed to the BPOA except those which he disputed. See Trial Exhibit 48. In fact, the foreclosure action details the disputed payments and reflects that Lucas had paid regular regime fees in the amount of \$28,093.75, capital reserved contributions of \$4,496.25, insurance assessments of \$8,726.98, and late fees of \$14,104.08. He had specifically disputed \$42,354.90, which dispute led to the foreclosure.

At the time of the foreclosure filed against Lucas, there were eight other condominium owners with outstanding balances for assessments and fees. Lucas was the only homeowner against whom BPOA filed an action. Vest Trial Trans. 51:8-16 – 52:1-6. Of course, Lucas was the only homeowner that had filed suit disputing the special assessments and the amount the BPOA claimed he owed.

By the time of trial, the BPOA had filed another foreclosure action against another homeowner. Still, only two actions had been filed against the nine homeowners with outstanding balances. *Id.* at 52:1-6. The foreclosure action against Lucas was filed with the BPOA's full knowledge of the disputed claim. *Id.* at 52:7-13. Lucas's payments, totaling \$55,421.06 for the time period during which the BPOA alleged an arrearage had accrued, demonstrated Lucas's ability to pay. There was therefore no legal or business reason to foreclose on Lucas, and the evidence clearly supports Lucas's claim that the BPOA foreclosure action was a willful abuse of process.

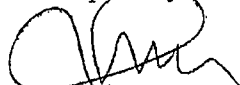
Further, in its action, the BPOA claimed \$15,990.78 in interim collection costs as well as \$3,500.00 in attorneys' fees. Lona Vest, property manager for the BPOA, testified when questioned by the Court that attorneys' fees and costs for the foreclosure matter were paid during the pending of the litigation. Vest Trial Trans. 42:3-7 and 44:18-21. Vest further testified that the amount being claimed as owed in the foreclosure action an incorrect calculation. *Id.* at 45:6-9. The amount that the BPOA claimed Lucas owed also included a 10 to 15 percent collection fee added for legal services, which Vest acknowledged was incorrect. *Id.* at 45:6-9. In fact, Ms. Vest testified that there was not any support for the amounts listed as owed in the foreclosure complaint. *Id.* at 41:6-8.

Foreclosure counsel elected not to attend the trial. Counsel did, however, submit a memorandum in support of the BPOA's position. In that memorandum, Lona Vest was identified as the sole witness who could or would substantiate the charges owed. *Id.* at 33:13-18. Therefore, even if the foreclosure action is viable, which Lucas denies, the calculations used to determine the amount owed were clearly incorrect as evidenced by the uncontradicted testimony of the property manager, Lona Vest.

Conclusion

For the reasons stated, Lucas respectfully requests that the Court reconsider its ruling in this matter based upon the evidence presented at trial and specifically referenced in this motion and reverse its current ruling in favor of the BPOA and grant Lucas a new trial, on the grounds that the greater weight of the evidence supports Lucas's claims. In the event the Court finds the BPOA should prevail, Lucas requests the Court reconsider the amount awarded for collection fees and costs, and either reduce that amount or require additional and sufficient proof of the amount owed.

Respectfully submitted,



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Attorneys for the Defendants/Counterclaim
Plaintiffs

September 5, 2013

Greenville, South Carolina

1 was paid?

2 A. Yes, sir. And it will be 1,680 again in
3 September 2013.

4 Q Right. Okay. And how was the 1,680
5 assessment calculated? You said 20 percent of the
6 annual budget.

7 A 20 percent of the annual budget divided by
8 54 owners. So it was split equally.

9 Q All right. Okay. So generally speaking,
10 setting aside the window assessment, which we'll
11 talk about in a minute, when the homeowners are
12 assessed whatever money is owed is divided by 54?

13 A That's correct.

14 Q When the window assessment was calculated,
15 the number of windows was used as a factor in
16 calculating the assessment?

17 A That's correct.

18 Q That's why at tab 11 in defense proposed
19 exhibits, the numbers are different?

20 A That's correct.

21 Q Correct? The homeowners -- the values of
22 the condos, certainly they were different, are they
23 not?

24 A Yes.

25 Q The market values are different. And you

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1 actually came to fruition, so to speak, in about
2 2002.

3 Q All right. Now, that's all we need to
4 talk about the assessments, correct?

5 A That's all of the assessments.

6 Q Okay. All right. We've talked about the
7 assessments and where they're calculating?

8 A Yes, sir.

9 Q Okay. Let's talk about -- since we've got
10 this foreclosure document in front of us, let's talk
11 about the foreclosure a little bit.

12 A Okay. I'm going to take it back then.

13 Q Sure. It appeared when I reviewed this
14 yesterday afternoon that you are the witness who
15 would have been called had counsel for Moore &
16 VanAllen hung around to call witnesses to testify
17 about foreclosure; is that correct?

18 A I am the witness.

19 Q All right. And, essentially, on page 3 of
20 this document, your anticipated testimony is
21 reflected. Did you participate in the preparation
22 of this anticipated testimony?

23 A No. I mean I briefly reviewed it, but it
24 was prepared for me to be honest.

25 Q All right. Let's talk specifically about

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1 the information that appears on page 4, which is the
2 calculation of the numbers for foreclosure.

3 A I did participate in that.

4 Q Okay. So you provided these numbers?

5 A Yes, sir.

6 Q Is that correct? Now, I want to focus
7 your attention specifically on C, insurance
8 assessments. Is it your testimony today that Dr.
9 Lucas has refused to pay insurance assessments?

10 A No. He's paid insurance assessments.

11 (Off-the-record discussion.)

12 BY MR. MOONEYHAM:

13 Q Okay. We were talking about page 4 of
14 Defendants' Exhibit 1, which specifically seems to
15 indicate to me that Dr. Lucas has now paid all of
16 his insurance assessments; is that correct?

17 A I don't think that that represents that.
18 Basically, what I did was I broke out what type of
19 monies were owed. I gave him credit for all the
20 payments received, but I don't specify what the
21 payments were. So he's giving me -- we billed them
22 \$97,000. He has sent in checks worth \$49,000.

23 So basically, that -- that's all that
24 states. We'd have to look at his actual history to
25 then discuss -- as I said to you in the early days

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1 some point, he made part of the special assessment
2 for the windows, but then he discontinued paying for
3 the windows.

4 And then I don't believe he paid any
5 of the special assessments that relate to the short
6 fall, but he may have. I'd have to specifically
7 look at his history to tell you what that \$49,000
8 meant..

9 Q I got you, and that's what I wanted to
10 clarify. And we don't -- numbers are not as
11 concerning to me as the concepts are. This exhibit
12 appears to suggest that it's possible Dr. Lucas did
13 not pay insurance assessments, did not pay regular
14 regime fees, because these are listed as payables.
15 And your testimony today is he did, in fact, pay his
16 regime fees, generally timely, right?

17 A Correct.

18 Q He did not, because he opposes the failure
19 to pay back the loan to the capital reserve fund,
20 and he's told you that, he's not made capital
21 reserve fund contributions, because he thought that
22 money ought to have come back from the litigation,
23 right?

24 A Yes.

25 Q He has paid his insurance assessments, as

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1 A Conceptually. I have my own -- I created
2 my own spreadsheet, which then the attorneys used to
3 create this document.

4 Q Right.

5 A And in my particular spreadsheet, I did
6 give him credit by the month for what he did or
7 didn't give me, and I realize that this -- this
8 isn't part of the production, but I do -- you know,
9 basically, what Joseph's done is he's lumped it.

10 Q I got you.

11 A Just to give you an idea.

12 Q Again, the numbers are less concerning to
13 me as the concepts are more concerning. Dr. Lucas
14 has said repeatedly, I think this was handled wrong.
15 I don't think I ought to pay these assessments, but
16 I will pay the things I think I owe, and he's paid
17 the things he thinks he owes, correct?

18 A As far as I can see in my own cheat-sheet
19 notes, he has always paid the insurance, he's paid
20 the operating side of the regime fee, and as I said,
21 he's given me -- he paid some money toward the
22 special assessment, and so, yes. That's an accurate
23 characterization of the payments he's made.

24 Q Thank you. There's also a \$15,990 interim
25 collection cost line item on this document. Did you

1 participate in the creation of that line item?

2 A No.

3 Q Do you have any idea what that is?

4 A I'm assuming those are the legal fees
5 related to Dr. Lucas' collections.

6 Q Okay. Have you any idea what would
7 justify a \$15,000 legal fee in this case?

8 A I'm not a lawyer. I don't know.

9 Q But you pay lawyers?

10 A I do pay lawyers. Sometimes way too much.

11 Q And this would be one of those cases,
12 right, where you'd be paying a lawyer way too much,
13 in my opinion.

14 A You think?

15 Q But the point is, do you have an invoice
16 or any documentation that would support a \$15,000
17 payment to the lawyers in this situation?

18 A No. Not with me. No, sir. You know, I'm
19 assuming I could go back and pull all the Moore &
20 VanAllen bills that have been paid since the
21 beginning of time.

22 Q You have been to most of the depositions
23 in this case?

24 A No, sir. I went to Dr. Lucas' deposition.

25 Q That's the only one you went to?

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1 Moore & VanAllen did in this case that was worth the
2 \$15,000 fee?

3 A I can't speak to the Moore & VanAllen
4 bills. Honestly, I don't know. I can't answer
5 where that 15,000 came from.

6 Q And that was my question. As you sit here
7 today, you can't say here's support for this bill?

8 A Correct. -

9 Q Okay. All right.

10 THE COURT: Can I ask her --

11 MR. MOONEYHAM: Sure.

12 THE COURT: Have they billed you-all for
13 those 15,000, or they just added that to the
14 tab?

15 A Your Honor, I really don't know. They
16 bill us every month.

17 THE COURT: But you don't know whether
18 they included the charges for Dr. Lucas'
19 foreclosure every month or not?

20 A I have never sat down and tallied exactly
21 how much I paid for Dr. Lucas' related legal fees.
22 So I can't honestly tell you what that number is,
23 because this has gone on for years.

24 THE COURT: I know, but I wasn't concerned
25 about what the number was. Usually, when

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1 lawyers do a foreclosure fee, I don't know
2 about usually, but many times, they don't get
3 any money at all until it's over. So my
4 question really is is Moore & VanAllen waiting
5 until the end of it, or have you been paying
6 them along and along?

7 A We have been paying them along the way.

8 THE COURT: Okay. That's what I wanted to
9 know. Okay. I got you.

10 MR. MOONEYHAM: Thank you, Your Honor, for
11 that clarification.

12 BY MR. MOONEYHAM:

13 Q Is your testimony that you have been
14 paying them to handle this foreclosure action, or
15 have you been paying them as your general counsel
16 for the Bristol?

17 A Paying them for all of the above. They're
18 the general counsel for the regime. They bill
19 specifically per action item, and so I would receive
20 bills every month that would have Dr. Lucas' name at
21 the top of them. And that would be all of the time
22 related to anything to do with the Lucas action, and
23 there have been other issues that they've worked on
24 for the regime.

25 So each month I get multi pages of

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1 any other foreclosure in terms of the complexity or
2 difficulty of handling it?

3 A Well, yes. It's different in that,
4 generally, if we're dealing with a straight
5 foreclosure, we're just dealing with the
6 foreclosure. The fact that we have this other
7 action going at the same time I'm sure probably
8 contributed to some of the complexity of this.

9 Q Don't you think it made it easier to have
10 the other lawsuit going on because of these very,
11 very good lawyers sitting at the table with us have
12 done all of this work?

13 A No. I would have thought it would have
14 extended the foreclosure, not that these lawyers are
15 not fabulous. But I would have assumed that it
16 would have added time to this process, and,
17 therefore, it may have added money to it.

18 Q And you just testified a minute ago that
19 you believe that Bristol had paid these interim
20 collection costs along and along?

21 A Yes, sir.

22 Q So that the total debt is not \$64,000,
23 because those costs have been paid along and along,
24 and if you're calculating attorneys' fee, the
25 attorney's not going to collect -- he's not going to

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1 get a percentage of what he's already been paid, is
2 he?

3 A No, sir. I wouldn't believe so, no. I
4 would assume that money would come back to the
5 regime.

6 Q So that is an inaccurate calculation, if
7 he's asking for a third or 10 percent or 15 of this
8 \$15,000 if that's what you paid, correct?

9 A I would assume so, yes.

10 Q All right. Okay.

11 A But again, I'm not a lawyer.

12 Q I understand. Let's talk about
13 foreclosure as a concept for a moment. When I
14 reviewed your deposition, you and Ms. Pope had a
15 long discussion about foreclosures with Bristol.
16 And if you need the deposition to refresh your
17 recollection, I'll be happy to get you a copy of it.
18 I've got one somewhere. In fact, it's right there.
19 This would be in -- if you need to
20 look at it, in the second portion of the deposition
21 toward the end. I don't remember the page number.
22 You-all talked about Jay Harmon (phonetic)?

23 A Yes.

24 Q Who, according to you, at the time you
25 were deposed, had never made a payment at all after

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1 A And we filed a foreclosure.

2 Q Not according to your testimony.

3 A Well, we may not -- we suspended his
4 foreclosure. So I'd have to look at the testimony,
5 but we brought a foreclosure action against Bishop
6 Rembert.

7 Q And when he made payments, it's your
8 testimony that you suspended foreclosure?

9 A He paid a \$20,000 payment, and then he
10 began giving us his rent each month.

11 Q Okay.

12 A And, basically, we got Bishop Rembert to
13 sign an agreement, and I don't know the legal
14 terminology, but, basically, what the agreement was
15 that we didn't lose our standing. That if Bishop
16 Rembert discontinued his good-faith efforts to pay
17 us, with the agreement he eventually would sell his
18 unit, then we could pick up where we left off and
19 continue with the foreclosure.

20 Q But the point is, he owed \$90,000. He
21 made a payment leaving a \$70,000 balance, and you
22 suspended the foreclosure?

23 A But he had a payment plan, yes. That's
24 correct.

25 Q And his payment plan is \$150 a month

1 Q But the Bristol did not?

2 A No. The Bristol did not.

3 Q Ashley Middleton was also behind on her
4 payments?

5 A Short sale.

6 Q But the Bristol did not foreclose?

7 A No.

8 Q So of the one, two, three, four, five,
9 six, seven, eight, of the nine people, including Dr.
10 Lucas, who had outstanding balances and difficulties
11 in terms of their agreements to make payments and
12 payments and that sort of thing, the only
13 foreclosure that was followed through was Dr. Lucas'
14 foreclosure?

15 A No. Rembert, Bishop Rembert. There were
16 two foreclosures filed.

17 Q But as soon as he made a payment, you
18 suspended his foreclosure?

19 A We negotiated. It wasn't quite as simple
20 as that. We negotiated a plan with Bishop Rembert.
21 Let's go back and discuss why this is this way.

22 Q Well, you've answered it. I'm sure your
23 lawyer's going to ask you a lot of questions.

24 A Okay. Well, they can ask me why.

25 Q They'll ask those questions. I'm sure

1 they will. Bottom line is, out of the people you
2 were able to remember at the time of your
3 deposition, the only foreclosure that's still
4 ongoing is Dr. Lucas', and only two of the nine
5 people even had a foreclosure to deal with?

6 A That's correct.

7 Q Okay. And that's despite the fact that
8 Dr. Lucas was making payments and despite the fact
9 that he had had us write you a letter in March of
10 2010, which is tab 23, that says that we dispute --
11 he disputes the nature of the assessments and the
12 regime fee assessments?

13 A That's correct.

14 Q You would agree with me that one of Dr.
15 Lucas' big issues in his dealings with the Bristol
16 has been a lack of communication. Whether you agree
17 or not, that's one of his issues, correct?

18 A Yes. He has expressed concerns about the
19 level of communication, and he feels that he has not
20 received adequate communication.

21 Q The lack of communication was particularly
22 an issue at about the time that the construction
23 lawsuits were being filed, according to the e-mail
24 that you and Ms. Landry exchanged that was made an
25 exhibit yesterday, right?

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1 that was going on, which you knew about, and Dr.
2 Lucas has advised you of, to see what happened in
3 this litigation before you foreclosed? Wouldn't
4 that be just as appropriate?

5 A I don't think that the board felt that
6 there was enough emphasis on the collection piece of
7 the puzzle, and I don't think -- I think that they
8 wanted to insure that they were going to collect the
9 funds from Dr. Lucas. We would have gone all the
10 way through this litigation, and at the end of it,
11 he still could have decided not to pay us.

12 Q And you mentioned the collection process.
13 This is certainly something that you could have
14 turned over to a collection agency, right?

15 A It depends. The collect --

16 Q But it could have been turned over to a
17 collection agency?

18 A Yes. It could have, but that's our usual
19 last resort.

20 Q But in point of fact, you do turn matters
21 over to collection agencies all the time for
22 collection?

23 A No. That characterization is not correct.
24 We do not do it all the time. In all my years I've
25 been in this business, I just started working with a

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(1 collection agency in the last year and a half. They
2 charge a percentage of what they collect, and
3 they're sort the last course of action, not the
4 first.

5 Q I think they charge a percentage of the
6 collection, just like the law firm charges a
7 percentage of what they collect in foreclosure,
8 right?

9 A Well, I wouldn't have necessarily said
10 that a law firm charges a percentage to get a
11 collection. But yes, there are fees related to a
12 collection through a law firm, yes.

(13 Q And doesn't the affidavit that's part of
14 Defendants' Exhibit Number 1 specify 10, 15 percent
15 share of the recovery as attorneys' fees?

16 A Yes.

17 Q So that's like a collection agency?

18 A Cheaper.

19 Q Depends on which collection agency you
20 hire, doesn't it?

21 A That's true.

(22 Q All right. We can talk about Judge
23 Newman's order. I had a particular question about
24 that, and that is tab number 34 -- or 33. Let me
25 look one second.

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2	COUNTY OF CHARLESTON)	:	CASE NO. 10-CP-10-3240
3	JOHN T. LUCAS, SR. AS)		
4	TRUSTEE OF THE JOHN T.)		
5	LUCAS REVOCABLE TRUST)		
6	AND CAROLYN C. LUCAS)		
7	REVOCABLE TRUST,)		
8	Plaintiff(s),)		VOLUME I
9	-vs)		DEPOSITION OF:
10	THE BRISTOL CONDOMINIUM)		John Lucas
11	PROPERTY OWNERS')		
12	ASSOCIATION,)		
13	Defendant(s),)		
14	-----)		
15	STATE OF SOUTH CAROLINA)	:	IN THE COURT OF COMMON PLEAS
16	COUNTY OF CHARLESTON)	:	CASE NO. 11-CP-10-2232
17	THE BRISTOL CONDOMINIUM)		
18	PROPERTY OWNERS')		
19	ASSOCIATION,)		
20	Plaintiff(s),)		
21	JOHN T. LUCAS, SR. AS)		
22	TRUSTEE OF THE JOHN T.)		
23	LUCAS REVOCABLE TRUST)		
24	DATED NOVEMBER 10,)		
25	2004, AND CAROLYN C.)		
26	LUCAS REVOCABLE TRUST)		
27	DATED NOVEMBER 10, 2004)		
28	Defendant(s),)		
29	Counterclaim)		
30	Plaintiffs,)		
31	-vs)		
32	THE BRISTOL CONDOMINIUM)		
33	PROPERTY OWNERS')		
34	ASSOCIATION,)		
35	Counterclaim)		
36	Defendants.)		
37	-----)		

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1 windows. Then they tried -- they took my property
2 physically when they took my windows physically. And now,
3 they're trying to take my windows and my whole property
4 again. And neither time they gave me due process or input.

5 So I had to file a lawsuit, because they wouldn't
6 respond to my attorney or to me. So he wrote a letter.
7 They didn't respond. They went ahead and did whatever the
8 heck they wanted to do. Then we wrote another letter to
9 make sure they got it. I read it in a meeting under the
10 premise of running for something on the board. They
11 responded with a letter saying, our foreclosure lawyer will
12 contact you.

13 That's the only response I got. I don't think
14 there's any due process there. I think it was within two or
15 three weeks. Now, since that time they've been going
16 through their records. And of course, my attorney has been
17 doing so. And they hadn't been in any big hurry. We
18 haven't even got all the records yet. In other words, their
19 banking records -- out of state, which is suspicion.

20 So we really haven't got all the records yet. I
21 don't understand why we're doing a deposition, because you
22 know, I haven't got a chance to -- they're holding back
23 information. And they went ahead with the building and did
24 the building with ignoring me. And they didn't make no
25 attempt to settle this before they came in and ripped out my

1 STATE OF SOUTH CAROLINA)
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 5 LUCAS REVOCABLE TRUST)
 6 AND CAROLYN C. LUCAS)
 7 REVOCABLE TRUST,)
 8 Plaintiff(s),)
 9 -vs)
 10 THE BRISTOL CONDOMINIUM)
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 12 ASSOCIATION,)
 13 Defendant(s),)
 14 -----)
 15 STATE OF SOUTH CAROLINA) : IN THE COURT OF COMMON PLEAS
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 18 PROPERTY OWNERS')
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 22 TRUSTEE OF THE JOHN T.)
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 24 DATED NOVEMBER 10,)
 25 2004, AND CAROLYN C.)
 LUCAS REVOCABLE TRUST)
 DATED NOVEMBER 10, 2004)
 Defendant(s),)
 Counterclaim)
 Plaintiffs,)
 -vs)
 THE BRISTOL CONDOMINIUM)
 PROPERTY OWNERS')
 ASSOCIATION,)
 Counterclaim)
 Defendants.)
 -----)

DEPOSITION OF:

Dave Landry

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- 1 A Forth quarter, I would think.
- 2 Q When you started working for Dunes?
- 3 A Before, yeah. Before I started.
- 4 Q Right. So when you joined Dunes, were you an employee
- 5 of theirs or were you still an independent contractor?
- 6 A No, independent contractor.
- 7 Q Okay. Did you have an office out at the Dunes
- 8 Property?
- 9 A Yeah.
- 10 Q Did you have to lease that space?
- 11 A No.
- 12 Q It was just part of your contract with them?
- 13 A Yeah.
- 14 Q Did you have a written contract with them?
- 15 A Yeah.
- 16 Q You had to have all that?
- 17 A We do have a written contract, yeah.
- 18 Q How many real estate agents did they have out there?
- 19 A Well, they've got -- we've got several offices. Okay.
- 20 You've got probably about 15 at the Isle of Palms, and about
- 21 five at Seabrook, and a dozen in the city on King Street,
- 22 and five at Folly.
- 23 Q Okay. You're going to have to educate me some. How
- 24 many properties does Dunes Properties own? I come down here
- 25 and I see the signs for Dunes Properties but I don't --

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1 A You mean like offices, how many offices do they own?

2 Q Well, do they just have the Wild Dunes property or are
3 there other --

4 A The signs you see are rental signs probably.

5 Q Are they still part of the Dunes Properties company?

6 A Well, they're not part of the company. The company --
7 we have -- we employ property managers, you know, and
8 reservationists to run our short term rental program. We
9 don't own those homes. We have a contract with the
10 homeowners. And we service the homeowner. We rent the
11 homes for the homeowners and maintain them.

12 Q So it's like a rental management company?

13 A That's right.

14 Q And so how many divisions does Dunes Properties have?
15 You have the rental division.

16 A Have rental and sales. Just those two.

17 Q Rentals and sales?

18 A Yeah.

19 Q Okay. On the rental part of it, there's several groups
20 that you'll see advertised in the little books. I can't
21 remember the name of the other companies that I've seen. I
22 think one's like Resort Quest or something --

23 A Yeah, Resort Quest and Island Realty and --

24 Q Yes.

25 A We all have our brochures, our catalogues, right.

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1 Q Okay. So the Dunes Property has a division of it
2 that's rental. And you said, how many employees?

3 A Vacation rental. There are six at Folly and two at the
4 Isle of Palms.

5 Q So eight total?

6 A Yeah.

7 Q So there's a rental property office at the Isle of
8 Palms. And then there's one out at Folly Beach?

9 A Right.

10 Q Okay.

11 A And we lease those buildings. We lease the building
12 we're in, right.

13 Q Okay. And those eight employees are responsible for
14 managing those properties on those areas?

15 A Yes, and renting them, getting them rented.

16 Q Getting them rented, making sure they're clean.

17 A Right.

18 Q Dealing with the homeowners, if there's any problems
19 collecting the money, dealing with the renter, all that?

20 A Managing the business.

21 Q They deal with all that part?

22 A Uh-huh.

23 Q Okay. On the sales part, how many employees does the
24 sales division of Dunes Properties, not counting independent
25 contractors?

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1 Q Okay. The two that are in process now, who are those
2 homeowners?

3 A I don't think I can -- I don't think I can give you
4 their names. Okay?

5 Q For confidentiality reasons; is that what --

6 A Yeah, yeah.

7 Q This may help. Are they in foreclosure process because
8 the board foreclosed on them for liens, or the bank did?

9 A No, banks. The banks.

10 (Whereupon an off the record discussion took
11 place.)

12 Q Now, tell me what attracted you to the Bristol. How
13 did you hear about the development?

14 A I drove between Mount Pleasant and Folly enough so that
15 I saw it going up. And it looked like a really neat
16 building. And then we decided we were going to move in the
17 city. Okay? We're going to leave Mount Pleasant and move
18 in the city. And we looked at a lot of properties that were
19 old. And I think old properties are wonderful, but I don't
20 want to live in an old property. And then you go to other
21 places that are -- that don't offer as much space, you know,
22 or as nice as the Bristol. So we just settled on it -- you
23 know, wilfully settled on it, because it was like a really
24 nice property, and in a good location.

25 Q And y'all moved in 2005; is that right?

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2 COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
CASE NO. 10-CP-10-3240
3 JOHN T. LUCAS, SR. AS)
4 TRUSTEE OF THE JOHN T.)
5 LUCAS REVOCABLE TRUST)
AND CAROLYN C. LUCAS)
6 REVOCABLE TRUST,)
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7 -vs) DEPOSITION OF:
8 THE BRISTOL CONDOMINIUM)
9 PROPERTY OWNERS')
ASSOCIATION,)
10 Defendant(s),)
STATE OF SOUTH CAROLINA)
11 COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
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12 THE BRISTOL CONDOMINIUM)
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15 JOHN T. LUCAS, SR. AS)
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1 workshop, that's not what we're doing.

2 Q No. I'm just trying to understand how it's different
3 from an executive session, because you say the homeowners
4 could come if they want to. But they don't know when
5 they're taking place. Executive session, they know when
6 it's taking place but they're not allowed to watch. So
7 really what's the difference, because they don't know when
8 the workshop's taking place so they have no way to know when
9 to be able to come observe? Does that make sense?

10 A Sure. Yeah. I mean, they don't, I guess. Yeah. It's
11 not something that's published to the owners, but it's not
12 like we -- if they show up and say, hey, we got a question.
13 Yeah. They're more than welcome to come in and ask. But
14 it's not -- it's designed for us to accomplish our work to
15 prepare for a board meeting or to deal with day-to-day
16 issues that may come up with Lona, or the property manager,
17 or whatever the case may be.

18 Q All right. You went on the board December of 2010,
19 right?

20 A '11. Just this past year.

21 Q So you were not on the board when the decision was made
22 to foreclose on Dr. Lucas' property, or were you?

23 A That was prior to me coming on. I was not part of that
24 decision.

25 Q Since you've been on the board has the board made the

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1 decision to foreclose on any properties?

2 A No. I mean, all those decisions, I think that was all
3 put into the place prior to me joining the board. So I was
4 not part of that decision making process.

5 Q Would you be supportive of the board notifying
6 homeowners of when workshops were taking place so that
7 homeowners could attend?

8 A I don't know that I'd have a problem with that, you
9 know.

10 Q Okay. I don't have any further questions.

11 (Deposition concluded at 4:30 o'clock p.m.)

12

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF CHARLESTON)

~~IN THE COURT OF COMMON PLEAS~~

3

4

CASE NO. 2010-CP-10-3240

5

6 JOHN T. LUCAS, SR., et al.)

7 Plaintiffs,)

8 -vs-)

9 BRISTOL CONDOMINIUM PROPERTY)
OWNER'S ASSOCIATION,)

10)

11 Defendants.)

12)

13

14

15 Given before Trisha G. Rarick, Court Reporter and Notary

16 Public, at BARNWELL, WHALEY, PATTERSON & HELMS, LLC, 288

17 Meeting Street, Suite 200, Charleston, South Carolina, on

18 Wednesday, May 22, 2013, at 9:28 a.m.

19

20

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25

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BEFORE THE HONORABLE:
JAMES WILLIAMS, JR.

1

A P P E A R A N C E S

2

3 ON BEHALF OF THE PLAINTIFFS:

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19

20 ALSO PRESENT:

21 LONA VEST
22 JANICE LANDRY
23 JOHN T. LUCAS, SR.
24 CAROLYN LUCAS

25

I N D E X

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1 THE COURT: We have some preliminary
2 matters?

3 MR. BARFIELD: We do.

4 MR. COOK: Judge, I'm not sure where you
5 want to start. We do have a motion for summary
6 judgment.

7 THE COURT: All right.

8 MR. COOK: By agreement, I would like to
9 present this as an abbreviated form.

10 THE COURT: All right, sir.

11 MR. COOK: Because it may help organize
12 things. But also, do you want the parties to
13 introduce themselves for the record?

14 THE COURT: Yes. That would be good.

15 MS. POPE: Kelly Pope, here for the
16 plaintiff.

17 MR. LUCAS: John Lucas.

18 MS. LUCAS: Carolyn Lucas.

19 MR. MOONEYHAM: Joe Mooneyham.

20 MR. BELTON: Joseph Belton.

21 MS. VEST: I'm Lona Vest, with Property
22 Management Services.

23 THE COURT: I feel like I know you.

24 MR. COOK: I'm Dawes Cook for the
25 defendant.

1 MR. BARFIELD: And Michael Barfield, also
2 for the defendant.

3 THE COURT: All right. Yes, sir,
4 Mr. Cook?

5 MR. COOK: Thank you. This will be our
6 second motion for summary judgment. Our
7 previous motion for summary judgment was
8 granted in part, denied in part. Discovery has
9 proceeded.

10 The theme of this case is communal living,
11 that there are a lot of places where you can go
12 to live, and you can pretty much do what you
13 want. And people can't make you pay what you
14 don't want to pay, but a condominium is not one
15 of those places that you -- for the privilege
16 of -- for the benefits that you have of living
17 in a uniform structure, you have a very
18 detailed set of rules and governments, and you
19 give up a lot of your autonomy.

20 And this is a case where the people have
21 spoken over and over again about what they
22 believe was in the collective best interest of
23 the Bristol Condominiums, and Dr. Lucas and Ms.
24 Lucas just don't agree with what the majority
25 has decided on numerous occasions.

1 Not atypically, people who don't actually

2 live in a communal setting sometimes have
3 different value systems than those who are
4 actually living there. In a lot of homeowners
5 cases that I deal with, that's exactly what it
6 is, that you have somebody who maybe has an
7 investment property, and they don't think that
8 maintaining the premises is quite as important
9 as the people who are actually living there,
10 and maybe that's -- maybe that's what's driving
11 this.

12 But one way that that principle is
13 manifested legally is through their idea of
14 derivative action, and much of what the
15 plaintiffs are complaining about, they're
16 actually complaining about injuries that were
17 committed to the property owner's association.

18 For example, they complained that the
19 property owner's association had to pay more
20 than its share of the legal fees associated
21 with the litigation of a construction defect.
22 And Dr. Lucas claims 154th interest in whatever
23 that average was, and whether they can prove
24 that there was any is a whole different issue.

25 But that's not an individual claim, and

(1 we've cited that in our pretrial brief and the
2 cases that talk about the difference between
3 the derivative claim and an individual claim.

4 A derivative claim generally is a claim
5 that is common to everybody by virtue of their
6 membership in the association. And, you know,
7 we've all heard about derivate actions against
8 boards of directors and so forth where you've
9 injured the corporation, and as a shareholder,
10 my injury is that my property -- my stocks has
11 gone down. Well, you can't sue for that
12 personally. You can only sue derivatively.

(13 The rules set forth what you have to do in
14 order to step into the shoes of the corporation
15 and take that action, and none of that was
16 done, and this case wasn't pleaded as a
17 derivative action.

(18 So that's our first prong of our summary
19 judgment motion, and that is that most, if not
20 all, of the damages that Dr. Lucas is claiming
21 are damages that he claims he incurred by
22 virtue of poor decisions made on behalf of the
23 property owners association. And he has not
24 differentiated from any other member in that
25 injury.

1 The second basis of our summary judgment

2 motion is that certain of his claims are just
3 not recoverable as a matter of law. The
4 largest element of damage that he's asking for
5 is his attorneys' fees in prosecuting this
6 action and in defending the foreclosure suit.

7 And I know the whole argument about
8 whether the foreclosure is proper is a
9 different one, but there's simply no statute,
10 no contractual provision, no nothing, that
11 entitles him to recover his attorneys' fees for
12 bringing this lawsuit.

13 And then the third and final basis for
14 summary judgment is that very little of what
15 he's asking for, I'm using as the guide page
16 four of their pretrial brief in which they set
17 out the specific elements of damage that
18 they're claiming, is included in the complaint.

19 The amended complaint in this case alleges
20 the improper taking of his windows, and it has
21 it set out as various causes of action, breach
22 of fiduciary duty, negligence. Some of them
23 have been thrown out by the Court already. But
24 on the common nucleus of facts underlying all
25 of it is that he contests the ability of the

1 association to take control and ownership of
2 his windows.

3 Now, aside from the fact that it's not --
4 that nothing else is pleaded in the complaint,
5 there's simply no injury from the, quote,
6 taking of his windows. As an aside physically,
7 he has his windows. You know, the association
8 gave them to him after they were taken out for
9 what that may be worth.

10 But actually, ownership of windows is a
11 liability, because if you owned your own
12 windows, and this is one of the reasons why the
13 association decided to take them into the
14 association, then each individual owner has his
15 own responsibility to insure the windows and to
16 replace them and to maintain them.

17 And the first thing that they discovered
18 was that it was impractical to get adequate
19 insurance for the building if the building --
20 if the association doesn't own the windows.

21 Because if we had a hurricane and a bunch
22 of windows got blown out, you would want to
23 make a claim to the insurance company, and the
24 insurance company would come back and say,
25 well, we're not paying for those. You don't

(1 own them, and it would have been up to each
2 individual homeowner to insure his windows.

3 It wouldn't have given the homeowners any
4 autonomy in what to do with their windows,
5 because the bylaws and the regulations and
6 appearance regulations and so forth would have
7 required that they maintain them and do exactly
8 with them as all the other windows were being
9 done.

10 As an example, as you probably know from
11 reading the pleadings, a group of unit owners
12 brought their own lawsuit and settled it, and
13 they claimed -- they were claiming damage to
14 their windows, as well as their interior
15 spaces.

16 And when they settled it, the property
17 owners association still required them to pay
18 to fix the windows. They didn't get to go out
19 and choose their own windows. They had to get
20 the same windows as everybody else did, but
21 they had to pay for them.

22 So there's no -- there's absolutely no
23 benefit to an individual property owner in
24 owning his windows. It's a pure liability. He
25 can't decide that, you know, I want a different

1 color windows or I want a different style

2 windows, or I want to take my windows out and

3 make it an open balcony. They can't do that.

4 It's only a requirement that they maintain

5 them.

6 So to the extent that the complaint

7 alleges damages arising out of the taking of

8 the windows, there are none, and as we'll get

9 into the -- because I promised I'd be brief, I

10 won't go into the analysis of the bylaws, but

11 we'll get into that, obviously, as to why the

12 association was correct to do that.

13 So that's our summary judgment motion,

14 that each claim is barred by one or more of

15 these three points, one that they're either not

16 recoverable as a matter of law, that they are

17 recoverable only in the derivative action, and

18 this is not a derivative action, or they're

19 just not pleaded for in the complaint. Thank

20 you.

21 THE COURT: Ms. Pope, you want to make a

22 brief response at this time, or you want --

23 MS. POPE: Mr. Mooneyham is going to.

24 THE COURT: Okay. Yes, sir.

25 MR. MOONEYHAM: Thank you, Your Honor.

(1 Your Honor, may it please -- there are a couple
2 responses I will make, and I'll try to be
3 brief.

4 First, purely from a procedural
5 standpoint, this derivative question was argued
6 at the summary judgment motion previously, and
7 that motion -- and I will refer to the actual
8 transcript of the hearing that was held before
9 Judge Nicholson on the 16th of August of 2012.

10 And on page 10 of the transcript, Mr.
11 Barfield actually brought up the question of
12 whether the plaintiffs' claims were derivative
13 rather than direct, and Judge Nicholson,
14 although he did grant partial summary judgment,
15 denied the motion in part as well.

16 So our position initially is this
17 particular issue has been litigated already.
18 The motion has been denied, and so it would be
19 inappropriate at this point for the Court to
20 grant a motion on the derivative issue, because
21 certainly, there was scintilla evidence then.
22 Additional evidence would not negate or obviate
23 that evidence.

(24 And so on the issue of the derivative
25 claim, the argument that these are derivative

1 claims, that's our first thought.

2 In addition to that, while I certainly
3 understand Mr. Cook's argument that some of the
4 claims made by our clients may be -- might have
5 been brought as derivative claims, there are
6 certainly other claims that would not or could
7 not have been derivative claims.

8 The case of Brown v. Stewart decided in
9 the motion, the moving papers, and, of course,
10 what that case says is that misconduct by the
11 management corporation as felt a particular
12 loss of individual stockholder of liability for
13 mismanagement is an asset of the stockholder
14 and not of the corporation.

15 As you know from having read our
16 materials, for example, we allege that the
17 assessments were calculated inaccurately.
18 Recalculation of the assessments would not
19 cause more money to go to the corporation.
20 What it would cause is a jiggering of the money
21 that was already assessed, and so, for example,
22 Mr. Lucas' claims that he was assessed
23 improperly or inappropriate would put money
24 back his pocket. That's an individual claim
25 that's certainly not a claim of the

(1 corporation.

2 And because the assessment is going to be
3 the same number regardless, if it costs -- make
4 up a number 1.15 million dollars, I think to
5 bring up some numbers, to what they need to be
6 brought up to, that money's been paid in. It's
7 really just reallocation of that money. It's
8 not money that's coming out of the corporate
9 pocket to pay Mr. Lucas.

10 And so surely, there are claims in our
11 lawsuit that are not derivative but that are
12 particular to Mr. Lucas.

13 The second issue that Mr. Cook brought up
14 was that some of the claims are not recoverable
15 as a matter of law, and he pointed to the issue
16 of attorneys' fees. Without going into the

17 merits of those claims, we have brought a
18 wrongful foreclosure action, which I would say
19 is akin to an abuse of process claim or maybe
20 even a frivolous acts claim.

21 And in both of those claims, if we prove
22 our case to you, then you certainly can award
23 attorneys' fees, because in both of those
24 cases, the parties' economic damages and
25 losses, including the cost of defending himself

(1 from an inappropriate claim, would be
2 recoverable. And so to the extent that
3 Mr. Lucas has spent money in attorneys' fees
4 and costs to defend himself, then the
5 attorneys' fees would be recoverable. And I
6 think that's pretty clear from cases, and I can
7 cite you a case on that, but I don't think I
8 need to right now.

9 And then as it relates to the third
10 argument, we certainly contest to the taking of
11 the windows. That is simply an example of our
12 arguments that this relates to the breach of
13 fiduciary duty and negligence. Those aren't --
14 the taking of the windows isn't the only damage
15 that we allege, and it is my view that once we
16 plead a cause of action as elements of damage
17 are developed in discovery, we certainly can,
18 at this stage, argue whatever damage we
19 incurred at that point.

(20 I think Mr. Barfield at one point said
21 it's kind of a moving target, and damages are a
22 moving target sometimes in cases. But we're
23 not excluded or precluded from alleging at this
24 stage additional elements of damage, so long as
25 we can plead a cause of action that allows us

1 to recover that damage. That's our position.

2 THE COURT: All right. Mr. Belton, I
3 believe you said you wanted to present some
4 documents, and then you were leaving?

5 MR. BELTON: That's correct.

6 THE COURT: All right. Well, we don't
7 want to -- be glad to have you with us, but we
8 don't want to delay your departure. So I'll
9 give you that opportunity.

10 MR. BELTON: Sure. How many copies of the
11 testimony would you like?

12 THE COURT: I don't know what we're
13 talking about. I guess you need one marked as
14 an exhibit for the court reporter. Is this the
15 original?

16 MR. BELTON: It is. I can give you an
17 extra one. What I'm going to be doing here,
18 instead of actually presenting the case live,
19 just offering you reference testimony.

20 THE COURT: Okay. All right. So this is
21 basically --

22 MR. BELTON: This will be our case in
23 chief on the -- for the foreclosure action
24 component of the case. The counterclaims that
25 were filed are going to be actually handled by

1 Mr. Barfield and Mr. Cook.

2 THE COURT: All right. Any objection on
3 the part of the plaintiff to proceed with this?

4 MS. POPE: No objection.

5 THE COURT: You're familiar with it?

6 MS. POPE: I just actually got it.

7 MR. BELTON: My understanding is that in
8 this particular case, and they are described,
9 since we have had two actions that have been
10 consolidated just for sake of clarity, we have
11 been identified as the POA, and that the Lucas'
12 have been identified as the unit owners.

13 We originally filed this action, the
14 second one down in the caption, the 2011 ending
15 in 2232. It was later consolidated with the
16 main case, and so what I wanted to present here
17 is just our case in chief just for the
18 foreclosure action component establishing the
19 debt. And this is by way of testimony of Lona
20 Vest, which is here today.

21 Then attached are the exhibits of the
22 master deed, the notice of lien, and then also
23 the affidavit of attorneys' fees. So this
24 testimony right here establishes the debt,
25 establishes his failure to pay the assessments

(1 that were charged and able to be, I think,
2 broken down into each of the different areas of
3 the regular regime fees, the capital reserve
4 contributions, insurance, special assessments,
5 things of that nature, less his payments to
6 date. So it's an up-to-date debt that is due.

7 THE COURT: All right. And I will mark
8 this as an exhibit for the plaintiff -- I mean
9 for the defendant and just make it part of the
10 record as testimony in this foreclosure part of
11 the trial --

(12 (Defendant's Deposition Exhibit No. 1
13 was marked for identification.)

14 MR. BELTON: Correct.

15 THE COURT: All right. It's been marked
16 Defendants' 1, and Ms. Pope, if you find
17 something there that you are not expecting or
18 you need to respond to, or if you need time to
19 respond it to, certainly I'll do that, give you
20 some time -- whenever you have a chance to look
21 at it.

(22 MS. POPE: Yeah. Actually, if we could,
23 because this is the first time that we have
24 been handed --

25 THE COURT: All right. Thank you, sir.

(1 (Mr. Belton left the room.)

2 THE COURT: Okay. You may call your first
3 witness.

4 (Off-the-record discussion.)

5 MR. COOK: We had agreed off the record
6 that we're just going to agree to all the
7 exhibits coming in, but we want to reserve
8 relevance objections. And we're not consenting
9 to the amendment of pleadings to conform to the
10 proof, but because it's a non-jury we're going
11 to allow it all to come in for what it's worth.

(12 THE COURT: All right. The court reporter
13 needs to have the exhibits. So are you going
14 to give them to her later, or you got a copy to
15 give to her, or how are we going to deal with
16 that.

17 MS. POPE: We can later if that's okay. I
18 believe this is my only copy left.

19 THE COURT: A plaintiffs' exhibit list.

20 MS. POPE: I can give -- what may be
21 easier, Your Honor, is to do a plaintiffs'
22 exhibit list, and because most of the exhibits
23 are actually within these notebooks.

(24 THE COURT: Right.

25 MS. POPE: If you want to do -- just do

1 the list without actually reproducing the
2 exhibits themselves. Now, there are some
3 addition -- additional ones, tabs 46 through
4 59, of our pretrial brief are actually not
5 exhibits within these notebooks that were used
6 in depositions. So those will need to be
7 copied and supplemented, but we can do it
8 whichever way is easiest for you.

9 THE COURT: All right. The defendant
10 basically consents to the genuineness of these
11 exhibits, not the materiality of the relevance,
12 but as far as the genuineness of the exhibits,
13 you're not challenging that?

14 MR. COOK: That's correct. And we just
15 also agreed between us that we would reserve
16 objections to relevancy, because a lot of them
17 go outside the pleadings. And we just don't
18 want later on for somebody to say, well, you
19 impliedly consented to amendment by letting
20 these come in.

21 THE COURT: I understand. Well, I'm going
22 to give the court reporter my copy of the
23 plaintiffs' exhibit list, and let her -- unless
24 you have an extra one. If you don't, she can
25 just mark mine, and I can get a copy later.

1 (Plaintiffs' Deposition Exhibit No. 1

2 was marked for identification.)

3 MR. BARFIELD: The first numbered exhibit
4 is Plaintiffs' 18.

5 MS. POPE: Okay. I just didn't want there
6 be any confusion, and the reason -- I said
7 there's a Plaintiffs' Exhibit 1 in the
8 depositions, but I don't know that anyone is
9 going to be referencing that today. Does
10 that -- because what we did on our exhibit
11 list, we did the different tabs, but we kept
12 them corresponding with the deposition
13 exhibits, because there were so many.

14 MR. COOK: Are we doing that too?

15 MR. BARFIELD: Yeah. Well, I didn't know
16 if you want -- in terms of trial exhibits, if
17 you wanted to use your tab numbers or the
18 deposition exhibit numbers.

19 MS. POPE: In referencing documents,
20 probably what I will be doing is identifying it
21 as tab number so and so, which was Plaintiffs'
22 Exhibit 10 in depositions.

23 MR. BARFIELD: Okay.

24 MS. POPE: So we can still do this as --

25 THE COURT: Well, I think it needs to be

1 referred to as tab, because I've already seen
2 the Plaintiffs' 20 -- well, that's a
3 Defendants' 20, but I think you need to refer
4 to them by tab.

5 MR. BARFIELD: Okay.

6 MS. POPE: Yes, sir.

7 THE COURT: And so what has been marked
8 Plaintiffs' Exhibit 1 is Plaintiffs' Exhibit
9 list tab 1 through 59, and we had that
10 discussion already on the record.

11 MS. POPE: Yes, sir.

12 MR. BARFIELD: All right.

13 THE COURT: Yes, ma'am.

14 JOHN T. LUCAS, SR.,
15 having been first duly sworn, was examined and testified as
16 follows:

17 THE WITNESS: So help me, God.

18 THE COURT: If you need a break, Dr.
19 Lucas, you let us know, and we'll take a break
20 any time you need one.

21 THE WITNESS: I appreciate that, sir.

22 DIRECT-EXAMINATION

23 BY MS. POPE:

24 Q If you would, state your name for the
25 record, please.

1 A John Thomas Lucas.

2 Q Okay. And I'm going to ask you to speak
3 up a little bit, because we have got traffic going
4 by and make sure that the court reporter can hear
5 you and everything. But at any point in time she
6 can't, she'll just let us know. Okay. All right.
7 Dr. Lucas, where do you live?

8 A In -- my primary residence is in Travelers
9 Rest, 100 Upcountry Lane.

10 Q Okay. And that's in Greenville County?

11 A Yes.

12 Q Okay. And how long have you lived at that
13 particular address?

14 A Probably six -- approximately six years.

15 Q Okay. And I'm going to short circuit your
16 extensive educational background. You're retired,
17 correct?

18 A Yes.

19 Q Okay. And what did you do before you
20 retired?

21 A I practiced medicine.

22 Q In what area?

23 A Neurosurgical surgery.

24 Q Okay. And do you own a property here in
25 Charleston County?

1 A Yes. I do.

2 Q What property do you own here in
3 Charleston?

4 A Unit 3013 at the Bristol.

5 Q Okay. And where is the Bristol located?

6 A On the corner of Lockwood and 17, the
7 crosstown of 17. I think the address is Old
8 Bridgeview Lane.

9 Q Okay. And where is your condo located as
10 far as --

11 A The building is five floors. We're the --
12 the first two floors are the garage, and we're the
13 first floor above the garage.

14 Q Okay. And where --

15 A That would be the third.

16 Q The third floor. What does your condo
17 face? Do you face the water? Do you face the road?

18 A We face the MUSC parking lot, and I think
19 it's -- used to be a Quality Inn --

20 Q Okay.

21 A -- in front. They recently bought and
22 sold it and changed it. May have been a Howard
23 Johnson's when we first was there.

24 Q What road does your condo face?

25 A Oh, Lockwood. I'm sorry.

(1 Q Nope. That's okay. When did you purchase
2 your condo at the Bristol?

3 A I don't know. It was before the
4 homeowners association took over, and it was
5 still -- I purchased it from the Gulfstream Company.

6 Q And why were you looking at a property
7 here in Charleston?

8 A My son had been accepted for med school at
9 the Med U, and we were looking for a place for him
10 to stay that was close by. Most of the places at
11 that time I did not feel secure and were not secure
12 when I was going to med school. So the Bristol had
13 a security system, had its own parking lot, and it
14 was within walking distance of the Medical
15 University.

16 Q Okay. Were you going to use the condo as
17 well, or was it strictly just for your son?

18 A It was for my son until he had done his
19 four years, and then the -- we had planned at some
20 point to maybe retire there when we got to where we
21 couldn't do as well.

22 Q Okay.

23 A And -- but yes. We would visit him at the
(--- 24 Bristol, and theoretically, one room was -- the
25 bedroom was ours but --

1 Q Okay. That --

2 A But we had to schedule.

3 Q Okay.

4 A Because it was other people that would use

5 that bedroom.

6 Q How many bedrooms did your condo -- or

7 does your condo have?

8 A Two.

9 Q Two. Two bedrooms. How many bathrooms?

10 A Two and a half.

11 Q Okay. And there's a balcony on your

12 condo?

13 A Yes.

14 Q And the balcony faces?

15 A The parking lot, Lockwood.

16 Q Lockwood? Okay. Do you recall when your

17 son started medical school?

18 A No.

19 Q Okay.

20 A It was shortly after we bought the condo.

21 Q But you don't remember what year it was

22 that --

23 A No.

24 Q Okay. But it was -- you bought your condo

25 when it was still under management of --

1 A Yes. We bought the condo, and he moved in
2 shortly after. I never lived there in that regard.
3 He moved in.

4 Q Okay. When you first bought your condo,
5 how often would you come down and use it on average,
6 monthly?

7 A Well, probably once a month, I'd come down
8 to see my son and take him out to dinner, because I
9 wanted to make sure he was eating right.

10 Q Okay.

11 A I mean, you know, we go to a nice
12 restaurant and have dinner.

13 Q Okay. When did -- strike that. Does your
14 son still live in the condo?

15 A No.

16 Q When did he move out of the condo?

17 A Four years later -- well, three and a half
18 to three and three-quarters later.

19 Q Okay. When you purchased your condo,
20 would it have been maybe around 2005?

21 A I think it's in the record.

22 THE COURT: Can we stipulate on the date?
23 What is it?

24 MS. POPE: I believe it's January 2005. I
25 do not know the exact, maybe January 11th, but

1 I know it's January 2005.

2 THE COURT: '05?

3 MR. BARFIELD: We don't have a problem
4 with that.

5 BY MS. POPE:

6 Q Okay. So you purchased the condo at the
7 Bristol in 2005, and you believe your son moved out
8 maybe 2008, 2009?

9 A Three and three-quarters a year.

10 Q Okay. When you first purchased your
11 condo, what was your understanding as to what you
12 controlled or didn't control with the condo?

13 A My understanding was I controlled my
14 property from the front door, and I had part control
15 in the hallways, and, of course, the elevators, and
16 common area downstairs, which includes an exercise
17 room now, two offices, the Bristol rooms. Small
18 kitchen was considered common, and then we were
19 deeded two parking places as part of the condo, and
20 we were deeded a storage place down on the second
21 floor near where all the common area was.

22 Q Okay. What was your understanding at the
23 time you purchased your condo as to what you were
24 responsible to insure?

25 A The whole thing. I insured the whole

(1 thing.

2 Q When you say whole thing, give me
3 specifics. What do you mean the whole thing?

4 A From the front door to the -- where you
5 step off the edge.

6 Q When you say the edge, did you-

7 A Outside.

8 Q Did you feel that you were responsible for
9 insuring the balcony?

10 A Yeah. Because if somebody fell off, I was
11 liable.

(12 Q Okay. So you insured everything?

13 A Correct.

14 Q Window, doors, the balcony area?

15 A Correct. And as part of my deed, they
16 wrote in a little section of the balcony that was
17 kind of bannistered off at one end. That was
18 considered common, but they deeded that over to me
19 as part of my property. It's four-by-eight feet,
20 but the reason I wanted that is I could walk down
21 the end, look around the building and see the river.
22 And also, it was where the wind picked up.

23 Q So it was originally a common area, but it
(--- 24 was deeded to you for your responsibility?

25 A Yes. There was several common areas
.....

(1 that -- or porches that were not deeded. I mean
2 that was part of the common, but this was deeded
3 over to me. It's in my deed.

4 Q Okay. The insurance policy that you had
5 when you first purchased your condo in 2005 --

6 A Correct.

7 Q -- has it changed any since 2005, not
8 premium amount, but the basic concept and what it
9 covers?

(10 A No. It covers the same thing. I was
11 originally insured by -- I can't remember the
12 company, but they pulled out of the coastal market.
13 And before the policy lapsed, I got a policy with a
14 company down in Beaufort, which was Seacoast, and it
15 was the same policy, except Lloyds of London covered
16 it. Everybody had to change their policy that
17 had -- it was the same -- it was -- it wasn't State
18 Farm. I think it was All State, if I remember.

19 Q When you said had to change the policy,
20 you mean had to change carriers?

21 A Changed carriers, yeah. The policy didn't
22 change, because I took it to them and said, I want
23 the same thing. They said fine.

(--- 24 Q Okay. The policy you originally had, you
25 took it and asked them to cover the same things?

(1 A Correct. Well, I gave them a copy of the
2 thing and --

3 Q Okay.

4 A The original insurance thing.

5 Q The policy that you have on your condo
6 then when you purchased it in 2005 and now, what
7 does it insure as far as the windows and doors to
8 your unit are concerned?

9 A Well, my understanding, it insures
10 everything. I got flood insurance. I got -- it
11 insured the windows and doors. For some reason,
12 that -- the builders said it was -- that I had to
13 insure that. So I insured it, and he said I had to
14 insure it, because you got to take the window out
15 and put it in from the inside, not the outside.

16 Q Okay.

17 A And because of hurricanes, I went ahead
18 and specifically insured my windows.

19 Q When you first moved into your condo in
20 2005, did you ever go to any -- or hear about any
21 informal homeowners meetings?

22 A They had one that I went to and remember.
23 Now, I may have gone to others, but the main one I
24 remember that deals with this topic is they had paid
25 somebody to do destructive testing, which amounted

(1 to tearing the wall -- outside wall off of the unit
2 next to me and I think part of the one down beyond
3 that.

4 And the -- then they had a meeting
5 after that destructive testing, and I contributed to
6 that money. And this was before -- it was -- I
7 believe my homeowners association. And basically,
8 we had a meeting, and in the meeting, they presented
9 a one, maybe two-page document. And the only thing
10 they found when they tore the stucco off was a
11 rusted nail.

(12 But they did not go below the
13 waterproof sheathing to do the stucco -- well; you
14 do -- you got insulation. Then you do a waterproof
15 sheathing over that, and then you put the metal that
16 holds the stucco. And then you put the stucco.

17 Q Okay. You -- I'm going to back up just a
18 little bit just to kind of clarify, because you used
19 they several times.

20 A That was the group that was trying to sue.

21 Q Okay. You said that was true. Now, this
22 is before -- this is before the formal homeowner
23 association was formed?

(-- 24 A Correct.

25 Q All right.

1 A Correct.

2 Q So this is a group of homeowners getting
3 together?

4 A Well, they were already some -- there's --
5 there was some tropical storm that passed by
6 Charleston, and somebody said their windows leaked
7 or they had water. And everybody started discussing
8 it. I didn't. I didn't pay any attention, because
9 I didn't have a water leak to my knowledge.

10 Q Okay. You said -- I'm sorry. Go ahead.

11 A I have not had a water leak to my
12 knowledge.

13 Q You said you contributed to that at the
14 meeting.

15 A Yeah.

16 Q Explain that to me.

17 A Well, no. They wrote everybody a letter
18 saying we want some money so we can pay for this.

19 Q Pay for what?

20 A The tearing off of the stucco and all that
21 stuff. So they -- they called it destructive
22 testing.

23 Q And they had an engineer look at the --

24 A They had somebody to look at it, because
25 they were feuding with the Gulfstream, and that was

1 it. And I think I paid \$1,200 or 14. I can't
2 remember.

3 Q 1,200 or \$1,400, is that what you said?

4 A Yeah. That's what they did with
5 everybody, you know, wanted to. I think that was a
6 --

7 Q That was an assessment. That was
8 voluntary if you wanted to?

9 A Yeah. I think that was an arm twisting,
10 we're -- might be in trouble, and everybody
11 understood. And not all the units were sold at that
12 time.

13 Q Do you know how many?

14 A No. I don't. The builder still had it,
15 and there was a thing in the records that which --
16 when it reached a certain number of them sold, they
17 had to turn them over --

18 Q Okay.

19 A -- to the homeowners association as a -- I
20 guess a legal name.

21 Q In the bylaws, once a certain percentage
22 of the condos were sold?

23 A Yes. And that's how most of them are.

24 MS. POPE: Okay. All right. And if we
25 could stipulate August 2006 was when the formal

(1 movement with the homeowners association -- the
2 homeowners actually took responsibility of the
3 Bristol in managing.

4 MR. BARFIELD: Lona, does that sound
5 accurate to you?

6 MS. VEST: It was in August of 2008, yes.

7 MR. BARFIELD: 2008?

8 MS. POPE: 2006, sorry.

9 MR. BARFIELD: Okay.

10 THE COURT: August 2006 is when the
11 homeowners --

(12 MS. VEST: That's when the -- they had an
13 official turn-over meeting and elected the
14 first homeowner representative board.

15 THE COURT: Okay.

16 BY MS. POPE:

17 Q Okay. Take us up to August 2006. At that
18 time, when the homeowners association -- the
19 homeowners actually took over and elected a board,
20 were you having any problems with your condo at that
21 time?

22 A No.

(23 Q Okay. Did you participate in the election
24 of the first board?

25 A No. They kind of just assumed board

(1 positions. They may have had some kind of an
2 election, but they were the ones complaining and
3 they got positions.

4 Q Okay. When you say they, anyone in
5 particular that you remember?

6 A It was one guy that resigned and moved
7 away, which I thought was kind of suspicious, and
8 then Landry -- Ms. Landry got -- took charge as
9 president.

10 Q Okay.

11 A The other members of the board -- I think
12 Hunger was a member, because he was already suing.

13 Q You mean Dr. Hanger?

14 A Dr. Hanger, yeah. Dr. Hanger was already
15 suing the beach company, Gulfstream, or whoever.

16 Q Right. Okay.

17 A He'd already filed suit.

18 Q By 2006?

19 A Well --

20 Q That's your recollection?

21 A That's my recollection that when the board
22 -- he had already sued or -- it was a mess which I
23 preferred to keep out of.

(-- 24 Q Okay. You said it was a mess that you
25 preferred to keep out of. What do you mean it was a

(1 mess?

2 A Well, some people were fighting for
3 control to sue, and some people went ahead and sued,
4 which established I guess their position. And I
5 think it was just Hunger and maybe the person next
6 to him either above or below, but it was just two of
7 them. And -- that I remember. It didn't bother me.
8 So -- it didn't bother my property, so I kept my
9 nose out of it.

10 Q Right.

11 A But at that time, somebody formed a suit,
12 and I think Hunger was on the board with the
13 bankers. I'm not sure.

14 Q Okay.

15 A That's the best of my recollection.

16 Q In the fall of 2006, after the homeowners
17 take responsibility of managing the Bristol, what do
18 you remember about there being talk about suing the
19 builder?

20 A Well, that was the first thing they talked
21 about. They were talking about that before they
22 even took ownership, and they were fussing. Part of
23 that tearing the wall off I think was -- as I
24 remember, was because the builder didn't want to pay
25 for the destructive testing. It was some kind of

1 rift about that, and so they went ahead and did
2 their destructive testing.

3 Q When you say they, you mean some of the
4 homeowners?

5 A The homeowners. Or the people involved,
6 it was Hunger -- Hanger, I'm sorry. Hanger and
7 Landry --

8 Q Okay.

9 A -- were the main ones, and at that time,
10 one of the people that had been elected president
11 left. He just resigned his position and left. He
12 moved back up north.

13 Q Okay. What was your feeling about filing
14 a lawsuit against the builder?

15 A I didn't have any problem, except my
16 bathroom mirror wasn't hung properly, and it slipped
17 down. And I called up the builder, and he came and
18 fixed it.

19 Q Okay.

20 A And I thought I had a warranty with the
21 builder -- well, I did have a warranty with the
22 builder, and a whole book of warranties on the
23 appliances, the windows, the -- everything that, you
24 know, they give you, and I had warranties on them.
25 And so, you know, I figured if something happened, I

1 would take care of it.

2 Q All right.

3 A I wasn't there. My son was there.

4 Q Okay.

5 A And he was supposed to watch out.

6 Q Did you intend -- in the fall of 2006, did

7 you attend any of the meetings, homeowner

8 association meetings, or do you remember?

9 A I don't remember honestly. I told him to

10 go, but he never did.

11 Q Okay.

12 A Busy studying or something.

13 Q Okay.

14 A As a matter of fact, I think I did sign

15 over a proxy for him to go.

16 Q Okay. Did you have a problem with the

17 homeowners association filing a lawsuit against the

18 builder?

19 A Yeah. I did.

20 Q Okay. Tell me why.

21 A Well, honestly, I had been the butt of so

22 many lawsuits that I thought it was -- company

23 excluded, I thought it was just a money grab.

24 Q Okay. I'm going to have you explain what

25 you mean by that, that you had been the butt of so

1 many lawsuits. Explain what you mean.

2 A Well, as a surgeon, I have been sued five
3 times, which I think is under the normal number of
4 times, but none of them were ever a judgment against
5 me, meaning I wasn't at fault.

6 Q Okay.

7 A But you get kind of tired of that and that
8 kind of way of life, and every time you get sued,
9 you have to take off from work. It disrupted your
10 private life, wife suffered, kids suffered, because
11 I was in a bad mood. And so I just wanted to stay
12 out of it. Leave me alone.

13 Q Okay.

14 A And I thought I had been left alone.

15 Q Okay. When did you first realize that you
16 weren't being left alone, that you were going to be
17 a part of the lawsuit one way or the other?

18 A Truthfully, I had told them that I didn't
19 want to be.

20 Q You told who?

21 A The people that were suing, the board and
22 everybody I could tell there. I said -- you know,
23 and they took a vote, and they would -- they really,
24 in my opinion, were trying to sell everybody on the
25 idea of suing the builder, get some money. And they

1 used all kind of things.

2 Like he didn't put enough in the
3 association. I remember that. And it started out
4 with the windows was the big thing, and they were
5 Anderson windows. I didn't have any trouble with my
6 windows, and just about everything you could think
7 of, they were trying to do. And I said, whoa, no.

8 So -- well to jump ahead and tell you
9 when, they settled the lawsuit in August. I'm not
10 sure which one year -- or they settled it some time,
11 and they presented the settlement in August. I
12 didn't ask to be part of that either, but I did
13 inform them that, you know, they got 60 cents on the
14 dollar. And I did say that, and that's in the
15 minutes. Very few things I said got in the minutes,
16 but that one was in the minutes.

17 I didn't realize why they were only
18 getting 60 cents on the dollar. Well, that was it.
19 But they called the meeting for the reconstruction
20 since September, and they showed -- they had two
21 window guys there, aluminum window guys, the sales
22 man. And we couldn't discuss about the windows,
23 because Sternowski (phonetic) or whatever was his
24 name -- he's dead now, poor guy. But -- died I
25 think of a heart attack.

1 But anyway, he said we don't need to

2 discuss our business in front of the salesman. So
3 we had no discussion. So then that was in
4 September. They said we're going to meet in
5 October. Well, they apparently didn't have enough
6 votes or something bothered them, and I also told
7 them, you know, I'm not part of the suit. My
8 windows are fine. I don't want any of this mess.

9 But when that happened, I got an
10 inkling something was going on, which meant I was
11 going to get stuck paying the bill. So as soon as
12 that meeting was over, it was on -- I left on a
13 weekend, and I called Mr. Mooneyham up.

14 Q Now, don't go into any of your
15 conversations that you had with him.

16 A No. But I hired him, because I felt like
17 I was getting ready to be royally involved. So
18 anyway, he asked, because they said they were going
19 to have a meeting in October. I didn't know
20 anything about what was going on.

21 So I got Mr. Mooneyham to write a
22 letter, which is a record, asking for information.

23 Q Now, and I just want to clarify as far as
24 timeline goes. This is after the construction case
25 lawsuits had settled?

1 A Yes.

2 Q Okay.

3 A Well, I mean they doled the money out,
4 and -- but anyway, it was after the settlement. And
5 when they were talking about construction, they were
6 talking about windows, and everybody choose. That's
7 when I figured I better get a lawyer.

8 So I hired Mr. Mooneyham, and I asked
9 him to ask them for information so that we'd know
10 how to prevent ourself from being royally involved.
11 So anyway --

12 Q I'm going to stop you for just a second.

13 Okay? I'm going to back up a little bit.

14 A Okay.

15 Q Because --

16 A Because I was getting there, but go ahead.

17 Q Okay. We jumped from the beginning of
18 them filing a lawsuit to the settlement, and there's
19 some stuff in between that I want to cover timewise.
20 Okay?

21 A Okay. But between the lawsuit and
22 settlement. Okay.

23 Q Yes, sir. Do you recall whether you voted
24 on whether -- when they took a vote on whether to
25 file a lawsuit or not? Do you remember whether you

1 participated in that vote?

2 A I told them I didn't want to be part of
3 it.

4 Q Okay.

5 A And but anyway, it went on. And
6 apparently, Landry, somebody, went ahead and sued,
7 and I said, well, I'm glad I'm not a part of this,
8 but --

9 Q In addition to the homeowners lawsuit?

10 A No. It may have been --

11 Q The association.

12 A -- association or something.

13 Q Okay.

14 A And basically, this drug on and drug on,
15 and what they were doing was taking the money for
16 their suit out of either a special assessment, or
17 they were raising the fees. I know the condo fees
18 got up to around \$800 a month.

19 Q Okay.

20 A I remember that, and they were funneling
21 that money over to pay for the attorneys, because
22 they -- the thing that really kind of had me is they
23 didn't hire him on a contingency. They hired him on
24 an hourly basis. So that meant they were paying,
25 you know, all along, and as my condo fees went up.

1 One of the people at the homeowners association

2 said, well, condo fees are going up everywhere, and
3 they used New York as an example. Well, Charleston
4 is expensive, but it ain't New York.

5 Q Okay.

6 A So anyway, I figured, well, this time,
7 they're probably paying for the lawsuit. So I
8 called Mr. -- name starts with a W.

9 Q Could it be Warner?

10 A Warner.

11 Q David Warner.

12 A Called him up. Well, he wasn't there. He
13 had -- he was up in Massachusetts or something. I
14 think he had two places. And I called him -- Lona
15 knows. I called, and she connected me in or had him
16 call back, and he wasn't in town. And he called
17 back, and we had some words about why the condo fees
18 were going up so much. And I brought up the fact
19 that I was tired of paying for his lawyer to be
20 quite frank.

21 And he sent some little blurb that
22 had been sent out before to the homeowners I think
23 at that time. They just had a party line that they
24 would send out.

25 Q Okay. I've got several things I want to

1 clarify within there, but the last thing you talked
2 about was he sent you a blurb. Now --

3 A Well, Lona actually sent it. He told her
4 to send me some blurb. It was about contingency
5 versus payment by the hour or something like that,
6 and there was a fight going on about that too, which
7 I tried to get out of. But the condo fees kept
8 going up and up and up, and --

9 Q Well, let me ask you something right quick
10 there about the communications, because you kind of
11 hit on it just then. What were your feelings about
12 the communications between the board and the
13 homeowners? How did the board communicate with the
14 homeowners?

15 A Well, not well.

16 Q And I'm talking about the time in the
17 beginning when all the lawsuit and stuff was going
18 on.

19 A I mean it was word of mouth back then, and
20 I kept telling my son, listen, but he was going to
21 school. But it was all by word of mouth, and you
22 could tell this group was churned up, and that group
23 was churned up.

24 Q And at some point, your son moved out. So
25 no one was in the condo except for you could then

(1 visit?

2 A Right. But he would take -- the way they
3 communicated is they'd slide the thing under the
4 door.

5 Q What thing?

6 A Whatever blurb -- it was condo business
7 and sometimes -- the only reason I paid attention to
8 it was because it gave the combination to the gate.
9 You had to have a combination to get in the gate,
10 and that's what I look at. It was usually on an
11 orange -- a different color page, orange or red or
12 something. But they changed it periodically, and
13 that was before they came out with the little
14 buttons you pressed, the little openers.

15 Q Okay.

16 A Which they finally came out with, which
17 meant I didn't even have to pay attention to the
18 condo -- to the combination, and there were little
19 files you could get in the door with, which you rake
20 across a reader.

21 So at that point, you know, it would
22 come under the door. My son would put it in a
23 stack. He would usually figure out what the
24 combination was, because he was the one using it.
25 And then when he left, it would go under the door.

1 Occasionally -- we always got the bill. We always
2 got the bill.

3 Q How did you receive the bill?

4 A From the management company.

5 Q I know, but would it come in the mail?

6 Would it come under the door? Was it e-mail?

7 A Some of the mail -- yeah. Some of them --
8 well, it came in the mail, the bills did.

9 Q Okay.

10 A And that was really -- and once in a
11 while, there'd be something stuck in the envelope
12 with the bill.

13 Q That was mailed to your residence?

14 A Yes.

15 Q Not to the condo?

16 A Yes.

17 Q Okay. I want --

18 A For a while, after he left, or somewhere
19 in there -- somewhere in there -- the condo handles
20 the water bill.

21 Q Right.

22 A Or the -- whoever handles it. They got
23 little meters they read, and then we pay our water
24 bill. But it's usually through some company. It
25 was through ISTA. I don't know who it's through

(1 now.

2 Q Okay.

3 A But I'd write a check each month for that,
4 but that would come in the mail.

5 Q When you say in the mail, residence?

6 A My residence.

7 Q Okay.

8 A But when he moved out, that must have been
9 four or five months, water bill wasn't paid, because
10 they were stuffing it down in my mail box.

11 Q At the Bristol?

(12 A At the Bristol, and I didn't know it. And
13 I forgot what brought it to our attention. They
14 didn't turn the water off. I forgot -- but anyway
15 might have been I must have realized I didn't get a
16 water bill. So we started looking around to find
17 out where the water bill is. I didn't want, you
18 know, to shut the water off.

19 And it ended up being some company,
20 and the bills were being put downstairs, along with
21 a lot of other mail that would come in down there.

22 Q Okay. I'm going --

(23 A My son would check his mail periodically
24 and leave the other.

25 Q Okay. All right. Let's go back to the

1 lawsuits for just a second. Okay. I'm going to
2 clarify on that.

3 A Uh-huh.

4 Q There was -- you already mentioned once
5 before there was the Hanger lawsuit --

6 A Yeah.

7 Q -- that was filed early on?

8 A Right.

9 Q You mentioned the lawsuit that the board
10 brought for the homeowners association against the
11 builder?

12 A Yes.

13 Q Okay. And then you also mentioned a suit
14 that Landry brought?

15 A Well, yes.

16 Q Okay. Tell me what your understanding is
17 or was of the Landry lawsuit.

18 A Well, my understanding was that it was a
19 board lawsuit.

20 Q It was --

21 A Meaning Landry. She was the president.
22 She was handling all of that, and she sued for some
23 alphabet soup in there. I mean they changed the --
24 it was originally BOPC something, and then it was
25 BO- -- they changed the name of the homeowners

1 association. It was Bristol Condominium Homeowners
2 Association BCPHO or something.

3 Q Okay.

4 A The only reason I paid attention to it was
5 when I wrote the check --

6 Q Okay.

7 A -- to pay my dues, but anyway --

8 Q What was your understanding to be the
9 purpose of the Landry suit? What was it supposed to
10 be doing?

11 A I didn't know.

12 Q Okay.

13 A I mean I thought it was the board's suit,
14 but -- and that's what I thought all the way up
15 until we discovered a Judge Newcome -- Newton?

16 Q Newman maybe?

17 A Newman. Judge Newman. It started with an
18 N, and he said they couldn't sue for my property.

19 Q Who couldn't?

20 A The board.

21 Q Okay.

22 A And I didn't know that. They were suing,
23 and I didn't know they were suing for me, which
24 really ticked me off, because I told them I didn't
25 want to be a part of it. Well, come to find out,

(1 they had sued for all property owners, and I guess
2 that was me, being one of the property owners. But
3 then the judge ruled that they couldn't sue for my
4 property, which is what I thought. You know, I
5 thought the board was just suing for the common
6 property. Okay? And then that's okay, and that was
7 --

8 Q Because you agreed they have a
9 responsibility to protect the common areas?

10 A Yeah.

11 Q Okay.

(12 A I have no problem with that. And I
13 thought that's what my dues were for, but then I
14 found out that they were suing for me. But that --
15 I found that out after Mr. Mooneyham was hired. But
16 before that, there was a thing where they said we're
17 going take you -- well, this gets complicated.

18 Before that, they sent out a thing
19 with a little DVD, and they said, we want to sue.
20 And they asked if I wanted to sue or if I minded if
21 they sue. I didn't want to sue. But the DVD was a
22 presentation. It was a presentation by Landry,
23 somebody else, that talked, and then there was a
(--- 24 third little guy. Didn't know who it was at that
25 time, but he said, we'll worry about the windows

(1 later in that suit.

2 Well, it was all right with me,
3 because Landry said on that DVD that the windows and
4 stuff are my own property, and I chose not to sue
5 because I didn't have a problem.

6 Q Okay.

7 A Well, so that's why I thought it was a
8 common area they were suing for, and it sounded
9 like -- that thing sounded like a common area, and
10 they weren't messing with my property. Fine, if
11 they want to sue for something that belongs to
12 everybody, fine, but don't be messing with my stuff.

(13 So it wasn't more than a month,
14 probably couple of weeks, a letter comes in the mail
15 from some insurance person. You got it. We've
16 talked about it, and she said there might be some
17 question of insurance on the windows and doors. I
18 said, dang, I insured mine. I got insurance. So it
19 went in the pile of unuseful information to be
20 honest with you.

21 And it wasn't long after that, we got
22 a thing where they had made all my property
23 secondary property, which I didn't fully understand,
(--- 24 but they took control of my property.

25 Q You said all your property. It wasn't all

1 your property?

2 A Well, the initial thing the board said,
3 the only thing I owned was the air conditioner, the
4 stove, the refrigerator, washing machines. That's
5 what came in the mail to me.

6 Q Okay.

7 A And they owned everything else, which
8 really the proverbial discuss hit the wall.

9 Q Okay.

10 A And -- or fan. And because -- I mean if
11 they can tell me what to paint my walls, what's the
12 use to have a -- or hang my curtains, what's the use
13 to have the thing?

14 Q What was your understanding --

15 A They were taking my property.

16 Q No. What was your understanding as to
17 why?

18 A I never knew. Except when I started
19 putting things -- some of this is hindsight and some
20 of it is before. The hindsight, that's what the
21 insurance thing was about.

22 Q You're talking about the letter from --

23 A Yeah. And I had my own insurance. So I
24 said, you know, I didn't like it, and I let them
25 know I didn't like it. Well, they came back later

(1 for something saying about the windows, if I wanted
2 you on the lawsuit, but this was after the lawsuit
3 had been settled I found out later. That if I
4 wanted to join the lawsuit, we could get something
5 for my windows. Well, I never joined it.

6 Then, Lona sent me some letter, and
7 this may be the same letter. I'm sorry. Forgive
8 me. But Lona sent me some letter in August, and the
9 reason I remember that was because they wanted to
10 make me part of the lawsuit. And this is just
11 before the settlement meeting.

(12 Q Okay.

13 A You know, in the settlement, I said, I'm
14 not part of this lawsuit. And they said, well,
15 we'll let you be a part of the lawsuit. And I said,
16 no. And after the meeting, Lona asked me if I got
17 the letter. Well, I went home, looked, and there
18 was a letter saying -- I think Lona was going to pay
19 for a couple of my windows.

20 You know, I'm afraid being all of
21 this money, you know, I already paid for the lawsuit
22 for a couple of windows. Then I got another one
23 that was on a piece of paper that sounded like an
(24 attorney wrote it. You got a copy of it. Sounded
25 like an attorney wrote it.

1 Q Okay.

2 A And it was all this mishmash about, you
3 know, legal stuff for me to sign, but I didn't sign
4 that one either. Because it didn't have an
5 attorney's name on the page. That wasn't even a
6 letterhead on that thing. It was two pages of
7 paper, and it looked like the letterhead had been
8 blocked out and Xeroxed. That was sent to me. I
9 didn't do that either. Well, this is in -- this was
10 before or just after August.

11 Q Of what year?

12 A The year of the settlement.

13 Q Settlement?

14 A Yeah.

15 Q Okay.

16 A And then when they came up with the thing
17 of changing all the windows back, I said, this is
18 out of my hands. I need to hire an attorney.
19 Should have gotten one on the retainer the day I
20 bought the condo, but anyway, that's when I hired
21 the attorney.

22 MS. POPE: Okay. I believe, and we can
23 check to make sure, and Lona may -- I would
24 like to stipulate to the date. I believe the
25 settlement was June of 2009.

1 THE COURT: Is that right?

2 MS. VEST: That's about right. I thought,
3 honestly, it was a little earlier than that.

4 MS. POPE: That may have been when the
5 release paperwork was signed.

6 MS. VEST: Spring of 2009.

7 MS. POPE: Spring of 2009. Okay.

8 BY MS. POPE:

9 Q Dr. Lucas, I want to talk to you -- you
10 had mentioned this earlier talking about
11 assessments, and you said in the beginning, you paid
12 some of the assessments. Do you remember about how
13 much you paid in special assessments in the
14 beginning of the lawsuit and leading up to the
15 lawsuit?

16 A Well, when we got the condo, I paid a
17 monthly regime fee.

18 Q Right.

19 A And I'm thinking that's 450. I can't be
20 sure, but I can produce checks. All right? Well,
21 when all the suit business started, it jumped up,
22 and it jumped up some more, and it jumped up some
23 more. Jumped up some more, and I said, those guys
24 are making me pay for the lawyer.

25 Q But regime fee is separate than a special

(1 assessment?

2 A Well, the regime fee has -- they tack on
3 \$100 for the reserve fund --

4 Q Right..

5 A -- each month.

6 Q Right.

7 A And that -- the regime fee and that was
8 going up. Now, how much they were doing one and how
9 much for the other, I never really knew. I think it
10 was listed as \$100.

11 Q Okay. Were there other special
12 assessments, smaller, that you paid?

13 A Yeah. There were small ones. One of them
14 was actually for attorney fees I think, and I kind
15 of balked at that, and that's when my -- I called --

16 Q Mr. Warner.

17 A -- Warner.

18 Q Okay.

19 A Because I wasn't suing. So, what the heck
20 is going on?

21 Q Okay. When did it reach a point where you
22 refused to pay a special assessment?

23 A All right. We had the settlement meeting,
24 which was in August. September, we had the rebuild
25 meeting, and that's where they showed us the

(1 aluminum siding and doors or windows.

2 Q Okay.

3 A All right? Then we went to -- we were
4 supposed to have a meeting in October, but they
5 didn't. But in the meantime, I have hired Mr.
6 Mooneyham, and Mr. Mooneyham wrote a letter to him
7 asking what the heck is going on.

8 So they delayed that meeting till
9 November. Now, I didn't go to the November meeting,
10 and to my knowledge, there's been no meeting minutes
11 of that meeting. But Mr. Mooneyham went to it,
12 because I had hired him by that time. I knew
13 something was going to happen. So I had hired him.

14 So he went down, and what he reported
15 back to me was --

16 Q Don't say what you-all discussed --

17 A I understand.

18 Q -- because that's attorney-client
19 privilege.

20 A He told me -- they forwarded it to -- I'm
21 sorry, but that was -- I mean I had no way, but they
22 had voted to replace all my property basically.

23 Q You're talking about the windows and
24 doors?

25 A Windows and doors.

1 Q Okay.

2 A And well, there was the month of December
3 after that. Now, I was fit to be tied. So I went
4 to that meeting.

5 Q Let me set something up. Was this after
6 the lawsuit had settled?

7 A Oh, yeah. It was settled. They had the
8 meeting in August.

9 Q Okay. There was --

10 A And then, September they had the rebuild
11 stuff. Yeah. They said something about a
12 shortfall, and they put out pieces of paper with
13 windows on it. But they put out something about how
14 much you had to pay for windows. I'm trying not to
15 use the word, but I said a word, and then I said, I
16 own the windows. Why am I putting in new windows?
17 I said, I'm not going to do it,
18 because I own my windows. Well, here is where the
19 trickery came in. They changed the type of window,
20 and they said, all of them had to be done. Well,
21 but we were asking information all this time. So --
22 and after the November meeting, Mr. Mooneyham wrote
23 them a letter after the September meeting, no
24 response.

25 So it was December, quote/unquote,

(1 Christmas meeting, we go to the meeting -- my wife
2 and I both. All right? And before we left, we
3 asked Mr. Mooneyham to write a letter to them saying
4 that I wasn't going to pay for my windows.

5 Q You weren't going to pay the special
6 assessment?

7 A Right. I own my windows, and why should I
8 buy them back from what they took from me is the way
9 I looked at it. They took my windows, and now,
10 they're asking me to buy them back. Well, anyway,
11 so at that December meeting, it was the end of the
12 year, and they were electing officers. So I ran for
13 office. I had no intention of being there, but I
14 got some votes, unfortunately, but I didn't win, but
15 it got their attention.

16 Q Okay.

(17 A And the only reason I ran for office was
18 to say my mind, because each person when they ran
19 for office, they made a little spiel. Okay? Now,
20 the rest of the meetings, you couldn't say anything,
21 generally speaking. They presented something, and
22 you rubber stamped, voted on it. That was the way
23 the meetings were run, still are. The last one I
24 went to was.

(... 25 And so at that meeting, Mr. Mooneyham

1 had written a little where I -- for me, which said,
2 I'm not paying for the windows, and I'm not paying
3 for any new debt. Because, see, they said we have
4 an overage of what we got from the lawsuit.

5 Q You mean the reconstruction was going to
6 be --

7 A Yeah. It was going to be like 1.6 million
8 dollars more.

9 Q Okay.

10 A And you didn't get to agree. You just got
11 that, and you got to vote, you know, yes or no.
12 Well, mine was no. But anyway, so in December
13 meeting, running for office, and Mr. Rosen, their
14 attorney, was at that meeting. He was sitting at
15 the table with Mr. Warner, and I said good. Maybe
16 we'll get some response.

17 So I read Mr. Mooneyham's letter
18 verbatim in that meeting. Mr. Rosen didn't say any
19 word, but he knew some information that I didn't
20 know at that time. And Mr. Warner said, we will
21 respond to it, and within a month, I was foreclosed,
22 or threat of foreclosure if I didn't pay.

23 Q Okay.

24 A And I told him I wasn't going to pay for
25 my windows, and I wasn't going to pay for any new

1 debts they had. Because they had found out that the
2 windows weren't the problem. I mean some of them
3 leaked, but they were all up -- you know, they were
4 put in. They did find some of them had something
5 wrong with the flashing around them, and they found
6 that some of them had water coming between the glass
7 and the wood.

8 But at that meeting, they said, we
9 also found water coming under the owner's closet
10 door going into the wall, because it wasn't properly
11 joined. And the water would run down in the wall,
12 and that cost I think a quarter million dollars
13 more.

14 Well, my closet is under a roof.
15 It's under a porch roof, and it would have to be one
16 heck of a blow for a window to be -- I mean wind
17 would have to blow wind straight across to get under
18 my owner's door and into the wall, because I looked.
19 I didn't have any water in it, but on the fifth
20 floor --

21 Q Okay.

22 A -- there's no roof. That closet set out
23 in the open.

24 Q Okay.

25 A That's what I figured what had happened.

1 Q You talked a moment ago about you got a
2 letter stating that if you didn't pay the special
3 assessment, they were going to foreclose on your
4 property.

5 A Yes. That was what Warner said.

6 Q Okay.

7 A That was in January of that year.

8 Q Following the --

9 A After me reading the letter --

10 Q After the -- hold on. After the
11 settlement and so forth. So this would have been
12 January of 2010?

13 A _ Probably. I mean it was -- it all
14 happened at once, August, settlement, September,
15 what we going to do, construction. No time to think
16 within a month.

17 Q Right.

18 A Then they said it was going to meet in
19 October, but they skipped that because -- you know,
20 and I had seen Mr. Mooneyham at that time, and Mr.
21 Mooneyham went to the November. And then it was in
22 December of the same year, which I read my letter in
23 a meeting. That's why I ran, so I could read
24 something.

25 Q Okay.

1 A Obviously, they didn't like it. So they
2 threatened to foreclose on me.

3 Q Following that letter stating they were
4 going to foreclose on you if you didn't pay the
5 special assessment, was that when you filed suit?

6 A No. No, no, no.

7 Q Okay. How long after that was it before
8 you filed --

9 A I'm not sure. You-all have to attest
10 through you-all's records, but we went on and on and
11 on. We argued with them for a while about the
12 windows. You-all did, about whether or not the
13 owners should own the windows, and the argument that
14 I had was, you put them in from the inside, they're
15 my windows. And the original master deed said they
16 were my windows.

17 Q Okay.

18 A And that's in black and white.

19 Q Dr. Lucas --

20 A Yes.

21 Q -- you eventually filed a lawsuit, which
22 is why we're here today.

23 A Yeah. I filed a lawsuit, and the reason I
24 filed that lawsuit was that we had no information.
25 They weren't giving us information. As a matter of

(1 fact --

2 Q What information were you wanting?

3 A Just the routine business information.

4 Q Such as?

5 A The condo minutes, the condo records,
6 where money went --

7 Q Financial?

8 A Yeah. I want to know what they'd done
9 with all that money they wanted. Okay? Couldn't
10 get any information. We got some little old letter
11 written by Landry that glossed over the whole
12 thing -- not Landry, Warner, glossed over the whole
13 thing. It's in there, you-all's records, which
14 didn't tell us anything.

15 And so they went ahead and started
16 changing the windows, and they hadn't even ordered
17 the windows when I told them that I wasn't going to
18 get a window. They hadn't even ordered them,
19 because it wasn't until February they ordered the
20 windows. They could have changed their orders, or
21 they -- or they could have just not ordered them.

22 But then they pulled the sneaky
23 trick, well, we're going change the windows, and,
24 you know, it's a better window. Well, we know that
25 that's not totally true, and they didn't bother to

1 tell us that they could have treated the windows,
2 which we found out later, that their attorneys had
3 presented to them that they could treat the windows.
4 Because to be honest with you, well --

5 Q Was the treatment cheaper than the
6 replacement?

7 A Well, wait a minute, before we get to the
8 treatment. We went through all that period of time
9 where they were changing the windows. They started
10 on the water side and ran toward me. I think it was
11 supposed to go the other way, but they changed their
12 mind and came towards me where my condo is, the
13 street side.

14 And I said, you know, don't bother
15 me. I'm not changing mine, and so one day, Lona
16 comes in reportedly to take my windows so dust won't
17 get in. She called you-all. And you-all related to
18 me, and I said, okay. So she goes in and tapes my
19 windows, theoretically, and she'll have to say
20 whether or not she did. I didn't go. But then they
21 said, your windows leak. You got to change all your
22 windows, because I found two windows that leaked.

23 Well, there was a little brown strip
24 at the bottom of the glass. Well, in Charleston,
25 you know, if you breath too much in a room,

1 condensation occurs on the inside, and it runs down.

2 And that's what I thought it was. So I didn't pay
3 any attention to it. And they still do that after
4 they replaced them. The last time I was down there,
5 which was in November, I think, it's still got
6 condensation. They even wrote a letter, don't run
7 your fireplace without opening a door, because it
8 got the place so air tight that the people that
9 don't have a chimney for their fireplace have to
10 open the door to run their fireplace. Otherwise,
11 you suffocate.

12 As a matter of fact, my son when I
13 called him, had a bad, bad headache, and, you know,
14 I'm thinking aneurysm, okay, because I'm a
15 neurosurgeon. And, you know, so I'm running down
16 the road in the middle of the night going from
17 Beaufort to Charleston thinking differential from a
18 kid.

19 Well, come to find out, the kid was
20 apoxic, because he was too -- the gas for the
21 fireplace was free, but the heat was not. So he was
22 running the fireplace so he wouldn't have to pay the
23 heating bill, but my son -- you know --

24 THE COURT: Smart.

25 A -- in the summer, he would open the doors

1 so the air conditioning in the hallway would come in

2 so he wouldn't have to pay the air conditioning

3 bill, and he closed every vent in every room except

4 his. And I had to pay 10 bucks when I'd visit him

5 to open my vents, because he was paying the electric

6 bill. Now, that was a -- anyway --

7 Q Okay.

8 A That's my son.

9 THE COURT: Did he learn that from his

10 momma or his daddy?

11 THE WITNESS: Probably, to be truthful,

12 probably his momma.

13 BY MS. POPE:

14 Q All right. We're going to go back to

15 talking about your lawsuit. Okay?

16 A Okay.

17 Q You brought your lawsuit because you

18 wanted information, you said?

19 A Oh, well, no. They came to change my

20 windows before we even had the lawsuit, because they

21 said they were bad. And we had a ruckus about that.

22 I told them not to change my windows. They did.

23 Q Okay. I want to talk about your lawsuit

24 that you brought.

25 A Okay.

1 Q You know, you brought -- you said for
2 information?

3 A Yeah.

4 Q About the issues with the windows and
5 doors. What else were you suing for or had concerns
6 about? What else was your lawsuit about?

7 A Well, honestly, we -- in that letter from
8 Lona, it said, if you're going to contest this
9 procedure of your windows, you had to do it in three
10 years or something, and we picked up on that. So we
11 filed a lawsuit, but it wasn't really -- the main
12 reason we wanted was the darn information of what
13 happened. We hadn't gotten any information, so --
14 we've asked for it. We hadn't gotten it.

15 So we knew that if we filed a suit,
16 we could get information, and that's really why the
17 suit was filed initially.

18 Q Okay.

19 A But we got some information.

20 Q What information are you referring to?

21 A Well, one of the biggest things about the
22 window was somebody had asked Lona, or Lona did it
23 on her own, to pressure wash our side of the
24 building, because we were deciding not to really
25 complain. So they had pressure washed that -- I

(1 don't know what you call it down here, stone wash,
2 whatever. It's stucco. They just used pressure,
3 and I got to put two and two together. And I also
4 remembered that the sticky rubber part under my
5 kitchen door --

6 Q Uh-huh.

7 A This is when it started getting a
8 little -- one time I went down there, and it was
9 bent back, like something from the outside pushed
10 back. Well, I touched it. It's still sticky. So I
11 opened the door and tucked it back up. I didn't
12 know how or why.

(13 But anyway, but then we found out
14 they had pressure washed. Well, everybody knows you
15 don't pressure wash your windows. You really
16 shouldn't pressure wash a building unless it's fully --
17 rated for that. Then we looked -- or I looked in my
18 warranty and found out my warranty had been violated
19 so --

20 Q What warranty?

21 A For windows.

22 MR. BARFIELD: I will interpose an
23 objection to the hearsay on that.

(24 THE WITNESS: Well, it's in the books.

25

(1 BY MS. POPE:

2 Q You just keep answering.

3 A All right. It's in the warranty book.

4 That second book they gave is a saying that stone
5 washing windows voids warranty.

6 Q Okay.

7 A And that was with Anderson, because right
8 after, they said, Anderson is going to give us a
9 deal on windows. I said, yeah. You sue somebody --
10 I mean I have been sued so many -- well, I did treat
11 one malpractice lawyer, but anyway -- but anyway,
12 where was I at? About the windows. I said, oh,
13 yeah, Anderson is going to give you a real deal.

14 Well, the next scenario was, well, we
15 can't get anything from Anderson. So we're not
16 going to buy Anderson windows. This is how they
17 pulled the switcheroo. We're not going to buy the
18 windows from Anderson, because we can't get past the
19 lawyers. And that's their word.

20 They always -- we can't get the
21 salesman. We can only talk to the lawyers. So
22 that's why Anderson windows was not presented as an
23 option for replacement. So if you replace with
24 another window, that means you got to replace all
25 the windows to make them look alike. And that's

1 what they used to tear up my windows.

2 Q Okay. So your lawsuit was contesting the
3 special assessment?

4 A It was contesting -- I think we're up to
5 -- well, I quit counting about seven assessments.

6 Q Okay.

7 A Because it was used -- the trick they used
8 is, oh, we're going to study the whatever fund that
9 --

10 Q The reserve fund.

11 A The reserve fund. They study it. They
12 say we don't have enough. They do an assessment.

13 Q Okay.

14 A It's usually because they spent --

15 Q Okay.

16 A It -- they use it as a slush fund to buy
17 lawyers, everything, you know, and they never really
18 funded it. And each time they would really study
19 it, it would be different, always want money.

20 Q Okay.

21 A And they're doing that now. They're
22 saying we need to restudy the reserve fund, and
23 right now, to my knowledge, reserve fund doesn't
24 have anything in it.

25 Q Okay. The assessments for the windows and

1 doors, how were those determined? How was it

2 determined how much each homeowner was going to pay?

3 A Oh, they had charged a certain amount per
4 window. They counted the windows, and if you had X
5 number of windows, you paid X amount of money.

6 Q So it wasn't a set amount divided by 54
7 units, it was based on how many windows you had?

8 A Oh, yeah. That was a funny thing. After
9 the lawsuit, they started saying we all pay equally.
10 Okay? But the first thing they did as a board
11 action was to charge unequal for the windows,
12 because there was so much of a ruckus raised that he
13 -- they were trying to stick the windows into one
14 lump sum, and the homeowners wouldn't let them.

15 Q Okay.

16 A So they had to divide it out by windows,
17 the number of windows. They didn't divide it out by
18 the kind of windows until I raised cain, and then
19 they sent out a little thing that was the cost of
20 the windows, theoretically. I don't know how, but
21 some windows there have got a big giant dome, you
22 know.

23 The fifth floor is the penthouse
24 floor, and as a matter of fact, one of the things I
25 complained about was that my condo has less windows

1 than the fifth floor condo. Well, the initial thing
2 came out as us having the same number of windows.
3 We don't.

4 Q Okay.

5 A And I fussed about that. Well, somebody
6 corrected it, and I'm sure I know who. But anyway.

7 Q The assessment for the windows and doors
8 was based on how many windows and doors you had?

9 A Yeah.

10 Q Okay. The other assessments --

11 A I mean, you know, bigger condos would have
12 more windows. Condos on the end would have more
13 windows. Condos on the end side would have less.
14 Condos on the fifth had more. Condos on the third
15 floor --

16 Q Okay. Other assessments, whether they
17 dealt with the lawsuit, paying of insurance
18 policy -- hold on. Let me finish. Paying of the
19 insurance policies, are those assessments broken
20 down based on where your condo is located, size of
21 your condo, or is it just flat across the board?

22 A Flat across the board. Everybody pays the
23 same, the insurance, and that was another thing.

24 That was kind of after the lawsuit, but they say
25 everybody pays the same for insurance. Duh, you got

(1 more windows. That is more costly.

2 Q Well, they've got a bigger condo?

3 A Yeah. And a bigger condo, but it's not --
4 you know, the condos are pretty much columns, and
5 that's why they call it a horizontal regime. If you
6 have something wrong with a column, then those
7 people settle the difference.

8 Q Okay.

9 A Including the guy on the fifth floor who
10 has more windows.

11 Q Uh-huh.

(12 A Now, certain parts of the building have
13 bay windows. Some of them have big expensive dome
14 windows.

15 Q But I'm not talking about the window and
16 door special assessment right now.

17 A All right.

18 Q I'm talking about --

19 A I'm sorry.

20 Q That's okay. I'm talking about --

21 A Insurance.

22 Q -- insurance?

23 A That's what --

(--- 24 Q Hold on. Let me finish. Insurance and
25 any other special assessment:

(1 A All equal.

2 Q Okay.

3 A But that's why I brought out the point
4 about the windows and doors. The first thing they
5 did after the lawsuit, they couldn't get away with.

6 Q Was try to do it equally?

7 A They tried to do it equal with the windows
8 and doors, but everybody said no. They were smart
9 enough to say no. So they did it by windows, the
10 number of windows. Well, the windows were a value,
11 so to speak.

(12 Q Okay.

13 A And so -- but then from that point on,
14 they started saying everything is equal. Everything
15 is equal, equal assessments, equal amounts. We're
16 going to make these into apartments where everybody
17 owns 154th of the whole building. That was their
18 gimmick with that one. If we owned the whole
19 building, which goes back to them taking the windows
20 and condos.

21 Q Okay. Hold one second.

22 A Okay. Trying to get --

23 Q Hold on. Has the way that the board

(-- 24 apportions insurance payments among the condo

25 owners, has that changed, or is it still you pay

(1 equal share?

2 A We pay equal share this year.

3 Q Okay. On special assessment, any type of
4 special assessment?

5 A They're all equal. They've always been
6 equal. They say we pay equal, because that's what
7 we started out. Well, when we started out paying
8 the assessment, it was for cleaning the floors,
9 cleaning the common floors, cleaning the -- well,
10 security. That's a big cost, paying for security,
11 and I agree with those because those are a common
12 expense.

(13 I got a lady out there vacuuming my
14 hall, I pay -- you know, somebody else has got a
15 hall in theirs. It was common for the security.
16 The guy guards my place at night, my son's there,
17 you know -- it's to pay for the gates, the gates
18 that open and close, the little -- you know, that's
19 common.

(--- 20 To use the Bristol room was supposed
21 to be common, but somehow in there when they got
22 short of money, they wanted you to pay to use the
23 Bristol room. And I got the feeling people wasn't
24 cleaning up, but you had to pay to use your common
25 property.

1 Q Okay.

2 A And that was the same fee for everybody.

3 Q Up to a certain point, you paid, as a
4 homeowner, flood insurance as --

5 A Pay --

6 Q There was a general policy for the
7 Bristol?

8 A Yeah. But I had my own flood insurance.

9 Q Right. You had your own, but in addition
10 to that, the Bristol had a flood insurance policy?

11 A And I figured that was okay, because the
12 generator is down on the bottom, and the flood
13 insurance would cover that.

14 Q Okay. And any point in time --

15 A And the downstairs, there's a first floor
16 common area where the post office boxes are and the
17 entrance --

18 Q But at some point, there was a refund for
19 the flood insurance premium?

20 A Oh, yeah. They were -- somebody had
21 goofed up, and there was a refund on the flood
22 insurance.

23 Q To the Bristol ---

24 A To the Bristol.

25 Q -- Homeowner Association?

1 A And I never saw any refund. See, the way
2 they work is money in equally, money out unequally.

3 Q Okay.

4 A They pay for their own, you know. The
5 only thing they got caught on was the windows and
6 doors.

7 Q Do you know how much that refund was?

8 A You know, I don't.

9 Q Okay. Do you know what it was used for?

10 A It was, quote/unquote, put in a reserve
11 fund, but it eventually was used to pay the lawyer
12 fees.

13 Q For the litigation -- the construction
14 litigation?

15 A Against the builders, yeah.

16 Q Okay.

17 A That's what happened to all the reserve
18 fund.

19 Q Okay.

20 A And what happened was they had to rely
21 more on the reserve fund, because the fees had
22 gotten so high and the -- you know, everything
23 got -- the economy got bad, and then they didn't
24 have an excuse to raise the fees. We were no longer
25 New York. So they had to go down, and they couldn't

1 sell their property because of the high condo fees.

2 Highest -- I think it was the highest in town at one
3 time.

4 And so they had to reduce the condo
5 fees and then go to special assessments and reserve
6 funds. That's my opinion.

7 Q Okay. Now, at some point -- I'm trying to
8 remember the date. Just one moment. I believe it
9 was April of 2011. Here we go. I stand corrected.
10 In March of 2011, do you remember being sued, the
11 foreclosure action that was filed against you?

12 A Uh-huh.

13 Q Okay. What was your understanding as to
14 what that foreclosure action was for?

15 A Not paying my dues. It's that December
16 meeting that I wrote about the windows and doors,
17 and that same meeting, they ran out and borrowed
18 \$250,000. And I wasn't going to be part of that.
19 They were making debt, but it was to sue -- I was
20 foreclosed on for that reason, the windows and doors
21 is my understanding. But I didn't pay for the
22 windows and doors.

23 But each month, I paid whatever the
24 monthly charge was minus the \$100, which was the
25 special assessment fee.

1 Q So you were still paying your regime fee?

2 You --

3 A Oh, yeah. I paid my regime fee all along,
4 because I didn't contest that. Well, I did, because
5 the price went up and down.

6 Q Right.

7 A And they were using that money -- as a
8 matter of fact, it was an emphasis on bathrooms too.

9 Q Okay. We're going to get to the bathrooms
10 in just a second.

11 A Okay. But they were using that reserve
12 fund, which was \$100, and that's what I was
13 contesting.

14 Q That and the special assessment?

15 A And the special assessment.

16 Q Okay.

17 A Yeah. And I didn't pay them, and I didn't
18 pay for the windows and doors either.

19 Q Okay. Now, I'm going --

20 A I mean why should I pay for windows and
21 doors that I owned that they destroyed and buy them
22 back from --

23 Q I understand, but let me show you this --
24 I'm going to get you to look at this for a moment.

25 MS. POPE: Do you want me to refer to

1 this, Your Honor, by tab number or --

2 THE COURT: Tab number is easiest for me.

3 MS. POPE: Okay.

4 BY MS. POPE:

5 Q I'm going to refer to tab number 48 of
6 plaintiff's pretrial brief and list of exhibits,
7 which I think we've marked as Plaintiffs' Exhibit 1.
8 This is a copy of the foreclosure action that was
9 filed --

10 A I've never seen it.

11 Q -- in the March of 20 --

12 A I've never seen it.

13 Q Yes. Now, it names you actually as the
14 trustee.

15 A John T. Lucas, Sr., and John T. Lucas
16 Revocable Trust, yeah.

17 Q Okay. Now, the property at the Bristol
18 that you own, the condo, when you initially
19 purchased it, was it purchased by the trust or you
20 as an individual?

21 A By me as an individual.

22 Q Okay. And did you later open the trust or
23 open the trust and transfer the property?

24 A I hired -- when I was living in Beaufort,
25 I hired an attorney for tax reasons -- but for tax

(1 reasons to put it in a trust, and my understanding
2 of the trust by this attorney was that the tax on it
3 somehow got delayed when I died --

4 Q Okay.

5 A -- to my kids and they pay it, not me.

6 Q And you and your wife, Carolyn Lucas, are
7 the control -- you-all control the trust?

8 A Yeah. And there's -- well, yeah. Well,
9 actually, guess what? I'm supposed to be the one
10 who controls the trust, because I'm the executor, at
11 least that's what they tell me.

(12 Q Okay. So the lawsuit that you initially
13 brought in 2010 against the homeowners association
14 for the various things that we discussed, the trust
15 didn't bring that. You, as individuals, brought
16 that lawsuit?

17 A Yeah. It was to get information.

18 Q Okay. But you perceived yourselves as
19 owners of the condo. You brought the lawsuit?

20 A Paid for it.

21 Q Okay. All right.

22 A We paid for it. The trust didn't buy it.

(23 Q Following the filing of the foreclosure
24 action against you, do you know how much you had
25 incurred in attorneys' fees and costs defending

(1 and -- defending that foreclosure action, but then
2 also pursuing them for a counterclaim for the false
3 foreclosure?

4 A God only knows. I mean you-all would have
5 to figure that one out. I mean I --

6 MR. BARFIELD: I will object to the
7 relevance based on our arguments pre- --

8 THE COURT: I understand, but I'll allow
9 him to answer.

10 MR. BARFIELD: Yes, sir.

(11 A Well, I do know that it's costing me more
12 because when -- before we even brought the lawsuit,
13 we made a deal, or Mr. Mooneyham or -- may have been
14 you, made a deal with the homeowners that they pay
15 for my windows.

16 BY MS. POPE:

17 Q Okay.

18 A And I dropped the suit. I mean, you know,
19 and we also made an inquiry as to whether or not if
20 I put money in escrow for whatever I wasn't paying,
21 that your firm would keep until it was settled.

22 Q You're talking about placing money after
23 the foreclosure was filed, placing money in escrow?

(24 A I don't know whether that was before or
25 after.

1 Q Okay.

2 A But we did escrow, and as a matter of
3 fact, I had kept the amount of money they say I owed
4 them in my own attorney's escrow account, because
5 they didn't want the escrow -- the money.

6 Q Okay.

7 A And so I did the best I could. That's
8 all.

9 Q Okay.

10 A And is that what we were supposed --

11 Q You're fine.

12 A Okay.

13 Q All right. Now, you mentioned a moment
14 ago about the bathrooms.

15 A Oh, yeah.

16 Q You wanted to talk about the bathrooms.
17 Talk about the bathroom situation.

18 A I forgot what I was -- the bathrooms.
19 Well, basically, I found out that the bathrooms were
20 theoretically part of it, but that was also
21 something that Judge Newman said no on. And anyway,
22 they were handing out \$2,000 to the people who did
23 sue to keep them quiet.

24 Q Okay.

25 A And so we asked for it, and they said, no,

(1 you weren't part of the suit. I said fine.

2 Q Let me back up just a little bit. You're
3 talking about the suit that had individuals named on
4 it?

5 A Well, it was the -- I don't know which
6 suit it was.

7 Q Okay.

8 A It was the suit -- initially, it was just
9 for the windows --

10 Q Okay.

(11 A -- and doors. I don't even think it was
12 for the doors, but that was by the property owners.
13 Then they -- the judge told them they couldn't do
14 that. So they filed another suit is my
15 understanding.

16 Q That you never joined?

17 A That I never joined, and I honestly didn't
18 know about --

19 Q Okay.

20 A -- at the time. Now, I know about it, it
21 was Landry, but people referred to it as the Landry
22 suit.

23 Q Right.

(24 A And that included the windows and doors
25 and everything, and Mr. -- who's the little guy that

1 talked to on the table -- the DVD, Rosen's partner.

2 Hagood. Mr. Hagood even sent me a picture of the
3 bathroom asking if I wanted to be part of it, and I
4 said no -- or I never signed it.

5 Q Okay.

6 A And to my knowledge, my bathroom doesn't,
7 leak but I'm on the bottom floor. And that's part
8 of the reason I didn't do it. Oh, this is another
9 good story. I'm on the bottom floor. My bathroom
10 is on the bottom floor. Below me are, you know,
11 Volvos, Fords, Cadillacs, whatever. That's the
12 second floor of the garage.

13 Well, what they did, and this is
14 really cool, they started talking about bathrooms.
15 They ran around and plugged every little hole where
16 the sewage drain or any water pipe comes through.
17 Well, remember, column, horizontal regime. Well,
18 they got around plugging all of them.

19 Well, before they did, and this was
20 mentioned by Warner in his deposition, that they
21 voted to do this so they -- well, I don't know what
22 the word was. He said it just leaked too much, and
23 what they were doing was plugging these holes where
24 the water was coming out from the bathrooms above
25 and hide them so they could sell their condos.

1 And they -- well, then the water quit

2 coming down, and it was also involved in that
3 sewer -- not sewer, that drain on the floor doesn't
4 work. I think it goes uphill, and they decided they
5 couldn't fix that. And -- but they plugged all the
6 holes up. You can see them where they plugged the
7 holes up where the pipes came down, and water was
8 coming down there.

9 And under the one that it was a
10 worst, I think which was 16, you could see where the
11 cement is cracked where the water is kind of settled
12 into it and with the free soft cycle on the third
13 floor. But what that does with the water, spreads
14 it out from one condo to another, and doesn't give
15 it a way to drain.

16 But in addition to that it, every
17 blankety blank hot water heater in that building
18 doesn't have a drain. So that's a disaster waiting
19 to happen. Then they built the door bottoms, jams
20 up, I'd say an inch and three quarters where if you
21 did have a disaster, water would run out the door.

22 Well, now, they got a dam. So
23 instead of going out the door, it's going to go in
24 the hall or somebody else's condo, which has
25 increased the liability for me if something

(1 happened.

2 Q Okay.

3 A Or my insurance company, really.

4 Q Just a moment ago, you mentioned \$2,000
5 going to the property owners. I'm going to show you
6 what is behind tab 57 in plaintiffs' trial brief --

7 A Oh.

8 Q -- that is marked tab 57 on Plaintiffs'
9 Exhibit 1. Let me make sure I'm making that clear
10 for the record. Now, this is a two-page letter, and
11 I'm going to put that in front of you. Tell me what
12 this is.

(13 MS. POPE: Go ahead.

14 (Off-the-record discussion.)

15 THE COURT: All right.

16 MR. BARFIELD: You were on tab 57 I
17 believe.

18 MS. POPE: Yes.

19 THE COURT: Yes. 57.

20 BY MS. POPE:

21 Q All right. Dr. Lucas, you have got a
22 two-page letter here in front of you. Tell me what
23 this letter is, or when did you receive this letter?

(24 A I don't know when I received it but --

25 Q Well, what is it dated?

(1 A It's dated April 15th.

2 Q Of what year?

3 A 2013.

4 Q Okay. And what is this -- the letter's

5 from the --

6 A BPO.

7 Q Okay. To the homeowners?

8 A Yeah.

9 Q All right. And what is this letter

10 discussing? Is it the bathrooms?

11 A Yeah. It's bathrooms, mold and water.

(12 Q And drainage issues?

13 A Yes. Drainage issues.

14 Q Okay. Related to possible construction

15 defects with the bathrooms?

16 A Yeah.

17 Q Okay. That people may or may not have.

18 Some people knew that they had bathroom problems and

19 had them fixed?

20 A And they sued for them.

21 Q Okay. And some people didn't and didn't

22 sue?

23 A Right.

(24 Q Okay. Now, on the second page, you had

25 mentioned \$2,000 earlier, and it states in this

1 letter, and I'm just going to read straight from it.

2 Property owners have been notified of the potential
3 problem through legal action on this issue, and to
4 set aside \$2,000 for eligible owners based on the
5 lawsuit that provided a level of funding to complete
6 the recommended repairs. And this is referencing
7 \$2,000 for potential bathroom repairs?

8 A Yeah. They gave them \$2,000 to repair
9 their bathroom, because they didn't do it with the
10 original suit. The guys above me, their bathrooms
11 may leak. I don't know.

12 Q Okay.

13 A Well, one of them I think probably does,
14 but they didn't fix them.

15 Q Okay.

16 A And -- but they gave them \$2,000 to find
17 out if they need to fix them or fix them.

18 Q All right.

19 A And that was their settlement.

20 Q This talks about eligibility for the
21 \$2,000. What is your understanding as to your
22 eligibility to get --

23 A I wasn't eligible.

24 Q Why not?

25 A Because I wasn't part of the suit.

1 Q Okay. However, you testified earlier that
2 you were -- that money was being used from different
3 accounts?

4 A Oh, yeah. Well, in Primus' deposition,
5 Johan Primus (phonetic), he said that they took
6 money out of the general -- budgeted money from the
7 general budget to pay these guys 2,000 so they
8 wouldn't sue.

9 MR. BARFIELD: I want to object to the
10 hearsay there.

11 A Well, it's in Johan --

12 MS. POPE: Hold on. Hold on. I'm sorry.
13 Yes, sir.

14 THE COURT: He can answer. I noted the
15 objection.

16 MS. POPE: Go ahead.

17 THE COURT: He was probably an agent of
18 the defendants if he was speaking this type of
19 thing. But anyway, I'm going to let him answer
20 the question.

21 A Well, Johan testified about it. In his
22 deposition, he said that. That's how I found out
23 about it.

24 BY MS. POPE:

25 Q Okay.

1 A I didn't know about it till Johan said,
2 and Johan is on the board. So he would have known.

3 Q Do you know if -- strike that.

4 To your knowledge, do you have any
5 leak issues with your bathroom?

6 A To my knowledge, no, you know, my
7 bathrooms. But there's a question of a bathroom
8 that they initially said wasn't a problem. There's
9 signs of water damage above the shower in my guest
10 bathroom that occurred at some point, and you can
11 see the head of a nail where it's worked its way
12 out.

13 And I don't know whether that --
14 honestly, whether it's the bathroom above we hadn't
15 investigated, or if it's while they had the
16 sheetrock torn -- or not sheetrock, stucco torn off
17 the building and it rained and messed up my
18 sheetrock. I'm not sure.

19 But in and around that time is when
20 it occurred, and there's also a question of the
21 vents in my guest bedroom, but hadn't had that
22 looked at either. It was either due to my son
23 closing the air conditioning vents, as I mentioned
24 earlier, or it's rundown from the owners' closet
25 above me.

1 Q Okay. Either way, if you want to know

2 whether you --

3 A It's going to cost me.

4 Q Okay. Hypothetically, if you wanted to

5 put your condo on the market --

6 A It's going to -- I'd have to reduce the
7 price.

8 Q Why?

9 A Not only because of this letter, but --
10 you know, because the guy above me may leak at some
11 point.

12 Q Okay.

13 A See, they plugged all those little pipes
14 that go through the floor between the third floor
15 and the second floor and the garage, but they didn't
16 plug in the holes where it went through above. So
17 any time water gets in -- you know, somebody spilled
18 a bucket of water, or their washing machine runs
19 over or hot water heater, it's going to run down
20 that same pipe because they got it blocked off the
21 high thing to my condo. I mean water goes down.
22 Fire goes up. I got both insurances.

23 Q Okay. What did you pay for your condo?

24 When you bought it, what was the purchase price?

25 A 460 something I think.

1 Q Okay.

2 A 460,000.

3 Q And did you pay for that? Is there a
4 mortgage on it, or did you pay for it in full?

5 A Took money out of my retirement so that I
6 wouldn't have to take a loan, because I was disabled
7 still, but I wasn't working.

8 Q Right.

9 A So I had to get money somewhere to help my
10 son, and so I bought that figuring I could sell it
11 for the same price I had paid for it. And so, you
12 know, that's part of my retirement money.

13 Q Okay. Do you know what the current value
14 of your property is?

15 A Well, the tax value --

16 Q Tax value.

17 A -- is the only thing I know. At its
18 highest point, it was 600,000, and I tried to sell
19 mine for 525. That's when all the lawsuit stuff was
20 going on. Now, the current tax value is I think
21 379.

22 Q Okay.

23 A I think that was the last year's tax.

24 Q Okay. So is --

25 A That's the tax value.

(1 Q The tax value?

2 A I paid more tax because I'm out of town,
3 and it's Charleston.

4 Q Okay. Right. So the tax value shows that
5 it's decreased in value over time?

6 A Oh, God, yeah.

7 Q Based upon what you paid?

8 A Yeah. Not only that, all this other work
9 that's got to be done.

10 Q Okay. Then now you have got the issue of
11 the bathrooms and disclosure issues when you go to
12 sell, if you sell?

(13 A Yeah. And the rug's messed up.

14 Q Okay. Tell me about the rug.

15 A Well, they said I had to change the
16 windows with the transom.

17 Q You're talking about when they put the new
18 windows in?

19 A Yeah.

20 Q Okay.

(21 A And they moved the whole wall out about an
22 inch. You know, if you want to see it, I can show
23 it to you. I haven't done nothing with it. On the
24 carpet -- and there's a gap there. It runs
25 diagonally back. At one end, it's okay, but at the

(1 other end, it's out. And the other end it's out is
2 because the doors is there. So moved it out a bit.

3 Q So you're saying the carpet used to be
4 flush?

5 A Yeah.

6 Q And once the windows were replaced, it's
7 no longer flush?

8 A No.

9 Q Okay. Any other issues with your condo
10 since the windows being replaced and the
11 reconstruction took place?

(12 A Well, I gave Lona a punch list way back
13 right afterwards, and I think on that, there were
14 handprints where they were lifting to pull the
15 windows up. And we got some of that, and there was
16 a crack in the master bedroom where the stud goes
17 upside the window. You know, the window sits like
18 that, and the stud comes down. And there's a crack
19 below the window where it -- when they yanked the
20 window.

(— 21 To get windows out, they use some
22 kind of vacuum thing and then cut the -- around the
23 window and just pulled it back into my condo, and
24 they must have pulled a little hard there, because
25 they got a little crack in the wall. And my

1 bathrooms are okay.

2 There is a huge -- well, several
3 cracks, but a big one in the stucco that they redid
4 on my condo. Before, it had no cracks. But there's
5 one big crack that runs all the way from the floor
6 up to the -- I'm sorry, gentleman, the lawyer,
7 flashing between condos. But it runs all the way up
8 to that, and then it ran up to the oval window in
9 the condo above me.

10 Well, they repaired his, didn't touch
11 mine, but now he's got -- last time I was there,
12 which was November, he has a huge crack running up
13 from the other side. So there's some kind of
14 problem besides drying that they seen, and then
15 there's another place in the stucco that's cracked
16 where there was no stucco. It just -- I mean
17 there's a -- it's just stucco there.

18 And then there's a crack on the
19 column, and that's all the stucco I can see, and I
20 can't get out on the ladder so -- but that's from my
21 porch, the stucco.

22 Q Okay. And issues from getting from inside
23 your condo out onto your porch, your balcony?

24 A Yeah. Not my bathroom.

25 Q I'm sorry?

(1 A From my kitchen to the deck, which is the
2 room I use, because it's tiled, and, you know, you
3 don't track, and that's where the mat is. And I
4 used to take my scooter and scoot right out, and
5 there was a metal flashing there. Now, this is the
6 same door the rubber was blown back, but they got
7 this high -- I don't know how it is, but they got
8 this threshold there to keep -- the reason I say
9 that rubber is connected to the high threshold is I
10 think they put the high threshold there so the
11 pressure washing wouldn't come in under the door,
12 which they did pressure wash my place.

(13 So that's there to act as a block
14 instead of the rubber just being pushed off on the
15 bottom of the door. And I can't get over it with my
16 scooter. So every time I get ready to go outside, I
17 have to stop to look, go out, and, you know, in the
18 morning, it's -- it's okay. In the afternoon is
19 when I really get tired and need my scooter.

20 Q Was it like that before the windows were
21 changed, before the reconstruction?

22 A No, no, no, no, no.

23 Q Okay.

(24 A As a matter of fact, down in the Bristol
25 room --

1 Q Talking about the meeting room?

2 A Big meeting room that's common property.
3 On one side, they got the big high -- last time I
4 was there, they got the big high threshold, but I'm
5 sure that City told them that they had to have a
6 flatter threshold so handicapped people --

7 Q Which doors are you referring to?

8 A The ones that go from the Bristol room to
9 the pool.

10 Q Okay.

11 A So one side -- it's a double door. One
12 side has got it so, and the other side has got the
13 low metal flashing that you go out. And I'm sure
14 somebody told them that for handicapped people, they
15 had to do that, but my condo is -- all of them are
16 that way. I can't get out my door. Can't get out
17 of some of my windows, because they painted them
18 plum shut.

19 And the screens on the master bedroom
20 never were reinstalled, and I can't get the window
21 up, because it might cause damage to the seal. And
22 I'm not going to bang on the window if I could to
23 get it open, and I didn't even let what's his name,
24 Mike, do that to put my screens on. So they
25 probably need to be put on from the outside if they

(1 need to be put on.

2 And then this -- I don't know. It
3 didn't have anything to do with the reconstruction.
4 But while all of this was going on, I noticed that
5 there are big, huge cracks in the floor of the
6 cement that my condo sits on, which I would say is
7 common property. But I think there's two. I showed
8 them to you, but they've been getting bigger.

9 And nobody has ever bothered to put a
10 little pressure -- you make little copper wedges and
11 put them in there and drive them in, and then if it
12 spreads, then they drop down. But it has spread
13 since they painted the floor in there, and I didn't
14 know they done this either. But they painted the
15 floor in there and built little cabinets for renters
16 to put their stuff, you know, not in the owner's
17 cabinet, but in those little cabinets.

18 And one of the things you said, they
19 were a business exemption from being sued. She had
20 to go to court about it.

21 Q Okay. All right.

(22 A But they were making money off -- they
23 rent those things for \$50 a month, and I didn't even
24 know it. And they're right next to me. I heard a
25 lot of banging over there, but I -- that's what they

1 do. For renters, they charge them \$50 a month. I

2 don't use them.

3 Q Okay.

4 A That's where the cracks go under my
5 bathroom, and I got the feeling they run all across
6 my condo there where the cracks are in the stucco
7 but --

8 Q You're talking about --

9 A -- I'm not going to tear it up to see it.

10 Q I'm sorry. I didn't mean to interrupt
11 you. You're talking about the cracks are in the
12 concrete area beside your condo that's used for
13 storage? Is that what you're referring to?

14 A Here's my condo.

15 Q Right.

16 A There's a little storage area here. It's
17 not a full, because there's a porch back there.
18 There's a little storage area here, and there are
19 big cracks in the concrete that run under my
20 bathroom.

21 Q Okay. I just wanted to clarify. I
22 thought I understood what you were talking about. I
23 wanted to make sure that we had it clear for the
24 record.

25 A And God knows how far down do they run,

1 but, see, those would be little channels. If water
2 came from somewhere else, it would run under my
3 condo.

4 Q Okay.

5 A And that's why I was referring to those
6 big cracks around the pipes in stack 16. It's a
7 model crack around -- I think what's happening is
8 the crack is getting larger, because the freeze thaw
9 cycle between the garage and the condo and spread.
10 They said something about settling, but I'm not so
11 sure that's what it is.

12 Q Okay. We talked earlier about attorneys'
13 fees and costs.

14 A Uh-huh.

15 Q Since the foreclosure was filed in March
16 of 2011, is it fair to say that you incurred
17 attorneys' fees and costs in excess of 100 -- or
18 approximately 100, not in excess. I'm sorry.
19 Approximately \$100,000?

20 A I would say probably in excess, because --
21 but anyway, you -- but anyway --

22 Q But would that be a fair assessment?

23 A Yeah. And initially, like I said, I was
24 willing to settle if they pay for my windows and
25 forget the whole thing, because they had taken my

1 windows. But anyway, they didn't want to do that.

2 So they have done -- the business exemptions were
3 pursued, they have done foreclosure, they have
4 done -- what else? It was something else they
5 tried. I forgot. Darn it, but all that costs me
6 money.

7 MS. POPE: Okay. If I could have just a
8 one-minute recess, Your Honor, to confer with
9 co-counsel, and I think I may be ready to turn
10 him over to you, and we can break for lunch and
11 then I can turn him over to you, however you
12 would like.

13 THE COURT: Sure.

14 (Off-the-record discussion.)

15 THE COURT: Yes, ma'am?

16 BY MS. POPE:

17 Q I just have a couple of follow-up
18 questions. You've taken a lot of time to talk about
19 and explain your feelings about the construction
20 litigation, your feelings about the board. I'm
21 going to ask you something a little bit more
22 specific, and what -- and you've touched on this a
23 lot, but in what ways do you feel -- or do you even
24 feel that you were misled by the board or the
25 homeowners association?

1 A Yes.

2 Q Okay. Explain.

3 A Well, one, is we found out they sued
4 saying all of the homeowners, and that's what the
5 judge said they couldn't do, the Judge Newman. And
6 they didn't let us know anything about that, but
7 they led us to believe that everybody had to pay
8 since they took the windows and -- well, took
9 everything in that ruling. I think it's Article 3.

10 Q Okay.

11 A And that's how we got to paying for
12 everything equally, and that kind of bothered me
13 too. Because during all of this time, when I read
14 the letter of Mr. Mooneyham's, which I asked him to
15 write about I wasn't going to pay for it, they said
16 I -- it was running a rebellion, but anyway, I
17 wasn't. I was paying attention to my property.

18 But that same Christmas, they were
19 trying to foreclose on seven or eight people while
20 they were having -- that May, while they were having
21 a pool party to open up the pool. And I don't know.
22 I get a little upset by those things when people on
23 top are having pool parties, and the people on the
24 bottom are losing their property.

25 That's why I have been so obstinate

1 about this from the beginning, and they worked with
2 them, I understand, where they had a lot of
3 special -- what was it, special sales or with the
4 bank and whatnot. I mean, you know, I don't know
5 many people there on the whole condo, and that's why
6 I'm a thorn in their side. But they were having --
7 what do you call it?

8 Q Short sales?

9 A Short sales. They were having short sales
10 instead of foreclosure. Now, they did close on
11 Bishop, because from the beginning, he never paid,
12 but --

13 Q Okay.

14 A -- you know.

15 Q All right.

16 A But I have been paying them, all except
17 for that.

18 Q Okay.

19 A What I'm contesting.

20 Q Do you ever feel that you as a homeowner
21 were misled by the board as to why funds from the
22 operating and reserve accounts were used?

23 A Oh, Lord, yes. And I mean the most recent
24 example was Johan Primus saying they were taking
25 money out of the general. They budgeted money to

(1 pay the people, because they never fixed any of the
2 bathrooms except the board's, to my knowledge. They
3 may have fixed somebody else's, but they fixed a lot
4 of floors and, you know, that sort of thing. I mean
5 if you really trace that money out, it was -- in my
6 opinion, it was abused and misused.

7 Q Not just for the bathroom situation?

8 A No. Not just for the bathroom. They ran
9 out of money on the bathrooms.

10 Q Okay.

11 A They were important people while they had
12 that 3.6. They spent it so fast.

13 Q Well, how else do you think they misused
14 the money besides the bathrooms?

15 A Well, the windows and doors.

16 Q Anything else?

17 A Because that was why it ran over. If they
18 were just going to do it, they just stuck to the
19 common area downstairs that I've already mentioned,
20 and fixed that --

21 Q Okay.

22 A -- and just kept the money in the escrow,
23 and they could have lived off of it for years. But
24 they said the stucco was bad, and the stucco may
25 have been bad because of water. And I think this is

(1 why they wanted to do the stucco, because the water.

2 Water goes downhill. They don't get that, but the
3 water was going in the closet and going down in the
4 walls. So they had to tear all the stucco off.

5 They also -- bathroom, they never
6 even looked at my condo, to my knowledge, to assess
7 if there was a problem with it. Ms. Vest is the
8 only one that said there was, and there was a little
9 streak on the window. And I think she has some
10 pictures of that, and the oval window. It's the two
11 little places where water either came in or sweated.

(12 Q Okay. I'm going to show you -- you made
13 reference to a letter that came from the insurance
14 agent about coverages. I'm going to show you what
15 is behind tab 8 in plaintiffs' trial brief. Okay?
16 Is this the letter -- this is a letter from --

17 A Cindy Mulcare.

18 Q Is this the letter you were referring to?

19 A Yes. I got a copy of this in the mail.

20 Q Okay.

(21 A And it was something you had been
22 requesting that I review the master deed of the
23 Bristol Property Owners in an attempt to ascertain
24 if the language used in the property rights and
25 descriptions in units 3.2 -- yeah. I remember that.

1 Basically this was where they were

2 saying, well, our insurance may not cover the
3 windows. So we need to change the master deed so
4 that it -- mine -- the condo insurance will take
5 care of it. Well, I already had insurance on mine.

6 Q Okay. Do you feel that this letter was
7 misleading to the homeowners as to the reason why --

8 A It was done.

9 Q Okay. Why was it to you?

10 A Because I had my own insurance, and nobody
11 ever asked me if I had insurance.

12 Q Okay.

13 A But just said we can change in the master
14 deed. Your -- and see, the problem with that is it
15 does create an insurance problem, because now, it's
16 hard to say who owns the windows. And if I apply it
17 on my insurance, then my insurance will reference
18 back, well, they took your windows. And if I apply
19 it on their insurance, it don't cover the window if
20 I fall against it and break it out from the inside.

21 Q All right.

22 A So, you know, I don't know what to do. I
23 guess I own the inside of the window from a
24 liability standpoint, and they own the outside is
25 the only legal way I can look at it after they took

1 them. But before, I owned both sides of that
2 window, and I owned the window. And that window
3 gave me a specific view. It may not have been a
4 pretty view, but it was a view that was consistent
5 with what I paid for my condo.

6 The people that had water views paid
7 for it. People who had parking views paid more.
8 I'm a cheap son of a gun in some respects, and I
9 wasn't going to buy the most expensive condo. So I
10 got one looking at the parking lot, because I
11 figured if my son looked at the parking lot, he'd
12 see the elevators -- the helicopters coming into the
13 Med U. Might remind him he needs to pay attention
14 to what he's doing.

15 Q Okay. What do you feel is the -- you
16 referenced the insurance letter that was behind tab
17 8. What do you believe, or what do you feel is the
18 real reason why they -- the board wanted to change
19 the master deed?

20 A So they could sue.

21 Q Okay.

22 A They took my property so they could sue
23 for it, and they -- Newcomb -- Judge Newcomb caught
24 them.

25 Q Newman?

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1 A Newman. Judge Newman caught them, said
2 they couldn't.

3 Q Okay.

4 A But then, they kept that secret and told
5 me I own the same things as the guy with the big
6 condo on the waterfront. And it's a horizontal
7 property regime. I think they're supposed to be
8 separate for the size or for the tax value. Here I
9 am paying tax value for it, and they got twice the
10 tax value, and I pay the same thing.

11 If you compare the pieces of
12 property, I'm paying to support their property, and
13 they're going to be able to sell it for more.
14 Proportionately speaking, I'm paying the same --
15 well, I'm paying more proportionately speaking based
16 on tax value, and tax value is based on resale
17 value, in Charleston at least.

18 Q Okay. I'm going to do something that my
19 co-counsel may throw a pen at me for it in just a
20 second here. But I'm going to ask a loaded
21 question. Is there anything that I have not covered
22 in asking you questions today that you would like to
23 say for the record?

24 A In my opinion?

25 Q This is your opportunity.

1 A In my opinion, they knew they were doing
2 this, and the judge had told them that each person
3 had to sue for their own property, that they could
4 not retrogradely change the deed just so they could
5 sue, and they charged me for the suit. And then
6 they tried to charge me for the reconstruction, and
7 I told them I had my own insurance. And it was my
8 condo, and I would be responsible for my condo, and
9 that's why I have insurance.

10 But now, they're trying to say my
11 bathroom leaks. They took my stucco and made it
12 crack. They took my windows. They still get
13 moisture on them. They messed up my condo, and not
14 only that, they made it a place I don't want to go
15 to, because I get upset every time I go there.

16 And I ain't been there since
17 November, and the only reason I stayed there was I
18 didn't want to go to a hotel. And I got to where
19 now -- well, I had come for a doctor I think, and I
20 got a hotel room. And I got a hotel room last
21 night, and -- I'm sorry.

22 And they treat a lot of people
23 besides me -- they only had 40 people total to the
24 records that sued. That's not 75 percent, which the
25 master deed requires. So they couldn't. Of those,

(1 48 of them didn't trust the attorney that was hired,
2 and they sued separately. And then there was 14 of
3 us that didn't sue.

4 And things do happen and things, over
5 a period of time, and I realize that with my condo.
6 But daggone it, they don't own it. I paid for it.

7 MS. POPE: Okay. That's all I have, Your
8 Honor.

9 THE COURT: All right. Cross-examine?

10 (Off-the-record discussion.)

11 THE COURT: All right. I believe it's
12 cross-examination time?

13 MR. BARFIELD: Yes, sir.

14 CROSS-EXAMINATION

15 BY MS. POPE:

16 Q Dr. Lucas, are you doing all right?

17 A Uh-huh. Yes. I'm here.

18 Q Are you good to get rolling again?

19 A Yeah. Might as well.

20 Q All right. I'm going to be very brief.

21 Your deposition is already part of the record. So
22 there's no sense plowing old ground. So forgive me
23 if I jump around in some discrete topics that I want
24 to kind of flesh out a little bit based on your --

25 A My mind don't jump as fast as yours. So

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1 let's go.

2 Q Fair enough. The first question I have
3 for you is sort of a philosophical question. Would
4 you agree with the proposition that a board in a
5 homeowners association has the right, if not the
6 obligation, to rely on the advice and consultation
7 of professionals that they hire?

8 A That depends on what I hired them for. I
9 mean if you're talking about SKS, I don't think they
10 were that professional personally, but yeah. I
11 mean, you know, you hire a professional, but you get
12 what you pay for.

13 Q Okay. So if the board hired an attorney
14 that gave them legal advice, it would be incumbent
15 upon the board to consider that advice, and if
16 appropriate, act on that advice, correct?

17 A Well, yeah, I suppose. There was a
18 question of attorneys and that advice throughout
19 this, because there was a connection between the
20 homeowners and the attorney representing them as --
21 against the builder. There was a connection there,
22 and one of the groups, the Hunger Group -- Hanger
23 Group had some things to say, which would be hearsay
24 if I repeated it. But -- and that's why I chose not
25 to use that group.

1 One of the many reasons I didn't sue

2 was nothing was wrong. Number 2, they were --
3 wasn't messing with my property, or at least I
4 thought not, and the third thing, there was some
5 question about the representation. So -- and there--
6 was a fourth thing. If you sued, you had to give
7 your proceeds to the board, which I thought was kind
8 of peculiar.

9 So in a case such as that, when I
10 hire an attorney, I prefer to hire my own attorney,
11 listen to my own advice, which is what I have done.

12 Q All right. Now, the connection that you
13 were referring to between the association and the
14 counsel they hired, you're referring to the fact
15 that the --

16 A One of them was a property owner in that
17 group.

18 Q You're referring to the agent now,
19 unfortunately, deceased, Morris Rosen?

20 A Oh, I didn't know that.

21 Q Yes. Within the last year. Mr. Rosen was
22 in his 90s when he passed. He had a good long life,
23 but that's the individual who owned the unit that --

24 A Well, I hate when anybody dies,
25 including -- but, yeah. Yeah. To answer your

1 question, it was affirmative. I did not think that
2 an attorney that represented all of us should be
3 part of us.

4 Q Okay. Now, but Mr. Rosen, the senior,
5 Morris Rosen, was not actively involved in
6 representing the board, was he?

7 A I don't know whether he was or not, but he
8 sure did come up with some legal opinions and so
9 forth in some of the meetings. And he was there
10 when I voiced my opinion about the windows.

11 Q Okay.

12 A Of course, he didn't say anything, but it
13 was peculiar at that meeting for Mr. Rosen. They
14 didn't start the meeting until they went and got him
15 and he arrived, and they took him up there and set
16 him at the table. It was two seats at the table as
17 I remember. Mr. Rosen, the older gentleman, was
18 there, and the reason I remember that is he had his
19 black cane with a silver tip, and then Mr. --

20 Q Hagood?

21 A No. He was president. And that was the
22 meeting right after Mr. Mooneyham had mailed the
23 letter that said I wasn't going to pay for those
24 windows that belonged to me. And that was Warner.
25 That was Warner who was sitting there, and he

(1 wouldn't start the meeting. And then after the
2 meeting -- I mean, you know, you got a respected
3 attorney who has a stick with a silver knob on it.

4 I set specifically up front so
5 that -- at that particular meeting and asked
6 questions of Mr. Warner, and he would keep looking
7 at Mr. Rosen before he would answer. And one of the
8 questions, he didn't even answer. He said, well,
9 we've gone past this, and we're -- you know, we can
10 talk after the meeting.

11 Well, I thought my questions were
12 appropriate for the whole meeting -- for all people
13 involved and not just the people who had sued, and
14 that's the reason I read my letter. But no. I
15 assumed Mr. Rosen was part of it, and that's the
16 reason Hanger sued one of the people in their suit,
17 and that's hearsay. But they got kind of a
18 threatening remark from the board, because they made
19 that remark. It was a lady Realtor.

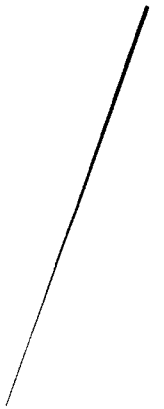
20 Q All right.

21 A Give me a minute, I can come up with her
22 name.

23 Q Not important.

(-- 24 A All right.

25 Q Would you not agree with me though that



1 all of the direct communication, at least in
2 writing, regarding the association's litigation came
3 from Brew Hagood, Morris Rosen's law partner, and
4 that Mr. Hagood was, in fact, the lead counsel on
5 the case?

6 A The only thing I got from Mr. Hagood that
7 I remember was a note saying you want to join the
8 suit that's in progress, and I think in that
9 setting -- he said in that letter, it's part of the
10 record, I know you don't like to sue, but the
11 bathrooms had -- and it had a picture of somebody's
12 bathroom tore out down to the cement, and he wrote
13 that letter to me, and you should have a copy of it.
14 And I didn't respond to it, because I wasn't going
15 to sue. Hadn't planned on it, hadn't done it.

16 Q Right.

17 A Now, I had no lawyer during this time
18 until after the September -- the meeting of the year
19 where it did everything at once, before anybody had
20 any -- and we'd asked for information. I didn't
21 have my lawyer until the day after that I think
22 September meeting.

23 Q All right. I don't want to get bogged
24 down on this issue, but to wrap it up, if the board
25 hired professional engineers, professional

(1 contractors, so forth, to advise it on particular
2 courses of action, you would agree with me that it
3 would be prudent for the board to --

4 A Well --

5 Q Let me finish the question. To consider
6 their advice, and if they deem it prudent, to act on
7 that advice?

8 A Well, I'm a scientist by trade. Okay?
9 And if I think something has happened, I form a
10 hypothesis, and then I test the hypothesis. I don't
11 rely on my partner's opinion about a medical case.
12 I may listen to it, granted. Okay? But I don't
13 rely on it, because it comes down to me, and the
14 property in question was mine.

15 So I relied on my own opinion but
16 kept an eye on the situation until it became a point
17 to where my personal space I felt was intruded upon.
18 Now, to my knowledge, the only professional that
19 went in to look at the -- my condo was Ms. Vest, and
20 she saw stains, and the only other professional that
21 I know that went into my condo was one I hired.

22 Q Uh-huh.

23 A So, you know.

(— 24 Q And I'm glad you bring that up, because
25 the professional you hired was present when they

(1 removed your windows ultimately, correct?

2 A I assume so. I was not there.

3 Q All right. And --

4 A My attorney was.

5 Q And he actually took possession of your
6 windows?

7 A No. I think I still own those windows.
8 They were defective, not being in the wall, which is
9 what a window is supposed to do.

10 Q Right.

(11 A The only other place I know a window
12 should be would be in a museum or in some
13 professional's office who's trying to test the
14 window.

15 Q All right.

16 A I have no use of those windows. They were
17 taken out. As a matter of fact, you know, because
18 my attorneys were conversing with you against my
19 wishes.

20 Q I understand that.

21 A All right.

(— 22 Q But out of deference to you, the Bristol
23 actually turned -- the windows had been removed out
24 of the condo over to you --

25 A I don't know how they can turn what's mine

1 over to me.

2 Q I understand there's a difference of
3 opinion on that, but follow me here.

4 A Okay.

5 Q This will go a lot faster if we don't
6 argue over every term or phrase.

7 A Well, that's why we're here. Go ahead.

8 Q Okay. So the windows were removed from
9 the wall?

10 A Yes.

11 Q The Bristol allowed you to do what you
12 wanted with those windows that were removed?

13 A My attorney was there, as I said.

14 Q Okay.

15 A And she took possession of them, and
16 whoever I had -- I don't even remember her name.

17 Q Right.

18 A To look at them, and they took possession.

19 Q Precisely. So the expert that -- the
20 expert that you hired through your attorney took
21 possession of the windows that were removed?

22 A Yeah. And they're still my windows.

23 Q And they --

24 A I can probably pay them rent for them to
25 be where they are.

1 Q Took those windows off site to another
2 facility?

3 A Yeah.

4 Q And performed some tests on them, did he
5 not?

6 A Right.

7 Q All right. And the outcome of that test
8 or those tests was that some of those windows
9 leaked?

10 A Yeah.

11 Q Okay.

12 A That's exactly right. But he also -- and
13 the contractor who works with the Bristol was in
14 agreement in his deposition that those windows were
15 probably damaged by water, pressure washing.

16 Q Okay.

17 A So before they were taken out, if that's
18 the case, my windows were damaged in situ. And they
19 were my windows then, and I think they're still
20 mine, damaged that they are.

21 Q Uh-huh. And you would concede that the
22 damaged window should be -- is a problem that needs
23 to be addressed, would you not?

24 A Yeah. And I would expect them to address
25 it with a window, which they did. Okay? It wasn't

(1 my choice. I would have chose the same window, and
2 probably hung out the window with a little bit of
3 that silicone paste, which I do at home, and go
4 pssss. And it'd probably cost me \$5 in silicone
5 paste to fix it.

6 And as a matter of fact, it was
7 attempted to be fixed that way before by the
8 builder -- before homeowners ever took it over, but
9 they charged the homeowners association. And that's
10 part of the record.

11 Q All right. So let me just confirm
12 something about your background. You are a man of
13 --

14 A Science.

15 Q -- science?

16 A Religion.

17 Q Tremendous amount of education and --

18 A Religion, philosophy.

19 Q Okay. You're a neurosurgeon?

20 A Yeah.

21 Q By trade?

22 A Yeah.

23 Q Okay.

(24 A I've got a few minors but --

25 Q All right. So out of extreme respect for

(1 the profession you chose, I will now ask you to
2 confirm, however, that you are not an engineer or a
3 construction professional?

4 A No. I'm not, but I have built about five
5 churches. Greenville County code, I don't think,
6 with the exception of the hurricane thing, is any
7 different from Charleston, and my construction
8 passed that. And I was not the contractor, because
9 I don't have a contractor's license, which you're
10 referring to.

11 Q Right.

(12 A But I was only an on-site contractor.

13 Q Okay.

14 A And I built from the foundation to the tip
15 of the steeple, and my son's name is inside the
16 steeple. So I do know a little bit.

17 Q Okay.

18 A And I built three, I think, of my own
19 houses.

20 Q All right. Will you at least --

21 A And the contractor worked under me.

(— 22 Q All right. Will you at least concede that
23 your knowledge and experience in construction in the
24 lowcountry is not equal to that of an engineer or a
25 builder who specializes on construction in the

1 lowcountry?

2 A No. It's not the same, absolutely not.

3 Q Okay.

4 A But, you know, I have a -- when you look
5 at a building, you have to have a history of the
6 building too and a history of what's happened to the
7 building, and I think I had that much more expertise
8 in that than the expert that did not examine my
9 condo.

10 Q Okay.

11 A He just examined -- I think they chose
12 four or five condos, and SKS came up with their
13 solution. And as a matter of fact, the windows, I
14 think, when they did test the windows on the water
15 side, which would get the most pressure washing from
16 nature, I think only 30 percent of them had a
17 problem. I may be wrong, but the records will show
18 that, and the other 70 percent didn't.

19 I think they wanted to -- I'm not
20 sure of this, make a deal and sue Anderson windows
21 at the same time to replace those windows, and the
22 ones that -- they still were under warranty at the
23 time the builders' suit occurred.

24 Q Uh-huh.

25 A And my windows were under warranty, and

(1 I'm not so much complaining about them destroying my
2 windows, which they did, but the fact that they
3 destroyed my warranty so I couldn't go to Anderson
4 windows and get new windows.

5 Now, the reason for that was they
6 changed the windows. They didn't even use the
7 original windows that were put in the building.
8 They said, oh, we're going to change them and put up
9 an upgrade. Well, the upgrade wasn't any -- you
10 know.

(11 Q All right. I want to parse out a point of
12 potential confusion. There were three lawsuits
13 going on simultaneously when this thing was --

14 A Well, actually, there were more, because
15 they were suing the bannister guy. They were suing
16 the pool guy. They were suing the stucco guy. They
17 were suing the builder or whoever. I don't know if
18 they sued the architect, but I got a feeling they
19 did too. So there were more than three that I know
20 of going on, and that's part of the reasons I washed
21 my hands and said it's my place.

(— 22 Q All right. I took -- one of those suits
23 that was pending, however, was the suit that was
24 brought by the association itself, correct? We
25 commonly -- in this case, we've commonly referred to

1 it was the board suit or the association suit.

2 A Well, there were a couple board suits.

3 The board actually even changed their letters there
4 at some point. There was a suit with the original
5 Bristol Properties Homeowners Association. I think
6 that's the way it was. That's the way it originally
7 was, but then that got changed to I think the
8 Bristol Property Owners under Landry. And then
9 there was a Hanger lawsuit, and, honestly, other
10 than being somewhat confused by the number of
11 lawsuits and who got sued, I was just thankful I
12 wasn't in it, and I stayed out.

13 Q All right. To the extent that one of
14 those -- at least one of those suits was brought by
15 the association itself --

16 A I don't know which one.

17 Q All right.

18 A But they -- yeah. I see. They did bring
19 one, and they named all the homeowners.

20 Q Right.

21 A Okay? But I never gave them permission to
22 do that, and that suit I think did not involve the
23 windows and doors and bathrooms and --

24 Q But that's what I'm getting to, is the
25 question of your permission. Okay?

1 A I said they sent me some letter. Okay?

2 And that letter said, can we sue, and it came with a
3 DVD.

4 Q Uh-huh.

5 A And somebody ought to review it, but in
6 that DVD, Ms. Landry, who I think is sitting over
7 there, said, the doors and windows are your
8 responsibility.

9 Q Okay.

10 A And you -- I mean we're going to sue about
11 the common stuff. Well, that was all right with me.
12 So I didn't sign up for it, but I said that was all
13 right with me. Well, it wasn't long after that that
14 I found out my doors and windows weren't a part of
15 that.

16 And the funny thing that upsets me is
17 it was in the short time I got that letter from the
18 new -- from the insurance lady saying there's a
19 question about the insurance, and then there was
20 another thing signed off by -- well, in the DVD, the
21 little guy at the end who said we'll worry about the
22 windows and doors later, and you can watch it, was
23 Hagood.

24 Q Hagood?

25 A Yeah. He was one of the ones suing the

(1 builder, and then in a couple of weeks, I got this
2 thing about they took my windows and doors because
3 of the insurance. But then they were asking if I
4 had insurance, and to be honest with you, I knew or
5 most everybody knew they were taking the windows and
6 doors so Brew Hagood could sue for them, which is
7 what he did, and I didn't join that lawsuit.

8 Q All right.

9 A Or he represented those experts and the
10 board.

11 Q All right. In the interest of time, can
12 we make a deal as we sit here?

13 A Well, I mean when I -- I know what you're
14 saying. I talk too much.

15 Q Well, no, no. And actually, you just
16 proved the reason why I'm going to make this
17 proposition to you now. I'm setting up questions.

18 A Oh, for later.

19 Q And you're -- no, no. I'm setting up a
20 question, but you're answering the setup.

21 A Okay. Well, I'm doing your job.

22 Q Well, if you just let me get to the
23 question.

(— 24 A Well, if I give you the answer, you don't
25 need to ask the question, but go ahead.

1 Q Because I don't even remember the last
2 question I asked.

3 A Well, I don't either so --

4 Q All right.

5 A Don't you love this?

6 Q I will submit to you that the association
7 filed a lawsuit in the name of the association.
8 Okay? That's the setup. You don't need to answer
9 that.

10 A Uh-huh.

11 Q Will you -- do you not agree with the
12 notion that the association has the right to file
13 litigation --

14 A For common property, yeah.

15 Q For common property?

16 A Yeah.

17 Q Okay. To the extent that you are a
18 owner -- a unit owner at the Bristol, and,
19 therefore, an undivided owner -- that you had an
20 undivided ownership share of the common elements?

21 A Yeah, yeah.

22 Q Right?

23 A Yeah. But I didn't give them permission.

24 Q That if following the procedure set forth
25 in the governing documents of the association, the

(1 association filed suit for damage or defects to
2 those common elements, that they could do that, and
3 in doing so, in part, represent you?

4 A They actually -- here's the way it went.
5 Okay? Hagood had one group. Hanger had another
6 group.

7 Q Right.

8 A God only knows what else. But those two
9 were vying for members to join their suit, and I
10 would assume if I joined somebody's suit, that I
11 would have made a deal with the attorney. I did not
12 sign anything with the attorney to pay him. Okay?

(13 I'm sorry. And I didn't sign anything with the
14 attorney to turn my money over to a board, who I
15 think was overextending their power, shall we say.

16 And I didn't do anything with the
17 attorney that represented the Hunger lawsuit --
18 Hanger lawsuit. And I didn't sign any money over to
19 them, but I know the Hanger lawsuit paid for their
20 lawyer.

21 Q Uh-huh.

(— 22 A And I do know that the people that sued
23 for the doors and windows and, quote/unquote, common
24 element, didn't pay for their lawsuit. Okay? That
25 came out of my pocket, and I didn't agree to pay it.

(1 All right? Now, I mean you want an answer. Do you?

2 Q What question are you answering right now?

3 A I'm answering the fact that who was suing
4 for who.

5 Q Okay.

6 A The Hanger group was eight people. They
7 sued the builder. The other group was 32. That's
8 by the notes that I've been able to look at. That
9 adds up to 40. That ain't even 70 percent, much
10 less 75 percent, which was in the homeowners
11 association that you had to have 75 percent to sue
12 the builder.

(13 Now, I guess you could sue the tub
14 guy, and you could sue the stucco guy, but to sue
15 the builder, I think, and maybe I'll be wrong, but
16 in the original, it had to be 70 or 75 percent,
17 which most homeowners associations have, and they
18 changed it from whatever it was down to 68 percent.
19 At another time they changed the deed. They change
20 the deed faster than I can read it.

(21 But anyway, it's my understanding
22 they couldn't legitimately bring suit, and there
23 were 14 people who didn't sue or 14 units. Now,
24 that's my understanding of the way it went down, and
25 I consider myself in one of those people that didn't

1 sue.

2 Q And I will agree with you that you did not
3 file suit in your individual capacity.

4 A No.

5 Q Okay. But will you agree with me that to
6 the extent the association filed suit through
7 Hagood --

8 A I never agreed to paying that lawyer.
9 Okay? A lawyer, if he's going to represent me, he
10 should have a contract with me, not a contract with
11 the board. He did not have a contract with me. The
12 board had a contract with him, and by virtue of
13 that, they said it was for me. I never had a
14 contract with him. And the things he sued about,
15 the board really didn't have a contract with me
16 about either.

17 Q Okay. All right. Let's move forward --

18 A I mean that's my answer really.

19 Q All right. Let's look at some documents,
20 shall we?

21 A All right.

22 Q All right. And --

23 A I can't remember them. You have been
24 through this before.

25 Q Well, I'm going to look at my notebook,

(1 and let's see if we can get one of the exhibit

2 notebooks in front of you.

3 MS. POPE: This one starts with 64.

4 MR. BARFIELD: All right.

5 MS. POPE: Well, wait. I'm sorry. Give
6 me just a second.

7 (Off-the-record discussion.)

8 THE COURT: What tab are you looking at?

9 MR. BARFIELD: I'm going to go to
10 defendants' tab 16.

11 THE COURT: You want me to let him look at
12 my copy? Is that what we're trying to do, find
13 something for him to look at?

14 MR. BARFIELD: Yes, sir.

15 MS. POPE: Yeah. Because I'm not even
16 seeing --

17 THE COURT: Now, that's mine. You give it
18 back to me. Okay?

19 THE WITNESS: Yes, sir.

20 (Off-the-record discussion.)

21 BY MR. BARFIELD:

22 Q If you would turn to tab 16. Should be --
23 that's it.

(24 A That says 15.

25 MS. POPE: No. But we're tab 16, correct?

(1 MR. BARFIELD: Right.

2 BY MR. BARFIELD:

3 Q That was Deposition Exhibit Number 15.

4 A Well, this is the --

5 Q All right.

6 (Off-the-record discussion.)

7 BY MR. BARFIELD:

8 Q Now, part of your testimony earlier, and
9 as I understand it, part of your issue with the way
10 this association has been run is the way they have
11 communicated or not communicated with the
12 homeowners?

(13 A Uh-huh.

14 Q All right. But you've also talked today
15 about certain notices that you have received?

16 A Under the door, yeah.

17 Q All right.

18 A And I have some gotten some in the mail,
19 but the main one I got in the mail was when they
20 changed the -- and that wasn't even Hagood. That
21 was another attorney.

22 Q All right.

23 A I think it's the same one that's
(24 foreclosed --

25 Q We're going to talk about that document in

(1 a moment, but the reason I'm having you look at this
2 exhibit is because this is a letter addressed to the
3 owners from the board of directors dated September
4 13th, 2007.

5 A Uh-huh.

6 Q That talks about them setting up the
7 website.

8 A Uh-huh.

9 Q Is that a yes?

10 A Yes.

(11 Q All right. And it even says about midway
12 down, there's a section on the construction defect
13 litigation which will be updated as our attorneys
14 approve the distribution of information on the case.
15 You see that?

16 A Yes.

17 Q All right.

18 A But I wasn't part of the lawsuit, and I
19 didn't get a lot of the information, nor did I go to
20 the meetings on the lawsuit.

21 Q Okay. And --

22 A So that -- I mean I -- the only document I
23 got from Hagood and that group --

(24 Q All right.

25 A -- was the one about the bathroom. I

1 remember the picture, and -- wait a minute. I

2 don't -- because the other document on changing the
3 master deed was from another attorney I think that
4 Hagood said --

5 THE COURT: All right. Let's just talk
6 about this one right now.

7 THE WITNESS: Okay. Yes, sir. I'm sorry.

8 BY MR. BARFIELD:

9 Q All right. Now, all I'm trying to ask you
10 on this one is you were aware they had set up a
11 website, were you not?

12 A Yes. And my wife asked how to get on it
13 at one of the meetings we were at, but by the time
14 we got home, we didn't remember. And there's a
15 password I think for it.

16 Q Okay.

17 A And so we never really went on it.

18 Q All right.

19 A We're --

20 Q You're not --

21 A I'm in a different era, and I prefer paper
22 as we're using today.

23 Q And despite that preference, however, you
24 do, albeit infrequently, use -- you have a computer
25 at home with internet access, correct?

(1 A Yes.

2 Q And occasionally, you do communicate by
3 e-mail, do you not?

4 A Yes. With my attorney I do.

5 Q Okay. We can leave that document behind
6 then.

7 A Because that's the only way she
8 communicated with me.

9 Q Let's turn then to tab 17, and this is a
10 one-page, rather auspicious looking, what appears to
11 be a flier that says a very important announcement
12 for all Bristol owners. Says, our construction
13 litigation attorney, Brew Hagood -- there's that
14 name again -- of Rosen, Rosen & Hagood, has advised
15 the board that he will be available on February 10th
16 to attend the owners special meeting to give an
17 update on our legal proceedings.

18 This update will be given after the
19 close of the official meeting that has been called
20 to approve the amendments to the master deed.
21 Please plan to attend. The changes to the master
22 deed are critical to the association. The update is
23 something we have all been waiting for. Did you
24 attend that meeting on February 10th?

(-- 25 A No. And I'm not sure of this meeting,

1 because we changed the master deed so many times.

2 They got one now to vote on. It -- to be honest
3 with you, I knew they were changing the master deed,
4 because I got that thing in the mail from I think
5 it's Moore -- Allen -- Moore Van Allen.

6 Q Moore & VanAllen?

7 A Okay. I got it from them, which was a
8 final document, and if I didn't sign it, I agreed.
9 And if I signed it, I agreed. And I thought that
10 was kind of peculiar. So I didn't do anything.

11 Q All right. But --

12 A I didn't understand.

13 Q -- you'll agree that in all likelihood,
14 this master deed change referenced in this document
15 is a reference to the change of ownership of the
16 doors and windows?

17 A It's simply by the lawyer's name.

18 Q But that was the issue that was on the
19 table at the time, the change related to the doors
20 and windows ownership?

21 A Yeah. I guess so. That's what it says.

22 Q All right. Let's go to --

23 A I never saw the minutes for that meeting.

24 Q Okay. Let's go to tab 44 of the
25 plaintiffs' notebook if we can.

1 MS. POPE: I'm sorry, which one?

2 MR. BARFIELD: Your exhibits, tab 44.

3 MS. POPE: Okay.

4 BY MR. BARFIELD:

5 Q And this is the document that we already
6 talked about a bit during your direct examination.

7 A Yes. This -- yeah.

8 Q Letter from Cindy Mulcare. Now, Cindy
9 Mulcare was an insurance professional who was
10 working with the board, was she not?

11 A Wait a minute. This is not Cindy Mulcare.

12 THE COURT: My 44 is not that either. 44
13 in the plaintiffs'?

14 MR. BARFIELD: Yes, sir.

15 THE COURT: That's October 16th board
16 comments on --

17 MS. POPE: The letter from Cindy Mulcare
18 is tab 8.

19 MR. BARFIELD: Tab 8?

20 MS. POPE: Yes.

21 MR. BARFIELD: Okay. Well, let's go to
22 tab 8 then. I apologize.

23 THE COURT: Yep.

24 BY MR. BARFIELD:

25 Q All right. Now, Ms. Mulcare was an

(1 insurance professional working with the board,

2 correct?

3 A I guess. I mean I thought the board had
4 hired her to get the cheapest insurance, but I mean
5 whether or not that's --

6 Q Well --

7 A That --

8 Q -- obtaining affordable insurance is a
9 laudable goal, is it not?

10 A Yes. And I tried to do that.

11 Q Okay. So --

12 A -- when I chose my own insurance.

(13 Q So Ms. Mulcare wrote this letter to the
14 insurance committee, which is a subcommittee of the
15 board, informing them of some problems with
16 insurability based on the ownership of the doors and
17 windows, correct?

18 A I'm trying to read it. And yeah. I had
19 my own insurance, so --

20 Q Okay.

21 A -- I owned the windows, to be specific.
22 Owned the doors, to be specific. I don't think the
23 board had insurance on those, but I did.

(-- 24 Q Okay.

25 A And so at that point in time, I think, you

(1 know, if I had insurance, that would be the people
2 they would pay. Now, they might balk at me, but
3 then I'd hire Joe, and they often do that.

4 Q Are you certain that all your neighbors
5 and co-owners had insurance the same nature that you
6 had?

7 A I didn't ask them any more than they did.

8 Q Okay.

9 A But the person I bought my condo from, who
10 was representative of the company that built them,
11 said, you need to get your own insurance.

(12 Q Okay.

13 A And that's why I did. I don't go out and
14 throw money away on insurance. I mean if I practice
15 medicine, I get malpractice insurance. If I own a
16 condo, I get the condo insurance.

17 Q Okay. You'll agree with me though that
18 not everyone is as conscientious as all that?

19 A Well, I know some of the board members
20 weren't, specifically the president. They didn't
21 have insurance, by deposition.

22 Q Right.

(23 A I don't think Mr. Warner had insurance,
24 and I don't think the head of the insurance
25 committee -- what was his name? Harold Campbell, I

(1 think. I think his insurance had been canceled,
2 too, by AllState, and he was the dealer. And I
3 think he notified those people that they needed
4 insurance.

5 And I don't know whether he did or
6 not, but I would assume. My insurance company
7 notified me that they were getting out of the
8 market. Go find another. So I went down and got
9 another one.

10 Q So in light of all that, in that context
11 --

(12 A Yeah.

13 Q -- let me ask you this, if there had been
14 a major storm to hit you-all --

15 A I was insured.

16 Q -- you were insured.

17 A Uh-huh.

18 Q But you just said some of your neighbors
19 and co-owners were not.

20 A Well, then they'd have to lay the cash
21 out. That's why I get insurance. So I don't have
22 to lay the cash out.

(— 23 Q Okay. But what if damage to or through
24 their exterior doors and windows resulted in
25 catastrophic damage to the common elements at the

1 Bristol?

2 A Well, now, the common elements, they were
3 supposed to have insurance on that. Now, whether
4 they did or not, I don't know, but I paid that
5 insurance fee every year. And I thought that was
6 what it was for, for the generator, which was flood
7 insurance, the elevator insurance, yeah.

8 They were supposed to have insurance
9 on that, and I think they did. I know they didn't
10 have it on the condos, because I bought my policy as
11 a supplemental policy from the same people they had.

12 Q Okay.

13 A Which I think was AllState, and I don't
14 think -- now, I may be wrong, but -- and I told
15 them. I said, the reason I'm getting my insurance
16 with you originally was I don't want to pay for
17 insurance that I don't need. So I bought the
18 AllState policy.

19 It is the same policy, because when I
20 moved to Lloyds of London, I said, give me the same
21 policy.

22 Q Okay.

23 A It cost me more.

24 Q Assuming you're correct, that the
25 insurance that covers the common elements of the

1 Bristol would kick in and cover damage caused by
2 damage to or through someone's individual doors and
3 windows -- you follow me?

4 A If it was because of their negligence and
5 not having insurance, I think that we could agree on
6 the fact that they would have to pay for the damage
7 resulting.

8 Q Okay. To the common elements?

9 A And that would require a lawsuit.

10 Q Okay. Is that an efficient way to handle
11 that sort of situation?

12 A Well, let's put it this way, same
13 scenario. They didn't fix the bathrooms from their
14 builder lawsuit. So in their last letter to me that
15 I referred to my attorney, said that we were a
16 horizontal regime, and that if somebody below you
17 messes up your -- I mean somebody above you messes
18 up your apartment from water, then you're going to
19 have to sue them.

20 Q Uh-huh.

21 A And that was what I assumed was the
22 regular normal way to do things. That's why I had
23 insurance on my condo, to protect me against
24 somebody falling in my condo and against the
25 liability of affecting someone else's condo. And I

1 have that insurance.

2 Q Do you have any evidence -- opinions
3 aside, do you have any evidence that the
4 representations made by Ms. Mulcare in this letter
5 regarding the difficulty with obtaining new
6 insurance or renewing insurance for the Bristol
7 because of the status of the doors and windows --

8 A Well, I don't know what --

9 Q -- were not true?

10 A Okay. To answer your first part.
11 Difficulty, I had no difficulty getting other
12 insurance. I just called the guy I had insurance
13 with down in Charleston. He -- now, granted,
14 because that was current Katrina time, I think, and
15 everybody was upset because of what happened with
16 Katrina. But -- and my policy is with Lloyds of
17 London, but they insured people all over the world,
18 and they insured me, and I paid the fees.

19 Now, that is being a good neighbor.
20 Now, expecting my neighbor to pay for my lawyer,
21 that's not a good neighbor, and that's not meaning
22 my neighbor pays for my condo damage either. That's
23 not a good neighbor.

24 MR. BARFIELD: I had this noted as tab 4
25 in the plaintiffs' book.

1 THE WITNESS: I just need a little piece

2 of sugar.

3 THE COURT: Tab 4 in plaintiffs' is --

4 MR. BARFIELD: Yes, sir. I want to make
5 sure I'm talking about the right thing. I'm
6 getting a little turned around on my own
7 notebook. It's one of your exhibits, but it's
8 in my notebook. It's tab 4 in the defendants'
9 book.

10 MS. POPE: Okay.

11 MR. BARFIELD: Plaintiffs' Exhibit 34 from
12 the deposition.

13 BY MR. BARFIELD:

14 Q The document in front of you is some
15 meeting minutes from Wednesday, March 4th, 2009,
16 pertaining to the Bristol informal owners meeting.

17 A I did not go to any informal. They were
18 never really advertised ahead of time. The main
19 meetings were something that -- like a flyer that
20 went under the door you showed me a minute ago.

21 Q Right.

22 A That was the main thing or that something
23 came in the mail with the bill.

24 Q Okay.

25 A If this was in mine, I apparently saw it,

(1 but I don't remember.

2 Q All right. And if you were to look at
3 this, I think you'd agree that the substance of this
4 meeting was largely dealing with the litigation.
5 And it appears that trial was imminent at this
6 point, because it says Mr. Haywood distributed lists
7 of potential jurors. Would you agree with that?

8 A That's what it says. I don't know what he
9 did.

10 Q Okay.

(11 A I know that a guy came around serving
12 subpoenas for the trial, and I happened to be there
13 when he was there. And I told him I wasn't suing,
14 and he didn't have a subpoena for me.

15 Q Okay. And I'll represent to you that
16 lawyers generally don't serve trial subpoenas until
17 right up to the time of trial, so --

18 A Well, I would represent to you that I
19 wasn't part of the suit. So I didn't --

(— 20 Q Okay. Now, if you look at the fourth
21 paragraph on that first page of the document, it
22 says, Mr. Hagood provided an overview about issues
23 relating to the windows and doors arguments. He
24 reminded owners that when the suit was filed, the
25 master deed provided the owners owned all windows

(1 and doors individually, even though the beach
2 company had let owners -- I believe that's a typo,
3 but had led owners to believe that they would
4 provide for repairs.

5 When the regime purchased insurance
6 in 2007, the agents raised the issue of ownership
7 and replacement of the windows. Master deed
8 provisions created ambiguity in the insurance
9 policy. The agents encouraged the board to assume
10 ownership of the windows and doors.

(11 The board passed an emergency
12 amendment for the regime to take over ownership of
13 them. Notice was sent to all owners of the proposed
14 change.

15 Owners were given an opportunity to
16 object, per the master deed. No objections were
17 received and the master deed was amended and
18 recorded. Do you disagree with any of that?

19 A Yeah. Here is what my side of -- my side
20 of it was I got the letter from Mulcare, and she had
21 on a DVD that I had gotten from a short time before
22 said --

23 Q Ms. Landry?

(24 A Ms. Landry.

25 Q Okay.

1 A You're responsible for your own windows

2 and doors. Okay? Fine. I didn't have a problem.

3 So, you know, I'm not part of this. I never

4 intended or wanted or was ever signed to be part of

5 that. Now, getting to the document that took my

6 windows and doors, this was sent by the board. I

7 remember Ms. Landry's signature on it, I think.

8 But I got that. We have been on

9 vacation or something, and I got that. Well, we

10 live out in the country, T.R. And as I remember, we

11 got a little note, pink slip in the mail company,

12 that said you got a document. And, you know, when

13 you get home, you're not going to run down three or

14 four miles to the mailbox. And I testified to this

15 in my deposition.

16 Q Uh-huh.

17 A And as I remember, my wife went down and

18 picked it up, and it got set on my table, because it

19 was a stack of this legal mumbo jumbo. When I got

20 around to reading it, I found out that I only had 20

21 days to respond to it, and that 20 days had -- were

22 gone with the exception of a day or so. And the

23 statement said, if you agree with this, sign here.

24 And if you don't agree with it, send a written

25 letter.

1 And I didn't have an attorney to send
2 a written letter. So it was gone. And their
3 unanimous part of acceptance was this had flaws,
4 meaning they didn't get a response. So they counted
5 it as a positive. I never responded in a positive
6 manner. Okay?

7 So that is a misinterpretation of --
8 when Dave Warner said that the board is in full
9 agreement, no. That was repair committee. Where
10 were we? I had forgot what we were talking about.

11 Q That fourth paragraph. I asked you to
12 look at that fourth paragraph on page 1 and tell me
13 specifically what about Mr. Hagood's chronology of
14 events you disagree with.

15 A Mr. Haywood reported that the attorney for
16 the architect challenged the --

17 Q Paragraph above that.

18 A Paragraph above?

19 Q The one I read aloud.

20 A Well, see I challenged that too, because I
21 said, you don't own my windows and doors, and I
22 don't want you to change them.

23 Q Uh-huh.

24 A Okay? So agreeing with the architect.
25 Mr. Hagood provided an overview about issues

(1 relating to the windows and doors argument. He

2 reminded owners that when suit was filed, the master
3 deed provided the owner shall own all their windows
4 and doors individually, even though the beach
5 company had led owners to believe that they would --
6 I don't understand that.

7 But my windows were under warranty,
8 and they would have been repaired by Anderson. When
9 the regime purchased insurance in 2007, the agents
10 raised the question of ownership in replacement of
11 windows and doors.

(12 The master deed provisions created
13 ambiguity in the insurance policy. The agents
14 encouraged the Bristol to assume ownership of the
15 windows and doors. No one asked me if I had
16 insurance.

17 Q Okay.

18 A Okay. And I had insurance.

19 Q I don't --

(20 A The board passed an emergency amendment
21 for the purpose of proposed change. The owners were
22 given an opportunity to object for the master deed.
23 No objections were received, and the master deed was
24 amended and recorded.

25 Now, that was the DVD that had

(1 occurred earlier where Ms. Landry, who signed that,
2 changed the master deed as an emergency. It said on
3 the DVD that -- I don't know if you've looked at it
4 or not, but she said the windows and doors are your
5 responsibility. And she was talking about the suit,
6 and at that point, Brew Hagood brought up the fact,
7 we'll worry about that later.

8 And I think this is what that's
9 referring to it. They worry about it later so they
10 can sue for my windows and doors, which I did not
11 give them permission to do, and the judge didn't
12 give them permission to do that, either, is my
13 understanding, Judge Newman. He didn't agree with
14 it either, and because they had done it after the
15 suit had been filed --

16 Q Uh-huh.

(17 A -- is my understanding. And that's also
18 my standing in the fact that I still own my windows
19 and doors, but the regime seems to think the
20 replacement windows for damages belong to them. But
21 it is my opinion that those windows and doors belong
22 to me, even though they're not the ones I want.
23 Because they change the decor of my living room, the
24 first windows you see.

(-- 25 And there were some damages done

1 changing them. They -- I told them I didn't want

2 it. They proceeded to do it anyway. They did not

3 want to make any compromise about it, and they

4 figured they'd do it and ask forgiveness later.

5 Well, all fine and good.

6 So later, instead of asking

7 forgiveness, they kept sending me a bill for the

8 windows and doors that they put in against my

9 desires. And in addition to that, they charged me

10 interest on it. So I said, I'm not going to pay for

11 it.

12 Q Now, I think that kind of clears it. All

13 right. Can I get you to go to tab 13?

14 A Tab 13?

15 Q In the same notebook.

16 A Same notebook, please report this -- yeah.

17 This communication from your -- and I remember the

18 windows, but I don't remember the rest.

19 Q Okay. So this is a flyer that's dated

20 down at the bottom in the corner March 26, 2007?

21 A Yeah.

22 Q Okay. And it says number 1, that Bristol

23 master deed defines the windows and doors as the

24 responsibility of the unit owners, and our insurance

25 policies only cover the common areas.

(1 A Well, that was the general understanding,
2 but see, my contention is they changed the master
3 deed so they could sue for my property.

4 Q All right. That's -- we're getting to
5 that a couple paragraphs from now.

6 A All right.

7 Q Number 2, insurance company potentially
8 used this as a loophole in addressing claims in the
9 event of a storm or other externally-caused damage.

10 A Right.

11 Q That's kind of the point that I was making
12 a little while ago.

(13 A Be here's the point I'm making in return.

14 Q Okay.

15 A One, asked me if I had insurance. I had
16 insurance. I continued to pay my insurance because
17 they were mine, and I wouldn't have paid the
18 insurance if I didn't think they were mine.

19 Q Okay.

20 A And the judge agreed that they were mine
21 at that point.

22 Q Okay. Number 3, let's follow.

23 A All right.

(— 24 Q Our insurers have written recommending the
25 board immediately act to correct this definition in

(1 the master deed.

2 A Yeah.

3 Q Okay. That was the Cindy Mulcare letter,
4 correct?

5 A I guess. I don't know. It doesn't -- but
6 I would assume. That's what I would assume.

7 Q Number 4, since none of us wants surprises
8 when it comes to repairing external windows and
9 doors, the board voted to amend the master deed and
10 changed the definition of the windows and doors from
11 individual property to limited common property.

(12 A And that's what I disagree with.

13 Q Okay. You disagree that the board voted
14 to do that?

15 A No. I agree the motivation of the
16 board -- I disagree with the motivation, which I
17 think was to sue.

18 Q Okay.

19 A And that way, they could sue for my
20 property and call it common property, and I did not
21 sue. And I owned that, and as far as I'm concerned,
22 I still own that, with the replacements being what I
23 own.

(24 Q Okay. This is simply what I want to ask
25 about that and the document I showed you just a

1 moment ago.

2 A Uh-huh.

3 Q Okay. You had testified on direct
4 examination that it was concealed from the members
5 of the association that the master deed had been
6 amended to convert ownership of the external window
7 and doors from the property --

8 A No. The reason it was concealed, I got
9 this thing in the mail that took my windows and
10 doors. I didn't agree with it, but they decided
11 that it was unanimous. There was no response from
12 me, and I bet if you check the records, there
13 weren't many responses from anybody else. So that's
14 what we need to look at is what responses you got.

15 Q All right.

16 A And that was really -- that 100 percent
17 thing was presented after the suit was settled. It
18 was presented in September. Landry came out at a
19 meeting and verbally presented it. Landry came out
20 at a meeting and said it's -- maybe that was it, the
21 August meeting, but he came out and said it was
22 unanimous, the vote on the windows and doors. And I
23 knew darn well that wasn't the truth, because I
24 didn't vote for it.

25 Q All right. You --

1 A Not Landry. It was Wiener, I'm sorry.

2 Q Wheeler -- Warner. Wheeler was the
3 attorney for the --

4 A Warner.

5 Q Okay.

6 A It was the president.

7 Q You did, however, testify that it was
8 concealed from the members of the association by the
9 board that the judge had ruled that the association
10 did not have standing?

11 A I didn't know that.

12 Q Okay. Let's turn back then to the
13 document we were looking at just a moment ago, tab
14 4.

15 A Tab 4.

16 Q Okay.

17 A All right.

18 Q Flip to the second page, please.

19 A It says pending approval. I don't know
20 that it was ever approved by the board.

21 Q Okay. But these are meeting minutes and

22 --

23 A Well --

24 Q -- you don't have any reason to believe
25 that a meeting didn't take place, do you?

(1 A No. But I have a reason to doubt the
2 minutes on the meetings, yes. Because I voiced
3 opinions, and they were not recorded. And sometimes
4 the meetings did not reflect the meeting minutes,
5 and I also know that the board went over the minutes
6 before they were sent out.

7 Q Okay.

8 A Okay?

9 Q But that notwithstanding, if you look at
10 the top of page 2, please.

11 A Pending approval minutes.

(12 Q No. Page 2.

13 A Oh, page 2. All right. Well, I got to
14 start on page 1 --

15 Q Sentence that starts on the first line.
16 It says the judge.

17 A The judge.

18 Q The judge heard the argument and agreed
19 that the regime did not have the right to sue for
20 the windows and doors.

21 A Yeah.

(22 Q Mr. Hagood stated that he is taking
23 exception to the judge's decision and will continue
24 to appeal it.

25 A I didn't know that.

1 Q Okay.

2 A And I didn't know that he was appealing
3 it, and I don't know honestly if he did appeal it,
4 and if the appeal was in his favor.

5 Q If these meeting minutes are accurate,
6 then you would agree with me that that information
7 was conveyed to the members of the association at an
8 open meeting, would you not?

9 A It may have been conveyed to the
10 association, but it wasn't conveyed to me.

11 Q Okay.

12 A Pure and simple, because I know where I
13 got the information.

14 Q Because you didn't attend the meeting?

15 A Well, this was a -- wasn't a regular
16 meeting I don't think.

17 Q Okay.

18 A 27 owners were there, and those -- I think
19 it was -- how many? 32 of them sued. They would be
20 the ones that would go to a meeting such as this.

21 Q Uh-huh.

22 A And not even all of them went to the
23 meeting. I didn't go, because I wasn't suing.

24 Q Okay.

25 A Once again, I didn't hire him directly or

(1 indirectly.

2 MR. BARFIELD: Give me a moment to consult
3 with Mr. Cook, if you will. I think I'm about
4 done.

5 THE COURT: Well, let me ask you a
6 question. Behind tab 4 in your notebook is the
7 minutes of March the 4th?

8 MS. POPE: Yes, sir.

9 THE COURT: All right. I got page 2, page
10 3. That's all I got.

11 MR. BARFIELD: Yes, sir. You don't have
12 page 1?

13 THE COURT: I got page 1.

14 MR. BARFIELD: Yes, sir.

15 THE COURT: Oh, which it was on my page 6
16 a minute ago that I missed some --

17 MR. BARFIELD: We were talking about tab 6
18 a moment ago.

19 THE COURT: All right.

20 MR. BARFIELD: No. This exhibit is only a
21 three-page exhibit.

22 THE COURT: All right. I got you. Okay.
23 Go ahead and take your time.

24 (Off-the-record discussion.)

25 MR. BARFIELD: I don't think anything

(1 further.

2 THE WITNESS: Could I ask you a question?

3 I mean I don't know if that's legally correct.

4 THE COURT: You can ask him. He doesn't
5 have to answer you.

6 MR. BARFIELD: If the judge says you can
7 ask me, I'm happy to answer.

8 THE COURT: We're off the record.

9 (Off-the-record discussion.)

10 MR. BARFIELD: I don't have anything.

11 THE COURT: Do you have any more
12 questions?

13 MS. POPE: No, sir. I do not.

14 THE COURT: Okay. Who is your next
15 witness?

16 MS. POPE: Our next witness actually will
17 be Jan Landry we will call, but before we move
18 on, I wanted to put on the record -- and I
19 didn't see it in the notebooks. The DVD that
20 keeps getting referred to as an exhibit at one
21 of the depositions, and I got a copy of it, but
22 the original that we used was an exhibit, but I
23 don't see it here. Do you have it? It should
24 have come with the stuff. I have a copy of it.

(25 MR. BARFIELD: Okay.

1 MS. POPE: We'd like to enter that in as
2 an exhibit to be reviewed later, but it's the
3 DVD that was mailed out to everyone. And all I
4 have is a copy. Are you okay with that?

5 MR. BARFIELD: Of course, yeah.

6 MS. POPE: And we'll just submit that to
7 you at a later date. The other matter that I
8 wanted to address it since we're here in
9 Charleston, several parts of Dr. Lucas'
10 deposition referred to his specific condo, and
11 there's been -- and the lip going out onto the
12 balcony and so forth.

13 I thought that maybe if we finished up in
14 today, or either tomorrow, go to the condo
15 itself and let Judge Williams, if he wants to
16 do that, look at his condo to see the lip, see
17 the crack in the stucco and so forth. And just
18 for those purposes, if he would like to do
19 that.

20 THE COURT: That's up to you-all. If you
21 want me to go, I'll go.

22 MS. POPE: I think it might be beneficial,
23 if you don't have any objection to that.

24 MR. BARFIELD: That would be fine.

25 MS. POPE: I think that that was -- that

1 was all I had for him and we can move onto the
2 next witness, Your Honor.

3 THE COURT: All right. I wanted -- if we
4 could just slide those -- I hate to ask the
5 doctor to move, but we really need the witness
6 over here closer to the court reporter and me.
7 Could you slide down one chair? Just roll your
8 chair down, Doctor. If you'll just roll your
9 chair, we got another chair. We're just roll
10 it right here. That's good.

11 (Off-the-record discussion.)

12 JANICE LANDRY,
13 having been first duly sworn, was examined and testified as
14 follows:

15 THE WITNESS: I do.

16 THE COURT: State your full name, please.

17 THE WITNESS: Janice Leonard Landry.

18 THE COURT: L-A-N-D-R-Y?

19 THE WITNESS: That's correct.

20 THE COURT: All right, counsel.

21 MS. POPE: Your Honor, before I move
22 forward with this witness, she's actually an
23 agent of the Bristol Property Homeowners
24 Association. We are calling her in our case in
25 chief, but would like to be able to treat her,

1 since she is a party to it, with

2 cross-examination and leading questions as far
3 as taking her testimony here today per Rule
4 611.

5 THE COURT: No objections?

6 MR. BARFIELD: No objection.

7 MS. POPE: Thank you. It might move us
8 along faster.

9 THE COURT: It's just a legal status that
10 allows her to ask you leading questions.

11 THE WITNESS: Okay.

12 THE COURT: A leading question is the sun
13 is shining today, isn't it. A direct question
14 would be, is the sun shining today. So that's
15 the only difference. It makes things flow a
16 little bit smoother and quicker usually.

17 MS. POPE: Yes.

18 THE COURT: Go ahead.

19 MS. POPE: Thank you, Your Honor.

20 DIRECT-EXAMINATION

21 BY MS. POPE:

22 Q Ms. Landry, I'm going to move quickly
23 through your background and get to the heart of the
24 matter, which deals with Bristol and litigation and
25 your time there on the board and as president. Just

(1 by way of background, you're originally from
2 Charlotte, North Carolina?

3 A That's correct.

4 Q Okay. And you moved to Charleston I
5 believe in 1998?

6 A That's correct.

7 Q Okay. And when you moved to Charleston, I
8 believe you didn't work for a little bit, but then
9 you went to work for Wild Dunes?

10 A Wild Dunes Community Association.

(11 Q Community Association. Okay. And you
12 were at the Wild Dunes Community Association until
13 2008?

14 A Till September 2008, yes.

15 Q Then you went to work for the --

16 A ACLU of South Carolina, yes.

17 Q And is that where you currently work
18 today?

19 A Yes.

20 Q Okay. Now, at Wild Dunes, your
21 responsibility or your title was financing
22 communications manager?

23 A That's correct.

(-- 24 Q Okay. And you worked with the -- strike
25 that.

1 The Community Association, did they

2 oversee the different homeowners associations for
3 the different condominiums?

4 A No. They didn't.

5 Q How did that work?

6 A The condominiums operated separately, but
7 they were members. People that were individually
8 were also members of the Wild Dunes Community
9 Association. We managed all the condo properties.

10 Q Okay. So there were dues paid into the
11 community association for the common properties
12 from --

13 A Yes. All owners.

14 Q -- all owners?

15 A All property owners, yes.

16 Q Okay. And you were in charge of working
17 with the different boards from the homeowners
18 association?

19 A Yes. I was.

20 Q And you would also attend meetings and
21 present financial reports at some of those meetings?

22 A Yes. I did that and did the minutes as
23 well.

24 Q Okay. You worked on creating newsletters
25 and -- were you also responsible for disbursing

1 those newsletters?

2 A By disbursing, from overseeing the mailing
3 out of them?

4 Q Or making sure that they got to the
5 homeowners.

6 A Yes.

7 Q Okay. And as part of your financial
8 responsibilities with the community associations at
9 Wild Dunes, you were responsible for making sure
10 that all the dues were paid?

11 A Yes. All the annual assessments were
12 paid.

13 Q And the assessments and keeping in --
14 basically, keeping tabs on any money coming in and
15 going out?

16 A That's correct.

17 Q Okay. You dealt with annual budgets?

18 A Yes.

19 Q You dealt with the reserve funds?

20 A Yes.

21 Q Okay. And I believe that there were
22 special trainings that you attended?

23 A That's correct.

24 Q Okay. And those were with the Community
25 Association Institute?

1 A Called the Community Association

2 Institute, yes. It's a national institute.

3 Q And you attended the programs at the
4 national office in Virginia?

5 A I attended them in Charleston.

6 Q Okay.

7 A They would go on the road and have them,
8 and I also attended them in Columbia. And they
9 would do area trainings, and I did them in finance
10 and covenants and community affairs.

11 Q About how many did you do?

12 A I probably done -- I don't remember
13 exactly, but I think I did at least five. I took a
14 whole course for certification in community
15 management.

16 Q And while you were working at Wild Dunes,
17 that's where you first met Lona Vest?

18 A That's correct.

19 Q Okay. And Lona was working for?

20 A She managed properties, condominiums, in
21 Wild Dunes, yes.

22 Q Okay. So by the time you left Wild Dunes
23 in September of 2008, it's fair to say you were
24 pretty well versed in how homeowners associations'
25 finances within homeowners associations worked?

1 A Yes.

2 Q Okay. Do you still do accounting -- I
3 mean for the ACLU, are you doing accounting, or are
4 you doing something else?

5 A I'm doing accounting, communications,
6 program management.

7 Q Is that a full time or a --

8 A Full time.

9 Q Okay.

10 A Yes.

11 Q And you currently still -- strike that.

12 You owned a property in the Bristol.

13 When did you purchase that?

14 A We bought it in January of 199- -- wait a
15 minute, 2005.

16 Q 2005?

17 A Yes. Sorry.

18 Q You say we, that was the property you
19 bought with your husband, Dave Landry?

20 A That's correct.

21 Q Was the purchase price on your condominium
22 at the Bristol approximately 650,000?

23 A In that range I believe, yeah.

24 Q I'm sorry. Go ahead.

25 A No. That's fine.

1 Q And you if you said this, I apologize if I
2 missed it. It was condo 4015?

3 A Yes.

4 Q Correct. Does that face Lockwood? Does
5 it face --

6 A It's on the corner of Lockwood and 17. It
7 actually faces 17, but there were windows that
8 overlooked the Lockwood side as well.

9 Q Okay. Was it two bedroom?

10 A It was -- yes. Two bedrooms.

11 Q Okay. Two bedroom, two-and-a-half bath or
12 two bedroom, two bath?

13 A It's two bedrooms, two-and-a-half bath.

14 Q Okay. But you and your husband sold that
15 property in 2011?

16 A That's correct.

17 Q Okay. For approximately 500,000?

18 A That's right.

19 Q So you-all took a loss of approximately
20 150,000?

21 A That's correct.

22 Q Okay. And you currently still live in the
23 Charleston area?

24 A That's correct.

25 Q Okay. When you moved into your condo 4015

1 in 2005, were you having water leakage problems or
2 any problems with your condo at all when you moved
3 in?

4 A No water leakage. I don't recall any
5 problems.

6 Q Okay. Were you experiencing any problems
7 at all?

8 A No.

9 Q When did you start having problems?

10 A Well, I started having problems -- I think
11 we were -- there was -- when they started doing
12 testing, like water intrusion testing, things like
13 that. But I can't -- I don't remember the -- when
14 we exactly started having problems.

15 THE COURT: Ms. Landry, you remember
16 giving your deposition?

17 THE WITNESS: I do.

18 THE COURT: Okay. And after that
19 deposition, it was typed up.

20 THE WITNESS: Yes.

21 THE COURT: And you might have had a
22 chance to look at it after that. I don't know.

23 THE WITNESS: I didn't look at it.

24 THE COURT: Normally, people don't.

25 THE WITNESS: Right.

(1 THE COURT: But anyhow. That's what she's

2 looking at now, I'm sure, is a copy of that
3 transcript. So she might ask you some
4 questions about what you said then at that
5 deposition. So that's what she's looking at.

6 THE WITNESS: Okay. Thank you.

7 MS. POPE: And we have the original also

8 --

9 THE COURT: Sure.

10 MS. POPE: With us if we get to that
11 point.

(12 BY MS. POPE:

13 Q Okay. You said there were -- you noticed
14 water leakage problems when they started doing the
15 testing?

16 A Yes.

17 Q Okay.

18 A I think -- I start losing what the timing
19 is on things. A lot of things have happened since
20 then, but one of the things that has -- I do recall
21 is that we would have -- we actually had water --
22 what I would -- like water on the balcony or
23 something, you know, to put plants or something like
(24 that. It would run into our condo. The water would
25 come in that way, or it went out. But yes, there

(1 was -- there was a water problem underneath the
2 windows in the living room.

3 Q Okay. Didn't you have a problem with
4 water in your daughter's bedroom?

5 A Yes. There was a problem there.

6 Q Okay. In your living area?

7 A Well, that's where that water was --

8 Q Is that what you were talking about the
9 balcony --

10 A Yes. That's what I was talking about,
11 yeah. And then there was some buckling in the
12 floors in the living area too.

(13 Q Okay. Some of that developed over time.
14 It wasn't right when you first moved in?

15 A Yeah. And we had some water damage in the
16 ceiling in the master bedroom that came in, as we
17 were told, from the condo above us.

18 Q Okay. Now, you-all volunteered to have
19 your bathroom be part of the destructive testing?

20 A Yes. We did.

21 Q Okay. Were you having problems with your
22 bathroom?

23 A Not that I knew of, but no.

(-- 24 Q Okay. If you weren't having problems with
25 your bathroom, why did you allow yours to be part of

1 the destructive testing?

2 A I was on the board at the time, and they
3 had discovered problems in some of the bathrooms.
4 In order to reach the -- you know, anytime you do
5 any type of destructive testing with an engineer,
6 they want a certain number of tests to be done in
7 bathrooms, and people had to volunteer those. Many
8 people did not want to do it, and we only -- I guess
9 I was the only good citizen and said they could tear
10 mine up.

11 Q Was this before or after August of 2006?

12 A Was after 2006.

13 Q So it was after the homeowners took
14 responsibility for managing the Bristol?

15 A That's correct.

16 Q Okay. Was it before or after the lawsuit
17 was filed in 20- -- February 2007?

18 A It was after.

19 Q Okay. In 2005, when you first moved into
20 your property, there was a group of homeowners that
21 would meet informally; is that correct?

22 A Yes.

23 Q Okay. And because of your experiences at
24 Wild Dunes, you attended those meetings and were
25 kind of involved in what was going on from an

1 informal standpoint?

2 A Right. I think I attended maybe two,
3 three.

4 Q Okay. And at some point prior to the
5 homeowners taking over management of the Bristol in
6 August of 2006, you were the one kind of selected by
7 the group to find an engineer or a list of engineers
8 to do an initial study?

9 A That was correct.

10 Q Okay. And you provided several names,
11 with one of them being Sutton-Kennerly?

12 A That's correct.

13 Q And by all the documents that we see here
14 today, Sutton-Kennerly was eventually one of the
15 experts used on the Bristol litigation and the
16 individual lawsuit litigation against the builders?

17 A Yes.

18 Q Prior to the homeowners taking over in
19 2006 and then shortly thereafter in 2006 -- strike
20 that.

21 When the homeowners took over the
22 responsibility and management of the Bristol in
23 August of 2006, were you elected to the board?

24 A Yes.

25 Q Okay. What was your position on the

(1 board?

2 A I was vice president.

3 Q Okay. Who else was on the board with you?

4 Who was president at that time?

5 A Bob Zeisler (phonetic).

6 Q Okay. And was David Warner on the board?

7 A Yes. He was.

8 Q Ken Hanger, was he on the board?

9 A No.

10 Q Okay. It was you --

11 A Ray Johnson.

12 Q That's it.

13 A And Charles --

14 Q Yes. Okay.

15 A And someone else.

16 Q Following being voted onto the board, did
17 the board initially try to work with the beach
18 company in trying to resolve some of the issues with
19 the Bristol?

20 A Yes.

21 Q At that point, in the beginning of the
22 management of the Bristol, shortly after August of
23 2006, is it fair to say that the board knew of some
24 of the issues with the Bristol, construction
25 defects, but not the full effect?

1 A That's correct.

2 Q Okay. There was also an issue that the
3 reserve fund had not been properly funded by the
4 beach company?

5 A It was underfunded, yes.

6 Q And that was actually something that the
7 informal group knew of prior to the homeowners
8 taking responsibility in August of 2006?

9 A I believe that's correct, yes.

10 Q And then when the board took over in 2006,
11 did more by formal reserve study of the accounting
12 from the beach company as from the transition over
13 to the homeowners?

14 A Yes.

15 Q And that's when you-all realized that it
16 was a much more grave situation than you thought
17 with the reserve fund issue?

18 A What we did is we had a reserve study
19 formed. None had been done.

20 Q Right.

21 A So once the reserve study was done and the
22 numbers were given to us as to it should be funded
23 at that time at that point, then, yes, we could say,
24 specifically, here's the problem.

25 Q Okay. It eventually came to the knowledge

(1 of the board that it wasn't a small amount that was
2 underfunded. It was in excess of \$100,000, if not
3 more?

4 A I believe that's correct, yes.

5 Q Okay. And the board approached the beach
6 company to try to resolve that issue and get some of
7 that money paid back to the homeowners association?

8 A Yes. That was a topic that was addressed,
9 yes.

10 Q Okay. And I believe the beach company
11 actually paid about \$50,000. That was all they
12 agreed to pay?

(13 A They paid 50,000, yes.

14 Q Okay. Was that for the reserve fund, or
15 was that to go towards -- help with cost of doing
16 tests?

17 A I believe that was to help with cost of
18 doing testing. It was a generalized sort of here's
19 \$50,000. You know, you're having this problem. I
20 think we sort of quoted it as good will, but,
21 however, that -- \$50,000 worth of good will, I don't
22 know.

(— 23 Q Okay. Did the beach company pay an
24 additional 65,000 later on towards the reserve fund,
25 or was that 50 it?

1 A That was it, I believe.

2 Q Okay. And that money wasn't, as you just
3 said, put in the reserve fund. It was used towards
4 testing and in anticipation of litigation?

5 A I don't recall that being the decision of
6 anticipation of that, but we had incurred cost of,
7 you know, for the destructive testing.

8 Q There were outstanding bills from
9 Sutton-Kennerly that needed to be paid?

10 A Yes. And we did ask for that to be paid.

11 Q But it didn't all get -- by the -- you
12 asked the beach company, and they didn't pay that?

13 A That's correct.

14 Q Prior to August of 2006, was there a
15 request by the informal smaller group of homeowners
16 for money to be donated towards trying to do
17 testing? It wasn't an assessment, because there
18 couldn't be a formal assessment, but --

19 A Right.

20 Q -- there was a request to have money paid
21 in?

22 A Here is what I recall what had happened,
23 is that actually before we moved to Bristol, my
24 husband and I bought there, there was this group
25 that existed, and that they had collected some money

1 to do some testing. And so there was somebody in

2 accounting, and I believe they did come back -- yes.

3 They did come back at one point and say, would

4 people be willing to contribute some money.

5 Q After you moved in?

6 A After I moved in, yes.

7 Q Okay.

8 A And I think they asked for a couple

9 hundred dollars. I don't recall exactly.

10 Q Okay.

11 (Off-the-record discussion.)

12 BY MS. POPE:

13 Q There's been discussion today of different

14 lawsuits that were filed, and they've got different

15 names -- or were given different names I think by

16 the homeowners and some of them just kind of stuck.

17 A Uh-huh.

18 Q The Hanger lawsuit was a lawsuit where Dr.

19 Ken Hanger was a plaintiff along with some other

20 people, correct?

21 A That's correct.

22 Q That was filed in 2005?

23 A Yes.

24 Q That was the first lawsuit filed against

25 the builders by a homeowner or a group of

1 homeowners?

2 A Yes.

3 Q Then when the board -- or, excuse me, when
4 the homeowners took over responsibility in August of
5 2006, elected a board, one of the first pieces of
6 business conducted by the board was to look to see
7 whether the board or homeowners association needed
8 to file suit?

9 A Yes.

10 Q Okay. And about the fall of 2006,
11 October-November, started looking at hiring a law
12 firm to represent the homeowners association?

13 A That's correct.

14 Q Because the board made the decision not to
15 join in the Hanger lawsuit that was already
16 existing?

17 A That's correct.

18 Q Okay. Then the law firm of Rosen, Rosen &
19 Hagood was hired by October-November of 2006 to
20 represent the homeowners association?

21 A That's correct.

22 Q And a lawsuit against the beach company,
23 Gulfstream, and multiple subcontractors?

24 A Yes.

25 Q Okay. And as we know later on, other

(1 subcontractors were added as discovery --

2 A Uh-huh.

3 Q -- led the attorneys to believe that they
4 needed to be added as parties; is that correct?

5 A That's correct.

6 Q Okay. In February of 2007, beginning of
7 February 2007, the homeowners association lawsuit
8 was filed, and the individual lawsuit was also filed
9 where your name was listed first on the list of
10 plaintiffs. And that's been referred to as the
11 Landry lawsuit?

(12 A Yes.

13 Q Okay. Both of those were filed by the law
14 firm of Rosen, Rosen & Hagood?

15 A Yes.

16 Q Okay. And Rosen, Rosen & Hagood worked on
17 both of those cases continually until they settled
18 in 2009?

19 A Yes.

20 Q Okay. The lawsuit that was for the
21 homeowners association, that was a lawsuit to cover
22 common areas and limited common areas?

23 A Uh-huh.

(24 Q Correct? Is that a yes?

25 A Yes. Sorry. Yes.

(1 Q No. That's okay. I'm doing that so she

2 can get it on the record. The individual lawsuit,
3 wherein nicknamed the Landry lawsuit, because your
4 name was listed first, that one was to cover any
5 personal property damaged maybe on the inside of the
6 condos and any property owned by the individuals?

7 A Yes.

8 Q Okay. When the investigations or when
9 Sutton-Kennerly started doing more extensive testing
10 in 2006, after -- almost immediately after the
11 board -- homeowners took over responsibility and the
12 board started looking more in depth at the builders,
(13 when Sutton-Kennerly started doing more extensive
14 testing, one of the biggest issues they were looking
15 at were the windows?

16 A Yes.

17 Q Okay. And then when the lawsuits were
18 filed in February, the homeowners association made
19 the attempt to recover for any damage to the windows
20 and doors of each unit; is that correct?

21 A I don't know that was what was stated, was
22 they were trying to recover for the individual? I'm
23 sorry. I'm not following.

(24 Q Well, what they were trying to --

25 (Off-the-record discussion.)

1 BY MS. POPE:

2 Q The board meetings that started after
3 August of 2006, those were not held out at the
4 Bristol. The majority of them were not held at the
5 Bristol?

6 A No.

7 Q Okay. They were held actually at the
8 Medical Society Building?

9 A It's the Medical University, Medical
10 something society.

11 Q Okay.

12 A Yes. On -- right off Calhoun.

13 Q Okay. And you believed that that was a
14 better place to have them than at the Bristol,
15 because -- instead of the conference room and
16 conference table?

17 A Yes.

18 Q Okay. But the Bristol has a huge room --

19 A Right.

20 Q -- where the board could have met but
21 chose not to meet?

22 A That's correct. The room is a common
23 room where people come and go. There's a kitchen,
24 and there's a swimming pool outside. We were there
25 to conduct business and needed a conference room.

1 Q Okay. The homeowners that were not

2 members of the board, they complained about those
3 board meetings being off campus basically?

4 A They did talk about it, yes. Some did.

5 Not all.

6 Q And some homeowners tried to attend the
7 board meetings?

8 A They did attend the board meetings.

9 Q But there were also times when they
10 weren't allowed to stay in the board meetings?

11 A That's not correct. They were not always
12 allowed to if we called for executive session, but
13 they were always allowed to come.

14 Q They were allowed to come, but they
15 couldn't stay if you went into executive session?

16 A No. That's what executive session is.

17 Q And during your executive session is when
18 you would discuss the lawsuit and issues with the
19 lawsuit pending -- or the pending lawsuit and issues
20 with the lawsuit once it got going?

21 A Right. The executive session, by
22 definition, is to discuss lawsuits, personnel
23 issues, and things of a confidential nature like
24 that, and we would only call executive sessions for
25 those things which were allowed to meet.

(1 Q Now, is that your opinion, that that's the
2 only time to discuss lawsuits, in a executive
3 session? That's by definition --

4 A Which you may call -- by definition, we
5 can have executive session to discuss lawsuits, yes.

6 Q Okay. And that's your opinion as to what
7 executive session is?

8 A No. That is what's stated in the master
9 deed.

10 Q Okay. The homeowners were funding the
11 lawsuit, were they not?

(12 A That's correct.

13 Q Okay. But it's still your position that
14 there was certain information about the lawsuit that
15 they should not be privy to?

16 A That's correct. There are confidentiality
17 issues. I mean attorneys would ask for it too.

18 Q When you purchased your condo in 2005, you
19 read the master deed, correct?

20 A Yes.

21 Q And you understood that the ownership of
22 the windows and doors was your responsibility as a
23 homeowner?

(- 24 A I guess I did. I don't know. Like all
25 master deeds, I don't know that that really was a --

1 you know, I mean really I think that was -- I think
2 a lot of people were surprised. I think we all
3 looked at it -- just made an assumption that the
4 outside of the building is not owned by the owner.

5 Q Ms. Landry, I know that Judge Williams
6 asked you earlier that -- about taking -- having
7 your deposition taken. You remember having your
8 deposition taken?

9 A Yes.

10 Q And you remember being under oath --

11 A Yes.

12 Q -- and answering the questions?

13 A Uh-huh.

14 Q Is that a yes?

15 A I'm sorry. Yes.

16 Q All right. I'm going to show you your
17 deposition, and we did your deposition in two parts,
18 to be fair.

19 A Uh-huh.

20 Q We started on July 16th, 2012, at 10:00,
21 and then it actually recommenced I believe on July
22 31st, which was Monday, 2012. I'm going to show you
23 what was your deposition testimony taken on July
24 16th, to 2012, and I'm referring to page 77,
25 beginning with line 2. Actually, we'll start with

1 page 76, beginning with line 24.

2 Question. Okay. When you and your
3 husband purchased your condo at the Bristol, did you
4 read over the master deed? Continues on page 77,
5 line. Answer, yes. Question, did you understand
6 that the windows and doors are the responsibility of
7 the homeowner? Answer, I did.

8 Okay. So at that time I took your
9 deposition, you said that you understood that you
10 were responsible as a homeowner for the windows and
11 doors?

12 A And I'll stick with that.

13 Q Okay. At the time that you purchased your
14 condo, did your insurance policy cover any damage to
15 your windows and doors?

16 A I didn't purchase the insurance policy.
17 My husband was in charge of that, but I will
18 certainly go with the idea that he made sure that
19 was covered.

20 Q Okay. Sorry. Give me just a moment. You
21 were here just a moment ago during Dr. Lucas' --
22 some of Dr. Lucas' testimony. I'm going to refer to
23 I believe it is tab 8 in the plaintiffs' trial
24 brief, which is the Cindy Mulcare letter. Okay.

25 I'm going to have that out in just a

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1 moment, and we're going to discuss that in a little
2 bit more detail. In February of 2007, after the
3 lawsuits were filed, I believe that the board
4 started making movements to change the master deed
5 in regard to ownership of the windows and doors?

6 A Yes.

7 Q Okay. And there has been much debate over
8 the reason for the change of the windows and doors,
9 but isn't it true that at the time that the lawyers
10 were looking at bringing a lawsuit against the
11 builders and their evaluation of the master deed
12 that they were concerned there was an issue that the
13 homeowners association did not have ownership of the
14 windows and doors, that those were not common
15 properties?

16 A That was discussed, yes.

17 Q Okay. So that was a concern by the --

18 A Right.

19 Q Okay. And since it was a concern of the
20 attorneys, it was a concern of the board in moving
21 forward with the litigation against the builder?

22 A I'm -- if the attorneys were concerned
23 about it, they had an issue with it, and they would
24 discuss it with us. And I'll just have to say -- am
25 able to say that, yes, we would reflect their

1 concern. We would follow whatever they asked us to
2 do or they advised us to check into. Whatever they
3 might have said you need to do or we need to look
4 at, we would have looked at that and how to proceed.
5 But I don't recall specifically what the discussions
6 were.

7 Q Okay. Around the same time that the
8 attorneys were raising a concern about the windows
9 and doors and the ownership issue as it relates to
10 litigation, the board goes to the agent at the time,
11 Cindy Mulcare, about the master deed and insurance
12 coverage; is that correct?

13 A Well, the insurance coverage always comes
14 up for renewal in March, renewal. So we always
15 would do that.

16 Q But you would agree with me that there's
17 some board members that approached Cindy Mulcare and
18 asked her to look at the master deed specifically
19 for the windows and doors?

20 A I did not do that, but, yes. They would.

21 Q Okay.

22 A I was not a part of that discussion.

23 Q But you were on the executive committee of
24 the board at the time?

25 A Well, the board is the board. Yeah.

1 There was no executive committee.

2 Q Well, you-all didn't have homeowners that
3 set on the board at the time that weren't officers?

4 A Well, I'm sorry. Executive committee is
5 usually a defined. There isn't an executive
6 committee. There was no defined executive
7 committee. There were officers and board members.

8 Q You were vice president at this time?

9 A Yes. That's correct.

10 Q Okay. So as vice president of the board,
11 isn't it fair to say that you were pretty
12 well-versed in what the board is and isn't doing?

13 A Well, yes. But there was also an
14 insurance committee. If I recall correctly, there
15 were also members of the community that were on
16 there, I believe. Brad Sherlock (phonetic) was on
17 that committee, and they did go because we were
18 having -- there was a lot of trouble at that time
19 about insurance and insurance rates, all the things
20 that were happening, and, of course, they did have
21 an in-depth discussion, and the insurance committee,
22 along with whatever property owners were sitting on
23 it, along with whatever board members were on it,
24 would, of course, go and talk with the insurance
25 company.

(1 Q Okay. This letter from Cindy Mulcare

2 doesn't say that the Bristol is not insurable

3 because of what is perceived as ambiguities in the

4 master deed, does it?

5 A No.

6 Q Okay. All right. Following --

7 A It does say it would be quite difficult to

8 determine.

9 Q In regards to claims, not insurability,
10 but claims it filed.

11 A Okay.

(12 Q Well, no. I want to be clear for the
13 record.

14 A No. That's fine. That's fine.

15 Q This is not saying that the Bristol is not
16 insurable, correct?

17 A No. It does not say that.

18 Q It just says that there could be
19 difficulty with claims --

20 A Right.

21 Q -- because of the master deed?

22 A Yes. Okay.

23 Q If individuals didn't have proper

(-- 24 insurance?

25 A Yeah. As I'm just reading what you're

1 reading, yes.

2 Q Okay. Let's see. Now, the board did make
3 a change to the master deed. I think it was the
4 fourth amendment that changed the windows and doors
5 from individual ownership to limited common
6 properties?

7 A That's correct.

8 Q Okay. And when the board made that
9 change, there was information sent out to the
10 homeowners that gave them I believe 20 days to
11 object to the change in the master deed?

12 A I don't recall. Yeah. I don't recall the
13 exact number of days, but --

14 Q But they were given a set number of days
15 to object?

16 A Yeah.

17 Q And if they didn't object, the board could
18 make the change to the master deed without the vote?

19 A That's correct.

20 Q Okay. So when they're -- because it was
21 considered -- based on Cindy Mulcare's letter that
22 we just looked at, it was considered an emergency?

23 A Right.

24 Q Okay.

25 A And our attorney agreed with that, our

(1 general counsel. I'm not talking about Rosen, Rosen
2 & Hagood. I'm talking about David Wheeler, Moore &
3 VanAllen. We followed his advice on this.

4 Q Okay. Which also just happened to
5 coincide with the same time that you're filing a
6 lawsuit against the builder where your attorneys for
7 that litigation had concerns about ownership of
8 windows and doors?

9 A As I said, we renew the insurance in March
10 of every year. So that discussion would be held,
11 yes.

(12 Q You also testified earlier that your
13 litigations attorneys for the construction lawsuit
14 has concerns about the --

15 A Yes. We did --

16 Q -- association. Let me finish. About the
17 association not having ownership of the windows and
18 doors?

19 A Right. That was discussed from the very
20 beginning.

(-- 21 Q Okay. When the board made the change to
22 the master deed without vote, there was no
23 compensation given to the homeowners for that change
24 in ownership, taking that property, correct?

25 A That's correct.

1 MR. BARFIELD: Objection.

2 THE COURT: What was the question?

3 MS. POPE: I said when the board made --
4 and this might not be actually verbatim, but
5 when the board made the change to the master
6 deed, changing the ownership of the windows and
7 doors from the homeowners to the board -- I
8 don't know if I used limited common property.
9 I can't remember. You might want to read it
10 back.

11 MR. BARFIELD: My objection was the use of
12 the phrase taking the property.

13 MS. POPE: Oh, okay. I guess maybe --

14 THE COURT: All right. I note your
15 objection. Go ahead.

16 BY MS. POPE:

17 Q I think you answered it. Okay. Prior to
18 the board making the decision to file a lawsuit
19 against the builder and developer, were there any
20 investigations made into filing a claim with the
21 insurance for the person covered at the time?

22 A I don't recall.

23 Q Okay. And I don't believe that there were
24 any investigations made into warranties that may
25 have covered some of the properties with the

(1 Bristol, for example, on the windows?

2 A I don't recall.

3 Q Okay. Whose responsibility would it have
4 been to make those inquiries to the insurance
5 company? Would that have been the board's
6 responsibility?

7 A As I said, I don't recall. It may have
8 been that. We had different committees. I just
9 honestly don't remember at this point what all the
10 ins and outs were, and who did what.

(11 Q Would it have been the responsibility of
12 the board to check on any warranties, say, for
13 instance, with the windows, that they could replace
14 the windows through a warranty or used it as an
15 avenue instead of filing suit?

16 A You know, as I recall, and I cannot tell
17 you precisely, you know, each point of all the
18 discussions that were held both with the beach
19 company before 2006, after 2006. There was a
20 tremendous amount that was discussed about the
21 windows, about whether the windows themselves were
22 the problem or the installations were the problems,
23 whatever was going on with the windows. There was
(24 a -- and there were tests that were being done all
25 along.

1 So when we go to the point where

2 we're saying -- there was also suggestions of how
3 we're going to do this, and there were things that
4 the beach company proposed. And I think that what
5 the board did, and I stand by 100 percent, is to
6 review all of the information that was given, to
7 review the -- what people said the solutions were,
8 it was ADS or whatever. We were talking too much
9 here. And to simply say, okay, we need legal
10 counsel. We need to get an attorney on this.

11 Q Right.

12 A And so after we get an attorney, and we
13 get two attorneys, our general counsel and the
14 construction attorney, then at that point, you know,
15 we followed the advice of our counsel.

16 Q Okay. The individual lawsuit that was
17 filed where -- named the Landry suit, and case
18 number -- let's see if it's on here. Okay. I am
19 actually referring to what has been marked --

20 MS. POPE: The lawsuit that the Landry --
21 the individual lawsuit, is that one of your
22 defense exhibits?

23 MR. BARFIELD: I don't think so. I think
24 it was one of yours though.

25 MS. POPE: I don't think that one --

1 MR. BARFIELD: It was the --

2 MS. POPE: I think I just included the --

3 I'm going to show her just so she can see the
4 case caption, and I apologize, Your Honor, I
5 don't think this has been made an exhibit by --

6 MR. MOONEYHAM: Try tab 31.

7 BY MS. POPE:

8 Q I'm going to show you what is tab 31 in
9 plaintiffs' trial brief, and I'm showing it to you
10 just so you can have reference when I refer to it.
11 At the top right-hand corner here is the case
12 number, and the last three digits are handwritten
13 there 607. Do you see --

14 A Yes.

15 Q -- that? Okay. And this is the one that
16 has been referred to for the past several years as
17 the Landry lawsuit, because your name is listed here
18 first in the plaintiffs. But there were numerous
19 homeowners that joined this suit?

20 A Correct.

21 Q Okay. But it just gets for shortened
22 title the Landry lawsuit. And then this is the
23 lawsuit that was filed by your attorney or the
24 attorney for the homeowners association and the
25 individuals through Hagood. Right behind that on

1 tab 32 is another action filed that same day by Brew
2 Hagood, and plaintiff listed is the Bristol
3 Condominiums Property Owners association. And the
4 case number on it to the right, last three digits
5 612, do you see that?

6 A Yes.

7 Q Okay. I'm laying these out, because I'm
8 going to be referring to the last two numbers.
9 These two suits, 607 and 612, both filed by Brew
10 Hagood or Rosen, Rosen & Hagood?

11 A Yes.

12 Q Okay. The lawsuit for 607, which is the
13 individual lawsuit entitled Landry, the individuals
14 named as plaintiffs in the 607 lawsuit never paid
15 any extra money to the Bristol for attorneys' fees
16 and costs in relation to their suit, correct?

17 A Correct.

18 Q Okay. Whenever a bill came from Rosen,
19 Rosen & Hagood for legal services, it would come for
20 legal services and costs performed on 607 and 612?

21 A Correct. I don't know that they were
22 referenced in the bill but -- I mean I don't know if
23 both cases were referenced in the bills but there
24 would be a bill.

25 Q But there would be one bill from Rosen,

1 Rosen & Hagood?

2 A Correct.

3 Q Okay. And the Bristol would pay that
4 bill?

5 A Yes.

6 Q Okay. And Rosen, Rosen & Hagood was
7 working on both 607 and 612?

8 A Yes.

9 Q And individual property owners that were
10 named as 607 were benefiting from the work that
11 Rosen, Rosen & Hagood was doing?

12 A Right. As did the Hangers.

13 Q Okay. Yes. And I'm going to get to that
14 in just a moment. And the individual plaintiffs
15 that were named in 607 were benefiting from the
16 experts that were retained and working on the cases
17 and were paid by the Bristol?

18 A Yes. As did all owners, yes.

19 Q Okay. Now, and you just made a point just
20 a moment ago about as -- you said so did the Hangers
21 or something to that effect.

22 A Yes.

23 Q It's my understanding that at some point,
24 the judge combined the Hanger lawsuit, which was
25 filed in 2005, the suit 607 and 612, combined those

(1 for discovery purposes?

2 A I do -- that's what I understood too.

3 Q The Hanger suit would have been tried with
4 607 and 612, but they would all be put together as
5 far as discovery purposes so that there wasn't
6 repeat depositions done and --

7 A Correct.

8 Q Okay. Now, it's -- and you made this
9 reference a moment ago. The Hangers basically --
10 the Hanger lawsuit basically piggy-backed off of the
11 Bristol lawsuit. Is that a fair assessment?

(12 A Well, I'm not quite sure what you mean by
13 piggy-back, but whatever was discovered and
14 destructive testing was open for everyone, all
15 owners to see.

16 Q Okay. The Hanger lawsuit -- strike that.
17 The experts that were retained by
18 Rosen, Rosen & Hagood and paid for by the Bristol,
19 the information that those experts received during
20 their testing, during their investigations, that was
21 used by the Hanger lawsuit, correct?

22 A As I understand it. I was not part of
23 that suit so --

(24 Q And the Hangers -- the members of that
25 group never reimbursed the Bristol any costs towards

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1 those expert fees?

2 A No.

3 Q Okay.

4 A No.

5 Q No. I know that that was debated quite a
6 bit.

7 A Yeah. That may have been after my time.

8 Q I believe that that was after your time on
9 the board, because you stepped down in 2009, early
10 2009 I believe; is that right?

11 A Was it April of 2009?

12 Q Maybe. May have even been before that.

13 A It may have been. I was in job changing,
14 job transition and stuff, and so I did, yes.

15 Q Okay. And at that point, and being fair,
16 once you stepped down, you really didn't have a
17 whole lot to do with any --

18 A No. I didn't.

19 Q Your husband stepped in and took the spot,
20 but following your resigning in early 2009, you
21 really didn't have a whole lot of involvement with
22 the board, the homeowners association --

23 A No.

24 Q -- at all?

25 A No. I didn't -- no. I mean I could read

(1 whatever was handed out, but I --

2 Q You weren't very active?

3 A I was no longer on the board.

4 Q Right. During the time that -- I believe
5 you became president in June of 2007? In the summer
6 of 2007, would that be fair to say that you took the
7 position as president?

8 A I guess, yes. That was -- it was after
9 Zeisler resigned so --

10 Q So sometime in 2007? Would that be
11 better?

(12 A Yeah.

13 Q After the lawsuit was filed. Would that
14 help?

15 A Yes.

16 Q Okay. During the time that you were
17 president of the board, the litigation was starting
18 to heat up, a lot was going on, the law firm of
19 Rosen, Rosen & Hagood was actually be paid on an
20 hourly rate, correct?

21 A That's correct.

22 Q And any costs or expenses were to be paid
23 for directly by the homeowners, by the Bristol?

(24 A They were, yes.

25 Q So those bills were coming in fairly

1 quickly after the litigation was filed in 2007,

2 especially the expert fees and so forth?

3 A Yes.

4 Q Okay. And we've already discussed that

5 the reserve fund was underfunded when it was

6 transferred over from the beach company --

7 A Yes.

8 Q -- to the homeowners?

9 A Uh-huh.

10 Q Is that a yes?

11 A I'm sorry. Yes. I was just thinking --

12 I'm thinking maybe some of the timing when I became

13 president is off, but I don't know if that's

14 material, so --

15 Q And if it is, please correct me.

16 A Okay.

17 Q Because I may have the dates wrong, but I

18 believe it was sometime in 2007. When the board was

19 deciding what to do, how to fund the litigation,

20 isn't it fair to say that bills were getting paid

21 out of the operating account to fund the litigation?

22 A I believe the bills were paid out of --

23 some may have been out of the operating account, but

24 some were being paid out of the reserves. Because

25 we did have the -- I'm trying to think back, because

(1 I remember doing -- actually doing a spread sheet on
2 what monies were going in, and I think that we had
3 a -- we had an effusion of money from -- an
4 overpayment on insurance.

5 I mean there were monies that were
6 put into reserves. So I think that some of the
7 money was being borrowed from reserves to pay for
8 the --

9 Q Okay.

(10 A That's how I recall. They were being
11 borrowed from reserves with the anticipation that
12 perhaps they could be paid back from settlement
13 fees.

14 Q Which they weren't?

15 A Yeah. No.

16 Q Okay. And the operating fund, the money
17 that was borrowed from the operating fund was never
18 fully refunded either?

19 A Once out of the board, I really don't -- I
20 don't recall that.

21 Q While you were on the board --

22 A No. Because that was still ongoing at
23 that time. The case was still was ongoing.

(24 Q And you mentioned about a flood insurance
25 refund. At some point, I'm -- I can find it within

(1 the exhibits, but you made reference to the Bristol

2 got a refund from overpayment of an insurance

3 premium?

4 A Right.

5 Q Because the flood zone was marked

6 incorrectly?

7 A The flood zone was marked -- was

8 incorrect, that's correct.

9 Q The amount of that refund was

10 approximately 171,000; is that right?

11 A I don't recall it being that much.

(12 Q Okay.

13 A But --

14 Q Let me --

15 THE COURT: That's about right, isn't it?

16 MS. VEST: Yes. It was 171.

17 BY MS. POPE:

18 Q When that money came in, did the board

19 make the decision to deposit that into the reserve

20 fund --

21 A Yes.

22 Q -- towards the construction and litigation

23 costs?

(24 A They put it in the reserve fund, yes.

25 Q Which was --

(1 A We had a construction and litigation fund,
2 but it was not put into that, if I recall correctly,
3 which we had a regular reserve fund, and we had a
4 litigation fund.

5 Q Right. But the litigation fund kept
6 tapping into the reserve fund?

7 A Borrowed, yes.

8 Q Okay. And --

9 A I mean that was in keeping entry where it
10 was due to --

(11 Q And that was -- what to do with that
12 refund was never discussed with the homeowners as a
13 whole?

14 A No.

15 Q Okay. It was just a unilateral decision
16 on what to do with that money?

17 A By the board with the advice of our
18 attorney, yes.

19 Q Was there an opinion letter from your
20 attorney on what to do with that?

21 A I don't recall.

22 Q Because I have never seen it.

(-- 23 A I don't recall. I remember the
24 discussions as to whether that could come -- but I
25 don't recall whether there was an opinion letter or

1 not.

2 Q Okay. Communications, or the lack
3 thereof, communication was a common complaint for
4 the first few years from homeowners to the board.
5 Is that fair to say?

6 A They did complain, yes. Lack thereof is
7 not fair, but I will say they complained.

8 Q Okay. There was complaints that they
9 weren't getting communications from the board?

10 A But they were. There were complaints. I
11 will disagree that they were not getting them.

12 Q And, in fact, there were homeowners that
13 would speak up at meetings that would say we think
14 there's a problem with communication?

15 A That's correct.

16 Q Okay.

17 A They did.

18 Q All right. And there were times when some
19 things got e-mailed to homeowners in regards to
20 we're having a meeting or any type of information
21 about the Bristol. There was no set uniform way to
22 communicate with the homeowners initially?

23 A We had a newsletter, and we had a website,
24 and we put information under the door. We mailed.
25 We e-mailed. We called. We had meetings. I think

(1 we went back and did assessment of the types of
2 communication that were done during when I was on
3 the board, and it was numerous, really, really
4 numerous.

5 Q Well, there may have been numerous
6 communications, but there was never a set way as to
7 how things were going to be communicated. The board
8 never knew specifically is this going to get
9 e-mailed, or is this going to get shoved under the
10 door, right?

11 A We did newsletters, and I said, we had --
12 we did newsletters. We did e-mails. We hired Lona
13 as our property manager to manage these things, and
14 she sent them out. She put them under the door.
15 She e-mailed them. We put them in newsletters. We
16 put notices on the bulletin boards. You know, I
17 think that there was just widespread communication.

18 Q Okay. So in your opinion, even though
19 numerous homeowners were complaining about the lack
20 of communication or the untimeliness of
21 communication, you still think that the board was
22 doing their job?

(— 23 A I absolutely think that the board was
24 doing their job, and the people who thought that
25 they were not was the people who have the other

1 lawsuit. I mean the complaints were consistently
2 from the same people.

3 Q Was --

4 A And they were addressed.

5 Q John Primus wasn't a part of that Hanger
6 lawsuit, correct?

7 A No.

8 Q John Lucas and Carolyn Lucas were not part
9 of that --

10 A I never received any complaints from the
11 Lucases about communication.

12 Q You weren't at the board meetings when he
13 stood up and spoke and said that he had problems
14 with communications?

15 A I just simply disagree. We communicated.
16 I mean I believe that we heard that he didn't read
17 some of those communications. There's nothing I can
18 do about that.

19 Q Behind tab 9 of the plaintiffs' trial
20 brief, I'm going to show you what's marked as
21 Plaintiffs' Exhibit -- it was marked Plaintiffs'
22 Exhibit 24 from depositions, but it's behind tab 9.

23 A Yes.

24 Q This is an e-mail communication from you
25 to Lona Vest, and I point here. It's dated June

1 28th, 2007, one, two, three, four, five -- the fifth
2 paragraph. It's kind of -- there's some paragraphs
3 and some lines, but where it starts, would you also
4 mind posting the letter on the bulletin board? And
5 then it says, what do you usually do about
6 mailings/delivering paper copies? I don't want to
7 put more on you. So perhaps I can handle that part,
8 or we could ask security to put copies under the
9 doors.

10 Some of these people who don't live
11 there all the time probably have about 100 pieces of
12 paper under the doors by now. Let me know how you
13 want to handle that part.

14 So according to this, there were
15 sometimes communications by paper, sometimes
16 communications other ways. It was kind of a, I
17 guess, play by play on how you-all were going to
18 communicate with the homeowners, correct?

19 A Once again, I disagree. What I'm saying
20 here is they probably have a lot under there. Where
21 they were also mailed, they were also e-mailed. We
22 also put up notices. You know, so I'm not saying
23 that we -- that was hither or thither. I was saying
24 we covered it on several different bases over and
25 over again.

1 Q Okay. In 2007, there was a special

2 assessment done, \$1,896 per unit. Does that sound
3 familiar? Sound right?

4 A 2007, yes.

5 Q Yes. In 2007. Was that the only special
6 assessment in 2007 for the litigation?

7 A Yes.

8 Q Okay.

9 A As I recall, yes.

10 Q Okay.

11 A Yes. Because we did it under the master
12 deed.

13 Q For the 20 percent.

14 A Right. Once a year.

15 Q And another one in 2008?

16 A I believe there was one in 2008.

17 Q Okay. Close to the same amount?

18 A I cannot remember, honestly. I'm sorry.

19 Q No. That's okay.

20 MS. VEST: Kelly, I don't know if this is
21 appropriate to say to you, but we only had one
22 assessment in for 1,896.

23 MS. POPE: Okay.

24 THE WITNESS: That's what I thought the 20
25 percent rule was.

1 BY MS. POPE:

2 Q And you heard some discussion earlier
3 during Dr. Lucas' testimony about a CD being mailed
4 out?

5 A Yes.

6 Q Okay. That was a CD mailed out in -- was
7 it 2006 or 2007? It was an informational piece
8 about the litigation.

9 A I believe that was late 2006.

10 Q Okay.

11 A Which is why I'm saying I think we had a
12 problem. I think that I took over as president in
13 2006 because that's when -- I think it was in like
14 December.

15 Q Okay. And that was informational to the
16 homeowners about the lawsuit, what could be coming?

17 A Right. We did a presentation --

18 Q Okay.

19 A -- on what was being done at that point
20 from the destructive testing, that kind of thing.

21 Q Okay. And then in -- I believe it was
22 2010, you were no longer a member of the board, and
23 actually I think by that point, almost an entirely
24 new board had come on?

25 A I think that's true.

1 Q And you wrote a letter to them, to the
2 board, cautioning them about being so transparent;
3 is that correct?

4 A About being transparent or not being
5 transparent?

6 Q About trying to be so transparent or
7 warning them about being transparent or trying to be
8 transparent.

9 A Do you have the letter?

10 Q Uh-huh. I do. However, I do not -- hold
11 on. Sorry. Let me find it. It's not been marked
12 as a trial exhibit. It is actually an exhibit to
13 the depositions. It's actually Plaintiffs' Exhibit
14 56 from the deposition, and I will show you this
15 copy.

16 MS. POPE: And, Your Honor, I'll hand you
17 my copy if you'd like that.

18 BY MS. POPE:

19 Q And during your deposition testimony, I
20 believe that you testified that this was written in
21 2010, and you put this memo together to the board.
22 Do you recall putting this memo together?

23 A I do. I do.

24 Q Okay. And that the purpose was that you
25 were wanting to -- basically, kind of a warning to

(1 the people running the board that some people had
2 been stating that they were -- that were running for
3 the board that they didn't want to go into executive
4 session, and --

5 A What they were saying is that they were
6 going to eliminate executive session. They were
7 never going to have an executive session, and I said
8 from what I knew and from my experience is that was
9 a dangerous thing to do. Because executive session
10 serves its purpose, and in many cases is necessary
11 and required. And you don't want to make the
12 statement you'll never have executive session.

(13 Q I believe you called it utter foolishness.

14 A Well, it is utter foolishness. I'll agree
15 with that.

16 Q And that you warned them against being
17 transparent, and that that was a lofty ideal?

18 A What I'm saying and what I said before,
19 where executive sessions have served is that there
20 are things that boards must do in executive
21 sessions, whether it's litigation, whether it's
22 personnel, whether it's confidential property owner
23 information. And to make the statement that you
24 would not ever have executive session is
25 foolishness. That's dangerous business, in my

(1 opinion.

2 Q Well, isn't it true in your deposition,
3 where you were under oath, and you were making the
4 statement about they were saying everything would be
5 transparent, that you thought that that was a lofty
6 idea?

7 A Well, it is -- lofty idea, I mean I don't
8 really -- I'm not quite sure where we're going with
9 this. What I'm saying is that to say that you're
10 never going to have executive session, that you're
11 not going to have things that are done in private,
12 and -- I mean, you know, there are times when you're
13 discussing what's going on with the property owner,
14 or you're discussing what's going on with an
15 employee, or you're discussing something that's
16 incredibly important in a lawsuit that cannot get
17 out on the street.

18 And so when people say they're going
19 to be transparent, lofty idea might not have been
20 the best choice of words, but what I'm saying is
21 that executive sessions serves a purpose. It's
22 necessary and it should not be taken -- it shouldn't
23 be gone into lightly, but no one should say they're
24 not going to have one.

(25 Q And in your opinion, you don't think a

(1 board should be transparent?

2 A I do believe a board should be
3 transparent, but I also do believe there are times
4 when the board has to conduct its business in
5 private.

6 Q Okay. I'll go back to your deposition.

7 A I don't think I said anything different
8 from that.

9 Q I take you to page 70, which is from the
10 continued deposition held on July 31st, I believe,
11 for identification -- no, July 30th, for
12 identification purposes. I take you to page 70 and
13 down to beginning line 16, and your answer. There's
14 a lengthy answer, and I'm going to pick up with line
15 16 where it states, and so that was a concern of
16 mine, you know, having left the board or having a
17 new board in place.

18 Some of the things that were being
19 said, that we will never hold an executive session.
20 Everything will be transparent. All meetings will
21 be opened, and while that's kind of a lofty ideal --
22 I believe that's a typo. Idea, in many cases, it's
23 also incorrect and can cause problems for the
24 community association.

(25 A Yes.

1 Q Is that not what you said?

2 A That is exactly what I said.

3 MS. POPE: Okay. Could I have just a
4 moment to confer with counsel?

5 THE COURT: Sure.

6 MS. POPE: I believe if there's no
7 objection that we'll mark this.

8 MR. BARFIELD: No. That's fine.

9 MS. POPE: I'm not sure what number it
10 would be. I think it would be Defendants' 2.

11 MR. BARFIELD: It'll be Plaintiffs' 2.

12 (Plaintiffs' Deposition Exhibit No. 2
13 was marked for identification.)

14 MS. POPE: I have no further questions at
15 this time, Your Honor.

16 THE COURT: Cross-examination?

17 MR. BARFIELD: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. BARFIELD:

20 Q Ms. Landry, I'm going to try to be very
21 brief. Famous last words from a lawyer but -- based
22 on your experience on the Bristol board --

23 A Uh-huh.

24 Q -- did the board, in your opinion, ever
25 act counter to what it believed to be the best

(1 interest of the association?

2 A No. Well, we always acted in the best
3 interest. I felt very strongly about that.

4 Q Okay. Did the board ever intentionally
5 keep important information from the members of the
6 association at large?

7 A No. We did not. We would -- but we
8 did -- we would release information when it came to
9 the lawsuit when our attorneys told us it can be
10 released. We would never have released it at a time
11 that would harm. If it harms the case, it harms the
12 owners. So we had to be very clear on that.

(13 Q So you relied on the advice of counsel for
14 those decisions?

15 A Always, yes.

16 Q Okay. Did you also rely on the advice and
17 recommendations of the various experts that the
18 association retained to work on its behalf in the
19 construction litigation?

20 A Yes.

21 Q As we sit here today, do you believe that
22 the board acted appropriately in processing that
23 advice and acting on it?

(24 A Yes. I do. I do.

25 Q Do you believe, now that we're several

(1 years down the road, that the Bristol needed to be
2 fixed?

3 A Oh, yes.

4 Q And we're going to ask some others about
5 the details of this, but if you can, what -- in a
6 nutshell, what was wrong with the building?

7 A What was wrong with the building were the
8 windows, the installation of the windows. The
9 building leaked. The window leaked. The windows
10 themselves may have been okay as a window, but they
11 leaked. I can't -- I'm not an engineer, but we
12 certainly had so many studies done, but the windows
13 did leak and the damage was pervasive.

14 Q All right. And did the exterior
15 cladding -- and what I mean by that is the stucco --
16 did that have to be pulled off and replaced?

17 A It did. It did. And one of the things
18 that I think is important -- I mean it hasn't really
19 been brought out, but 40 percent of that building is
20 glass -- is windows. So you start messing with a
21 window, or you take a window out, or you move this,
22 you do that, when you start to correct that, you're
23 cutting into that cladding. So you can't put damage
24 on top of damage. The whole thing had to be
25 repaired and repaired so that it would be good for

(1 the future.

2 Q Okay. Was there plywood sheathing
3 underneath the stucco on the exterior of that
4 building?

5 A I honestly don't recall that.

6 Q Okay. There may be some other
7 witnesses --

8 A Yeah. There may be some other witness who
9 can tell you.

10 Q -- that can speak to that more
11 specifically. Do you believe that the decision to
12 fix the building was the right decision?

13 A Yes. Yes.

14 Q We have heard a lot of testimony about the
15 expense associated with pursuing the litigation.

16 A Right.

17 Q You had to pay attorneys?

18 A Yes.

19 Q Okay. And actually, the decision was made
20 to pay the attorneys hourly as opposed to on a
21 contingency fee basis?

22 A That's correct.

23 Q Were you on the board when that decision
24 was considered and made?

25 A Yes.

(1 Q Why, to the best of your recollection, was
2 it decided that the attorney should be paid hourly
3 as opposed to a contingency-fee basis?

4 A The board wanted that, because it was in
5 their consideration that that would be the most
6 economical route to take. And it was discussed. It
7 was discussed with the attorneys, and we felt that
8 that was in the best interest of the owners and
9 would be, like I said, the most economical -- would
10 be the cost-effective way.

11 And we had talked to a number of
12 people who have been involved in lawsuits and felt
13 that this was -- that financially, that was the best
14 decision for the owners. And I think it's
15 important -- I mean I will point out -- I don't know
16 if it was asked of me, but I'm going to point this
17 out if I can. Is that everyone who is on the board
18 owns one of those condominium, and I certainly would
19 never vote against my own best, you know, financial
20 interest or the interest of what I wanted, you know,
21 for me and my family for it to be -- for it to stop
22 leaking and to get it fixed.

(23 Q Okay. After all of the attorneys and
24 experts were paid and the other incidental costs of
25 the litigation were satisfied --

1 A Uh-huh.

2 Q -- did the association still come out
3 ahead monetarily at the end of the litigation such
4 that, in your opinion, it was worth it to get the
5 building fixed?

6 A I believe it was worth it to get the
7 building fixed. Yes. I do.

8 Q Okay. And when I say came out ahead
9 monetarily, I don't mean that you -- we've heard
10 testimony there was a shortfall.

11 A Right. I was going to say that kind of
12 confused me there for a moment.

13 Q You didn't profit?

14 A We did not profit. I believe that we got
15 the best settlement that we could get.

16 Q Okay. What I meant by that, and I'll ask
17 you to answer it after I clarify, having pursued the
18 litigation --

19 A Uh-huh.

20 Q -- paid for the litigation, accepted the
21 settlement that you ultimately accepted --

22 A Right.

23 Q -- did that -- was that, in your opinion,
24 worth it as opposed to the association simply
25 sucking it up, not pursuing litigation and paying

1 out of pocket on its own to fix the building?

2 A Yes. We had -- it's -- we had to do what
3 we had to do. We had to know what we know. You
4 know, we had to go through that process, absolutely.
5 That was the right thing to do.

6 Q This may sound like a silly question, but
7 it bears asking. Did the association have any
8 source of income other than the assessments and
9 regime fees it collected from its members?

10 A No.

11 Q Okay.

12 A No other sources.

13 Q There's no Bristol endowment out there?

14 A No. There's no Bristol endowment. There
15 are -- you know, we went through all that with the
16 owners. There are funded -- they're very limited
17 funding ways is what you meant, yes.

18 Q So if money is being taken from the
19 capital reserve fund --

20 A Uh-huh.

21 Q -- or from the litigation fund or from
22 some other account held by the Bristol, it's all
23 the -- ultimately, the funds paid to the association
24 by members of the association?

25 A That's correct.

(1 Q All right.

2 A That's correct.

3 Q The capital reserve fund, is it safe to
4 say that that was a rainy-day fund?

5 A Yes. Yes.

6 Q That's the --

7 A Well, capital reserve, they can be
8 rainy-day funds. They can also be funds for, you
9 know, future repairs. But reserve funds -- I think
10 we talked about we borrowed from them. We used a
11 litigation fund. We did -- they're -- as you
12 pointed out, there are certain ways that a
13 business -- that the associations can run and
14 they're funded. That's assessments -- monthly
15 assessment, dues, special assessments.

16 Q To the --

17 A We don't have bake sales, for example.

18 Q To the extent that the ultimate goal of
19 the litigation was to insure that the building was
20 repaired --

21 A Right.

22 Q -- do you believe that it was prudent then
23 to tap into the capital reserve fund at times to
24 fund the litigation?

25 A Yes. And the way that we did it when I

(1 was on the board and was, you know, it was we
2 borrowed from them, and then there was also a set
3 up -- a set litigation fund that came from when we
4 did the litigation -- when we did the one-time
5 assessment. That was designated specifically for
6 that, and then we did borrow from that. That is not
7 atypical. That is done.

8 Q You were asked some questions awhile ago
9 about transparency.

10 A Uh-huh.

11 Q And also about the communication between
(12 the board and the homeowners.

13 A Uh-huh.

14 Q With regard to the master deed amendment
15 --

16 A Uh-huh.

17 Q -- do you believe that the information
18 pertaining to that issue was sufficiently conveyed
19 to the membership at large for them to make an
20 informed decision on voting to change the master
21 deed?

22 A Yes. I do, yes.

23 Q And were there any dissenters on changing
(— 24 the master deed?

25 A No. There were no dissenters. I think

(1 that I would add to that, and I think the property
2 owners, some were a little bit surprised to find out
3 that they didn't own the windows. They were a
4 common property. I think most people wanted that --
5 well, they proved it out, they didn't. But they
6 were fine with it.

7 Q Just to be clear, you said some people
8 were surprised to find out that they actually owned
9 their windows --

10 A Oh, stunned.

11 Q -- unto themselves?

(12 A Stunned when we first started this. They
13 were just totally taken aback, and yes. So -- but I
14 think that it was -- that was a desired effect, that
15 40 percent of the building that's out there be
16 common property.

17 Q Okay.

18 A That was what the owners wanted, yes.

(— 19 Q Okay. If amending the master deed to
20 change the status of the doors and windows in some
21 regard facilitated or furthered the cause of the
22 association in its litigation, okay -- I may be long
23 winded. So if I need to clarify, let me know. But
24 if, in fact, the litigation was helped by that
25 amendment, does that, in your opinion, undercut the

1 need to amend the master deed for the insurance

2 reasons set forth in Ms. Mulcare's letter?

3 A No. I think we did absolutely the right
4 thing to have -- for this taken, yes, by the -- for
5 that -- it's the building, you know, that needs to
6 operate collectively. It's a condominium. People
7 don't have stand-alone properties.

8 Q Right. And the master deed as it was
9 originally drafted was something that was prepared
10 by the developer?

11 A Exactly. Exactly, which is why you review
12 the master deed frequently when you first come and
13 take over. When it first transitions, that's -- you
14 go through it very carefully to see what issues may
15 be there that need to be addressed.

16 Q Ms. Pope asked you about off-site meetings
17 --

18 A Yes.

19 Q -- of the board.

20 A Right.

21 Q Can you tell me why meetings were held off
22 site?

23 A And I had said this earlier, the room,
24 which is referred to as the Bristol room, the common
25 area room, is a room of common traffic. There's the

1 swimming pool. There's -- you know, there's a lot
2 of traffic out there. And although it's a large
3 room, it does not have a conference table. It did
4 not have telephone conferencing capabilities like we
5 have here.

6 One of your board members are one of
7 the -- the treasurer offered his conference room,
8 because it had this type of a set up, which they
9 offered to us for free. We could use it so that we
10 could conference in anyone who wished to participate
11 in the meeting.

12 And also, as I said before, a board
13 meeting is a business meeting. It's a place to
14 discuss finances. It's a place to discuss
15 maintenance. It's a place to discuss many, many
16 things that had to do with the business of running
17 the condominium.

18 So as a business meeting, we wanted
19 to hold it in a business setting, but we did have
20 chairs set up for people to come. Property owners
21 did attend, and they were there. We had property
22 owners who were there -- sat through entire budget
23 discussions.

24 Q You mentioned the telecommunications
25 capabilities.

(1 A Uh-huh.

2 Q The Lucases live in Greenville most of the
3 time.

4 A Right.

5 Q If they had wanted to call in to a board
6 meeting in the Bristol room, could they have done
7 that?

8 A Not at that time.

9 Q Okay. If they had wanted to call into a
10 board meeting at the off-site location, could they
11 have done that?

(12 A Yes.

13 Q Okay. And the off-site location was where
14 in proximity to the Bristol?

15 A It was probably a half a mile. I mean
16 some of the people walked or bicycled there.

17 Q Okay. Was it in -- it was part of -- it's
18 an MUSC facility?

19 A It's MUSC. It's the Medical Society of
20 South Carolina.

21 Q Okay.

22 A Right there at Jonathan Lucas Street.

(23 Q Okay. I asked you a moment ago about the
24 decision to pay the attorney hourly as opposed to on
25 a contingency fee.

1 A Uh-huh.

2 Q And this may -- the ultimate resolution of
3 the case may have come after your tenure on the
4 board, and so if you don't know, that's fine. But
5 do you know whether or not the association
6 ultimately came out ahead financially by taking that
7 hourly-rate option as opposed to a one-third
8 contingency fee or 40 percent --

9 A Based on what I know of the fees, we came
10 out ahead. It was the right decision.

11 Q Okay.

12 A It cost us less to go that way.

13 Q Okay. Do you know how much less?

14 A I don't know. I'm sure it was maybe -- I
15 really don't know. I'm guessing in the neighborhood
16 of 100, \$200,000 maybe, but I'm trying to think in
17 terms of what the one-third would have been. And
18 also, once it -- there are also things that I don't
19 know would have kicked in, because it went to the
20 trial level, then the percentages went up. So at
21 that point, we were really, really doing the right
22 thing.

23 Q So that the contingency fee arrangement --

24 A Contingency would have gone up as it does
25 with -- you know, get 30 percent and then it's like

1 40 if you get -- so yeah. We were good to have done
2 what we did.

3 Q . I just want to make sure that this is
4 clear on the record. The decision to file suit in
5 the name of the association --

6 A Yes.

7 Q -- was that put to a vote of the
8 association?

9 A Yes. It had to be, yes.

10 Q And so the association voted and approved
11 --

12 A They did.

13 Q -- that step?

14 A They did.

15 Q All right. Was the association asked to
16 vote in and approve the replacement of -- or the
17 replacement windows that were put in?

18 A Yes.

19 Q And did the association vote on and
20 approve the special assessment that was levied to
21 fund the shortfall between the settlement funds and
22 the cost of the repair?

23 A Yes. They did.

24 MR. BARFIELD: I think that's all I have.
25 Thank you.

1 THE COURT: Redirect?

2 MS. POPE: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. POPE:

5 Q Just a moment ago, Mr. Barfield made
6 reference to the reserve being a rainy-day account.
7 Isn't the purpose of the reserve fund to have money
8 there to make repairs to the building as needed?

9 A Yes. And I added that when he asked me
10 that.

11 Q Right. So it's not a rainy-day, fun-day
12 account. It's there to do things to the building as
13 needed to keep it in good shape?

14 A That's correct. But if something does
15 happen, it's -- for example, if you said, okay. I'm
16 going to do a roof repair. We're expecting 20 years
17 out, but the roof -- something happens and it
18 becomes an emergency, then you go ahead and pull
19 from those funds then.

20 Q Because the money should be there?

21 A The money should be there, and so you
22 build it up on reserves. But part of a reserve fund
23 is also understanding, you know, that you need money
24 for emergencies too, because your operating fund is
25 not necessarily going to carry that as well. You

(1 know, you have got to have --

2 Q And a reserve fund should be properly
3 funded?

4 A Yes. It should be.

5 Q And the goal is for it to be properly
6 funded at all times?

7 A The goal is for it to be properly funded
8 at all times, but I will say that when you talk
9 about how you fund something, you pay for
10 litigation, or you pay for a repair that may be more
11 than is in the funds at that point, or some other
(12 expense. It is totally okay to borrow from the fund
13 as long as you have a -- you know, there's a borrow
14 mechanism in place to borrow from a reserve fund to
15 fund something you need.

16 And it is reflected on the books. It
17 is something that's auditable. It's out there. It
18 has to be paid back, but you can -- the community
19 association can determine at what point it's paid
20 back.

21 Q But it should be paid back?

22 A Yes. It should be.

(23 Q And if an entity -- so, for instance, the
24 beach company had underfunded, and I believe I have
25 seen the figure somewhere in close proximity of

1 \$300,000 that it was underfunded when the beach
2 company turned over ownership to the homeowners
3 association?

4 A Uh-huh.

5 Q Is it the responsibility of the board to
6 go after the beach company or that entity that owes
7 that money and --

8 A Which I do believe we did. Now, there's
9 one thing. There's an issue on reserve funds that I
10 think needs to be brought out. Is that you can say
11 from a reserve study this is what needs to be
12 funded. In South Carolina, at least on the time
13 that I was on the board, as I understand it now,
14 there is no law that says it has to be precisely
15 this amount. It's a best practice to have funded at
16 60, 70 or 80 percent. There are states where it's
17 the law, but I do not think it's a law here.

18 Q So you think the board did the best job
19 that they could do in taking \$50,000 when they were
20 owed an extreme amount more than that from the beach
21 company for the underfunding of the --

22 A The \$50,000 was not part of the settlement
23 that was given at the beginning, and that wasn't
24 something that we actually --

25 Q So it's your understanding that the money

(1 that the beach company paid in settlement at the end

2 of 2009, that some of that was for the reserve fund?

3 A No. I don't -- I don't know that. What
4 I'm saying is that the \$50,000 that you referred to
5 was -- beach company just wrote a check for \$50,000.
6 That wasn't part of a -- we told them we thought it
7 was underfunded. We also said that we have this
8 problem with paying for, you know, more destructive
9 testing than we said.

10 And they said, well to help you
11 along, we'll write you a check for \$50,000. That
12 wasn't part of a -- it wasn't part of settlement.
13 It wasn't even anything anybody said, or that's
14 enough. Thank you very much. It wasn't like that
15 at all.

16 Q So it really wasn't an issue that was
17 pushed?

18 A Well, it was pushed when we filed the
19 lawsuit, but at that time, that money was basically
20 in a discussion given. This was early on.

21 Q So I'm going to ask you again, your
22 understanding is that when the settlement came from
23 the beach company, when they paid into the
24 settlement in 2009, it's your understanding that the
25 portion they paid in would also cover some of the

1 reserve fund?

2 A No. I don't know. That's why I'm saying
3 that.

4 Q You don't know?

5 A No. I don't know.

6 Q Okay.

7 A I was not part of the settlement. What I
8 know was that the settlement was voted on by the
9 owners to be accepted. It had to be. They voted to
10 accept it.

11 MS. POPE: Okay. I have no further
12 questions.

13 THE COURT: All right. Recross?

14 RE-CROSS-EXAMINATION

15 BY MR. BARFIELD:

16 Q The board -- the association's attorneys
17 were aware of the issue whereby the -- that the
18 beach company had underfunded the reserve fund
19 initially?

20 A Right.

21 Q Right. The attorneys knew that?

22 A Yeah.

23 Q And they pursued that as part of their
24 claims --

25 A Right.

1 Q -- against the appropriate defendants?

2 A Right. I think what -- I'm sorry. I
3 thought what I was being asked at the end, was this
4 was all supposed to be divided a certain way. I
5 just can't address that, because I don't know.

6 Q Right.

7 A It was a settlement that was accepted.

8 Q I just wanted to make sure that we're
9 clear that that was one of the issues that was
10 turned over to the attorneys.

11 A Yes.

12 Q Who pursued it on behalf of the
13 association?

14 A Right, right. We did not pursue it
15 individually after that, yeah, once the lawsuit was
16 filed.

17 Q And as we all know, the litigation
18 resulted in a settlement?

19 A That's correct.

20 Q So all claims --

21 A Yes.

22 Q -- in the litigation --

23 A Yes.

24 Q -- were resolved in exchange for the
25 settlement that was reached?

(1 A Precisely, okay, yes. I see.

2 MS. POPE: Okay. That's all I have.

3 Thank you.

4 THE COURT: All right. Thank you, ma'am.

5 You can be excused, or you can stay with us if

6 you'd like. Do you have another witness at

7 this time?

8 MS. POPE: No, sir. Not at this time.

9 THE COURT: So we want to recess for
10 today?

11 MS. POPE: Yes, sir.

(12 (Proceeding was adjourned at 4:38

13 p.m.)

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REPORTER'S CERTIFICATE

I, TRISHA G. RARICK, Court Reporter and Notary Public in and for the State of South Carolina at large, do hereby certify that I correctly reported the within-entitled matter and that the foregoing is a full, true and correct transcription of my shorthand notes of the testimony and/or other oral proceedings had in the said matter.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my seal this 14th day of June, 2013, at Charleston, Charleston County, South Carolina.



TRISHA G. RARICK
Court Reporter
My Commission Expires
APRIL 19, 2019