The State Of South Carolina
In The Court Of Appeals

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Appeal from Beaufort County
Court Of Common Pleas
The Honorable Marvin H. Dukes, III,
Master-In-Equity

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Civil Action No. 2008-CP-07-00517

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Gregory M. Gottschlich and Donald L. McNeil,

Appellants,

versus

Strimpfel Custom Homes, Inc., Joseph A. Reeve,
Jerry L. Richardson, Coastal Surveying Co., Inc.,
Thomas N. Dye, Jan H. Dye, Ken Oliver,
The Byrne Corporation d/b/a Dunes Marketing Group,
Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman,

Defendants,

Of whom

Ken Oliver, The Byrne Corporation d/b/a Dunes Marketing Group,
Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman
are the

Respondents.

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**RECORD ON APPEAL**
**VOLUME II OF III (pp. 489-861)**

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**GOTTSCHLICH and McNEIL v. KEN OLIVER, THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP, LAURICH & DEEB, P.A., ROBERT M. DEEB, JR. and CHARLES H. WISEMAN**

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF BEAUFORT | IN THE COURT OF COMMON PLEAS<br>FOR THE<br>FOURTEENTH JUDICIAL CIRCUIT |
| Gregory M. Gottschlich and Donald L. McNeil,<br><br>Plaintiffs,<br><br>v.<br><br>Strimpfel Custom Homes, Inc.; Joseph A. Reeve; Jerry L. Richardson; Coastal Surveying Co. Inc.; Thomas N. Dye; Jan H. Dye; Ken Oliver; The Byrne Corporation d/b/a Dunes Marketing Group, Laurich & Deeb, P.A.; Robert M. Deeb, Jr. and Charles H. Wiseman.<br><br>Defendants. | CIVIL ACTION NO. 2008-CP-07-00517<br><br>**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT DYES' MOTION FOR SUMMARY JUDGMENT** |

Plaintiffs Gregory M. Gottschlich and Donald L. McNeil (collectively "Plaintiffs") submit this memorandum in opposition to Defendants Thomas N. Dye ("T. Dye") and Jan H. Dye ("J. Dye") (collectively "Defendants Dye") motion for summary judgment scheduled to be heard on December 16, 2009.

## BACKGROUND

This case concerns a house Plaintiffs own at 48 Sea Lane in Palmetto Dunes on Hilton Head Island ("house"). Plaintiffs purchased the house in December 2003 from Defendants Thomas and Jan Dye (collectively "Defendants Dye"). The house's lowest finished floor was constructed below the applicable 14 foot base flood elevation level imposed by the Town of Hilton Head Island ("Town") in conjunction with the National Flood Insurance Program ("NFIP") administered by the Federal Emergency Management

Agency ("FEMA"). This elevation defect has caused Plaintiffs damage in the form of increased annual premiums for federally mandated flood insurance coverage, ineligibility (or, alternatively, extremely high annual premiums) for excess flood insurance coverage, diminution in the house's value, potential future fines to be levied against the property by the Town for the existing ordinance violation, substantial costs and expenses associated with bringing the house compliant with applicable Town ordinance, and substantial legal fees, costs and expenses associated with this lawsuit. The case involves numerous defendants, among them the homebuilder (Strimpfel Custom Homes, Inc.), the individuals who sold Plaintiffs the house (Defendants Dye), the real estate broker and agent(s) who represented Plaintiffs and the seller defendants during the sale transaction (Dunes Marketing Group and Ken Oliver), and Plaintiffs' closing attorneys (L&D, Deeb, and Wiseman). The case involves numerous claims founded upon alleged construction defects, misrepresentations arising out of the sale transaction, and professional malpractice and breach of contract by Plaintiffs' closing attorneys.

For purposes of the hearing on Defendants Dye's summary judgment motion, this memorandum is directed, to the extent practicable, only to Plaintiffs' claims against Defendants Dye.

## FACTS

Defendants Dye purchased the house at 48 Sea Lane, their second house on Hilton Head Island, in 2001 from Ben and Myra Muldong. (T. Dye Dep. p. 45, lns 2-9, Ex. 2.) On March 28, 2001, Sea Island Land Survey issued an elevation certificate to Defendants Dye for the house which showed the lowest finished floor elevation to be 13.3 feet (13.3') – or 0.7 feet less than the applicable fourteen (14) foot base flood elevation. (Am. Compl. ¶ 27;

Pls.' Answers to Interrogs. To Each Pl. from Def. Oliver and Dunes Mktg. Group, Answer No. 12.) Upon receipt of the Sea Island elevation certificate in early 2001, Defendant Thomas Dye first learned of the house's negative elevation. (T. Dye Dep. p 74, ln 25 – p. 75 ln 7; p. 77, lns 14-25; p. 93, ln 24 – p. 95 ln 2.)

In 2003, Defendants Dye received a letter from Seacoast Insurance dated February 25, 2003 notifying them of nonrenewal of their Excess Windstorm and Flood Insurance policy. The letter demanded timely payment of $4,578.00 for replacement coverage. At the bottom of the letter, set off by three asterisks, was a notice advising the Dye's that the flood insurance premium was more expensive due to the house's negative elevation. (February 25, 2003 letter from Shelly Wright to Thomas and Jan Dye.)

On March 3, 2003, eight (8) days after the date of the Seacoast letter, Defendants Dye contracted with Dunes Marketing to list the house for sale. (Oliver Dep. Ex. 8.) At the direction of their realtor, Defendants Dye subsequently completed a 24 point South Carolina Residential Property Condition Disclosure Statement ("disclosure statement"). (T. Dye Dep. p.52, ln. 13 – p. 53 ln. 19.) Defendant Thomas Dye filled out the disclosure statement and signed it, and Defendant Jan Dye subsequently signed it without reviewing it. (T. Dye Dep. p. 52, lns. 17-21; J. Dye Dep. p. 47, lns. 6-16.) Through their realtor, Defendants Dye provided Plaintiffs with a signed, completed disclosure statement. (Am. Compl. ¶ 22.) Despite Defendant Thomas Dye's knowledge of the house's elevation, in the disclosure statement, item 17 ("Violations or variances of building codes or zoning ordinances") was checked as "No." (Am. Compl. ¶ 22, Ex. G.) Item 21 dealing with owners' association fees or common area expenses or assessments was also checked as "No"; despite the fact that the house was subject to a homeowners association fee. (T. Dye Dep. p. 62, ln. 14 - 63, ln. 9.)

Defendant Thomas Dye didn't otherwise disclose the house's negative elevation to Plaintiffs because he didn't deem it important for purchasers to know. (T. Dye Dep. p. 93, ln 24 – p. 95 ln 2.)

Plaintiffs, relying on the representations made in the disclosure statement, executed a contract of sale for the house with Defendants Dye in November 2003. (Am. Compl. ¶ 22.) Pursuant to the contract, Plaintiffs bought the house from Defendants Dye in December 2003 for $1,395,000.00. (Am. Compl. ¶¶ 6, 26.)

After Hurricane Katrina caused catastrophic damage to the Gulf Coast in August 2005, Plaintiffs sought quotes for excess flood insurance for the house in the event a similar disaster should befall the Hilton Head Island area. (Am. Compl. ¶ 27.) In the process of doing so, Plaintiffs were informed by Seacoast Insurance Company around April 10 – 20, 2006 that their house was not eligible for excess flood insurance because its lowest finished floor, at least according to the aforementioned elevation certificate issued for Defendants Dye by Sea Island Land Survey on March 28, 2001 showed the house as below the applicable fourteen (14) foot BFE. (Am. Compl. ¶ 27; Pls.' Answers to Interrogs. to Each Pl. from Def. Oliver and Dunes Mktg. Group, Answer No. 12.)

During the course of following up on the newly acquired information concerning the house's elevation, Plaintiffs – Greg Gottschlich in particular – spoke with representatives from the Town, Coastal Surveying, Sea Island Land Survey, Laurich & Deeb, P.A. and possibly other entities to discuss the situation. Gottschlich had the Town send him a copy of documents and records it had on file relating to the house's construction. (Plaintiffs' Answers to Interrogatories to Each Plaintiff from Defendants Oliver and Dunes Marketing Group, Answer No. 12.) The documents received from the Town included an elevation

certificate prepared by Coastal Surveying Company on November 24, 1987 indicating the house's lowest finished floor elevation to be 14.1 feet – an elevation compliant with the applicable base flood elevation level. (Id.) In mid 2006, Gottschlich called Sea Island Land Survey and requested that it confirm the information in its March 28, 2001 elevation certificate, and Sea Island did so. (Id.) Thereafter, Gottschlich contacted Coastal Surveying, the company that prepared the original elevation certificate in 1987, and requested that it too verify the accuracy of the March 28, 2001 certificate issued by Sea Island, and Coastal Surveying did so. (Id.) Gottschlich also had a number of conversations with Town Floodplain Administrator Trudie Johnson, who informed Gottschlich that if Plaintiffs failed to remedy the elevation defect, they would ultimately be compelled to do so by the Town. (Gottschlich Dep. p. 33.)

Plaintiffs filed this lawsuit on February 18, 2008, less than two years after learning of the house's negative elevation.

## STANDARD OF REVIEW

Summary judgment is only proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005). All ambiguities, conclusions, and inferences rising from the evidence must be construed most strongly against the moving party. Id. 608 S.E.2d at 159. "Because it is a drastic remedy, summary judgment should be cautiously invoked so no

person will be improperly deprived of a trial of the disputed factual issues." Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Bennett v. Investors Title Ins. Co., 370 S.C. 561, 635 S.E.2d 660 (Ct. App. 2006). Likewise, "even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn for them, summary judgment should not be granted." Hill v. York County Sherrif's Dept. 313 S.C. 303, 437 S.E.2d 179 (Ct. App. 1993).

The Supreme Court of South Carolina, abrogating prior case law indicating to the contrary, has recently held that an opposing party need only present a mere scintilla of evidence to survive summary judgment in cases where the burden of proof is the preponderance of the evidence standard. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009).

## ANALYSIS

### I. GENUINE ISSUES OF MATERIAL FACT

#### a. Duty and Breach

Sellers in a residential real estate transaction have a duty to disclose all material facts not within reach of a diligent purchaser. Lawson v. Citizens and Southern Nat. Bank of S. C., 259 S.C. 477, 485, 193 S.E.2d 124, 128 (1972) ("Where material facts are accessible to the vendor only, and he knows them not to be within the reach of the diligent attention, observation and judgment of the purchaser, the vendor is bound to disclose such facts and make them known to the purchaser").

Additionally, S.C. Code Ann. §27-50-10 imposes a duty on all sellers to truthfully complete the disclosure statement. Defendants Dye acknowledge that they needed to disclose the negative elevation if they were aware it constituted a violation. (J. Dye Dep. p. 55, ln. 11 – p. 56 ln. 15.; T. Dye Dep. p. 60, ln. 24 – p. 61 ln. 23.)

Defendants Dye unquestionably had notice of the issue and its importance with respect to flood insurance. The parties are now in receipt of a letter from Seacoast Insurance to Defendants Dye stating, "***Please be advised that your Flood Premium is high due to the Elevation of your home – the base flood is 14.0 and your home is at 13.3; which makes it .07 below base flood elevation." (asterisks in original).

Prior to the production of the letter, Defendants Dye purported in their depositions to have no knowledge of the negative elevation's significance. (T. Dye Dep. p. 94, ln. 14 – p. 95, ln. 2.; J. Dye Dep. p. 49, lns. 11-25.) The letter from Seacoast plainly suggests otherwise.

At a maximum, the evidence shows that Defendants Dye were well aware of the significance of the negative elevation and conspired to make it a subsequent purchaser's problem. In fact, Defendants listed the home eight days after the date of the letter from Seacoast notifying them of the consequences of the negative elevation. Furthermore, Defendants Dye acknowledged they were starting to experience financial difficulties in 2003 when they decided to put the house on the market.

At a minimum, the evidence shows that Defendants should have disclosed the negative elevation. Defendants were required by law to conform their conduct with that which "the law requires of an actor in order to protect others against the risk of harm from his actions." Snow v. City of Columbia, 305 S.C. 544, 409, S.E. 2d 797. Defendants failed

to exercise due care in marketing the home to potential purchasers and completing the disclosure statement as required by law. (T. Dye Dep. p. 15, lns. 17-19; p. 63, ln. 25 – p. 64 ln. 17.) Defendant Jan Dye failed to even review the disclosure statement before signing it. (J. Dye Dep. p. 47, lns. 6-16.)

Furthermore, Defendants Dye cannot be absolved of liability even if a jury finds that Defendants Dye did not appreciate (and should not have appreciated) that the defect constituted a code violation. The letter demonstrates that Defendants Dye were aware of the negative elevation's impact on flood insurance and its materiality to the sale transaction. The letter triggered Defendants Dye's duty as a seller to "disclose all material facts not within reach of a diligent purchaser." Lawson at 485, 193 S.E.2d at 128. Therefore, Defendants Dye should have disclosed the existence of the defect to potential purchasers due to its materiality in terms of ramifications for flood insurance cost and availability.

**b. Reliance and Damages**

Plaintiffs relied upon the representations made by Defendants in purchasing the house. (Am. Compl. ¶ 22.). Plaintiffs' reliance was justified in that they had no knowledge of the truth and Defendants Dye were in a superior position regarding the misrepresentation. (Am. Compl. ¶ 35; T. Dye Dep. p 74, ln 25 – p. 75 ln 7; p. 77, lns 14-25; p. 93, ln 24 – p. 95 ln 2.) See Harrington v. Mikell, 321 S.C. 518, 469 S.E.2d 309 (Ct.App. 2002) and Hit Prods. Corp. v. Anchor Financial Corp., 111 F.Supp.2d 723 (D.S.C. 1999). Defendants Dye contend that Plaintiffs didn't review the disclosure form because it was only signed by Dr. McNeil's wife. Defendants Dye's reasoning is fallacious. While a signature might be competent evidence for a legal fiction of understanding or a finding that one reviewed a document, the inverse is not necessarily true.

Defendants Dye needed to sell the house to relieve financial pressures. (T. Dye Dep. p. 51, lns 1-15.) Had the defect been disclosed, Plaintiffs would not have purchased the home. (Gottschlich Dep. p. 24, ln. 20 – p.25 ln. 6.; p. 87, ln. 22 – p. 88 ln. 18.) Moreover, the value of the home was considerably higher absent the defect, and therefore, Defendants stood to lose a significant amount of money if they disclosed the defect. (Baldwin Dep. p. 40, lns. 12-14.)

As a result of Defendants Dye's acts and omissions, Plaintiffs suffered considerable damage. The primary and most critical element of Plaintiffs' damage is the cost to cure the defect. (Strimpfel Dep. p. 125, ln. 21 – p. 126, ln. 15; Johnson Dep. p. 29, ln. 25 – p. 30, ln. 6; Campbell Dep. Ex. 12; Ex. 18; Hartnett Dep. p. 50, ln. 18 – p. 51, ln. 11.) Plaintiffs paid an excessive purchase price, suffered a diminution in value of the house, have experienced hardship in attempting to procure prohibitively expensive excess flood insurance coverage, paid increased premiums for minimal flood coverage, and paid attorneys' fees and costs. (Baldwin Dep. p. 40, lns. 12-14; Farrell Dep. p. 34, lns. 7-14.; Am. Compl. ¶ 27; ¶ 46.)

## II. STATUTE OF LIMITATIONS

Plaintiffs' claims against Defendants Dye are subject to the discovery rule set forth in S.C. Code Ann. §15-3-535 (1976). Section 15-3-535 states that "all actions initiated under §15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." Id. "[U]nder the discovery rule, the statute of limitations begins to run when a reasonable person of common knowledge and experience would be on notice that a claim against another party might exist." Epstein v. Brown, 363 S.C. 372, 382, 610 S.E.2d 816, 821 (2005). Knowledge of injury alone is insufficient to give rise to a suspicion of a cause

of action against another. True v. Monteith, 327 S.C. 116, 120, 489 S.E.2d 615, 617 (1997). The statute of limitations can only be triggered by knowledge of "facts sufficient to put an injured person on notice of the existence of a cause of action against another." Epstein at 376, 610 S.E.2d at 818 (citing True, 327 S.C. 116, 489 S.E.2d 615). The date the statute of limitations runs in a particular case and application of the discovery rule "are questions of fact for the jury when the parties present conflicting evidence. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 338, 534 S.E.2d 672, 681 (2000); see Arant v. Kressler, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997).

Plaintiffs did not learn the house was below the applicable base flood elevation, but more importantly of the adverse implications of the negative elevation (i.e. Plaintiffs' injury), until approximately April 10 – April 20, 2006, at which time Greg Gottschlich was informed Seacoast Insurance that the house was not eligible for excess flood insurance. (Gottschlich Dep. p. 14, ln. 18 – p. 15, ln. 1.)[1] In the months following, Plaintiffs diligently investigated the details and potential implications associated with the negative elevation. For instance, they communicated with the two separate survey companies that had issued the two elevation certificates containing conflicting elevation information to understand which, if either, of the two was accurate. (Plaintiffs' Answers to Interrogatories to Each Plaintiff from Defendants Oliver and Dunes Marketing Group, Answer No. 12.) Plaintiffs also contacted Trudie Johnson at the town to try to make sense of the situation. (Gottschlich Dep. p. 33, lns. 3-9.) Upon suspecting they may have recourse against others involved in their purchase of the house, Plaintiff Gottschlich contacted closing attorney Robert Deeb, Jr. of Laurich, Deeb & Wiseman, P.A. on December 1, 2006, less than three years after closing.

[1] Defendants Dye claim that Plaintiffs received a copy of the 2001 elevation certificate, however, the testimony of both Plaintiff's contravenes Defendants' claim.

Defendant Deeb eventually informed Plaintiffs, by way of a letter dated December 8, 2006, that they may have claims against a number of parties to the transaction.[2]

Plaintiffs filed their original summons and complaint (which was timely served upon all named defendant) on February 18, 2008, and they filed (and timely served) their amended complaint naming additional parties on March 20, 2009. Both pleadings were filed and served within three years of Plaintiffs being informed of the negative elevation, as well as at least on adverse implication of the issue, in mid-April 2006.

Defendants Dye stretch the 30(b)(6) testimony of Seacoast Insurance to conclude that Seacoast communicated with Plaintiffs regarding the house's negative elevation, resulting in actual knowledge of the defect by Plaintiffs. This conclusion is flawed for several reasons. First, the 30(b)(6) testimony of designee Lyons was unreliable. Lyons questioned her own fitness for 30(b)(6) designation, demonstrated a lack of knowledge in critical areas, and speculated on corporate policies and procedures without adequate knowledge of or reference to actual corporate policies and procedures. (Lyons Dep.) Second, the existence of a policy whereby certain information is communicated to a customer does not necessarily mean that such a policy was adhered to in this case. In fact, Teena Farrell, the Seacoast producer with whom Plaintiffs dealt, testified in her deposition that she had not discussed the negative elevation with Plaintiffs and presented a different picture of actual practices at Seacoast.

Defendants Dye also ask the Court to impute the knowledge of Seacoast Insurance to Plaintiffs.; however "the sale of insurance is an arm's length commercial transaction, which does not give rise to a fiduciary relationship." Pitts v. Jackson Nat. Life Ins. Co., 352

[2] Defendant Deeb also suggested that the statute of limitations may have run with respect to certain parties; however, in his deposition, he acknowledged that he was not a litigator and based his opinion on the fact that three years has passed since the closing. (Deeb Dep. p. 208, lns. 3-7.)

S.C. 319, 331, 574 S.E.2d 502, 508 (S.C.App. 2002). Plaintiffs apply rudimentary law of agency without consulting the law with regard to insurance or conducting the proper analysis of the relationship between Plaintiffs and Seacoast. Under Pitts, Plaintiffs were "operating in the marketplace at the point of purchase" and Seacoast's knowledge would not be imputable to Plaintiffs. Id.

Various Defendants have also suggested that Plaintiffs were on notice based on a coded field in an "Agent Copy" of an insurance policy declaration which contains the following statement: "Elevation Difference: -1." Plaintiffs received one or more declaration pages that, among a number of fields containing codes, abbreviations and other information, included an obscure reference to elevation information under the heading "Location Information." Occupied by references like "No: 4502500014D," "Status: REGULAR," "CRS Class: 6," and "FIRM Zone: A07," the field contains information styled in conformity with the technical rating classifications and requirements of the Federal Emergency Management Agency's ("FEMA") National Flood Insurance Program ("NFIP"). It would be patently unreasonable to impose upon laymen the responsibility for deciphering and investigating the discrete instances of Federal insurance regulatory speak. While this information might potentially be sufficient to place a professional – acquainted with the form, abbreviations and other minutiae of policy declarations – on notice of an issue with the home, it defies any notion of a "reasonable person of common knowledge and experience" to suggest that Plaintiffs should have appreciated the meaning of the reference. In fact, but for Plaintiffs decision to seek quotes for excess flood insurance coverage in April 2006, they likely would still be unaware of the house's negative elevation.

For the foregoing reasons Defendants' statute of limitations defense is without merit

## CONCLUSION

For the reasons set forth above, Defendants Dye's motion for summary judgment should be denied.

Respectfully submitted,

ELLIS, LAWHORNE & SIMS, P.A.

BY: _____

JOHN D. HUDSON, JR.
WESLEY D. FEW
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
TEL: (803) 254-4190

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

12/16, 2009

# FEBRUARY 25, 2003 LETTER FROM SHELLEY WRIGHT TO THOMAS AND JAN DYE

2/25/2003

Thomas & Jean Dye
210 Riverbirch Pl
Duluth, GA 30097

RE: Wrap Non-Renewal LL006SC05003140002 - Excess Windstorm & Flood Insurance
48 Sea Lane, Hilton Head Island, SC

Dear Thomas & Jean Dye,

Please be advised that our office has been notified that Seacoast Brokers will not be renewing the above policy effective April 3, 2003. Due to the market changes, the coverage is no longer available on the above referenced policy.

Our office is able to replace coverage for you with Travelers and NXS. The coverage will remain the same as you currently have. The yearly premium for Excess Windstorm will be $1,855.00 and the premium for Flood Insurance will be $2,723.00. The total premium of $4,578.00 will have to be paid in full. This premium must be mailed directly to our office and payable to Seacoast Insurance. In order to secure coverage upon your expiration date, our office must have this payment prior to April 2, 2003.

I am sorry for any inconvenience this may cause you. If you should have any questions or problems, please do not hesitate to contact our office.

Sincerely,

Shelly A. Wright
Personal Lines Representative

***Please be advised that your Flood Premium is high due to the Elevation of your home - the base Flood is 14.0 and your home Is at 13.3; which makes it .07 below base flood elevation.

# DEPOSITION EXCERPTS/EXHIBITS

# THOMAS N. DYE DEPOSITION EXCERPTS/EXHIBITS

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

GREGORY M. GOTTSCHLICH and DONALD L. MCNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP, LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR. and CHARLES H. WISEMAN,

Defendants.
----------/

COPY

The deposition of THOMAS N. DYE, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Theresa Saxon, Certified Court Reporter and Notary Public, at the Law Offices of Tupper, Grimsley & Dean, P.A., 611 Bay Street, Beaufort, South Carolina, on the 5th day of November 2009, commencing at or about the hour of 10:35 a.m.

HUDSON - DYE (DIRECT EXAMINATION)

I did claim -- file bankruptcy for one of the locations in Florida, in Orlando, Florida.

Q How many locations around the Southeast did EBC have?

A At one time we had 14. That's the most we ever had. It varied from time to time.

Q From 2000 forward, how many locations did EBC have?

A We probably had I would say seven or eight in 2000, 2001.

Q And those locations were where?

A In Georgia, Florida, and North Carolina. Do you want the cities?

Q Please, sir.

A They were in Atlanta, Orlando, Fort Lauderdale, Florida, and Raleigh, North Carolina, and Birmingham, Alabama.

Q None in South Carolina?

A No.

Q And each location as I understand it was incorporated separately; is that correct?

A That's correct.

Q And all of the locations for EBC are now currently no longer in existence; is that

HUDSON - DYE (DIRECT EXAMINATION)

Q That appears to be the Settlement Statement that was generated during the course of your purchase of 48 Sea Lane; is that correct?

A That's correct.

Q And that purchase took place on or about April the 3rd of 2001?

A Correct.

Q If you'll look at the second page in line that's numbered 903.

A "Hazard insurance."

Q You're right, that's exactly where I told you to look. I should have said 904.

A "Flood insurance - Sea Coast Insurance," yes.

Q And there's a "POC" out to the right. Do you know what that POC stands for, by chance?

A No.

Q It stands for paid outside of closing.

A Okay.

Q What can you tell me about how your initial flood insurance premium was paid when you purchased 48 Sea Lane?

A How it was paid? You mean whether it

HUDSON - DYE (DIRECT EXAMINATION)

Q Was there a sense of urgency for you and your wife to sell this property?

A I think there was a mild sense of urgency. I mean, when you decide to do something like that, I mean, it's a big deal. You know, you want it to happen as soon as possible. And especially selling a home like this, you know, when you get offers, you want to consider them. I mean, that's the only way we considered it urgent. We needed to get a good price for it, but . . . We were certainly glad when it was sold because it relieved us a lot of pressures we were having from her physical standpoint, financially, and otherwise.

Q Did you have a self-imposed time frame that you wanted to see the property sold within?

MS. GRAHAM: Objection.

THE WITNESS: I don't recall a specific one, but if I were doing it today, I'd want it done in about 30 days.

BY MR. HUDSON:

Q Did you ever any discussions with Ken Oliver about a time frame that you would like to

HUDSON - DYE (DIRECT EXAMINATION)

see the property sold in?

A I don't recall that.

Q Did you ever have any discussions with anyone from Dunes Marketing about a projected sale time frame?

A I don't recall that kind of conversation.

(Whereupon, Plaintiffs' Exhibit Number 4 was marked for identification.)

BY MR. HUDSON:

Q Mr. Dye, I'm showing you what we've marked as Exhibit Number 4. And you have seen this document before today; is that correct?

A That's correct.

Q And this document is the Seller's Disclosure Form; is that correct?

A That's correct.

Q Did you complete this document?

A Yes.

Q When did you complete it?

A You know, I'm looking -- I don't recall in my mind a date.

Q Do you recall in general --

HUDSON - DYE (DIRECT EXAMINATION)

A This is dated 10/25/03. Does that mean when it was signed? I don't know.

Q Well, do you recall a general time frame in which you would have filled this document out?

A I think when you put a house up for sale, that you fill these out as part of the selling process.

Q Is that what you recall happening in this case?

A Probably so. I'd say it was more likely to be true.

Q How did you come to be in possession of this document to fill it out?

A I would say -- I would think and recall it was given to us by Ken Oliver, our real estate agent, who said that we had to do this to put the house up for sale.

Q Did you have any other discussions with Mr. Oliver about how to go about filling out this particular document?

A I don't think so. I mean, I may have called him about a couple of things on here, but if I did, I don't recall what they were. I

HUDSON - DYE (DIRECT EXAMINATION)

this down. I just didn't think there was anything wrong.

BY MR. HUDSON:

Q When you said during the process various people had seen it, and then you mentioned attorneys, insurance agents, what is the "it" you're referring to?

MS. WALL: Objection.

THE WITNESS: I mean your closing documents and all the research and, you know, what is it, inspections and things that you go through to comply for all these people. Everybody had looked at it, and none of them had thrown up a red flag to me. The city hadn't come to me.

I mean, I had been in the house for a couple three years, the previous owners had been there, and nobody had ever brought the subject up, so I didn't see any reason to be concerned.

BY MR. HUDSON:

Q Had you known that the house had one or more building code violations with it at the

HUDSON - DYE (DIRECT EXAMINATION)

time you were filling out this document, would you have checked "Yes"?

MS. WALL: I object to the form.

THE WITNESS: I think that if I had known about any violations, I would have found them out before I bought it, and I probably would have either been in knowledge of it at that time or not bought the home. I think that's when I would have found out about it.

BY MR. HUDSON:

Q Well, how about in the event that you had come to learn of any building code violations after you bought the home but prior to selling it, under those circumstances would you have checked "Yes" on this form?

MS. GRAHAM: Objection.

MS. WALL: I object to the form.

THE WITNESS: If I had been aware of a violation and the fact that I needed to report it, yes, I would have. There is no doubt in my mind.

BY MR. HUDSON:

Q With regard to Item 17 in particular,

HUDSON - DYE (DIRECT EXAMINATION)

why did you not check "No Representation"?

MS. GRAHAM: Objection.

THE WITNESS: I'm sorry, why did I check "No"?

MR. HUDSON: Why did you not check "No Representation," the far right-hand column?

THE WITNESS: As I sit here and look at it now, I don't really recall why I didn't at that time. I just don't recall why I didn't.

BY MR. HUDSON:

Q In looking at Item 21 that deals with owners' association fees or common area expenses or assessments, "No" is checked there; correct?

A Correct.

Q Is that accurate?

MS. GRAHAM: Objection.

THE WITNESS: You know, obviously at the time I thought it was accurate. And we've had this -- my wife and I have had discussions about this since this document was brought to our attention, and we still can't find

HUDSON - DYE (DIRECT EXAMINATION)

anything in our records that shows that we were part of an association or paid association fees.

Now, maybe we did and wasn't aware of it, but I know that there was an association there that we had an opportunity to join, but we didn't join it.

But as far as other property fees, I just think at that time if -- I mean, I had no reason to put "No" if we were paying fees. I mean, we pay fees at our place in Atlanta, and, you know, that's not something you hide.

BY MR. HUDSON:

Q Do you remember paying any fees when you owned the property at 189 Mooring Buoy?

A No, I don't. But that's not to say I didn't. I mean --

Q You just don't recall it sitting here today?

A I just don't recall, yeah. And the same applies to Sea Lane.

Q In filling out this disclosure

HUDSON - DYE (DIRECT EXAMINATION)

statement, did you ever think to go back to your closing documents from the purchase of 48 Sea Lane just to review information to make sure you refreshed yourself as to any information that may be pertinent to this statement?

MS. GRAHAM: Objection.

THE WITNESS: When filling out this document?

MR. HUDSON: Yes, sir.

THE WITNESS: To be honest with you, I probably didn't research other things to fill out this document. It just seemed -- right or wrong, it just seemed such a straightforward thing that I didn't think I needed to do a lot of research.

BY MR. HUDSON:

Q When you were filling out this document, did you have an understanding as to who would subsequently see it?

A I probably did. I think that when I filled it out, I was filling it out for the benefit of the purchasers. I knew other people would see it.

HUDSON - DYE (DIRECT EXAMINATION)

BY MR. HUDSON:

Q Did you have an understanding in 2001 as to why an Elevation Certificate was needed?

A No. It was apparently required by someone that was dealing with us, insurance or mortgage or someone.

Q Did you ask anyone why it was required?

A I don't recall asking anybody about it, no.

Q What did you do with this document when you received it?

MR. MAHAFFEE: Objection.

MS. GRAHAM: Objection.

THE WITNESS: If I received it directly, I probably gave it to the proper person, which would probably be the attorney or whoever is handling putting the documents together, whoever required the document.

BY MR. HUDSON:

Q Did you review it?

A I wouldn't say I reviewed it. I probably looked at it.

Q Did you pay attention to any of the

HUDSON - DYE (DIRECT EXAMINATION)

elevation information contained on the document when you did look at it?

MS. GRAHAM: Objection.

MR. MAHAFFEE: Objection.

THE WITNESS: I probably saw the elevation that was on there, yes.

BY MR. HUDSON:

Q Did you understand what the information meant?

A No. I mean, it just meant that that's what the elevation was. That's all I understood.

Q Were you curious as to the significance of any of the information contained on the Elevation Certificate?

MS. GRAHAM: No.

BY MR. HUDSON:

Q Why not?

MS. GRAHAM: Objection.

THE WITNESS: I mean, I couldn't think of a reason to be concerned about it. I mean, you know, when you go into something like this, you're depending on your agent, your attorneys and all

HUDSON - DYE (DIRECT EXAMINATION)

knowledge about elevations.

BY MR. HUDSON:

Q But do you have some knowledge about elevations?

MS. GRAHAM: Objection.

THE WITNESS: I mean, if somebody tells me -- the only knowledge I have, if I look at the document and it says the elevation of the house is 13-3, that means it's 13-3. That's my knowledge.

BY MR. HUDSON:

Q At what point in time did you first appreciate the fact that the lowest finished floor elevation of 48 Sea Lane was determined to be 13.3 feet?

MS. GRAHAM: Objection.

THE WITNESS: It may have been when I received this document. I mean, I don't know if the very first time, but I'm assuming that I may have looked at this document and became knowledgeable of it at that time, at the time it was performed.

HUDSON - DYE (DIRECT EXAMINATION)

Johns Creek?

A Correct.

Q And she states that it appears as though it is about to short sell for $600,000; is that correct?

A That's correct. There's an offer on it for that.

Q That offer is currently pending?

A Yes.

Q It has not yet been accepted; is that correct?

A Correct.

Q How long is that offer open for?

A I don't know if there is a timetable.

Q Have you had discussions with your daughter about this lawsuit?

MS. GRAHAM: Objection.

THE WITNESS: I'm sure at some times we've said some things about it. We don't discuss it in -- I don't discuss it in detail with her.

BY MR. HUDSON:

Q And it's your testimony that you simply didn't know that the house at 48 Sea Lane had a

HUDSON - DYE (DIRECT EXAMINATION)

negative elevation; is that correct?

MS. GRAHAM: Objection.

MS. WALL: Objection.

THE WITNESS: I may have known after I saw the certificate that it had a negative -- what you call a negative elevation.

BY MR. HUDSON:

Q After you first saw the Sea Island Elevation Certificate?

A It's possible that I would have known it, yes.

Q If you did know it at that point in time, why did you not see fit to inform my clients of that fact?

MS. GRAHAM: Objection.

THE WITNESS: I didn't feel like it was an issue. It had never been an issue with me, and apparently it wasn't an issue with the clients that had it before. I just didn't think it was important for them to know. We furnished all the documents everybody wanted, and I just didn't see that as a

huge issue.

MR. HUDSON: All right. I think that's all the questions I've got. Thank you, sir.

CROSS-EXAMINATION

BY MS. WALL:

Q Mr. Dye, my name is Susan Wall. I represent some of the other Defendants in this lawsuit, specifically Mr. Deeb, Mr. Wiseman, and Laurich & Deeb. I just have a few questions before for you to follow up.

I believe you were asked and you simply didn't recall with regard to how or why a survey was obtained at the time that you purchased the home in 2001; is that correct?

MR. HUDSON: Objection.

THE WITNESS: That's correct.

(Whereupon, Plaintiffs' Exhibit Number 12 was marked for identification.)

BY MS. WALL:

Q Let me hand you what we've marked as Exhibit 12. Does this refresh your recollection at all that in order to purchase the home, your

A. Settlement Statement Purchase

B. Type of Loan

1. FHA 2. FmHA 3. Conv. Unins. 4. VA 5. Conv. Ins.

U.S. Department of Housing and Urban Development OMB No. 2502-0265

| 6. File Number | 7. Loan Number | 8. Mortgage Insurance Case Number |
|---|---|---|
| DYEPID-01LRS | 8031158862 | |

G. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals. WARNING: It is a crime to knowingly make false statements to the United States on this or any other settlement statement. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

| | |
|---|---|
| D. NAME OF BORROWER: | Thomas N. Dye and Jan H. Dye |
| ADDRESS | 210 Riverbirch Place, Duluth, GA 30097 |
| E. NAME OF SELLER: | Ben D. Muldong and Myra Muldong |
| ADDRESS | |
| F. NAME OF LENDER: | Lighthouse Community Bank |
| ADDRESS: | P.O. Box 25000, Hilton Head Island, SC 29925 |
| G. PROPERTY ADDRESS: | Lot 27, Tr B, Par 3, Bl C, 48 Sea Lane, Hilton Head Island, SC 29928 |
| | Lot 27, Tract B, Parcel 3, Block C, Palmetto Dunes |
| H. SETTLEMENT AGENT: | Bethea, Jordan & Griffin, P.A. |
| PLACE OF SETTLEMENT: | 73-B Shelter Cove Lane Ste 400, P.O. Drawer 3299383, Hilton Head Island, SC 29928 |
| I. SETTLEMENT DATE: | 04/03/2001 |

| J. SUMMARY OF BORROWER'S TRANSACTION | | K. SUMMARY OF SELLER'S TRANSACTION | |
|---|---|---|---|
| 100. GROSS AMOUNT DUE FROM BORROWER | | 400. GROSS AMOUNT DUE TO SELLER: | |
| 101. Contract sales price | 1,162,500.00 | 401. Contract sales price | 1,162,500.00 |
| 102. Personal Property | | 402. Personal Property | |
| 103. Settlement charges to borrower (line 1400) | 168,379.33 | 403. | |
| 104. WATER/SEWER TRANSFER FEE | 25.00 | 404. | |
| 105. | | 405. | |
| Adjustments for items paid by seller in advance | | Adjustments for items paid by seller in advance | |
| 106. City/town taxes | | 406. City/town taxes | |
| 107. County taxes | | 407. County taxes | |
| 108. Assessments 04/03/01 to 12/31/01 | 598.35 | 408. Assessments 04/03/01 to 12/31/01 | 598.35 |
| 109. WATER/SEWER 04/03/01 to 04/30/01 | 24.85 | 409. WATER/SEWER 04/03/01 to 04/30/01 | 24.85 |
| 110. | | 410. | |
| 111. | | 411. | |
| 112. | | 412. | |
| 120. GROSS AMOUNT DUE FROM BORROWER | 1,332,527.53 | 420. GROSS AMOUNT DUE TO SELLER | 1,163,123.20 |
| 200. AMOUNTS PAID BY OR ON BEHALF OF BORROWER | | 500. REDUCTIONS IN AMOUNT DUE TO SELLER | |
| 201. Deposit or earnest money | 26,000.00 | 501. Excess Deposit (see instructions) | |
| 202. Principal amount of new loan(s) | 1,303,900.00 | 502. Settlement charges to seller (line 1400) | 74,891.25 |
| 203. Existing loan(s) taken subject to | | 503. Existing loan(s) taken subject to | |
| 204. | | 504. Payoff of first mortgage loan | 358,046.47 |
| | | Alliance Mortgage Company | |
| 205. | | 505. Payoff of second mortgage loan | |
| 206. | | 506. POA FUA | 800.00 |
| 207. | | 507. POA PROCESSING FEE | 50.00 |
| 208. | | 508. REPAIRS | 5,000.00 |
| 209. | | 509. WATER USAGE | 98.37 |
| Adjustments for items unpaid by seller | | Adjustments for items unpaid by seller | |
| 210. City/town taxes | | 510. City/town taxes | |
| 211. County taxes 01/01/01 to 04/03/01 | 1,169.36 | 511. County taxes 01/01/01 to 04/03/01 | 1,359.95 |
| 212. Assessments | | 512. Assessments | |
| 213. | | 513. | |
| 214. | | 514. APPR WATER/SEWER | 27.00 |
| 215. | | 515. | |
| 216. | | 516. | |
| 217. | | 517. | |
| 218. | | 518. | |
| 219. | | 519. | |
| 220. TOTAL PAID BY/FOR BORROWER | 1,329,469.56 | 520. TOTAL REDUCTION AMOUNT DUE SELLER | 440,002.45 |
| 300. CASH AT SETTLEMENT FROM/TO BORROWER | | 600. CASH AT SETTLEMENT TO/OR FROM SELLER | |
| 301. Gross amount due from borrower (line 120) | 1,332,527.53 | 601. Gross amount due to seller (line 420) | 1,163,123.20 |
| 302. Less amounts paid for borrower (line 220) | 1,329,469.56 | 602. Less reduction amount due seller (line 520) | 440,002.45 |
| 303. CASH FROM BORROWER | 3,057.97 | 603. CASH TO SELLER | 723,120.75 |

SUBSTITUTE FORM 1099 SELLER STATEMENT: The information contained herein is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported. The Contract Sales Price reported on line 401 above constitutes the Gross Proceeds of this transaction.

SELLER INSTRUCTIONS: If this real estate was your principal residence, see Form 2119, Sale or Exchange of Principal Residence, for any gain. For other transactions, complete the applicable parts of Form 4797, Form 6252 and/or Schedule D (Form 1040).

You are required by law to provide Bethea, Jordan & Griffin, P.A. with your correct taxpayer identification number. If you do not provide BJG with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law. Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

| BJG | SELLER 1 | SELLER 2 | SELLER(S) SIGNATURE(S): | SELLER 1 | SELLER 2 |
|---|---|---|---|---|---|
| | | | | | |

PLAINTIFF'S EXHIBIT 2

TitleExpress Settlement System Printed 04/02/2001 at 13:49

REV. HUD-1 (3/86)

SETTLEMENT STATEMENT PAGE2

| L. SETTLEMENT CHARGES | PAID FROM BORROWER'S FUNDS AT SETTLEMENT | PAID FROM SELLER'S FUNDS AT SETTLEMENT |
|---|---|---|
| 700. TOTAL SALES/BROKER'S COMMISSION based on price $1,162,500.00 @ 6.000 = 69,750.00 | | |
| Division of commission (line 700) as follows: | | |
| 701. $ 34,875.00 to DUNES MARKETING GROUP | | |
| 702. $ 34,875.00 to SCHEMBRA REALTY | | |
| 703. Commission paid at Settlement | | 69,750.00 |
| 800. ITEMS PAYABLE IN CONNECTION WITH LOAN | | |
| 801. Loan Origination Fee 0.000 % Mortgage America, Inc. | 11,403.88 | |
| 802. Loan Discount % | | |
| 803. Appraisal Fee to Mortgage America, Inc. (P.O.C.) 725.00 BUYER | 45.00 | |
| 804. Credit Report to Mortgage America, Inc. | 72.00 | |
| 805. TAX SERVICE FEE to FIRST AMERICAN TAX SERVICE | 149.00 | |
| 806. DOC PREPUNDERWRITING to Lighthouse Community Bank | 275.00 | |
| 807. FLOOD DET FEE to FIRST AMERICAN FLOOD CERT | 23.00 | |
| 808. PROCESSING FEE to Mortgage America, Inc. | 267.00 | |
| 809. | | |
| 810. | | |
| 811. | | |
| 900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE | | |
| 901. Interest From 04/03/2001 to 04/01/2003 @ $ 307.7230 /day 28 Days | 8,616.27 | |
| 902. Mortgage Insurance Premium for to | | |
| 903. Hazard Insurance Premium for to SEACOAST INSURANCE - POC | | |
| 904. FLOOD INSURANCE to SEACOAST INSURANCE - POC | | |
| 905. | | |
| 1000. RESERVES DEPOSITED WITH LENDER FOR | | |
| 1001. Hazard Insurance mo @ $ /mo | | |
| 1002. Mortgage Insurance mo @ $ /mo | | |
| 1003. City Property Taxes mo @ $ /mo | | |
| 1004. County Property Taxes mo @ $ 380.68 /mo | | |
| 1005. Annual Assessments mo @ $ 66.67 /mo | | |
| 1006. Aggregate Analysis Adjustment | | |
| 1100. TITLE CHARGES | | |
| 1101. Settlement or closing fee | | |
| 1102. Abstract or title search to Counsellor Title Insurance Agency, Inc. | 385.00 | |
| 1103. Title examination to Counsellor Title Insurance Agency, Inc. | 175.00 | |
| 1104. Title insurance binder to Counsellor Title Insurance Agency, Inc. | 40.00 | |
| 1105. Document Preparation | | |
| 1106. Notary Fees | | |
| 1107. Attorney's fees to Bethea, Jordan & Griffin, P.A. | 900.00 | |
| (includes above items No: ) | | |
| 1108. Title Insurance to Counsellor Title Insurance Agency, Inc. | 2,206.00 | |
| (includes above items No: ) | | |
| 1109. Lender's Coverage $ 2,303,300.00 - 2,181.00 | | |
| 1110. Owner's Coverage $ 1,162,500.00 - 25.00 | | |
| 1111. SELLERS ATTYS FEES to FRASER & ALLEN | | 450.00 |
| 1112. SATISFACTION: M-BODY to BEAUFORT COUNTY RMC | 10.00 | |
| 1113. | | |
| 1200. GOVERNMENT RECORDING AND TRANSFER CHARGES | | |
| 1201. Recording Fees Deed $ 10.00 Mortgage $ 40.00 Releases $ 10.00 | 50.00 | 10.00 |
| 1202. County Recording Fee Deed $ 1,278.75 Mortgage $ | | 1,278.75 |
| 1203. State Recording Fee Deed $ 3,022.50 Mortgage $ | | 3,022.50 |
| 1204. Transfer Fee Deed $ 2,906.25 Mortgage $ | 2,906.25 | |
| 1205. RECORDING FEE WAIVER to BEAUFORT COUNTY RMC | | 10.00 |
| 1300. ADDITIONAL SETTLEMENT CHARGES | | |
| 1301. Survey to Sea Island Land Survey, LLC | 575.00 | |
| 1302. Pest inspection to IMPERIAL PEST CONTROL | | 150.00 |
| 1303. CL-100 LETTER to JOHNSON & SON | 45.00 | |
| 1304. A/C INSPECTION to HALE'S HEATING AND A/C | 195.00 | |
| 1305. RENTAL TAX - M-BODY to BEAUFORT COUNTY TREASURER | 359.17 | |
| 1306. PAYOFF - M-BODY to SOUTHTRUST BANK | 140,887.76 | |
| 1307. | | |
| 1308. | | |
| 1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Section J and 502, Section K) | 159,379.33 | 74,871.25 |

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Thomas N. Dye — Dora D. Mulling

Jan H. Dye — Dora Mulling

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause funds to be disbursed in accordance with this statement.

Settlement Agent — Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

TitleExpress Settlement System Printed 04/02/2001 at 13:49 — REV. HUD-1 (3/86)

Dve 144

524

# JAN H. DYE DEPOSITION EXCERPTS/EXHIBITS

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

GREGORY M. GOTTSCHLICH and DONALD L. MCNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP, LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR. and CHARLES H. WISEMAN,

Defendants.
----------/

COPY

The deposition of JAN H. DYE, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Theresa Saxon, Certified Court Reporter and Notary Public, at the Law Offices of Tupper, Grimsley & Dean, P.A., 611 Bay Street, Beaufort, South Carolina, on the 5th day of November 2009, commencing at or about the hour of 2:05 p.m.

HUDSON - DYE (DIRECT EXAMINATION)

BY MR. HUDSON:

Q I was going to ask you, did that thought ever cross your mind?

A No.

Q Seeing as how you were also one of the legal owners of the property, do you think there was a need for you to review the information indicated on this Seller's Disclosure Statement before signing it?

MS. GRAHAM: Objection.

MS. WALL: Objection.

THE WITNESS: You know, I think if I had, there still would not have been anything that I would have changed on here.

BY MR. HUDSON:

Q Even on Item Number 21, you don't think that's something you would have changed?

MR. MAHAFFEE: Objection.

MS. GRAHAM: Objection.

THE WITNESS: No, because it was -- it was in a flood zone, flood plain.

BY MR. HUDSON:

HUDSON - DYE (DIRECT EXAMINATION)

Well, is it your current understanding that you and your husband in fact never paid such a fee, or do you just not know one way or the other?

MS. GRAHAM: Objection.

THE WITNESS: To my knowledge, we didn't. I could not find anything in my records that we paid any fees.

BY MR. HUDSON:

Q Sitting here today and looking at Exhibit 4, do you believe that all the information that's contained in it is accurate?

MS. GRAHAM: Objection.

MR. MAHAFFEE: Objection.

THE WITNESS: Well, I know now that the house does not meet code, but I had no way of knowing that at that time. And as I said, we had two professionals that were in charge of this that were advising us, and no red flags came up. And there were three lenders that had been involved in this, and nothing was flagged as being improper.

HUDSON - DYE (DIRECT EXAMINATION)

Q So it would be fair to say you never saw this document prior to selling the property to my clients; is that correct?

A No.

Q My statement is correct, you never saw it before selling the property to my clients?

MS. GRAHAM: Objection.

THE WITNESS: That is correct.

BY MR. HUDSON:

Q If prior to selling 48 Sea Lane to my clients you had known that the house had a negative elevation and that the negative elevation constituted a code violation, would you have disclosed that information to my clients?

MS. GRAHAM: Objection.

MS. WALL: Objection.

THE WITNESS: Absolutely.

BY MR. HUDSON:

Q For what reason?

MS. GRAHAM: Objection.

THE WITNESS: Because I'm honest.

BY MR. HUDSON:

Q Would there have been a need to

HUDSON - DYE (DIRECT EXAMINATION)

disclose it?

MS. WALL: I object.

MS. GRAHAM: Objection.

THE WITNESS: If I had known about it, I would have had to have disclosed it.

BY MR. HUDSON:

Q And you would have disclosed it by doing what? Anything in particular?

A Well, probably bringing it to someone's attention. Well, and also on the sheet that . . .

Q The Exhibit 4, Disclosure Form?

A Right.

Q Take a look at Exhibit 11, and I want to ask you, have you read this letter before today?

A Yes, I have.

Q Do you want to read it one more time before I ask you some questions, or can I ask you questions?

A No, go ahead.

Q Were you aware that your daughter wrote this letter to my clients?

# GREGORY M. GOTTSCHLICH
# DEPOSITION
# EXCERPTS/EXHIBITS

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT
OF COMMON PLEAS
FOR THE
FOURTEENTH JUDICIAL
CIRCUIT

Gregory M. Gottschlich
and Donald L. McNeil,

Plaintiffs,

-vs-

CIVIL ACTION NO.
2008-CP-07-00517

Strimpfel Custom Homes,
Inc.; Joseph A. Reeve;
Jerry L. Richardson;
Coastal Surveying Co. Inc.;
Thomas N. Dye; Jan H. Dye;
Ken Oliver; and The Byrne
Corporation d/b/a Dunes
Marketing Group, Laurich &
Deeb, P.A.; Robert M. Deeb,
Jr. and Charles H. Wiseman.

Defendants.

VOLUME I

- - -

TELEPHONIC DEPOSITION OF GREGORY M. GOTTSCHLICH, M.D., taken by me, Susan L. Bickert, a Certified Shorthand Reporter and Notary Public in and for the State of Ohio, at large, as upon Cross Examination, at the offices of Allergy and Asthma Affiliates, Inc., 4260 Glendale-Milford Road, Suite 201, Cincinnati, Ohio 45242, on Monday, July 27, 2009, commencing at 9:03 o'clock a.m. on behalf of Defendants Ken Oliver and The Byrne Corporation, d/b/a Dunes Marketing Group.

about five years. Four to five years.

Q And I assume that since you've been with Island Getaway approximately five years that you're happy with their services?

A Yes.

Q And, well, let me ask you this. What's the first time that you saw anything or had any idea that the elevation on 48 Sea Lane was less than what it should be?

A When I saw it or when I became aware of it?

Q Oh, either one. Any idea when you actually saw a document?

A Okay. I was going to say visually looking at the house you wouldn't know. But I became aware that there was a deficiency around Easter of 2006.

Q And how did you become aware?

A I called our insurance agent. This was after Katrina had struck Louisiana, and I discussed with Dr. McNeil that we should increase our insurance. I called our agent, Teena Farrell, when I was on vacation with my kids on Spring Break, made an appointment, went over and spoke with her. And that's when I was made aware of the elevation

deficiency.

Q And did your insurance agent know it prior to you letting her know?

MR. HUDSON: Object to the form.

BY MR. MAHAFFEE (Continuing):

Q You can answer, Doctor.

A You'd have to ask her that. I don't know.

Q Okay. Well, tell me, you know, after Katrina hit you went to see Teena Farrell, your insurance agent, and learned of it. How did you learn of it?

A I was sitting in her office, and I said -- paraphrasing I said, "Teena we'd like to have increased insurance." I was aware that homes in New Orleans had not been covered by insurance because of the tidal surge, and so that the wind policy would not cover a situation like that. It was widely publicized on the news. And I, therefore, met with her, explained that situation to her. And she, as I recall, pulled up our file and at that point said, "You know what? You can't get flood insurance." I said, "Why not?" And she said, "Because your elevation certificate is not adequate." I said, "What's an elevation

document, we can look at it.

Q Yes, sir. As I said, we'll get to the documents. I'm just trying to get an overview.

A Okay.

Q Anything else that Ken Oliver and the Byrne Corporation doing business as the Dunes Marketing Group did or did not do? In other words, what did they do wrong other than what you've already stated?

A Well, my understanding is that Greg Merrill and Dunes Marketing since they were our agent -- as well as the Dyes' agent, but they were our agent. We signed an agency agreement. That they were required to work on our behalf to make sure that the transaction was proper. They also provided to us the Dyes' disclosure, which was not accurate, regarding deviation from building code standards. And so this had an injurious effect on Dr. McNeil and myself.

Q And when you say they were -- my clients were required to work on your behalf to ensure that it was a good transaction and they failed on that, tell me how they failed.

A Well, had they informed us that the house was deficient in its elevation certificate, we

would not have offered to purchase the house. We would not have purchased the house, and we would not have -- we would not be in the situation we're in right now, and I wouldn't be sitting here in my office with cancelled patients to be talking to you under a deposition.

Q I assume you knew that once you filed a lawsuit at some point somebody would take your deposition?

A Correct.

Q When is the last time you've seen the house or stayed in the house?

A I was there in -- it was Easter of this year. I think it was -- it was a little later. I think it might have been the early part of April.

Q And do you know -- and maybe you do; maybe you don't -- when is the last time Dr. McNeil has been in the house or stayed in the house?

A You'd have to ask him that. I don't know precisely.

Q That's okay.

A But I think -- actually, I believe I recall that he was there about a week before myself approximately. You'd have to get the date from him, but he was there about the same time frame.

about, "Gee, what do you do in situations like this? We're really in a pickle here. How can we remedy this?" It was just a casual conversation. I had a couple conversations with Trudy Johnson, however, which were more substantive, and that's when I said, you know, "What's the outcome if we don't?" She said, "Well, you will be compelled to have it fixed." And that was the other reason that prompted us to proceed with litigation.

Q Okay.

A She told me how they're going house by house, and they're going to the beach front homes and they're making -- they're tearing down condominiums and raising them up. And so it heightened our anxiety and put us in a position where we had no alternative but to seek legal remedy.

Q Oh, yes. I was just wanting to know the exploration process.

MR. MAHAFFEE: Madam Court Reporter, I'm looking for once again in that same stack it's L&D, and I'll leave off all the zeros but 79, 80 and 81. Would you please make that Exhibit 2?

(Whereupon, a discussion was held off the record.)

based upon what you know failed to tell you that the elevation on this property was not 14.1 feet but it was 13.3?

A Well, I think there's a cascade of nondisclosure which commenced at the construction in 1987 when Strimpfel didn't add the I think it was 24 and three-quarter inches to the last course of brick. And then the Dyes obtained, I believe, from around March of 2001 an updated elevation certificate which apparently wasn't submitted to Hilton Head because they had no record of it when I contacted Trudy Johnson. We already discussed the fact that Cary Griffin sent a letter to Bob Deeb that was also copied to Dunes Marketing, Greg Merrill, Ken Oliver with the survey. The survey referenced the elevation which should have prompted somebody to look at the elevation certificate I would think.

Q Yes, sir.

A And who else? Then since Bob Deeb had a copy of that same survey, he didn't disclose it to us. And the bottom line is, as I may have not stated it clearly enough, but had we known November 30th before the closing on the house that the house was not complaint with FEMA elevation code

requirements, we would not have offered that. We would have withdrawn our offer. We would not have purchased the house. And that's a consequence of a myriad of events which commenced back with Strimpfel not following through on what he told I think it was Jerry Richardson, Coastal Survey he would do back in 1987. Maybe also Reeve being in some way a builder involved with this process also not verifying or making sure that things were done properly or saving some money to not complete the project. I don't know what the reason was, but that initial problem led to the ongoing problem, and then it was not disclosed. It was erroneously checked off on the Disclosure Statement by the Dyes that there weren't any defects. We've been through all these facts. I don't think I'm leaving anybody out, but if I am I reserve the right to go back and review, but I think that covers it.

Q All right, sir. And certainly the people that actually sold you the house were Mr. and Mrs. Dye; correct?

A They sold us the house through their realtor, Ken Oliver, and Dunes Marketing, yeah.

Q But the sellers of the house were Mr. and Mrs. Dye; correct?

# RONALD STRIMPFEL
# DEPOSITION
# EXCERPTS/EXHIBITS

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

GREGORY M. GOTTSCHLICH AND DONALD L. McNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP, LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR. AND CHARLES H. WISEMAN,

Defendants.

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The deposition of RONALD STRIMPFEL, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Cathy M. Knoettner, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting & Video Services, 107 Executive Center, Hilton Head Island, South Carolina, on the 1st day of July, 2009, commencing at or about the hour of 10:00 a.m.

HUDSON - STRIMPFEL (DIRECT EXAMINATION)

various parties?

A For the Town. It's for FEMA for the insurance company, for insurance for flood. That's the legal ramification.

Q But with regard to the copy to the developer, you just don't know what the basis for that was?

A No.

Q In instances where an updated elevation certificate is prepared for residential dwellings, do you know if that updated certificate must be provided to the Town of Hilton Head?

A No, I don't know that. You mean like if the house has been built for several years and they do an update?

Q Yes.

A I do not know if the Town requires that or not.

Q Based on your experience in the residential construction industry, what, in your opinion, would be some ways to go about attempting to rectify the negative elevation level that exists with 48 Sea Lane?

HUDSON - STRIMPFEL (DIRECT EXAMINATION)

MR. MAHAFFEE: Objection.

MS. WALL: Object to the form.

MR. HUDSON: That's one of those instances where I say you can still answer.

THE WITNESS: I mean, do I have to answer?

MR. HUDSON: You do

THE WITNESS: I guess the only way to rectify -- you mean to raise it, to get it to an elevation as required, you either add to the top or you -- you add to the top of the finished floor or you raise the foundation.

BY MR. HUDSON:

Q All right. Explain to me what you mean by you add to the top of the finished floor.

A Eleven inches, you have a finished floor now, you add one step required to adjust to, and you add 11 inches to the first floor. If it's got a 10-foot ceiling, or whatever it is, it would be a 9-foot ceiling on the first floor. You'd have to cut in, recut your doors. Unless you have 8-foot doors, you got to go 6.8

# 30(b)(6) TOWN OF HILTON HEAD – TRUDIE JOHNSON DEPOSITION EXCERPTS/EXHIBITS

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

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiffs,

vs.

CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE, JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

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COPY

The 30(b)(6) deposition FOR HILTON HEAD ISLAND OF TRUDIE JOHNSON, a witness in the above-entitled cause, taken pursuant to Notice and Subpoena, before Ceil Weser, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting & Video, Inc., 1 Corpus Christie, 107 Executive Center, Hilton Head, South Carolina, on the 20th day of October, 2009, commencing at or about the hour of 3:05 p.m.

HUDSON - JOHNSON (DIRECT EXAMINATION)

Q But that recommendation comes from you and no one else, correct?

A Correct.

Q And you recommend that the town take action by doing what and to whom?

A We would assist the property owner using our knowledge of flood plain management standards to obtain compliance with the regulations. Assisting them in permitting and helping them with the requirements for compliance.

Q And how would the town assist my clients in this case?

A We might suggest alternative methods for compliance.

Q The town might or the town would?

MR. MAHAFFEE: Objection.

THE WITNESS: It is my job to assist the property owners of Hilton Head Island with compliance, and in my knowledge I can suggest alternatives. That is my job.

BY MR. HUDSON:

Q What are my client's alternatives in

HUDSON - JOHNSON (DIRECT EXAMINATION)

this case?

MR. MAHAFFEE: Objection.

THE WITNESS: The house can be elevated. The house can be retrofitted.

BY MR. HUDSON:

Q All right.

You said the house can be elevated. Explain that a little bit.

A The top of the lowest floor is required to be at or above 14 feet. If it is not at this time, then the floor structure can be elevated according to the U.S. Army Corp of Engineers' manuals, and so that a new foundation IS put in place so that it is at 14 feet MSL or the interior could be retrofitted.

Q To accomplish what?

A So that the top of the lowest habitable floor is 14 feet.

Q The bottom line is the first finished floor needs to be at a finished elevation of 14 feet or greater, is that correct?

A That is correct.

Q And the two ways to accomplish that as

# ALAN O. CAMPBELL DEPOSITION EXCERPTS/EXHIBITS

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT ) Case No. 08-CP-07-0517

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiff,

vs.

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

DEPOSITION OF
ALAN O. CAMPBELL, PE, RRC

DATE: NOVEMBER 16, 2009

TIME: 10:10 a.m. - 12:35 p.m.

LOCATION: Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, South Carolina

REPORTED BY: Beth Walters Kornuta

**********

PALMETTO STATE COURT REPORTERS
P. O. Box 50488
Summerville, SC 29485
843.670.1637 Fax: 843.486.0064
Palmettostatecr@yahoo.com

Andrews
&Burgess Inc.
Engineering & Surveying

December 18, 2008

Mr. Rob Mathison
Via email: rmathlaw@aol.com

**Re: Project 280044 – 48 Sea Lane, Palmetto Dunes, Hilton Head Island**

Dear Rob:

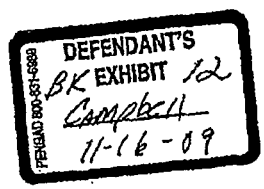
As we have discussed in our various conversations regarding the house at 48 Sea Lane, Palmetto Dunes, we have coordinated with a general contractor, house mover, structural engineer and architect to develop a construction budget to raise the house above the flood plain. The budget, prepared by Anchor Construction Co., is based on raising the house 32". There would be a nominal reduction in the budget if the house were only raised 10".

The construction budget provides an eleven (11) item scope of work. These eleven (11) items do not represent all of the tasks required to raise the house. The list does identify the general categories of work required to raise the house and hopefully helps to demonstrate why it is a $275,000.00 job.

I am sure there will be questions regarding the estimate. In whatever manner is most convenient for you, please relay to me the questions and I will get the answers.

Sincerely,

Steve Andrews, P.E.




PLF-107
ELS #79-58113

40A Shanklin Road, Beaufort, SC 29906 • 843.466.0369 • Fax 843.466.9766

**Anchor Construction Co. of Beaufort, Inc.**
22 Hickory Rd. Beaufort, S.C.
Office 843-525-6708 Fax 843-525-9601

December 18, 2008

To: Andrews & Burges Inc.
48 Shanklin Rd.
Beaufort, S.C. 29906

Re: 48 Sea Ln.
Palmetto Dunes, Hilton Head S.C.

To Whom It May Concern:

Please find this quote to include material and labor to complete the following scope of work in order to raise the house 32 inches.

1. Remove plants and shrubs as needed around the house in order to gain access to the exterior foundation.
2. Rework foyer as needed so foyer will be same elevation as existing finish floor.
3. Rework front entrance door and windows to be same elevation as new foyer.
4. Rework front side walk and add steps, so that the side walk and steps meet new finish floor elevation.
5. Build all new lattice on perimeter of house.
6. Build new steps on rear porch to meet new finish floor elevation.
7. Disconnect and reconnect all utilities in order to lift house.
8. Disconnect the garage structure from main house, rebuild steps and structure as needed after house is raised.



PLF-108
ELS #79-58113

9. Disconnect existing tie downs, straps etc, from foundation piers and exterior foundation block walls. Replace old piers with new piers per new engineered plans. Add 4 courses of block to outside foundation wall per engineer plans.
10. Stucco all new exterior foundation block.
11. Structural Engineer, architect + field survey #20K

Per call w/ Eddie 18-Dec-05

Total estimated cost for the above work is----------$ 275,336.00

Any question or concerns please call me. Thank you for the opportunity to estimate this project.

Eddie Powell

Eddie Powell

PLF-109
ELS #79-58113

Lynes
CONSTRUCTION, INC.
#1 Row Boat Row
Hilton Head Is., S.C. 29928
843-785-4202

# PROPOSAL

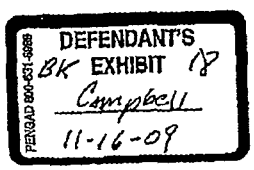
May 1, 2007

Greg Gottschlich and Don McNeil
C/o Jack Qualey
Qualey Law Firm
Park Rd, Hilton Head Is., SC 29928

RE: #48 (Lot 27) Sea Lane, Palmetto Dunes, Hilton Head Island, SC

Dear Gentleman,

I have estimated the cost of raising the house to an elevation of 14 feet above sea level at finished floor height. It is at 13.3 feet at present. The estimate is based on the actual work to raise the house and the reasonable expectation of damage that will occur because of the movement of the house (ie: drywall cracking). Damage that could occur but is not expected is the cracking of the stucco walls, the cracking of the tile on the floors and showers, the cracking of mirrors and the breaking of window glass. These kinds of damage were not estimated but have a small chance of happening. I have also included damage to the landscape, sidewalks and driveway due to the difficulty of moving heavy machinery around the house to accomplish the work. All of the heavy beams used to support the house will have to be inserted under the house from the front. This will damage a great deal of the front exterior. The estimate is based on existing quality levels. The landscape plantings will be as large as possible to strive for the closest replacement that can be achieved when replacing 20-year-old landscape plants. I have spoken with the Building and Codes office of the Town about permitting the job and also with an engineer that designed the foundation extension for the house.




PLF-0001
FLS #79-58113

## Scope of Work

Detach the house from the existing foundation and the garage.
Build temporary support walls for the garage/laundry wall, the front entrance wall, the interior staircase and the exterior rear stairs.
Disconnect electrical service, all plumbing waster and water lines and all Heating and Air conditioning condenser units.
Raise the house, J.E. Oswalt and Sons Professional House Movers.
Install a bond beam around the foundation wall, extend the existing anchor bolts and add a block to the interior piers of the house (Per engineer).
Lower House back onto new foundation additions and install new tie down straps that connect the house to the foundation.

Rebuild the front entrance foyer floor to extend up to the new height of the walls. Install new tile and stucco to match existing Build new supports for the interior staircase.
Rebuild the walls of the garage/laundry connection. Tie the garage to the house, re-flash and install new stucco to the exterior walls in this area. Install new drywall and trim.
Rebuild the staircase in the garage to accept the new height.
Repair the holes in the garage walls that were made during the raising of the house, Stucco and drywall repairs in this area.
Rebuild the rear stairs to accommodate the new height.
Reconnect the electrical, plumbing and HVAC.
Install new stucco on the new addition of foundation and on the walls was the stucco was affected by the construction.
Rebuild the retaining wall in the front yard that was removed during house raising.
Re-install the front sidewalk, stoop and driveway.
Install new irrigation in the front yard and new landscape plants in the front yard damage from the construction.
Repair damage landscape lights in the front yard.

Assumption: Cracks in the drywall will appear in each room after moving the house.
Wallpaper cannot be matched so all wallpaper will be removed and replaced.
Move and protect all furniture and floors before work on the interior begins.
Repair all cracks in the drywall.
Repaint the interior of the house and the exterior of the house where construction has caused a need for painting.
Re-point the grout in the tile floors and showers.

NOT INCLUDED IN THIS COST:
No tile replacement is included in this cost except for the foyer, which will have to be rebuilt.
No repair to the stucco has been estimated for cracks that could occur in areas of the house that are not directly affected by the construction on the house.

PLF-0002
FLS #79-58113

Cost Breakdown:

| | |
|---|---|
| Permits, Engineering, Plans | $2,100.00 |
| Dumpster and rubbish removal | $4,000.00 |
| Irrigation/ Landscape | $21,400.00 |
| Furniture and house protection | $3,000.00 |
| Final Clean | $1,400.00 |
| Sidewalks | $2,400.00 |
| Driveways | $17,200.00 |
| Block and masonry | $18,400.00 |
| | |
| House moving (J.E. Oswalt and Sons) | $75,000.00 |
| Framing, trim and Siding | $39,110.00 |
| Drywall | $20,600.00 |
| Painting | $35,000.00 |
| Stucco | $12,500.00 |
| Heating and Air Conditioning | $2,250.00 |
| Electrical | $3,000.00 |
| Plumbing | $1,700.00 |
| Tile and Grout | $5,500.00 |
| Wallpaper | $7,900.00 |
| | |
| Supervision | $31,500.00 |
| Overhead | $36,475.00 |
| Profit | $34,043.00 |
| | |
| Total | $374,478.00 |

If you have any question about the scope of work or the cost please call me at (843) 683-4203.
I understand that the work will be scheduled for the fall after the rental season. I will follow with a contract after your review of this proposal. During the estimation of this project I have incurred debt of $1675.00. If the contract is signed this debt will be waived.

Thank you,

Michael R. Lynes
Lynes Construction, Inc
SC License #5489

PLP-0003
ELS #79-58113

# THOMAS E. HARTNETT
# DEPOSITION
# EXCERPTS/EXHIBITS

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT ) Case No. 08-CP-07-0517

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiff,

vs.

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

DEPOSITION OF
THOMAS E. HARTNETT, GAA, CRB

DATE: OCTOBER 22, 2009

TIME: 10:10 a.m. - 12:47 p.m.

LOCATION: Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, South Carolina

REPORTED BY: Beth Walters Kornuta

**********

PALMETTO STATE COURT REPORTERS
P. O. Box 50488
Summerville, SC 29485
843.670.1637 Fax: 843.486.0064
Palmettostatecr@yahoo.com

of Hilton Head which stated that the base floor elevation was 14.16?

A Ms. Wall, I read in Dr. Gottschlich's deposition where there was some dispute, one surveyor had come up with one number and one had come up with another. So I was aware of the fact that there was some dispute as to whether or not the elevation was 13.3 or 14, whatever.

Q And you have not done any independent measurements, research, nor hired any independent person to go out and do an elevation measurement of the home at issue, have you?

A No, ma'am.

Q So as you sit here today, you cannot testify to a fact what the actual elevation of that house is, can you?

A No, ma'am, I can't.

Q Now you go on to say in your e-mail that we've marked as Exhibit 4N that the measure -- and I'm quoting -- "The measure of damage is somewhere between the two estimates you have forwarded to me for raising the house," end quote. And are you referencing there the earlier e-mail attachment that we identified as 4M, that had an estimate by Lynes and an estimate by

Anchor?

A Yes, ma'am.

Q And one has a number, a total number of $374,478 and the other has a total estimate of $275,336, correct?

A That's what shows on those estimates, yes, ma'am.

Q So it's your opinion that the measure of damages is somewhere between those two numbers, correct?

A Yes. That is correct, Ms. Wall.

Q Now you go on to say -- you reference the Town of Hilton Head and an issue as to whether the Town of Hilton Head will insist that the code violation be corrected and fines the owner if it is not. Do you have any information, as you sit here today, on the position of the Town of Hilton Head?

A Yes, ma'am, I do.

Q What is your information?

A When I took the trip to Hilton Head with counsel to inspect the subject property, I was told that he would be taking the deposition of Ms. Trudy Johnson, who was -- I can't remember Ms. Johnson's title, the Flood Administrator or

# PATRICIA R. FARRELL
# DEPOSITION
# EXCERPTS/EXHIBITS

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT ) Case No. 08-CP-07-0517

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiff,

vs.

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

# DEPOSITION OF PATRICIA R. FARRELL

DATE: SEPTEMBER 21, 2009

TIME: 1:34 p.m. - 4:53 p.m.

LOCATION: Tupper, Grimsley & Dean, P.A.
611 Bay Street
Beaufort, South Carolina

REPORTED BY: Beth Walters Kornuta

**********

PALMETTO STATE COURT REPORTERS
P. O. Box 50488
Summerville, SC 29485
843.670.1637 Fax: 843.486.0064
Palmettostatecr@yahoo.com

A I can't speak for the system at that point. We get those quotes typically -- if everything is all right, we get the quotes now right away, and that would be shown in the coverage and rating detail on page two. And as to the submit, yes, it would come back as that.

Q Does this application that you filled out indicate that while the base flood level is 14 feet, the lowest floor on this dwelling was only 13.3 feet?

A Yes, that's correct.

Q How did that affect the premium from Travelers?

A It's higher.

Q Where is that indicated on the coverage and rating detail, if at all?

A It is not indicated, per se, that it's higher because. They just give you a rate.

Q What, under the coverage and rating detail, is the CRS discount?

A That's a community. If the community has fulfilled the compliance issues with the federal flood, they get community discounts.

Q And is the community Hilton Head area wide or smaller?

# KENNETH OLIVER DEPOSITION EXCERPTS/EXHIBITS

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

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE, JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

----------/

The deposition of KENNETH OLIVER, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Ceil Weser, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting & Video, Inc., 1 Corpus Christie Place, 107 Executive Center, Hilton Head, South Carolina, on the 19th day of October, 2009, commencing at or about the hour of 4:19 p.m.

201844

# EXCLUSIVE RIGHT TO SELL AGREEMENT
## HOMES VILLA/CONDO LOT (Circle Property Type)

OWNER NAME: Dunes Mktg Group — MLS #: 065 — FIRM PH: 842-1111 — FIRM FAX: 842-4788
JOINT NAME: Ken Oliver — LIST #: 027 — AGENT PH: 816-0167 — AGENT FAX:
JOINT E-MAIL: Oliverkw@aol.com

Employment: In consideration of the services of "Broker" Dunes Mktg Group, Hereinafter called "Broker," We, the undersigned Owner(s), hereinafter called "Owner," appoint hereby as my exclusive agent, and give Broker the exclusive right to sell and sell the property described below and hereon described as

SALE: Lot 27 TB 108/184 — LEGAL ADDRESS (see below) — LIST PRICE: $ 1,495,000

STREET #: 48 — STREET NAME: San Lucie — TOWN: Hilton Head Is — ZIP CODE: 29928 — ZONING: Select 1 Mobile Home / Apartment / Hotel / R/O

SUBDIV: Beaufort / Jasper — TAX KEY #: — TAX MAP #: — District, Tax Map, Parcel — ELEVATION: (Approx) — FURNISHED: Y/N

TYPE: — BUILT: — SQ FT: — ACRES: — ASSOC FEE: — OWNER TRANSFER FEE: — DOM/FEB 90d/VE

a period, beginning on LIST DATE: 8-27-03 and ending on EXPIRE DATE: Aug 31, 2003 hereinafter called the "term" of the gross sales price specified above.

Owner and Broker understand that this agreement is a contract, and that the term of this Agreement extends until the date noted above unless terminated sooner by written consent of both parties during the term of this Agreement, Owner is contractually obligated to pay a commission to Broker pursuant to the terms and conditions of paragraph 8 below.

Contractual obligations of this agreement are separate from those obligations stemming from the parties' agency relationship. The parties' agency relationship may be terminated unilaterally by way of any time. Should Owner elect to do so, the Broker shall no longer have the right to list and sell the property, however, the termination of the agency relationship between the parties will not end the Owner's contractual obligation in this Agreement to pay a commission to Broker pursuant to paragraph 8 below.

Commission:

Owner agrees to pay Broker a sales commission of $ _____ or Six (6) % percent of the sales price if a buyer is secured who is ready, willing and able to purchase the property at the price and on the terms contained or at any price and terms acceptable to Owner. Said commission shall be paid at closing of sale or default of Owner.

Said commission shall be paid to Broker if the Property is sold by or in the term of this Agreement, regardless of whether the sale is made by Broker, by Owner, or by any other broker or agent, or any other person or any public auction. However, Owner's has no liability to pay any portion to whom Owner receives the right to sell, and if a sale to any of such parties occurs within ninety (90) days after the date hereof, Owner is not obligated to pay a commission to Broker.

Owner shall also pay said commission to Broker if: (a) within ten (10) days after expiration of this Agreement Broker provides to Owner the names of prospective buyers who were shown called the Property during the term of this Agreement and (b) Owner sells the Property to one of such prospective buyers within six (6) months after expiration of this Agreement. However, such commission shall not be due to Broker if a sale is made after the expiration hereof by or through a MLS Broker who has a then current, valid Listing Agreement with Owner.

It suit is brought to collect the compensation or if Broker succeeds in defends any action brought against Broker by Owner relating to this authorization or under any sales Agreement relating to said property, Owner agrees to pay all costs incurred by Broker in connection with such action, including a reasonable attorney's fee.

Owner agrees that Broker may compensate an agent representing the Purchaser from the fee described above. It is also possible that a buyer represented by Broker will want to see Owner's property as well as those both Owner and a buyer have different interests to protect in the negotiation process, certain differences or conflicts may arise. Accordingly, Broker will represent both the Owner and Buyer only with both parties' written consent after full disclosure of the potential existence of dual agency.

CONTRACT OF SALE, CLOSING COSTS, AND TITLE. Upon acceptance of a purchaser whose offer complies with the terms of sale, Owner agrees to enter into the customary written Contract of Sale Agreement, which will contain the terms and conditions of sale and customary provisions as to quality of title to be conveyed by Owner, the assumption of title by purchaser, curing of any defects by Owner, and prevention of interest encumbrances, taxes and liens (if any). Owner agrees to pay for preparation of the deed and recording fees for the deed, and Owner agrees to execute and deliver to the purchaser a general warranty deed conveying the Property free and clear of all monetary liens and encumbrances, except those set forth in the Contract of Sale Agreement.

DEFAULT BY PURCHASER. As the exclusive agent for Owner, Broker is authorized to receive and keep in Broker's Trust Account until closing all funds paid as a deposit on the purchase of the property, and Owner agrees that if such deposit is forfeited by the Purchaser, Broker is authorized to retain one-half (1/2) of such forfeited amount as a sales commission, provided such amount retained does not exceed the amount of the commission specified above. The balance of the forfeited deposit shall be paid to Owner.

OWNER HOLD HARMLESS. Owner shall hold harmless and indemnify the Broker and Broker's agents from any liability caused by latent, undisclosed, pre-existing conditions, if any, including but not limited to, structural and/or mechanical deficiencies which exist now or occur up to the time of closing.

LOCKBOX OPTION: Owner gives ( ) does not ( ) authorize Broker to install a Lockbox on the Property containing a key to the Property. Owner acknowledges having understands the use, risk and precautions taken in connection with its use and releases Broker from risk thereof. Lockbox on Property: Y/N — LOCKBOX #: 7310849

OWNERSHIP. The undersigned, by the execution of this Agreement, certifies that he/she is the owner of record of the Property or, in the event the property owner is other than that individual, s/he has the authority to bind the owner of the Property by execution of the within Agreement.

OTHER AUTHORIZATIONS. Owner authorizes Broker to take photos, advertise, print and publish this Property in other brokers and the general public.

PHOTO: (Select 1) ✓ Take Photo — Photo(s) Attached — Web MLS Generic — # PHOTOS: ____
No Photo — Photo to Follow — Photo Upload — PHOTO INSTRUCTIONS:

INTERNET: Y / N — VIRTUAL TOUR: Y / N — VT ID #: ____ — VT/OTHER:

TYPES: MLS VT — MLS VT/Realtor.com — Web Gen VT — Web Generic/Realtor.com — Other — VT URL:

OWNER'S REPRESENTATIONS: Owner hereby warrants: 1) to place the listing in the Multiple Listing Service of Hilton Head Island, Inc. which will constitute an offer of subagency to all participants in the Multiple Listing Service; 2) to hold Broker and MLS harmless in any damages or liability that may occur in the showing of the property; 3) that the care and custody of the property is not the responsibility of the Broker or MLS; and 4) that the information contained in the within Agreement is, to the best of Owner's knowledge, accurate and correct.

NOT INCLUDED IN SALE: ____

PRIVATE / CONFIDENTIAL REMARKS: ____ PUBLIC REMARKS: ____

SHOW TO (Select 1): Appointment Only; Call OCC, then LBX; Call Listing Agent; Call Cust/LBX Pgr; Call Listing Office; Call Rental Agent; Key in Lbx/Lk Office; Lockbox Appointment; ✓ Lockbox Unoccupied; Lockbox No Appointment; Listing Must Accompany; See Showing Instructions; Under Construction; Vacant Lot

AREA and SUB AREA (Select 1):
1 ☐ Sea Pines: ☐ Ocean Dunes, ☐ Harbour Town, ☐ Ocean Cottages, ☐ Fairfield Harbour, ☐ Ocean Villas
2 ☐ Forest Beach: ☐ Ocean Point Marsh, ☐ South Point Beach
3 ☐ Shipyard
4 ☐ Wexford
5 ☐ Long Grove
6 ☐ Palmetto Dunes/Shelter Cove: ☐ Governors, ☐ Spanish Main, ☐ Palmetto Hall, ☐ Dunes Villas
7 ☐ Windy Point
8 ☐ Other Beach: ☐ Hunting Country, ☐ Double Eagle Port Royal Dunes, ☐ Fairfield Harbour Quarters, ☐ Second Villa Port Royal Dunes
9 ☐ Hilton Head Plantation: ☐ Bear Creek Course, ☐ Planet Woods, ☐ Country Club of Hilton Head, ☐ Dolphin Head Course, ☐ Oyster Reef Course, ☐ Golf Villas of Country Club
10 ☐ Palmetto Hall
11 ☐ Indigo Run: ☐ Island Point, ☐ Chelsea Place, ☐ Bell Club, ☐ Pine Glen
12 ☐ Shipyard Villas
13 ☐ Wexford/Harbour
14 ☐ Other Beach: ☐ Hunting Country, ☐ Double Eagle Port Royal Dunes, ☐ Fairfield Harbour Quarters, ☐ Second Villa Port Royal Dunes
15 ☐ Hilton Head Island: ☐ Old Plantations, ☐ Broad Creek Area, ☐ Dolphin, ☐ Folly Field, ☐ Jarvis Creek, ☐ Mitchelville, ☐ Moss Creek, ☐ Port Royal, ☐ Sea Pines Forest Preserve, ☐ Shelter Cove, ☐ Spanish Wells Road, ☐ Wild Horse/Skull Creek, ☐ Windmill Harbour
16 ☐ Hilton Head Island: ☐ Old Plantations, ☐ Broad Creek Area, ☐ Dolphin, ☐ Folly Field, ☐ Jarvis Creek, ☐ Mitchelville, ☐ Moss Creek, ☐ Port Royal, ☐ Sea Pines Forest Preserve, ☐ Shelter Cove, ☐ Spanish Wells Road, ☐ Wild Horse/Skull Creek, ☐ Windmill Harbour
17 ☐ Bluffton/Okatie Plantation: ☐ Alljoy Road Area, ☐ Crane Island, ☐ Crane Island Point, ☐ Dyal Church Rd. to Bonneau Rd., ☐ Bonneau Rd. to 170, ☐ 170 South to 46, ☐ Highway 46 Okatie, ☐ Downtown Bluffton, ☐ Bonneau Rd. to Okatie Rd., ☐ Okatie Rd. to Jasper County, ☐ Pinckney Colony, ☐ Pritchardville, ☐ Other
18 ☐ Bluffton/Okatie Plantation: ☐ Alljoy Road Area, ☐ Crane Island, ☐ Crane Island Point, ☐ Dyal Church Rd. to Bonneau Rd., ☐ Bonneau Rd. to 170, ☐ 170 South to 46, ☐ Highway 46 Okatie, ☐ Downtown Bluffton, ☐ Bonneau Rd. to Okatie Rd., ☐ Okatie Rd. to Jasper County, ☐ Pinckney Colony, ☐ Pritchardville, ☐ Other
19 ☐ Moss Creek
20 ☐ Okatie River
21 ☐ Berkeley Hall
22 ☐ Palmetto Hall
23 ☐ Sun City
24 ☐ Okatie
25 ☐ Callawassie Island
26 ☐ Spring Island
27 ☐ Bluffton/Hwy 46 Okatie River
28 ☐ Bluffton/Hwy 46 Okatie River
29 ☐ Okatie/Hwy 46 Okatie River
30 ☐ Daufuskie Island
31 ☐ Hardeeville
32 ☐ Levy
33 ☐ Ridgeland
34 ☐ Other

SHOWING INSTRUCTIONS: ____ OFFICE INFORMATION: ____

COMPENSATION TO COOP. BROKER: 3.0 — N/A

WITNESS: ____ — Rental Agent Name: ____ — Rental Agent Phone: ____

WITNESS: ____ — OWNER SIGNATURE: Thomas N. Oliver — DATE: 8-03-

BROKER SIGNATURE: ____ DATE: ____ — PRINT OWNER'S NAME: THOMAS N. OLIVER

OWNER ADDRESS (1): 210 RIVERBIRCH PLACE — OWNER SIGNATURE: Jan H. Oliver — DATE: 8-3-

OWNER ADDRESS (2): Duluth, GA. 30097 — PRINT OWNER'S NAME: JAN H. OLIVER

OWNER E-MAIL: ____ — OWNER PHONE: (H) 770-623-9242 (W) 770-814-4303 Tom Da

HOME FAX: 770-497-3392

OFFICE: 770-814-4301

PLAINTIFF'S EXHIBIT 90 1/9/10

a period, to re EXP DATE: 6-27-03 ld LISTING DATE: Dec. 27, 2002 , hereinafter called the "term" of the gross sales price specified above.

Owner and Broker understand that this agreement is a contract, and that the term of this Agreement extends until the date noted above unless terminated sooner by written consent of both parties. ring the term of this Agreement, Owner is contractually obligated to commission to Broker pursuant to the terms and conditions of raph 8 below.

e contractual obligations of this agreement are separate from those ations stemming from the parties' agency relationship. The parties agency relationship may be terminated unilaterally by ither at any time. Should Owner elect to do so, the Broker shall h rights have the right to list and sell the property; however, the termination of the agency relationship between the parties will not eel the Owner's contractual obligation in this Agreement to pay a remuneration to Broker pursuant to paragraph 8 below.

Commission:

Owner Agrees to pay Broker a sales commission of 3 or 5% + 6 % percent of the sales price if a buyer is secured who is ready, willing and able to purchase the operty at the price and on the terms described or at any price and terms acceptable to Owner. Said commission shall be paid at closing of sale or default of Owner.

Said commission shall be paid to Broker if the Property is sold during the term of this Agreement, regardless of whether the sale is made by Broker, by Owner, or by any other broker or agent, or any other person or any other means. However, Owner's obligation to pay commission to Broker under this Agreement any parties to whom Owner initially gave the right to sell, and if a sale to any of such parties occurs within thirteen (14) days after the date hereof, Owner is not obligated to pay a commission to Broker.

Owner shall also pay said commission to Broker if: (a) within ten (10) days after expiration of this Agreement Broker provides to Owner the names of prospective buyers who were shown offered the Property during the term of this Agreement and (b) Owner sells the Property to any of such prospective buyers within six (6) months after expiration of this Agreement. However, such remission shall not be due Broker if a sale is made after the expiration hereof by or through a MLS Broker who has a then current, valid Listing Agreement with Owner.

It suit is brought to collect the commission or if Broker successfully defends any action brought against Broker by Owner relating to this authorization or under any sales agreement relating to id property, Owner agrees to pay all costs incurred by Broker in connection with such action, including a reasonable attorney's fee.

Owner agrees that Broker may cooperate as an agent representing the Purchaser from the fee described above. It is also possible that a buyer represented by Broker will want to see Owner's property. id since both Owner and a buyer have different interests to protect in the negotiation process, certain differences or conflicts may arise. Accordingly, Broker will represent both the Owner and t yer only with both parties' written consent after full disclosure of the consequences of dual agency.

CONTRACT OF SALE, CLOSING COSTS, AND TITLE. Upon acceptance of a purchase offer complied within the terms of sale, Owner agrees to enter into the customary written Contract Sale Agreement, which will contain the terms and conditions of sale and customary provisions as to quality of title to be conveyed by Owner, the examination of title by purchaser, curing of any le defects by Owner, and provision of interest on encumbrances, taxes and rents (if any). Owner agrees to pay for preparation of the deed and recording fees for the deed, and Owner agrees to ecute and deliver to the purchaser a general warranty deed conveying the Property free and clear of all monetary liens and encumbrances, except those set forth in the Contract of Sale Agreement.

DEFAULT BY PURCHASER. As the exclusive agent for Owner, Broker is authorized to receive and hold in Broker's Trust Account until closing all sums paid as a deposit on the purchase of the operty, and Owner agrees that if such deposit is forfeited by the purchaser, Broker is authorized to retain one-half (1/2) of such forfeited amount as a sales commission, provided such amount retained as not exceed the amount of the commission specified above. The balance of the forfeited deposit shall be paid to Owner.

OWNER HOLD HARMLESS. Owner shall hold harmless and defend Broker And Broker's agents from any liability caused by latent, undisclosed, pre-existing conditions, if any, including but t limited to, structural and/or mechanical deficiencies which exist now or occur up to the time of closing.

LOCKBOX OPTION. Owner does ( ) does Not ( ) authorize Broker to install a Lockbox on the Property containing a key to the property. Owner acknowledges he/she understands the use, s and precautions taken in connection with its use and assumes the risk thereof. Lockbox on Property: Y/N Lockbox #: 7574899

OWNERSHIP. The undersigned, by the execution of this Agreement, certifies that he/she is the owner of record of the Property or, in the event the property owner is other than that individual, he/she has the authority to bind the owner of the Property by execution of the within Agreement.

OTHER AUTHORIZATIONS. Owner authorizes Broker to take photos, advertise, print and publish this Property to other brokers and the general public.

PHOTOS: (Select 1) ✓ Take Photo ___ Photo(s) Attached ___ With MLS Generic [ ] # PHOTOS: PHOTO INSTRUCTIONS

INTERNET: Y/N VIRTUAL TOUR: Y/N VTS #: VTNET:

TYPE: ☐ MLS VT ☐ MLS VT Realtor.com ☐ Vita Genuine ☐ Vita Genuine/Realtor.com ☐ Other ☐ VT URL:

OWNERS REPRESENTATIONS: Owner directs Broker: 1) to place the listing in the Multiple Listing Service of Hilton Head Island, Inc. which will constitute an offer of subagency to all participants the Multiple Listing Service; 2) to hold Broker and MLS harmless for any damages or liability that may occur in the showing of the property; 3) that the care and custody of the property is not the sponsibility of the Broker or MLS; and 4) that the information contained in the within Agreement is, to the best of Owner's knowledge, accurate and correct.

NOT INCLUDED IN SALE:

PRIVATE / CONFIDENTIAL REMARKS: PUBLIC / INTERNET REMARKS:

HOW TO SHOW: (Select 1)
___ Appointment Only
___ Call OCC, then Lockbox
___ Call Listing Agent
___ Call Occ. then Pat
___ Call Listing Office
___ Call Rental Agent
___ Key @ Listing Office
___ Lockbox Appointment
✓ Lockbox Unoccupied
___ Lockbox No Appointment
___ Lister Must Accompany
___ See Showing Instructions
___ Under Construction
___ Vacant Lot

AREA and SUB AREA: (Select 1)
1 ☐ Sea Pines: ☐ Ala Green, ☐ Baynard Cove, ☐ Cordillo Courts, ☐ Fairfield, ☐ Greenwood Drive, ☐ Lawton Lane, ☐ Ocean Lane, ☐ Ocean Point, ☐ Port Royal Terrace, ☐ Sea Pines Center, ☐ Shipyard, ☐ Stoney, ☐ Tennis Center, ☐ Wexford
2 ☐ Forest Beach: ☐ Beach Lane, ☐ Dillon Road, ☐ Folly Field, ☐ Forest Beach Drive, ☐ Gardner Drive, ☐ Greenwood Drive, ☐ Lagoon Road, ☐ Leamington, ☐ Lighthouse, ☐ Middle Road, ☐ Pope Avenue, ☐ Sea Pines Circle, ☐ Shipwatch, ☐ Singleton Beach Road, ☐ South Forest Beach, ☐ Spanish Wells Road, ☐ Spanish Wells, ☐ Tennis Center, ☐ Wexford
3 ☐ Hilton Head Plantation: ☐ Cypress, ☐ Indigo Run, ☐ Jarvis Creek, ☐ Long Cove, ☐ Marshland Road, ☐ Palmetto Bay, ☐ Palmetto Dunes, ☐ Queens Grant, ☐ Shelter Cove, ☐ Shelter Cove Towne, ☐ Singleton Beach Road, ☐ Spanish Wells, ☐ Stoney, ☐ Wexford
4 ☐ Port Royal: ☐ Battery Creek, ☐ Cotton Hope, ☐ Lands End, ☐ Native, ☐ Old Shell Road, ☐ Parris Island Gateway, ☐ Port Royal, ☐ Port Royal Plantation, ☐ Sands, ☐ Sea Island Parkway, ☐ Shell Point, ☐ Shipyard, ☐ Stoney, ☐ Tanglewood, ☐ Tennis Center, ☐ Victoria Bluff, ☐ Wexford
5 ☐ Hilton Head Island: ☐ Adventure Lane, ☐ Arrow Road, ☐ Beach City Road, ☐ Benjamin Moore Drive, ☐ Chaplin Crossing, ☐ Cordillo Parkway, ☐ Dillon Road, ☐ Fairfield, ☐ Folly Field, ☐ Gardner Drive, ☐ Gum Tree Road, ☐ Hilton Head Plantation, ☐ Jarvis Creek, ☐ Lagoon Road, ☐ Lawton Lane, ☐ Long Cove, ☐ Marshland Road, ☐ Mathews Drive, ☐ Matthews Drive, ☐ Museum, ☐ Office Park Road, ☐ Pembroke Drive, ☐ Pope Avenue, ☐ Port Royal, ☐ Shelter Cove, ☐ Shelter Cove Towne, ☐ Squire Pope Road, ☐ Stoney, ☐ Tanglewood, ☐ Tennis Center, ☐ Union Cemetery Road, ☐ Wexford
6 ☐ Hilton Head Island: ☐ Arrow Road, ☐ Beach City Road, ☐ Benjamin Moore Drive, ☐ Chaplin Crossing, ☐ Cordillo Parkway, ☐ Dillon Road, ☐ Fairfield, ☐ Folly Field, ☐ Gardner Drive, ☐ Gum Tree Road, ☐ Hilton Head Plantation, ☐ Jarvis Creek, ☐ Lagoon Road, ☐ Lawton Lane, ☐ Long Cove, ☐ Marshland Road, ☐ Mathews Drive, ☐ Matthews Drive, ☐ Museum, ☐ Office Park Road, ☐ Pembroke Drive, ☐ Pope Avenue, ☐ Port Royal, ☐ Shelter Cove, ☐ Shelter Cove Towne, ☐ Squire Pope Road, ☐ Stoney, ☐ Tanglewood, ☐ Tennis Center, ☐ Union Cemetery Road, ☐ Wexford
7 ☐ Bluffton/OH Hardeeville: ☐ Alljoy Road Area, ☐ Buckwalter Place, ☐ Bluffton Parkway, ☐ Buck Island Road, ☐ Burnt Church Rd, ☐ Bustin Island Road, ☐ Calhoun Street, ☐ Chelsea, ☐ Colcock Road, ☐ Dawn Ridge, ☐ Downtown Bluffton, ☐ Fording Island Road, ☐ Goethe Road, ☐ Graves Road, ☐ Hampton Lake, ☐ Heritage Point, ☐ Highway 278 Corridor, ☐ Historic Bluffton, ☐ Hunting Island Road, ☐ Indigo Run, ☐ Jasper Ridge, ☐ Jenkins Island, ☐ Kitties Corner, ☐ Lawton Bluff, ☐ Malphrus Road, ☐ Mary Field, ☐ Moss Creek, ☐ Oakridge, ☐ Old Miller Road, ☐ Old Wagon Road, ☐ Palmetto Bluff, ☐ Pine Ridge, ☐ Pritchard Street, ☐ Red Cedar, ☐ Riverwood, ☐ Rose Hill, ☐ Sawmill Road, ☐ Shanklin Road, ☐ Simmonsville Rd, ☐ Spanish Wells Road, ☐ Squire Pope Road, ☐ Stoney, ☐ Tanglewood, ☐ Tennis Center, ☐ Union Cemetery Road, ☐ Wexford
8 ☐ Daufuskie Island: ☐ Bloody Point, ☐ Cooper River, ☐ Melrose, ☐ Old Plantation
9 ☐ Okatie: ☐ Alljoy Road Area, ☐ Bees Ferry, ☐ Buckwalter Place, ☐ Cherry Point, ☐ Colcock Road, ☐ Downtown Okatie, ☐ Fording Island Road, ☐ Graves Road, ☐ Hampton Lake, ☐ Highway 278 Corridor, ☐ Historic Bluffton, ☐ Hunting Island Road, ☐ Indigo Run, ☐ Jasper Ridge, ☐ Jenkins Island, ☐ Kitties Corner, ☐ Lawton Bluff, ☐ Malphrus Road, ☐ Mary Field, ☐ Moss Creek, ☐ Oakridge, ☐ Old Miller Road, ☐ Old Wagon Road, ☐ Palmetto Bluff, ☐ Pine Ridge, ☐ Pritchard Street, ☐ Red Cedar, ☐ Riverwood, ☐ Rose Hill, ☐ Sawmill Road, ☐ Shanklin Road, ☐ Simmonsville Rd, ☐ Spanish Wells Road, ☐ Squire Pope Road, ☐ Stoney, ☐ Tanglewood, ☐ Tennis Center, ☐ Union Cemetery Road, ☐ Wexford
10 ☐ Bluffton: ☐ Alljoy Road Area, ☐ Bees Ferry, ☐ Buckwalter Place, ☐ Cherry Point, ☐ Colcock Road, ☐ Downtown Bluffton, ☐ Fording Island Road, ☐ Graves Road, ☐ Hampton Lake, ☐ Highway 278 Corridor, ☐ Historic Bluffton, ☐ Hunting Island Road, ☐ Indigo Run, ☐ Jasper Ridge, ☐ Jenkins Island, ☐ Kitties Corner, ☐ Lawton Bluff, ☐ Malphrus Road, ☐ Mary Field, ☐ Moss Creek, ☐ Oakridge, ☐ Old Miller Road, ☐ Old Wagon Road, ☐ Palmetto Bluff, ☐ Pine Ridge, ☐ Pritchard Street, ☐ Red Cedar, ☐ Riverwood, ☐ Rose Hill, ☐ Sawmill Road, ☐ Shanklin Road, ☐ Simmonsville Rd, ☐ Spanish Wells Road, ☐ Squire Pope Road, ☐ Stoney, ☐ Tanglewood, ☐ Tennis Center, ☐ Union Cemetery Road, ☐ Wexford
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13 ☐ Beaufort County: ☐ Alljoy Road Area, ☐ Bees Ferry, ☐ Buckwalter Place, ☐ Cherry Point, ☐ Colcock Road, ☐ Downtown Okatie, ☐ Fording Island Road, ☐ Graves Road, ☐ Hampton Lake, ☐ Highway 278 Corridor, ☐ Historic Bluffton, ☐ Hunting Island Road, ☐ Indigo Run, ☐ Jasper Ridge, ☐ Jenkins Island, ☐ Kitties Corner, ☐ Lawton Bluff, ☐ Malphrus Road, ☐ Mary Field, ☐ Moss Creek, ☐ Oakridge, ☐ Old Miller Road, ☐ Old Wagon Road, ☐ Palmetto Bluff, ☐ Pine Ridge, ☐ Pritchard Street, ☐ Red Cedar, ☐ Riverwood, ☐ Rose Hill, ☐ Sawmill Road, ☐ Shanklin Road, ☐ Simmonsville Rd, ☐ Spanish Wells Road, ☐ Squire Pope Road, ☐ Stoney, ☐ Tanglewood, ☐ Tennis Center, ☐ Union Cemetery Road, ☐ Wexford
14 ☐ Beaufort County: ☐ Alljoy Road Area, ☐ Bees Ferry, ☐ Buckwalter Place, ☐ Cherry Point, ☐ Colcock Road, ☐ Downtown Okatie, ☐ Fording Island Road, ☐ Graves Road, ☐ Hampton Lake, ☐ Highway 278 Corridor, ☐ Historic Bluffton, ☐ Hunting Island Road, ☐ Indigo Run, ☐ Jasper Ridge, ☐ Jenkins Island, ☐ Kitties Corner, ☐ Lawton Bluff, ☐ Malphrus Road, ☐ Mary Field, ☐ Moss Creek, ☐ Oakridge, ☐ Old Miller Road, ☐ Old Wagon Road, ☐ Palmetto Bluff, ☐ Pine Ridge, ☐ Pritchard Street, ☐ Red Cedar, ☐ Riverwood, ☐ Rose Hill, ☐ Sawmill Road, ☐ Shanklin Road, ☐ Simmonsville Rd, ☐ Spanish Wells Road, ☐ Squire Pope Road, ☐ Stoney, ☐ Tanglewood, ☐ Tennis Center, ☐ Union Cemetery Road, ☐ Wexford

SHOWING INSTRUCTIONS:

OFFICE INFORMATION

COMPENSATION TO COOP. BROKER: 3.0

Rental Agent Name: N/A Rental Agent Phone:

WITNESS: OWNER SIGNATURE: Thomas N. Daye DATE: 3-03-03

WITNESS: PRINT OWNER'S NAME: THOMAS N. DAYE

BROKER SIGNATURE: DATE: OWNER SIGNATURE: Jan N. Daye DATE: 3-3-03

OWNER ADDRESS (1): 210 RIVER BIRCH PLACE PRINT OWNER'S NAME: JAN N. DAYE

OWNER ADDRESS (2): DULUTH, GA. 30097 OWNER PHONE (H): 770-623-9242 (W): 770-814-4203 Ext.

OWNER E-MAIL: HOME FAX: 770-497-3392 Other: 770-814-4201

Top-Broker's Copy Middle-MLS Copy Bottom-Seller's Copy

# 30(b)(6) THE BYRNE CORPORATION D/B/A DUNES MARKETING GROUP – WILLIAM BALDWIN DEPOSITION EXCERPTS/EXHIBITS

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

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE, JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

----------/

COPY

The 30(b)(6) deposition for THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP of WILLIAM BALDWIN, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Ceil Weser, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting & Video, Inc., 1 Corpus Christie Place, 107 Executive Center, Hilton Head, South Carolina, on the 19th day of October, 2009, commencing at or about the hour of 10:12 a.m.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SOUTH CAROLINA 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - FAX 843-785-5837

HUDSON - BALDWIN (DIRECT EXAMINATION)

Q So any defect that impacts on the value of the house constitutes a latent defect in your opinion?

MR. MAHAFFEE: Objection.

THE WITNESS: Maybe we should use a different word other than latent. That is what I believe it says in real estate law, but I am not sure that -- maybe I don't understand what that means other than it is a defect and that it does impact on the value. Yes, I would say that that is true, it is a defect; and it impacts on the value. And disclosure is required by South Carolina law. The form is in fact in this packet here.

BY MR. HUDSON:

Q And I do want to go through that with you; just not right at this very moment.

Are the attorneys who are named as defendants in this case, specifically Robert M. Deeb, Jr. and Charles Wiseman innocent parties in your opinion?

A I really don't have an opinion on that.

# PLEADINGS/DISCOVERY

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF BEAUFORT | ) | IN THE COURT OF COMMON PLEAS<br><br>CIVIL ACTION NO.: 2008-CP-07-00517 |
| Gregory M. Gottschlich and Donald L. McNeil,<br><br>Plaintiffs,<br><br>v.<br><br>Strimpfel Custom Homes, Inc.; Jerry L. Richardson; Coastal Surveying Co. Inc.; Thomas N. Dye and Jan H. Dye; Ken Oliver; and The Byrne Corporation d/b/a Dunes Marketing Group,<br><br>Defendants. | ) | **PLAINTIFFS' ANSWERS TO INTERROGATORIES TO EACH PLAINTIFF FROM DEFENDANTS OLIVER AND DUNES MARKETING** |

**TO: MAX G. MAHAFFEE, ESQUIRE, ATTORNEY FOR DEFENDANTS KEN OLIVER & THE BYRNE CORP. D/B/A DUNES MARKETING:**

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Plaintiffs Gregory M. Gottschlich and Donald L. McNeil, (collectively "Plaintiffs") hereby respond to Defendants Oliver and Dunes Marketing Group's (collectively "these Defendants") interrogatories as follows:

## GENERAL OBJECTIONS AND QUALIFICATIONS

A) Plaintiffs object to any interrogatory to the extent that it seeks information that constitutes or discloses confidential communications between Plaintiffs and any of its counsel or that constitutes or discloses work product or trial preparation materials of Plaintiffs or its counsel.

B) Plaintiffs object to any interrogatory that exceeds the scope of discovery allowed pursuant to South Carolina Rules of Civil Procedure.

C) Plaintiffs object to the production of any documents not within Plaintiffs' possession, custody or control and to the production of documents equally accessible to these Defendants.

D) Plaintiffs have made a reasonable and good faith effort to comply with the interrogatory requests of these Defendants and have searched for the requested documentation in the places where the documentation was most likely to be found. In the event additional information is discovered that is responsive to these interrogatories, Plaintiffs will supplement these responses.

## ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

a. **Dr. Gregory Gottschlich**
**c/o Ellis, Lawhorne & Sims, P.A.**
**P.O. Box 2285**
**Columbia, South Carolina 29202**

**Dr. Gottschlich is one of the owners of the subject property and one of the named plaintiffs in this lawsuit. He will testify as to all matters within his knowledge related to the purchase of the subject property and the discovery of the home's elevation defect. He will also testify as to the problems that have arisen as a result of the elevation defect. No written or recorded statements.**

b. **Dr. Don McNeil**
**c/o Ellis, Lawhorne & Sims, P.A.**
**P.O. Box 2285**
**Columbia, South Carolina 29202**

Dr. McNeil is one of the owners of the subject property and one of the named plaintiffs in this lawsuit. He will testify as to all matters within his knowledge related to the purchase of the subject property and the discovery of the home's elevation defect. He will also testify as to the problems that have arisen as a result of the elevation defect. No written or recorded statements.

c. Thomas & Jan Dye
210 Riverbirch Place
Duluth, Georgia 30097

The Dyes are the former owners and sellers of the subject property and are named defendants in this lawsuit. They will presumably testify as to any and all matters related to and/or arising out of their ownership and sale of the dwelling. No written or recorded statements.

d. Strimpfel Custom Homes, Inc. representatives
207F Hunter Rd.
Hilton Head Island, South Carolina, 29926

Upon information and belief, Strimpfel Custom Homes ("Strimpfel") was the general contractor of record for the subject dwelling. Representatives of Strimpfel will presumably testify as to their knowledge of Strimpfel's role in the construction of the dwelling. No written or recorded statements.

e. Joseph P. Reeve & Claudette Reeve
61 Manchester Ct.
Bluffton, South Carolina 29910

Upon information and belief, Joseph P. Reeve and his wife, Claudette F. Reeve, were the original owners of the subject dwelling and sold it to Ben and Myra Muldong in 1992. Upon further information and belief, and according to Defendant Strimpfel's discovery responses, Joseph Reeve played some role in the actual construction of the subject dwelling.

Joseph Reeve will presumably testify as to his role in such construction as well as any knowledge and/or information he may have pertinent to the dwelling's elevation level. No written or recorded statements.

f. Ben D. Muldong & Myra Muldong
Current Address Unknown

Upon information and belief, Ben and Myra Muldong purchased the subject dwelling from the Reeves in 1992 and sold it to Defendants Dye in 2001. The Muldongs will presumably testify as to any knowledge or information they may have as to the dwelling's elevation level. No written or recorded statements.

g. Sea Island Land Survey representatives (including but not limited to Jack Jones and Mark Renew)
P.O. Box 21568
Hilton Head Island, South Carolina 29925

Upon information and belief, Jack Jones, while employed by Sea Island Land Survey, performed a property survey on behalf of Defendants Dye on or about March 28, 2001. Upon further information and belief, Jones, as part of his survey, also issued an elevation certificate certifying the dwelling's elevation to be 13.3 feet. In 2006, Mark Renew (upon information and belief) of Sea Island Land Survey evaluated and recertified the elevation certificate in response to an inquiry from Dr. Gottschlich concerning the certificate's accuracy. No written or recorded statements.

h. Coastal Surveying Company, Inc. representatives (including but not limited to "Mack" and Jerry Richardson)
35 Pinckney Colony Rd.
Bluffton, South Carolina 29910

Coastal Surveying Company, Inc. ("Coastal Surveying") is a named defendant in this lawsuit. Upon information and belief, former Coastal Surveying employee Jerry Richardson performed a survey of the subject dwelling while it was originally being

constructed and issued a work order to Defendant Strimpfel on or about November 23, 1987, informing Strimpfel that additional work that needed to be performed to the dwelling's foundation in order to render the elevation compliant with applicable guidelines, codes and/or standards. Upon further information and belief, Richardson subsequently prepared and signed off on an elevation certificate certifying the dwelling' lowest floor elevation level to be 14.16 feet without rechecking the dwelling's elevation level to verify the accuracy of his certification.

In 2006, a Coastal Surveying representative named "Mac" informed Dr. Gottschlich that field notes prepared by Jerry Richardson indicated that Strimpfel was to add approximately two feet to the dwelling's elevation, which apparently never happened and Richardson never verified. Between June and November 2006, Coastal Surveying conducted another survey of the subject property and dwelling at a cost to Plaintiffs of $350. Coastal Surveying subsequently verifies the accuracy of the March 28, 2001, survey prepared by Sea Island and refunds without explanation Plaintiff's $350 survey fee.

No written or recorded statements.

i. Coastal Property Appraisals Inc.
32 Office Park Road, Ste. 209
Hilton Head Island, South Carolina 29928

David Kindle of Coastal Property appraised the subject property in November of 2003. He is expected to testify consistently with his appraisal. No written or recorded statements.

j. Ken Oliver
Dunes Marketing Group
6 Queens Folly Road
Hilton Head Island, South Carolina 29928

Ken Oliver was the sellers' agent during the sale transaction between Plaintiffs and Defendants Dye and, upon information and belief, was the buyers' agent for Defendants Dye during their purchase of the subject dwelling from the Muldongs. Defendant Oliver will presumably testify as his role in the above-referenced sale transactions and the extent of his knowledge about the condition of the subject dwelling. No written or recorded statements.

k. Bethea, Griffin & Jordan, P.A. representatives (including but not limited to Cary S. Griffin)
23-B Shelter Cover Lane, Ste. 400
PO Drawer 3
Hilton Head Island, South Carolina 29938

The law firm of Bethea, Griffin & Jordan, P.A. represented the Dyes during their purchase of the subject property from the Muldongs. Appropriate individuals currently or formerly employed by Bethea, Griffin & Jordan will presumably testify as to any relevant knowledge or information they may have about the condition of the subject property or documents in their possession or formerly in their possession relating to the subject property. No written or recorded statements.

l. Phil Schembra
Schembra Real Estate Group
32 Shelter Cove Lane, Ste P
Hilton Head Island, South Carolina 29928

Upon information and belief, Phil Schembra was the Muldongs' real estate agent during the sale transaction between the Muldongs and the Dyes. He will presumably testify as to his knowledge of the sale transaction and the condition of the dwelling in general. No written or recorded statements.

m. Wells Fargo Home Mortgage, Inc.
51 New Orleans Road, Ste. 2
Hilton Head Island, South Carolina 29928

or

P.O. Box 5708
Springfield, Ohio 45501

Wells Fargo is Plaintiffs' original mortgage lender. Representatives of Wells Fargo may testify as to its flood insurance requirements under the mortgage given to Plaintiffs as well as any other matters relevant to their role in Plaintiffs' purchase of the subject dwelling. No written or recorded statements.

n. Seacoast Insurance, Inc. representatives (including but not limited to Teena Farrell)
PO Box 7048
Hilton Head Island, South Carolina 29938

Seacoast Insurance is the insurance brokerage company that Plaintiffs have procured the majority of their insurance coverage through for the subject dwelling. In or about 2006, Plaintiffs, Dr. Gottschlich in particular, approached Seacoast about increasing their flood coverage for the dwelling but were informed that the dwelling was not eligible for excess flood coverage because its elevation level did not comply with FEMA guidelines.

No written or recorded statements.

o. Coastal Plains Insurance (Wendy)
5 Bow Circle, Ste. A
Hilton Head Island, South Carolina 29928
Phone: 843.785.7086
Fax: 843.785.7733

Plaintiffs have spoken with Wendy at Coastal Plains about the availability of excess flood coverage for the dwelling. No written or recorded statements.

p. Michael R. Lynes
Lynes Construction, Inc.
One Row Boat Row
Hilton Head Island, South Carolina 29928

Lynes Construction prepared a proposal of the scope of work and costs associated with increasing the subject dwelling's elevation to at least 14 feet. Michael Lynes of Lynes Construction will presumably testify in accordance with the information set forth in the proposal. No written or recorded statements have been taken from this witness.

q. Robert M. Deeb, Jr.
McNair Law Firm
Post Office Drawer 3
Hilton Head Island, South Carolina 29938

Mr. Deeb was one of Plaintiffs' closing attorneys during their purchase of the subject property from the Dyes. He will presumably testify as to his role in the closing process as well as his activities after learning of the dwelling's elevation defect. No written or recorded statements.

r. Charles H. Wiseman
Laurich & Wiseman, P.A.
P.O. Drawer 6868
Hilton Head Island, South Carolina 29938-6868

Mr. Wiseman was also one of Plaintiffs' closing attorneys during their purchase of the subject property from the Dyes. He will presumably testify as to his role in the closing process. No written or recorded statements.

s. Leslee Thomas
Laurich & Wiseman (upon information and belief)
P.O. Drawer 6868
Hilton Head Island, South Carolina 29938

Leslee Thomas is the Laurich & Deeb paralegal who assisted with Plaintiffs' closing. She will presumably testify as to her role in the closing transaction. No written or recorded statements (upon information and belief, she is believed to be deceased).

t. Trudie Johnson
Community Development – Floodplain Administrator
Town of Hilton Head Island

**Hilton Head Island, South Carolina**
**(843-341-4665)**

**Trudie Johnson is employed as the Floodplain Administrator for the Town of Hilton Head Island. Plaintiffs, Dr. Gottschlich in particular, spoke with Ms. Johnson in August of 2007 about the number of elevation certificates on file for the subject dwelling, and during this conversation was informed that only the original certificate prepared by Jerry Richardson of Coastal Surveying was on file. No written or recorded statements.**

u. **Hilton Head Buyers Real Estate, LLC**
**200 Professional Bldg. – 2 Corpus Christie Place**
**Hilton Head Island, South Carolina 29928-1712**

**Plaintiffs have communicated with representative of Hilton Head Buyers Real Estate about potential appreciation and depreciation of comparable homes in the Hilton Head area. No written or recorded statements.**

v. **In addition to the witness identified above, Plaintiffs reserve the right to call as witnesses, whether lay or expert, any and all individuals or entities identified by any other parties to this litigation.**

w. **Plaintiffs reserve the right to supplement this response as discovery continues.**

2. Set forth a list of organizational documents; photographs, contracts; change orders; plats; sketches; plans; specifications; and any other prepared documents (in any form including paper, digital and electronic) in the possession, custody or control of either Plaintiff that relates to the claim or any defenses in this case.

ANSWER:

**Plaintiffs and/or Plaintiffs' counsel are in possession of the following documents and materials:**

a. **Documents either received from Plaintiffs or procured by Plaintiffs' counsel prior to and during course of litigation (PLF 0001 - PLF 0103);**

b. **Robert Deeb, Jr.'s closing file (L&D 00001 – L&D 00377);**

c. **Documents provided to date by other parties during discovery.**

**All relevant, non-privileged documents and materials in Plaintiffs' possession (to include its counsel's possession), with the exception of those documents produced by other parties during discovery, are produced pursuant to DMG and Oliver's requests for production.**

**Plaintiffs reserve the right to supplement this response as discovery continues.**

3. Set forth the names and addresses of all insurance, surety, or bonding companies which have any type of coverage relating to the claim or any party, setting forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy and the amount of bond.

ANSWER:

**Plaintiffs object to this interrogatory on the basis that it is ambiguous as drafted and potentially calls for disclosure of information that is neither relevant nor likely to lead to the discovery of admissible evidence. Subject to and without waiving the forgoing objection, to the extent these Defendants seek to know the providers and types of coverage(s) Plaintiffs currently have on the subject dwelling, they are as follows:**

a. **Flood coverage:** **Travelers (via The Standard Fire Insurance Company)**
**Flood Service Center**
**PO Box 29103**
**Shawnee Mission, KS 66201-1403**
**Policy No.: 6004878572**
**Coverage limits: $231,100 (dwelling)**
**$46,600 (contents)**

**Additional flood:** (coverage provided via) Wells Fargo Home Mortgage
51 New Orleans Road, Ste. 2
Hilton Head Island, South Carolina 29928

or

P.O. Box 5708
Springfield, Ohio 45501

Coverage limits: $30,000 (approximately)

b. **Wind & Hail:** South Carolina Wind and Hail Underwriting Assoc.
P.O. Box 407
Columbia, South Carolina 29202
Policy 0056674-04
Coverage limits: $800,000 (dwelling)
$50,000 (personal property)
$80,000 (loss of use / rents)
$40,000 (increased construction cost)

Dwelling Three X-Wind

c. **Homeowners:** Lloyd's of London
One Lime Street
London EC3M 7HA
Policy LL003SC0201022
Coverage limits: $800,000 (dwelling)
$50,000 (personal property)
$80,000 (loss of use / rents)
$0 (other structures)
$0 (theft)
$300,000 (personal liability)
$5,000 (med pay)

**Plaintiffs reserve the right to supplement this response as discovery continues.**

4. Set forth an itemized statement of all direct and consequential damages claimed to have been sustained by any party, along with the particulars of who or what caused each and every element of damages.

ANSWER:

**Plaintiffs are still in the process of evaluating the nature and extent of their damages to date; however, Plaintiffs' damages consist of, but are potentially not limited to, the following: (1) the potential cost and expenses associated with raising the dwelling in order to render its elevation compliant with FEMA base flood elevation requirements so that if will be fully insurable against flood damage; (2) increased premiums paid for existing flood insurance over past four years based on existing elevation insufficiency; (3) diminution in value of the subject dwelling based on potential buyer uncertainty associated with measures required to render dwelling code compliant; (4) diminution in value of the subject dwelling associated with potential buyer's inability to fully insure dwelling against flood damage; (5) legal fees, costs, and expenses associated with this litigation; and (6) Plaintiffs' business interference resulting from demands of time-consuming litigation.**

**In the alternative, should Plaintiffs pursue and prevail on their rescission cause of action, their measure of damages would be the original purchase price of the subject dwelling plus related costs and expenses as well as any other monetary sums deemed justified by the court under the circumstances.**

**Plaintiffs' damages as set forth above have been caused by each individual who knew or should have known of the existing elevation defect and failed to disclose the defect's existence to Plaintiffs prior to the time of purchase.**

**Plaintiffs reserve the right to supplement this response as discovery continues.**

5. List the names and addresses of any expert witnesses who the Plaintiffs propose to use as a witness at the trial, or during the discovery, of this case.

ANSWER:

**Plaintiffs have not yet retained an expert witness specifically for purposes of testifying at trial, but if and when Plaintiffs do so they will supplement this response accordingly. Plaintiffs expressly reserve the right to elicit opinion testimony from any individuals, to the extent qualified, identified in response to interrogatory no. 1 or identified by any other parties during discovery.**

6. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficiently detailed to inform all parties to this lawsuit of the important facts known to, or observed by, such witness and provide a copy of any written or recorded statements taken from such witness.

ANSWER:

**See response to interrogatory no. 1.**

7. Identify by name, address and telephone number any expert or witness not listed above whom either Plaintiff has retained, contacted, or especially employed, but not including those informally consulted, in this case but who you do not expect to call as a witness at trial. For each such expert, state his/her area of expertise, his/her education, training and background and whether or not the expert has rendered any opinion, whether written or verbal, and a specific area or issue to which such opinion was addressed and any opinions.

ANSWER:

**Plaintiffs object to this interrogatory on the basis that it seeks the disclosure of information subject to the work product doctrine.**

8. Please identify and describe with specificity and particularity each and every alleged defect, shortcoming, change and/or deficiency ("problem") in any representation(s), design, contract(s), appraisal, valuation, disclosure(s), development, construction, sale, management,

inspection and/or repair of or relating to the property which is the subject of this action. For each such alleged defect state the following:

a. The specific problem(s) and by whom it was caused and the specific representation and by whom it was made;
b. When and by whom it was discovered, and the precise actions taken upon the discovery;
c. The monetary or other damages caused by it;
d. Who was damaged by it; and
e. All documents identifying, probing, analyzing, dealing with and/or suggesting remedies for any alleged defect, problem and/or deficiency.

ANSWER:

**Plaintiffs crave reference to the allegations as set forth in their complaint as a sufficient response to this interrogatory; however, in a good faith effort to further provide these Defendants with the information requested, Plaintiffs further respond as follows:**

**The critical defect with the subject dwelling is that its elevation level is approximately 9" low and therefore non-compliant with applicable FEMA guidelines and building code. The elevation defect was originally caused by representatives of Defendant Strimpfel during the original construction of the dwelling, perpetuated by representatives of Coastal Surveying during their survey of the property and documentation of the elevation insufficiency, and further perpetuated by each and every individual, including but not limited to Defendants Dye and DMG/Oliver, who knew or should have known of the elevation insufficiency prior to Plaintiffs' purchase of the dwelling.**

**Defendant Strimpfel should have taken appropriate steps to increase the dwelling's elevation once it was in possession of the November 23, 1987, work order from Coastal Surveying informing it of the specific work that needed to be done to render the elevation code compliant. After issuing the above-referenced work order to Defendant Strimpfel, Defendant Coastal Survey should have verified that Defendant Strimpfel actually performed**

(or had performed) the work requested in the work order prior to issuing a stamped elevation certificate certifying the dwelling's elevation to be 14.16 feet. Upon information and belief, the actions, inactions and misrepresentations of both Defendants Strimpfel and Coastal Surveying subsequently caused the Town of Hilton Head Island to issue a certificate of occupancy for the dwelling at a point in time when such certificate should not have been issued in light of the known existing elevation defect with the dwelling. Furthermore, by allowing the inaccurate elevation certificate dated November 24, 1987, to be filed (and remain on file) with the Town of Hilton Head, Defendants Strimpfel and Coastal Surveying misrepresented to those third-parties, including but not limited to Plaintiffs as potential purchasers, who might have potential cause or need to review and/or rely upon public records during their due diligence investigation of the subject property, that the dwelling's elevation complied with all applicable guidelines, codes and ordinances.

Defendants Dye either knew or should have known that the dwelling's elevation was non-compliant with the applicable FEMA guidelines and building code once the March 28, 2001, elevation certificate was prepared and delivered by Sea Island Land Survey. Thereafter, the Dyes should have informed Plaintiffs of the dwelling's elevation deficiency during the course of sale negotiations, but they failed to do so. Defendants Dyes' real estate agent, Defendant Oliver, knew or should have known of the dwelling's elevation deficiency by virtue of his exposure to the dwelling, exposure to sale negotiations and transactions involving the dwelling, and his representation of the Dyes as well as the Muldongs during sale transactions involved the subject property.

See response to interrogatory no. 4 for a summary of Plaintiffs' damages to date.

**See documents produced pursuant to the accompanying requests for production for information responsive to subpart (e) of this interrogatory.**

**Plaintiffs reserve the right to supplement this response as discovery continues.**

9. Identify with specificity and in detail each representation, warranty and/or guarantee, whether written or verbal, expressed or implied, made by any party or non-party to this action, relating in any manner to the real (and any personal) property which is the subject of this action and any materials or services provided to, on and concerning the subject property. For each warranty or guarantee state the following:

a. Who made it;
b. When it was made;
c. In what form (verbally, written, etc.);
d. To whom it was made;
e. The specific representations which were made; and
f. Who (name, address and telephone number) was present when such was made.

ANSWER:

**See response to interrogatory no. 8 as well as all documents and materials produced pursuant to the accompanying requests for production. Some of the specific representations made by the defendants include, but are not limited to, the following:**

**By providing the Town of Hilton Head with documentation and representations sufficient to cause the Town to issue a certificate of occupancy for the subjection dwelling, Defendant Strimpfel represented to any potential future purchasers of the dwelling that it was constructed in compliance with all applicable guidelines, codes and ordinances. Defendant Strimpfel issued an implied warranty of workmanship and habitability at the time it constructed and sold the dwelling, which extended to subsequent purchasers, including but not limited to Plaintiffs.**

**Defendants Dye represented to Plaintiffs during the course of the sale transaction that the subject dwelling did not deviate from applicable guidelines, codes and ordinances.**

**Defendant Coastal Surveying inaccurately represented on its 1987 elevation certificate that the dwelling had an elevation level of 14.16 feet.**

**Defendants DMG and Oliver represented to Plaintiffs via "Owner Acknowledgement" form the dwelling did not violate or vary from any building codes or zoning ordinances.**

**Plaintiffs reserve the right to supplement this response as discovery continues.**

10. List the names, addresses and telephone numbers of all persons and entities with whom you contracted or who you contacted for any design, revisions, development, engineering, construction, inspection, destruction, management, maintenance, appraisal, valuation, mortgaging, insurance, surveying, contract drafting or review, and repairs of the property or any part/portion of the property which is the subject of this lawsuit. For each person or entity, state the exact nature of the duties or responsibilities of such persons, any specialty or licensing of the person or entity, the specific areas for, and about which, they were involved and who hired them.

ANSWER:

a. **Michael R. Lynes**
**Lynes Construction, Inc.**
**#1 Row Boat Row**
**Hilton Head Island, South Carolina 29928**

**See response to interrogatory no. 1.**

b. **Coastal Property Appraisals Inc.**
**32 Office Park Road, Ste. 209**
**Hilton Head Island, South Carolina 29928**

**See response to interrogatory no. 1.**

c. **Sea Island Land Survey representatives (including but not limited to Jack Jones and Mark Renew)**
**P.O. Box 21568**

Hilton Head Island, South Carolina 29925

See response to interrogatory no. 1.

d. Coastal Surveying Company, Inc. representatives (including but not limited to "Mack" and Jerry Richardson)
35 Pinckney Colony Rd.
Bluffton, South Carolina 29910

See response to interrogatory no. 1.

e. Subcontractors who performed work to dwelling after Plaintiffs' purchase. Identities and addresses for each to be supplemented.

After Plaintiffs purchase the property in 2003, they had the kitchen and master bathroom remodeled.

f. Seacoast Insurance, Inc. representatives (including but not limited to Teena Farrell)
PO Box 7048
Hilton Head Island, South Carolina 29938

See response to interrogatory no. 1.

g. Coastal Plains Insurance (Wendy)
5 Bow Circle, Ste. A
Hilton Head Island, South Carolina 29928
Phone: 843.785.7086
Fax: 843.785.7733

See response to interrogatory no. 1.

h. Trudie Johnson
Community Development – Floodplain Administrator
Town of Hilton Head Island
Hilton Head Island, South Carolina
(843-341-4665)

See response to interrogatory no. 1.

i. Miscellaneous realtors about listing house for sale with existing elevation defect.

Plaintiffs will supplement the names and contact information for these individuals once located.

11. State with specificity and in detail any statement of existing fact which was not true; who exactly made such statement; to whom any such statement was made; when such statement was made; how much damaged any person or entity; and the amount of damage(s).

ANSWER:

**On or about November 24, 1987, Jerry Richardson of Defendant Coastal Surveying prepared, stamped and issued an elevation certificate certifying the subject dwelling's elevation level to be above the 14' base flood elevation level as defined by FEMA. The particular representation made by Jerry Richardson in this elevation certificate was false when made because the subject dwelling's elevation, as known to Richardson at the time, was less than 14' and he never took steps to verify that Defendant Strimpfel in fact performed the additional work as specified in the Coastal Surveying work order dated November 23, 1987.**

**On or about May 23, 1988, Defendant Strimpfel represented to the Town of Hilton Head Island that the subject dwelling was in fact compliant with applicable building codes and ordinances, including the 14' base flood elevation level as set forth by FEMA guidelines, in order to obtain a certificate of occupancy. The subject dwelling was in fact not compliant with all applicable building codes and ordinances, including the 14' base flood elevation level as set forth by FEMA guidelines, when the said representation was made by Defendant Strimpfel.**

**On or about October 25, 2003, Defendants Dye represented to Plaintiffs in writing that they had no knowledge of the dwelling violating or varying from any applicable building codes or ordinances. This representation was false when made insofar as the Dyes had prepared at their direction and were in possession of Sea Island Land Survey's (i.e. Jack Jones) March 28, 2001, elevation certificate certifying the dwelling's elevation to be 13.3'.**

**Neither the Dyes nor anyone representing them ever disclosed the elevation deficiency to Plaintiffs.**

**While marketing the subject property to Plaintiffs and representing Defendants Dye during the negotiation and purchase phase of the sale transaction, Defendant Oliver, as an agent for Dunes Marketing Group, provided to Plaintiffs written assurance from Defendants Dye (Residential Property Condition Disclosure Statement) representing that there were no violations or variances of building codes or zoning ordinances. This representation was false when made insofar as the Dyes were in possession of Sea Island Land Survey's (i.e. Jack Jones) March 28, 2001, elevation certificate certifying the dwelling's elevation to be 13.3 feet. Neither the Dyes nor anyone representing the Dyes ever disclosed the elevation deficiency to Plaintiffs.**

**Plaintiffs were damaged as outlined in response to interrogatory no. 4.**

~~**Plaintiffs reserve the right to supplement this response as discovery continues.**~~

12. State with specificity and in detail when you or any attorney, person or entity first became aware of any alleged defect or deficiency in the sale, listing, design, the management, the contract(s), appraisal, valuation, the construction, the inspection(s), any representations, any surveying, and any repairs or any other matters concerning any subject property or part/portion of the property which is the subject of this lawsuit. Also, describe with particularity what, if anything, you did when you learned of this. NOTE: If any documents were generated, please identify by date, title and maker of the document, and the recipient(s) of each document. Further, if non-privileged, produce them.

ANSWER:

Plaintiffs object to this interrogatory as overly broad and ambiguous. Subject to and without waiving the foregoing objections, Plaintiffs contend that the documents produced pursuant to the accompanying requests for production provide evidence of when the various parties, attorneys, etc. other than Plaintiffs or those representing Plaintiffs first became aware or should have become aware or the elevation defect. Further responding to this interrogatory, Plaintiffs state as follows:

Extensive damage caused by Hurricane Katrina in August 2005 prompted Plaintiffs to consider increasing flood insurance for the subject dwelling. Between April 10 - 20, 2006, Dr. Gottschlich inquired with Sea Coast Insurance about increased flood coverage, and Sea Coast responded that the elevation deficiency rendered the subject dwelling ineligible for excess flood coverage.

Between May - July 2006, Sea Island Land Survey, in response to Dr. Gottschlich's inquiry to Mark Renew, verified accuracy of the March 28, 2001, elevation certification.

Between June - November 2006, Plaintiffs contacted Defendant Coastal Survey regarding the original elevation certificate issued on November 24, 1987. For a fee of $350, Defendant Coastal Surveying verified accuracy of March 28, 2001, survey prepared by Sea Island Survey. Defendant Coastal Survey subsequently refunded the fee without explanation. Defendant Coastal Surveying provided field notes documenting Strimpfel's knowledge that additional elevation was required for code compliance.

On November 30, 2006, Plaintiffs notified closing attorney Robert Deeb, Jr. of dwelling's elevation deficiency. Attorney Deeb declined to represent Plaintiffs in any potential litigation that might be related to the matter and provided Plaintiffs with names of potential litigators to review and assess their potential claim.

**On February 6, 2007, Plaintiffs contact attorney Jack Qualey regarding potential representation. On April 5, 2007, Plaintiffs hired Lynes Construction, Inc. to provide an estimate for remedial measures to correct the dwelling's elevation deficiency.**

**In mid 2007, Plaintiffs contacted Ellis Lawhorne about potential representation. Plaintiffs subsequently retain Ellis Lawhorne and subsequently authorize suit to be filed in the instant matter.**

**Plaintiffs reserve the right to supplement this response as discovery continues.**

13. Identify each and every person or entity supplying information used to prepare the answers to these Interrogatories or assisting in answering these Interrogatories and, as to each person so identified, indicate the number of the Interrogatory, or portion thereof, to which that person or entity supplied information and/or assisted in answering.

ANSWER:

~~Plaintiffs object to this interrogatory as unduly burdensome as drafted. Subject to and~~ **without waiving the foregoing objection, see documents produced pursuant to the accompanying requests for production.**

**All information used in replying to these interrogatories and production requests was provided by Plaintiffs from their respective recollections of events, extracted from documents and materials in Plaintiffs or their counsel's possession, or gathered directly by Plaintiffs' counsel from identifiable third-parties.**

**Plaintiffs reserve the right to supplement this response as discovery continues.**

14. If either Plaintiff claims any lost wages, income, profits, and/or financial opportunities, set forth each element of any such loss, and exactly who (whether a party to this

litigation or not) caused such, along with who could testify during discovery or trial and a listing of all documents which show, or tend to show, such loss.

ANSWER:

**Plaintiffs contend that the potential resale value of the subject dwelling (which includes but is not necessarily limited to potential profits to each Plaintiff) is and will continue to be adversely affected until the elevation deficiency is rectified and the dwelling is able to be fully insured for flood damage for a reasonable premium price. Plaintiffs will testify as to the basis for this claimed element of damage, as will one or more potential expert witnesses to be identified in the future.**

15. If you claim that anyone led or misled you into signing a contract or entering into an agreement, state who did such; how they caused you to sign such a contract without seeking legal or other advice from others; and why you did not void that contract rather than proceeding to stand upon any rights under that contract.

ANSWER:

**Plaintiffs would not have purchased the subject dwelling had the elevation defect been disclosed to them prior to the sale. In choosing to close on the subject property, Plaintiffs relied upon the authenticity, accuracy and truthfulness of documents provided to them by the Dyes, Defendant Oliver, and Greg Merrill.**

**Plaintiffs reserve the right to supplement this response as discovery continues.**

16. With regard to each expert witness you have named in this case, or with whom you have consulted, please provide the following:

a. A comprehensive list of each and every document, record, text, study, paper, abstract, monograph, photograph, x-ray, diagnostic study, lab report, bill, report, book letter, film, data compilation, computer source, or other item of any and every nature whatsoever which the expert has

seen, read examined, studied, reviewed; and/or relied upon to any extent whatsoever in formulating to any extent whatsoever the opinions which he has developed in connection with this matter;

b. A comprehensive list of each and every case in which the expert has testified by way of deposition and/or court testimony from January 1, 1996 through the date of your answers to these interrogatories (and any later, supplemental answers) to include, but not limited to, the style of the case, case number, court in which the case was filed, names, addresses, and telephone numbers of the attorneys involved, the type case, the name of the insurance company involved, the name, address, and telephone number of the person who contacted the expert about the case, and the identity of the party by whom the expert was called to testify;

c. A comprehensive statement of the total amount of the expert's annual earnings from all sources for the years 2001 through 2004 and the year to date 2005;

d. A comprehensive statement of the total amount of the expert's annual earnings for the years 2004 through 2007 and the year to date 2008 from fees generated as a result of consulting on, or participating in, court cases or potential court cases and/or testifying in court cases by way of deposition and/or court testimony and/or consulting, whether or not testimony was given, itemized as to each case. The itemization is to include the style of the case, case number, court in which the case was filed, names, addresses, and telephone numbers of attorneys involved, the name of the parties or insurance company involved, the name, address and telephone number of the person or entity who engaged the expert, and the total amount of the expert's fees generated as to each such case;

e. A comprehensive statement of the expert's fee structure for consulting and/or testifying by way of deposition and/or in court;

f. A listing of all dates and times, and the name of the involved clients, when there has been a referral to or from the expert by the party and the party's attorneys and his/her law firm, whether for professional services or for court-related consulting and testimony, whether in deposition or in trial; and

g. The dates on which any consultant or expert was first contacted by or on behalf of the Plaintiff; what the expert stated and opined regarding this case; when any expert was hired and paid; the amount any expert has been paid; and any other matters relating to any consultation, discussions, submissions or verbal or written report of any expert.

ANSWER:

**To the extent this interrogatory seeks discovery of information involving consulting experts, Plaintiffs object on the basis of work product. Subject to and without waiving the foregoing objection, Plaintiffs have not formally retained an expert witness who they expect to testify at trial. However, if and when such an expert is retained, this response will be supplemented accordingly.**

17. State, for each Plaintiff, the basis for any allegation against Defendant Oliver and Defendant Dunes Marketing regarding the "Residential Property Condition Disclosure Act," especially considering that the Dye Defendants signed the disclosure pursuant to the Act.

ANSWER:

**In marketing the property to Plaintiffs, Defendant Oliver, an agent of Defendant Dunes Marketing, provided to Plaintiffs a written assurance by Defendant Dyes (Residential Property Condition Disclosure Statement) that there are no violations or variances of building codes or zoning ordinances.**

18. Set forth with particularity, and in a chronological order, what specific acts or omissions were done or omitted by, and which caused any injury to the Plaintiffs, by (1) the Defendant Oliver and by (2) the Defendant Dunes Marketing regarding the Third (Negligence) Cause of action.

ANSWER:

**See response to interrogatory no. 8.**

**Plaintiffs reserve the right to supplement this response as discovery continues.**

19. Provide all information regarding any contract which you claim that (1) the Defendant Oliver and (2) the Defendant Dunes Marketing entered into with one or both Plaintiffs and how and when such contract allegedly was breached.

ANSWER:

**DMG, by and through Greg Merrill, entered into an exclusive buyer agency agreement with Plaintiffs on or about November 11, 2003. At a minimum, DMG breached the agreement by failing to provide sufficiently those services stated in subparts 6.c.(ii) and 6.c.(iv) in particular.**

**Additionally, Plaintiffs believe that Defendants Oliver and DMG breached their duty of good faith and fair dealing by failing to make them aware of the existing elevation deficiency. Specifically, Defendant Oliver, as an agent of DMG, participated in the negotiation of the contract (of sale) bearing DMG's name and presumably drafted by DMG. In facilitating the formation of the said contract of sale without making Plaintiffs aware of the dwelling's elevation defect and the corresponding implications of same, these Defendants breached the duty of good faith and fair dealing.**

~~**Plaintiffs reserve the right to supplement this response as discovery continues.**~~

20. Particularly as to the allegations in the Seventh ("Civil Conspiracy") Cause of Action, state which two or more persons combined and/or conspired for the purpose of injuring either Plaintiff including which Plaintiff, what acts in furtherance of such combination/conspiracy was done by Defendant Oliver and/or Defendant Dunes Marketing; and what special damages and/or actual damages, if any, have been sustained by either Plaintiff.

ANSWER:

**Plaintiffs object to this interrogatory as ambiguous insofar as in can be reasonably construed to pertain either to all Defendants or only to Defendants DMG and Oliver. Subject to and without waiving the foregoing objection, Plaintiffs offer the following as to the conspiracy cause of actions against Defendant DMG and Oliver:**

**Upon information and belief, some combination of Defendants Dye and Defendants Oliver and DMG acting in concert to facilitate the sale of the subject property at the negotiated price stated in the contract of sale. The primary act done in furtherance of the conspiracy was the parties' combined failure to inform Plaintiffs of the existing elevation defect, which consequently caused Plaintiffs to purchase – at a inflated price – a dwelling they otherwise would not have made an offer on.**

**Plaintiffs' current alleged damages as a whole are dynamic and continue to not only increased in amount but also vary in nature. Plaintiffs' special damages, at least at this time, potentially range from, but are not necessarily limited to, their inability to procure excess flood coverage for the dwelling to their projected costs to raise the dwelling to their potential costs for excess flood coverage (if ultimately available) to their having paid an artificially inflated purchase price for the defective dwelling. In all likelihood, Plaintiffs will be amending their complaint as discovery moves forward and facts are further developed to elaborate upon and bolster those causes of action that afford Plaintiffs the greatest opportunity for recovery and to also remove those causes of action that might not ultimately be supportable by the evidence.**

**Plaintiffs reserve the right to supplement this response as discovery continues.**

21. Set forth with particularity all direct and circumstantial evidence either Plaintiff has regarding Defendant Oliver and/or Defendant Dunes had any notice or knowledge of any elevation problem of the subject real estate or any other real estate, at the time of the allegations in the pleadings or thereafter, setting forth with particularity (if known) the date of such notice of knowledge of one or both of these Defendants.

ANSWER:

**Plaintiffs crave reference to all documents produced pursuant to the accompanying requests for production that are response to this interrogatory. These Defendants represented Defendants Dye both in their purchase of the subject property from the Muldongs and their selling of the property to Plaintiffs. Defendants Dye commissioned a survey for the subject property during March of 2001, and the elevation certificate issued as a result of the survey showed that the subject dwelling was below the base flood elevation level. Defendants DMG and Oliver, as Defendants Dye's agent, consequently either knew or should have known of the elevation defect.**

**Plaintiffs reserve the right to supplement this response as discovery continues.**

22. Set forth with particularity each and every insurance company and insurance agent (including name, address and telephone number) that either Plaintiff has contacted regarding flood insurance and the specific result of such contact, including the pricing or quoting of any insurance, any insurance obtained, and any referral to another person or entity which occurred.

ANSWER:

a. **Teena Ferrell**
**Seacoast Insurance, Inc.**
**PO Box 7048**
**Hilton Head Island, South Carolina 29938**

**See response to interrogatory no. 1 and responsive documents produced pursuant to the accompanying requests for production.**

b. **Bill Spraul**
**McKenna Agency**
**Charleston, South Carolina**
**(843-795-0189)**

Plaintiffs, by and through counsel, attempted to get a quote for excess flood coverage through the McKeena Agency in July of 2008 but were informed that excess flood coverage was not available for the dwelling due to elevation defect.

c. Tommye Lyell
Anderson Insurance Associates
P.O. Box 1858
Pawley's Island, South Carolina 29585
(843-235-3383)

Plaintiffs received a quote for excess flood coverage through Tommye Lyell in September 2008. Mrs. Lyell presumably has knowledge of the details of the excess flood quote. No written or recorded statement.

d. Coastal Plains Insurance
c/o Wendy
Current Address Unknown
Phone: 843.785.7086
Fax: 843.785.7733

Plaintiffs have spoken with Wendy at Coastal Plains about the availability of excess flood coverage for the dwelling. No written or recorded statements.

e. BB&T Flood (Karissa Nadeau and Melody Kemp)
414 Gallimore Dairy Road, Ste. F
Greensboro, North Carolina 27409
(800-228-6978)

Plaintiffs have communicated with BB&T Flood about the availability of excess flood coverage for the dwelling, and are still in communications with BB&T regarding the availability of such coverage. BB&T provided Plaintiffs one quote for coverage on or about September 10, 2008, but the quote was erroneously based on the wrong elevation certificate (i.e. the one originally issued by Jerry Richardson as opposed to the one issued by Jack Jones). Plaintiffs are in the process of obtaining a quote from BB&T based on the correct elevation certificate. No written or recorded statements.

**Plaintiffs reserve the right to supplement this response as discovery continues.**

23. Set forth with particularity the legal and factual basis for each Plaintiff seeking rescission from Dunes Marketing.

ANSWER:

**Plaintiffs stipulate that they will be dismissing their rescission cause of action against DMG and Oliver (but only as to these two parties).**

24. Provide any information and documents of or relating to or regarding any past or pending civil or criminal action involving either Plaintiff.

ANSWER:

**Plaintiffs object to this request on the basis that it is neither relevant nor likely to lead to the discovery of admissible evidence.**

25. Set forth with particularity each person or entity (whether private or governmental) either Plaintiff contacted regarding the elevation level of the property and the result of each such contact, including without limitation any opinion, whether that opinion was that the elevation level was proper or improper. NOTE WELL: These Interrogatories must be answered separately and fully in writing and under oath by each of the Plaintiffs, unless it is objected to, in which event the legal reasons for objection must be stated. Rule 33 requires the prompt supplementation of answers to these Interrogatories up to, and through, the beginning of trial.

ANSWER:

**Plaintiffs crave reference to any preceding interrogatory responses that are responsive, in whole or in part, to this particular interrogatory. A brief synopsis of the responsive actions is as follows:**

**Between April 10 - April 20, 2006, Dr. Gottschlich communicates with Sea Coast Insurance about increased flood insurance, and Sea Coast Insurance informs him that the deficiency with the dwelling's elevation level precludes additional flood coverage.**

**Between May - July 2006, Sea Island Land Survey verifies the accuracy of the March 28, 2001, elevation certification.**

**Between June - November 2006, Plaintiffs contact Defendant Coastal Surveying to inquire about the information contained in the original elevation certificate dated November 24, 1987. For a fee of $350, Defendant Coastal Surveying verifies accuracy of 3/28/01 survey by Sea Island Survey. Defendant Coastal Surveying subsequently refunds fee without explanation. Defendant Coastal Surveying provides field notes documenting Defendant Strimpfel's knowledge that specific, additional construction work was required to render that dwelling's elevation level code compliant.**

**On or about April 5, 2007, Plaintiffs contract Lynes Construction to provide an estimate for remedial measures to correct dwelling's elevation deficiency.**

**Plaintiffs reserve the right to supplement this response as discovery continues.**

ELLIS LAWHORNE & SIMS, PA

BY: _____

JOHN D. HUDSON, JR.
WESLEY D. FEW
Post Office Box 2285
Columbia, South Carolina 29202
Phone: 803-254-4190

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

9/24, 2008

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF BEAUFORT | ) | CIVIL ACTION NO.: 2008-CP-07-00517 |
| Gregory M. Gottschlich and Donald L. McNeil, | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | **CERTIFICATE OF SERVICE** |
| v. | ) | |
| | ) | |
| Strimpfel Custom Homes, Inc.; Jerry L. Richardson; Coastal Surveying Co. Inc.; Thomas N. Dye and Jan H. Dye; Ken Oliver; and The Byrne Corporation d/b/a Dunes Marketing Group, | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |

The undersigned does certify that on September 26, 2008, that she did cause to have served by U.S. Postal Service, first class, postage prepaid, copies of the Plaintiffs' Answers to Interrogatories, Plaintiffs' Responses to Requests for Production from Defendants Oliver and Dunes Marketing and Plaintiffs' Privilege Log., to the following:

Max G. Mahaffee, Esquire
Grimball & Cabaniss, LLC
P. O. Box 816
Charleston, SC 29402-0816

Robert V. Mathison, Jr., Esquire
Mathison & Mathison
P. O. Box 5271
Hilton Head Island, SC 29938-5271

Dean B. Bell, Esquire
The Law Office of Dean B. Bell, LLC
1 Corpus Christie Place
Bldg 1-5 Executive Center
P. O. Box 7401
Hilton Head Island, SC 29928

Ralph E. Tupper, Esquire
Tupper, Grimsley & Dean, P.A.
P. O. Box 2055
611 Bay Street
Beaufort, SC 29901-2055

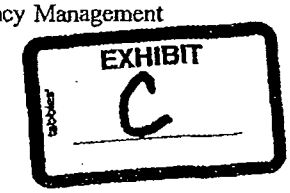
Monica Mulvey Mcgee
Paralegal

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF BEAUFORT | IN THE COURT OF COMMON PLEAS<br>FOR THE<br>FOURTEENTH JUDICIAL CIRCUIT |
| Gregory M. Gottschlich and Donald L. McNeil,<br><br>Plaintiffs,<br><br>v.<br><br>Strimpfel Custom Homes, Inc.; Joseph A. Reeve; Jerry L. Richardson; Coastal Surveying Co. Inc.; Thomas N. Dye; Jan H. Dye; Ken Oliver; The Byrne Corporation d/b/a Dunes Marketing Group, Laurich & Deeb, P.A.; Robert M. Deeb, Jr. and Charles H. Wiseman.<br><br>Defendants. | CIVIL ACTION NO. 2008-CP-07-00517<br><br>**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS LAURICH & DEEB, P.A., ROBERT M. DEEB, JR. AND CHARLES H. WISEMAN'S MOTION FOR SUMMARY JUDGMENT** |

Plaintiffs Gregory M. Gottschlich and Donald L. McNeil (collectively "Plaintiffs") submit this Memorandum in Opposition to Defendants Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman's (collectively, "L&D, Deeb and Wiseman") Motion for Summary Judgment.

## BACKGROUND

This case concerns a house Plaintiffs own at 48 Sea Lane in Palmetto Dunes on Hilton Head Island ("house"). Plaintiffs purchased the house in December 2003 from Defendants Thomas and Jan Dye (collectively "Defendants Dye"). The house's lowest finished floor was constructed below the applicable 14 foot base flood elevation level imposed by the Town of Hilton Head Island ("Town") in conjunction with the National Flood Insurance Program ("NFIP") administered by the Federal Emergency Management



Agency ("FEMA"). This elevation defect has caused Plaintiffs damage in the form of increased annual premiums for federally mandated flood insurance coverage, ineligibility (or, alternatively, extremely high annual premiums) for excess flood insurance coverage, diminution in the house's value, potential future fines to be levied against the property by the Town for the existing ordinance violation, substantial costs and expenses associated with bringing the house compliant with applicable Town ordinance, and substantial legal fees, costs and expenses associated with this lawsuit. The case involves numerous defendants, among them the homebuilder (Strimpfel Custom Homes, Inc.), the individuals who sold Plaintiffs the house (Defendants Dye), the real estate broker and agent(s) who represented Plaintiffs and the seller defendants during the sale transaction (Dunes Marketing Group and Ken Oliver), and Plaintiffs' closing attorneys (L&D, Deeb, and Wiseman). The case involves numerous claims founded upon alleged construction defects, misrepresentations arising out of the sale transaction, and professional malpractice and breach of contract by Plaintiffs' closing attorneys.

For purposes of the hearing on Defendants L&D, Deeb, and Wiseman's summary judgment motion, this memorandum is directed, to the extent practicable, only to Plaintiffs' claims against Defendants L&D, Deeb, and Wiseman. Plaintiffs have asserted claims against Defendants L&D, Deeb, and Wiseman for professional negligence/legal malpractice, breach of contract, breach of fiduciary duty and equitable indemnification.

## FACTS

Plaintiffs executed a contract of sale for the house with Defendants Dye on November 6, 2003. (Deeb Dep. Ex. 5.) Defendant Laurich & Deeb, P.A. represented Plaintiffs and served as their closing attorney during the purchase process. (L&D, Deeb

and Wiseman Ans. to Am. Compl. ¶¶ 10-11.) Defendants Deeb and Wiseman were employed as associates by Laurich & Deeb, P.A. at the time of closing. (Deeb Dep. p. 27; Wiseman Dep. p. 10.) At the commencement of Laurich & Deeb's representation, Defendant Deeb sent Plaintiffs an engagement letter, including various enclosures, partially outlining the scope of the firm's intended representation. (Deeb Dep. pp. 54–55; Ex. 2.) One enclosure contained the heading "Regarding the purchase of real property" and indicated: "the services to be performed by my office will include, but not be limited to, the following: ..." and then summarized in itemized fashion eight services to be performed by the firm. (Deeb Dep. p. 65; Ex 2.) The engagement letter and attendant enclosures included no limitations or disclaimers with respect to the firm's scope of review of any survey, elevation certificate or other documentation relevant to the closing. (Deeb Dep. p. 69; Ex. 2.)

In the weeks leading up to closing, the attorney for Defendants Dye, Cary S. Griffin, mailed a letter to Defendant Deeb with an as built survey of the property enclosed. (Deeb Dep. Ex. 6.) The survey was prepared for Defendants Dye by Sea Island Land Survey on March 28, 2001 during their purchase of the house, and revealed that the applicable base flood elevation was 14 feet and that the house's lowest finished floor elevation was only 13.3 feet. (Deeb Dep. Ex. 6.) Defendant Deeb spent approximately 15 minutes reviewing the survey; and during his review he looked at the following information contained in the middle of the survey: "Two-Story Stucco/ Frame Residence FF.EL. = 13.3'." (Id.) Cary Griffin subsequently transmitted additional information regarding the home's elevation to Laurich & Deeb, P.A., this time an elevation certificate indicating the lowest finished floor elevation to be only 13.3 feet.

(Deeb Dep. p. 149.) Laurich & Deeb, P.A. then forwarded the elevation certificate directly to the insurance agent. (Deeb Dep. p. 162.) Defendants Deeb and Wiseman never communicated with Plaintiffs regarding the significance or implications of the elevation information contained on the survey and the elevation certificate. (Deeb Dep. pp. 189–192; Wiseman Dep. pp. 14–15; Gottschlich Dep. p. 63.) Defendants Deeb and Wiseman never advised Plaintiffs of any limitations on their review of the survey or the elevation certificate. (Id.) Furthermore, Defendant Deeb never suggested or recommended that Plaintiffs get their own survey as part of the closing process. (Deeb Dep. p. 138.)

As part of the purchase process, Plaintiffs executed separate specific powers of attorney in favor of Defendant Deeb and/or Defendant Wiseman. (Deeb Dep. Exs. 12-13.) On or about December 2, 2003, Defendant Wiseman, acting as Plaintiffs' attorney-in-fact, conducted the closing for the loans financing Plaintiffs' purchase of the house. (Deeb Dep. pp. 168–169; Wiseman Dep. pp. 11 –12.) Defendant Deeb was not present when Defendant Wiseman executed the closing documents. (Wiseman Dep. p. 14.) Defendants Deeb and Wiseman made no mention of or inquiry into the house's eligibility or ineligibility to be fully insured against the peril of flood anytime prior to or during the closing. (Deeb Dep. pp. 189–192; Wiseman Dep. pp. 14-15; Gottschlich Dep. p. 63.) Moreover, Defendants Deeb and Wiseman never alerted Plaintiffs to the fact that the negative elevation constituted a code violation that could potentially prompt an enforcement action by government authorities (Gottschlich Dep. p. 63.) Plaintiffs tendered to Defendants Dye during the course of the closing funds sufficient to satisfy the agreed upon purchase price of $1,395,000.00, and Plaintiffs thereafter became the legal

owners of the house. (L&D, Deeb and Wiseman Ans. to Am. Compl. ¶ 12.) Two days later, on December 4, 2003, both powers of attorney were recorded by Defendant Laurich & Deeb. (Deeb Dep. Exs. 12-13.)

After Hurricane Katrina caused catastrophic damage to the Gulf Coast in August 2005, Plaintiffs sought quotes for excess flood insurance for the house in the event a similar disaster should befall the Hilton Head Island area. (Gottschlich Dep. pp. 15–16.) In the process of doing so, Plaintiffs were informed by Seacoast Insurance around April 10 – 20, 2006 that their house was not eligible for excess flood insurance through any of its excess markets because the house's lowest finished floor, at least according to the elevation certificate issued to Defendants Dye by Sea Island Land Survey on March 28, 2001, was below the applicable 14 foot base flood elevation. (Pls.' Answers to Interrogs. to Each Pl. from Def. Oliver and Dunes Mktg. Group, Answer No. 12.)

During the course of following up on the newly acquired information concerning the house's elevation, Plaintiffs – Greg Gottschlich in particular – spoke with representatives from the Town, Coastal Surveying, Sea Island Land Survey, Laurich & Deeb, P.A. and possibly other entities to discuss the situation. Gottschlich had the Town send him a copy of documents and records it had on file relating to the house's construction. (Id.) The documents received from the Town included an elevation certificate prepared by Coastal Surveying Company on November 24, 1987 indicating the house's lowest finished floor elevation to be 14.1 feet – an elevation compliant with the applicable base flood elevation level. (Id.) In mid 2006, Gottschlich called Sea Island Land Survey and requested that it confirm the information in its March 28, 2001 elevation certificate, and Sea Island did so. (Id.) Thereafter, Gottschlich contacted Coastal Surveying, the company that prepared the

original elevation certificate in 1987, and requested that it too verify the accuracy of the March 28, 2001 certificate issued by Sea Island, and Coastal Surveying did so. (Id.) Gottschlich also had a number of conversations with Town Floodplain Administrator Trudie Johnson, who informed Gottschlich that if Plaintiffs failed to remedy the elevation defect, they would ultimately be compelled to do so by the Town. (Gottschlich Dep. p. 33.)

On or about December 1, 2006, Gottschlich contacted Defendant Deeb via telephone to notify him of the two inconsistent elevation certificates and seek guidance on how to proceed. (Am. Compl. ¶ 28.) Defendant Deeb sent Plaintiffs a letter on December 8, 2006 confirming his intention to speak with Strimpfel Builders and the Town to explore potential solutions to the elevation problem, assuring Plaintiffs he would keep them updated on his progress, yet also disavowing any previous obligation on his part to have discovered and disclosed the elevation defect. The letter also notified Plaintiffs that the statute of limitations may have run on December 2, 2006, in the intervening time between Plaintiff's call and Deeb's response. (Am. Compl. ¶ 28; Ex. K.)

Plaintiffs filed this lawsuit on February 18, 2008, less than two years after learning of the house's negative elevation.

## STANDARD OF REVIEW

Summary judgment is only proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. BPS, Inc. v. Worthy, 362 S.C. 319, 608

S.E.2d 155 (Ct. App. 2005). All ambiguities, conclusions, and inferences rising from the evidence must be construed most strongly against the moving party. Id. 608 S.E.2d at 159. "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Bennett v. Investors Title Ins. Co., 370 S.C. 561, 635 S.E.2d 660 (Ct. App. 2006). Likewise, "even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn for them, summary judgment should not be granted." Hill v. York County Sheriff's Dept. 313 S.C. 303, 437 S.E.2d 179 (Ct. App. 1993).

The Supreme Court of South Carolina, abrogating prior case law indicating to the contrary, has recently held that an opposing party need only present a mere scintilla of evidence to survive summary judgment in cases where the burden of proof is the preponderance of the evidence standard. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009).

ANALYSIS

**I. STANDARD OF CARE AND BREACH THEREOF.**

To prove legal malpractice, a plaintiff must prove (1) the existence of an attorney-client relationship; (2) breach of a duty by the attorney; (3) damage to the client; and (4) proximate causation of the client's damages by the breach. McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998). The standard of care in legal malpractice claims must typically be established through expert testimony. Southeastern Housing Foundation v.

Smith, 380 S.C. 621, 670 S.E.2d 680 (Ct. App. 2008). Rule 702 of the South Carolina Rules of Evidence sets forth guidelines for the admissibility of expert testimony, and it provides as follows: "'If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise.'" Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004); Rule 702 SCRE.

**a. Plaintiffs' expert is qualified to provide opinion testimony in this case.**

L&D, Deeb and Wiseman preface their substantive argument on the issue or duty and breach by questioning the qualifications of Joe Roof, Esquire ("Roof"), Plaintiffs' expert, to provide relevant opinion testimony with regard to these Defendants' breach of the applicable standard of care. The qualifications garnered by Roof during the course of his 30 plus years of practicing law are set forth in detail in Roof's Affidavit and Opinion that was filed with Plaintiffs' Amended Complaint. The substance of Roof's affidavit, as well as his expert qualifications, speak for themselves and require no further discussion. At most, Roof's qualifications would go to the weight of this testimony, not its admissibility.

**b. Plaintiffs have established through expert testimony that L&D, Deeb and Wiseman had a duty to discovery and disclose to Plaintiffs the elevation issue under the circumstances of this case.**

Roof opines in his affidavit that L&D, Deeb and Wiseman " ... breached the duty and standard of care generally required of reasonably competent attorneys in the following particulars:

* * *

(3) Failing to advise Plaintiffs of issues related to recognized flood plain levels and protective laws, ordinances, rules and regulations related thereto;

(4) Failing to recognize duties in the Transaction, that if recognized, advised about and acted upon, would enable Plaintiffs to protect their investment in the Real Property;

(5) Failing to reasonably inform Plaintiffs about the elevation issue and in failing to explain the manner to the extent necessary to permit Plaintiffs to make informed decisions (Rule 1.4).

* * *

(Roof Dep., Ex. 2.) Roof's opinions are premised in part on Rules 1.1 ("Competence"), 1.2 ("Scope of Representation and Allocation of Authority Between Client and Lawyer") and 1.4 ("Communication") of the South Carolina Rules of Professional Conduct. As expressly recognized by the South Carolina Supreme Court in Smith v. Haynesworth, Marion, McKay & Geurard, 322 S.C. 433, 472 S.E.2d 612 (1996), these rules "may be relevant and admissible in assessing the legal duty of an attorney in a malpractice action."

All of the of the arguments set forth by L&D, Deeb and Wiseman as to both the lack of a duty and/or corresponding breach thereof are meritless. In particular, L&D, Deeb and Wiseman take the position that residential real estate closing attorneys in South Carolina " ... have no duty to review surveys for elevation issues and to advise purchasers regarding the same." (Laurich & Deeb's Memorandum in Support, p. 7 – not attached as exhibit). Assuming *arguendo* that this argument were true with regard to some closing transactions on at least some occasions, it does not follow that a duty to review a survey for elevation information does not exist under any circumstances. In fact, Laurich & Deeb expressly acknowledges in its supplemental responses to Plaintiffs' First Set of Interrogatories to Laurich & Deeb that "[e]very real estate transaction is unique and depends on the individual

facts, circumstances, and lender requirements." (See October 5, 2009 letter from Susan Wall to John Hudson.) At a minimum, Deeb assumed a duty of care by reviewing the survey prior to closing and noticing the elevation information contained therein. Having acquired the factual information concerning the elevation during the course of his closing responsibilities, Deeb can not subsequently turn a blind eye to the potential adverse implications associated with the elevation information and forgo communicating the information to his clients. See Madison ex. Rel. Bryant v. Babcock Center, Inc., 372 S.C. 123, 638 S.E.2d 650 (2006) (noting "it has long been the law that one who assumes to act, even though under no obligation to do so, thereby becomes obligated to act with due care."). Whether Deeb fulfilled his duty or not, is now a question of fact.

L&D, Deeb and Wiseman select and emphasize isolated portions of Joe Roof's deposition testimony to support their contention that Deeb had no duty to review the survey for elevation-related information. However, a review of the entire explanation offered by Mr. Roof on the duty issue elucidates why Deeb did in fact have such a duty under the circumstances of the particular transaction at issue. In response to the question "[u]pon what do you base your opinion that a closing attorney in 2003 had a duty to advise a client with regard to elevation matters?", Roof responded as follows:

> I don't think an attorney has a general obligation to ferret out elevation issues and to disclose those. It's when that information is available to the attorney with the exercise of due diligence and in the fulfillment of the responsibilities of the closing that the attorney has the duty to call those issues, then, to the attention of the parties and to suggest to the parties what resolutions, if any, are available to address the problem.

(Roof Dep. pp 57–58.) When asked the follow-up question "[a]nd when you say there's 'no general obligation to ferret out elevation issues," what to you mean?" Roof further explained:

> I mean the lawyer doesn't have a duty to go out and determine the elevation of the house and measure it and determine that it doesn't meet it or it does meet it. That is determined by other professionals such as a surveyor. If there were no survey and no survey available, then I think the standard here would be somewhat different.
>
> *But if it's there, if it's available, if it's knowledge that comes across the attorney's desk during the course of the closing or the preparation for the closing, then the attorney has a duty to disclose and to share and to advise about that.*

(Roof Dep. pp 57 –58.) (emphasis added)

The essence of Roof's opinion on the issue of duty is clearly that a duty [to discover and disclose elevation information] does not exist in each and every residential real estate closing; however, such a duty existed for Deeb in this particular case because of the factual information, namely the survey, which he had available to him and reviewed prior to closing. Deeb spent approximately 15 minutes looking at the survey in this case and looked at the following information contain in the middle of the survey: "Two-Story Stucco/Frame Residence FF. EL. = 13.3.'" (Deeb Dep. p 133.) Deeb construed the information at the time of review to mean to mean the flood elevation was 13.3. (Id.) Deeb does not recall if he looked at any of the information in the bottom box of the survey showing the property to have a base flood elevation of 14 feet. (Id.) Deeb's duty in this particular case was not to be proactively and seek out elevation information about the house Plaintiffs were purchasing, but rather it was simply to communicate the elevation issue to Plaintiffs after he in fact became aware of it during the course of his review of the survey, whether through inadvertence or otherwise.

Oddly, Deeb is of the opinion that he had no duty, even assuming he were aware of the negative elevation information, to disclose it to anyone because such disclosure was "in the court of the insurance agent." (Deeb Dep. pp. 139–140.) Deeb's opinion on this issue, however, is at odds with the opinion of Novit, his own expert. According to Novit, the elevation information on the survey identified a possible issue with the house, and while Deeb, in Novit's opinion, was not required to notice such information during his review of the survey, in the event he did notice such information he should have at least raised the issue to his client, namely Plaintiffs in this case. (Novit Dep. p. 106.) Even Novit concedes that an attorney must give full disclosure to his client, as to both things known and things that should be known. (Novit Dep. p. 66.) Deeb simply failed to do so.

In further support of their argument that a closing attorney has no duty to review a survey for elevation information, L&D, Deeb and Wiseman state that " ... [a]ll of the experts in this case agree that there is no law or regulation imposing a duty on residential real estate closing attorneys to review surveys for elevation and to advise purchasers regarding the same," and for this reason Plaintiffs' claims fail. This assertion is simply wrong. In point of fact, no recognized authority exists (or has been acknowledged in this case) that defines the specific reasons a survey should or should not be reviewed for. Novit himself concedes that, aside from the recent "best practices" memorandum promulgated by the South Carolina Supreme Court in 2009 recommending that a closing attorney generally review the survey, no written standards or guidelines exist that define a closing attorney's obligations with regard to survey review. (Novit Dep. pp. 106–107.) Notably, Novit could provide no legal precedent from South Carolina or elsewhere supporting his opinion that a closing attorney has no duty to review and elevation certificate in his possession during the

closing process. (Novit Dep. p. 139.) Novit also could provide no legal precedent from South Carolina or elsewhere supporting his opinion that a closing attorney has a duty to review a survey only for title and title marketability related information. (Id.) In contrast, Roof's opinions, as confirmed in his affidavit as well as his deposition testimony, are founded on specified rules of the South Carolina Rules of Professional Conduct (e.g. Rule 1.1. "Competence"; Rule 1.2 "Scope of Representation and Allocation of Authority Between Client and Lawyer"; Rule 1.4 "Communication") in addition to the facts and circumstances of this case.

**c. Substantial evidence indicates that L&D and Deeb, at a minimum, should have appreciated (and thus "understood") the potential significance of the elevation information contained on the survey.**

L&D, Deeb and Wiseman argue that closing attorneys have a duty to review a survey for elevation-related issues only when a closing attorney "understands" elevation to be an issue in the closing. Deeb's testimony plainly establishes that, at a minimum, he should have appreciated and disclosed the elevation issue in this case during the course of the closing.

Deeb is not only an experienced real estate attorney on Hilton Head Island, but he has had meaningful exposure to the residential construction industry as well. In 2003 - the year Plaintiffs purchased 48 Sea Lane – Laurich & Deeb, P.A. specialized in real estate closing transactions. (Deeb Dep. pp. 13, 15.) Deeb devoted approximately 70% of his practice to residential real estate. (Deeb Dep. pp. 13-15, 17.) The firm closed over 3,000 real estate transactions in 2003, and Deeb was the firm's highest producer. (Deeb Dep. p. 46, 48.) Prior to going to work for Laurich & Deeb, P.A., Deeb served as legal counsel for the Hilton Head Homebuilders Association. (Deeb Dep. p. 43.) As counsel for the

homebuilders association, his responsibilities included such charges as writing a column for the quarterly newsletter and monitoring legislation that was being considered by the Town and County. (Deeb Dep. p. 44.) Laurich & Deeb, P.A. was itself a "longstanding member" of the homebuilders association until sometime around 2003 or 2004. (Id.) Deeb knew the applicable base flood elevation on Hilton Head to be 14 feet, and he also knew that residential construction was to be built at or above the base flood level in order to comply with FEMA guidelines. (Deeb Dep. p. 51). Deeb also understood that if the house Plaintiffs purchased during the December 2, 2003 closing was constructed below the base flood elevation level, such construction would constitute a building code violation, a particular understanding which Deeb based on his understanding of FEMA's requirement which were incorporated to the Town ordinance. (Deeb Dep. pp. 75–76.)

L&D, Deeb and Wiseman argue in favor of an unreasonably restrictive, myopic interpretation of the term "understand" when considered in the context of the duty articulated by Roof. The term "understand" as used by Roof is synonymous with the term "recognize," as the following exchange substantiates:

> Q. In your Affidavit and Opinion that we've marked as Exhibit No. 2, you state that the Defendants Deeb and Wiseman failed to advise Plaintiffs of issues related to recognized flood plain levels and protective laws, ordinances, rule and regulations related thereto. What in your opinion should Deeb and Wiseman have known, as closing attorneys, regarding protective laws, ordinances, rules and regulations related to recognized flood plain levels?
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> A. Well, fist of all they had to recognize the problem, and then did just what I was testifying to a minute ago. Then give the buyer advise [sic] that this is an issue, recognizing the issues, being aware that there may or may not be areas that you can go into to solve the issue, and letting the buyer come into this transaction, acquire this property, eyes opened and knowing that issues case arise down the road.

> That's the duty of the closing attorney. Otherwise, you wouldn't have all these rules about closing attorneys and attorneys being necessary to closings. That's why they're there.

(Roof Dep. pp. 64–65.) In light of Deeb's varied and substantial professional knowledge and experience as referenced above, it verges on the incredible for Deeb to suggest that he did not understand or recognize the potential import of the elevation information he observed on the survey. When Deeb's general professional knowledge and experiences are considered in conjunction with the particular facts and information he acquired during the course of Plaintiffs' closing, a question of fact arises as to whether Deeb "understood" or should have "understood" an elevation issue to exist with the house, and consequently should have informed and/or advised Plaintiffs of the same, prior to the actual closing. All Deeb needed to do to fulfill his professional duty to Plaintiffs was to communicate the elevation discrepancy to them and recommend that they follow-up with other entities such as the insurance broker, the Town or Sea Island Land Survey to determine if the issue might be significant enough to cause them to rethink proceeding with the purchase of the house..

**d. Laurich & Deeb's engagement letter to Plaintiffs, without more, creates a question of fact as to whether L&D, Deeb and Wiseman breached the duty to discover and disclose information on the survey.**

Laurich & Deeb's November 13, 2003 engagement letter to Plaintiffs provides an additional basis for liability. Deeb utilized a form engagement letter with enclosures purporting to define the scope of his firm's services; however, the Law Firm Services enclosure bearing the heading "Regarding the purchase of real property:" expressly provides that the services to be provided by the firm "are not limited to" the services outlined. (Deeb Dep. pp. 54–55; Ex. 2.) Had the firm intended to limit the scope of its closing services to

exclude the review (and disclosure to clients) of certain documents, or certain information on documents, such as elevation certificates or surveys for instance, the firm, as the drafter of the letter, could (and should) have done so. In fact, this is precisely what Defendant Deeb did in his December 8, 2006 letter to Plaintiff's in which he attempted to disclaim responsibility for the nondisclosure of the elevation information. (Deeb Dep. Ex. 24.) Because the engagement letter neglects to provide Plaintiffs with reasonable notice of the specific limits on the firm's services incident to the closing transaction, Plaintiffs acted reasonably in expecting Laurich & Deeb to disclose to them such material information as the house's negative elevation. Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage. Myrtle Beach Lumber Co. v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (1981).

## II. STATUTE OF LIMITATIONS

### a. Plaintiffs' claims are subject to the discovery rule and are not barred by the statute of limitations.

Plaintiffs' claims against L&D, Deeb and Wiseman are subject to the discovery rule set forth in S.C. Code Ann. §15-3-535 (1976). Section 15-3-535 states that "all actions initiated under §15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." Id. "[U]nder the discovery rule, the statute of limitations begins to run when a reasonable person of common knowledge and experience would be on notice that a claim against another party might exist." Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816 (2005).

Knowledge of injury alone is insufficient to give rise to a suspicion of a cause of action against another. True v. Monteith, 327 S.C. 116, 489 S.E.2d 615 (1997). The statute of limitations can only be triggered by knowledge of "facts sufficient to put an injured person on notice of the existence of a cause of action against another." Epstein at 376, 610 S.E.2d at 818. The date the statute of limitations runs in a particular case and application of the discovery rule "are questions of fact for the jury when the parties present conflicting evidence. True v. Monteith, 327 S.C. 116, 489 S.E. 615 (1997); Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000).

Plaintiffs did not learn the house was below the applicable base flood elevation, yet more importantly of any adverse implications arising out of the negative elevation, until approximately April 10 – April 20, 2006, at which time Greg Gottschlich was informed by Seacoast Insurance that the house was not eligible for excess flood insurance. (Gottschlich Dep. pp. 14-15.) In the months following, Plaintiffs diligently investigated the details and potential implications associated with the negative elevation. For instance, they communicated with the two separate survey companies that had issued the two elevation certificates containing conflicting elevation information to understand which, if either, of the two was accurate. (Plaintiffs' Answers to Interrogatories to Each Plaintiff from Defendants Oliver and Dunes Marketing Group, Answer No. 12.) Plaintiffs also contacted Trudie Johnson at the town to try to make sense of the situation. (Gottschlich Dep. p. 33.) Upon suspecting they may have recourse against others involved in their purchase of the house, Plaintiff Gottschlich contacted closing attorney Robert Deeb, Jr. of Laurich, Deeb & Wiseman, P.A. on December 1, 2006, less than three years after closing. Defendant Deeb

eventually informed Plaintiffs, by way of a letter dated December 8, 2006, that they may have claims against a number of parties to the transaction.[1]

Plaintiffs filed their original summons and complaint (which was timely served upon all named defendant) on February 18, 2008, and they filed (and timely served) their amended complaint naming additional parties on March 20, 2009. Both pleadings were filed and served within three years of Plaintiffs being informed of the negative elevation, as well as at least on adverse implication of the issue, in mid-April 2006.

Various Defendants have suggested that Plaintiffs were on notice based on a coded field in an "Agent Copy" of an insurance policy declaration which contains the following statement: "Elevation Difference: -1." Plaintiffs received one or more declaration pages that, among a number of fields containing codes, abbreviations and other information, included an obscure reference to elevation information under the heading "Location Information." Occupied by references like "No: 4502500014D," "Status: REGULAR," "CRS Class: 6," and "FIRM Zone: A07," the field contains information styled in conformity with the technical rating classifications and requirements of the Federal Emergency Management Agency's ("FEMA") National Flood Insurance Program ("NFIP"). It would be patently unreasonable to impose upon laymen the responsibility for deciphering and investigating the discrete instances of Federal insurance regulatory speak. While this information might potentially be sufficient to place a professional -- acquainted with the form, abbreviations and other minutiae of policy declarations -- on notice of an issue with the home, it defies any notion of a "reasonable person of common knowledge and experience" to suggest that Plaintiffs should have appreciated the meaning of the reference.

[1] Defendant Deeb also suggested that the statute of limitations may have run with respect to certain parties; however, in his deposition, he acknowledged that he was not a litigator and based his opinion on the fact that three years has passed since the closing. (Deeb Dep. p. 208.)

In fact, but for Plaintiffs decision to seek quotes for excess flood insurance coverage in April 2006, they likely would still be unaware of the house's negative elevation.

**b. Defendants Laurich & Deeb, P.A. and Deeb are equitably estopped from asserting the statute of limitations as a defense.**

In South Carolina, "a defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant's conduct." Black v. Lexington School Dist. No. 2, 327 S.C. 55, 488 S.E.2d 327 (1997) (quoting Wiggins v. Edwards, 314 S.C. 126, 130, 442 S.E.2d 169, 171 (1994)) (internal quotations omitted). Whether a defendant's conduct gives rise to equitable estoppel is a question of fact for the jury. Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001)

When contacted by Plaintiffs in December 2006, Defendant Deeb represented to Plaintiffs that he would assist in resolving the elevation issue. In addition to telephone conversations with Plaintiffs, Defendant Deeb wrote to Plaintiffs promising to aid in their efforts with the Town and Strimpfel, and promising to keep them updated as to his progress with the issue. (Deeb Dep. Ex. 24.) Deeb assured Plaintiffs he would assist as they moved forward with this "unique issue." (Id.) Deeb, however, failed to honor the promises made in the December 8, 2006 letter. Accordingly, Defendants Laurich & Deeb, P.A. and Deeb should be equitably estopped from seeking the protection of the statute.

For the reasons stated above, Defendants' statute of limitations defense is without merit.

## III. DAMAGES

**a. Plaintiffs' damages are readily ascertainable and reasonably certain through accepted methods of valuation.**

Defendants L&D, Deeb and Wiseman contend that Plaintiff's damages are speculative. The law does not require absolute certainty to establish damages, "only reasonable certainty that the damages are not purely speculative and there exists a fairly accurate method to estimate..." *Vortex Sports & Entertainment, Inc. v. Ware*, 378 S.C. 197, 662 S.E.2d 444 (2008).

In this case, Plaintiffs have suffered particular damages that can be established with reasonable certainty. The primary and most critical element of Plaintiffs' damage is the cost to cure the elevation defect. (Strimpfel Dep. pp. 125–126; Town of Hilton Head 30(b(6) Dep. pp. 29–30; Hartnett Dep. pp. 41– 42.) The negative elevation constitutes a code violation, and according to Town officials must be remedied under penalty of law. (Town of Hilton Head 30(b)(6) Dep. p. 64.) Two estimates of the cost to cure the defect were prepared, both of which seek to establish the actual cost to elevate the house. (Campbell Dep. Ex. 12; Ex. 18; Hartnett Dep. pp. 50–51.) The first was prepared by Lynes Construction, Inc. and totals $374,478.00. The second was prepared by Anchor Construction Co. of Beaufort, Inc. and totals $275,336.00. (Aff. Of Alan O. Campbell, P.E., R.R.C.)

The marketability of the house has also diminished as a result of the negative elevation. (Hartnett Dep. p. 47; Baldwin Dep. p. 240.) Additionally, Plaintiffs paid an excessive purchase price, suffered a diminution in value of the house, have experienced hardship in attempting to procure prohibitively expensive excess flood insurance coverage, paid increased premiums for minimal flood coverage, and paid attorneys' fees and costs. (Baldwin Dep. p. 40; Farrell Dep. p. 34; Am. Compl. ¶ 27; ¶ 46.) Attorneys' fees and costs are certain and readily available. Each of the remaining elements of Plaintiffs' damages can

be established with reasonable certainty using straight-forward methods, as documented in the various depositions and estimates referenced and cited above.

## CONCLUSION

For the reasons set forth above, Defendants Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman's motion for summary judgment should be denied.

Respectfully submitted,

ELLIS, LAWHORNE & SIMS, P.A.

BY: _____

JOHN D. HUDSON, JR.
WESLEY D. FEW
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
TEL: (803) 254-4190

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

12/14, 2009

# OCTOBER 5, 2009 LTR FROM SUSAN WALL TO JOHN HUDSON

Susan Taylor Wall
Partner
Telephone: 843.727.2640
Direct Fax: 843.727.2680
susanwall@parkerpoe.com

Parker Poe

October 5, 2009

VIA EMAIL
John D. Hudson, Jr., Esq.
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, SC 29202

Re: *Gregory M. Gottschlich, et al. v. Strimpfel Custom Homes, Inc.; et al.*
Case No.: 2008-CP-07-00517

Dear John:

This letter is in response to your letter dated September 17, 2009 regarding Laurich & Deeb, P.A.'s, Robert M. Deeb, Jr.'s, and Charles H. Wiseman's responses to Plaintiffs' First Set of Interrogatories and First Set of Requests for Production. The following stands as supplemental responses.

As to Interrogatory No. 6 in all three sets of Interrogatories addressed to Laurich & Deeb, Mr. Deeb, and Mr. Wiseman, you contend that information pertaining to every lawsuit in which these parties has been involved as a named defendant is relevant or potentially relevant. You do not, however, provide any basis for how or why this information is reasonably calculated to lead to the discovery of admissible evidence. Thus, we maintain the objection set forth in the responses to this Interrogatory.

As to Interrogatory Nos. 9, 13, and 18 in Plaintiffs' First Set of Interrogatories to Laurich & Deeb, as well as Interrogatory Nos. 9 and 13 in Plaintiffs' First Set of Interrogatories to Mr. Deeb and Mr. Wiseman, you have requested that our clients specify the "certain closing services" performed. The documents contained in Laurich & Deeb's closing file reflect the closing services performed by Laurich & Deeb, Mr. Deeb, and Mr. Wiseman.

As to Interrogatory No. 23 in Plaintiffs' First Set of Interrogatories to Laurich & Deeb, Laurich & Deeb responds as follows subject to the objections set forth in its responses and without waiving its duties under Rule 1.6 of South Carolina Rules of Professional Conduct. Prior to December 2003, Laurich & Deeb did not represent or counsel any client concerning either a faulty, erroneous or inaccurate elevation certificate, or a dwelling or other structure with a non-compliant Base Flood Elevation in Beaufort County.

As to Interrogatory No. 26 in Plaintiffs' First Set of Interrogatories to Laurich & Deeb, Laurich & Deeb responds as follows, subject to the objections set forth in its responses: Every real estate transaction is unique and depends on the individual facts, circumstances, and lender

requirements. Depending on the facts and circumstances, surveys may be reviewed for title purposes and if lender instructions require flood insurance in a certain amount, a closing attorney will check to see that the borrower has obtained the required coverage to conform to lender requirements.

As to Request for Production No. 3 contained in Plaintiffs' First Set of Requests for Production to Laurich & Deeb, Mr. Deeb, and Mr. Wiseman, a copy of the Westport Insurance Corporation policy referenced in the responses is attached hereto, Bates Nos. Deeb 3-36, along with Laurich & Deeb, P.A., Robert M. Deeb, Jr., and Charles H. Wiseman's Privilege Log. This is produced without waiving all applicable objections as to relevancy and admissibility.

We trust that this letter addresses your concerns with these Defendants' responses to Plaintiffs' first set of discovery requests. With kind regards, I am

Very truly yours,

Susan Taylor Wall

STW:jsh
Enclosures

cc: Dean B. Bell, Esq. (via email, w/encl.)
Katherine E. Graham, Esq. (via email, w/encl.)
Max G. Mahaffee, Esq. (via email, w/encl.)
Ehrick K. Haight, Jr., Esq. (via email, w/encl.)
Amanda C. Williams, Esq.

PPAB 1608127v1

# AFFIDAVITS

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF BEAUFORT | IN THE COURT OF COMMON PLEAS<br>FOR THE<br>FOURTEENTH JUDICIAL CIRCUIT |
| Gregory M. Gottschlich and Donald L. McNeil,<br><br>Plaintiffs,<br><br>v.<br><br>Strimpfel Custom Homes, Inc.; Joseph A. Reeve; Jerry L. Richardson; Coastal Surveying Co. Inc.; Thomas N. Dye; Jan H. Dye; Ken Oliver; The Byrne Corporation d/b/a Dunes Marketing Group, Laurich & Deeb, P.A.; Robert M. Deeb, Jr. and Charles H. Wiseman.<br><br>Defendants. | CIVIL ACTION NO. 2008-CP-07-00517<br><br>**AFFIDAVIT OF ALAN O. CAMPBELL, P.E., R.R.C.** |

**PERSONALLY APPEARED BEFORE ME,** Alan O. Campbell, who is over the age of eighteen, duly sworn, deposes and states that:

1. I have been retained in the above-captioned case on behalf of the Plaintiffs to offer my expert opinions as a licensed Professional Engineer.
2. As part of my investigation, I have reviewed the repair estimates by Lynes Construction, Inc., and Anchor Construction Company of Beaufort, Inc., which are attached as Exhibits 1 and 2 respectively.
3. I have relied on these estimates in forming my opinions in connection with the above-captioned case.
4. It is my professional opinion to a reasonable degree of engineering certainty, based in part on my prior experience with this type of repair

work, that the scope of work and repair costs delineated in the Lynes Construction estimate is more in line with the amount of work and costs which are necessary to repair the subject property.

AFFIANT FURTHER SAYETH NOT.

Alan O. Campbell

Alan O. Campbell

SWORN to BEFORE me
this 11th day of December, 2009.

Katherine Taylor (L.S.)
Notary Public for South Carolina
My Commission Expires: April 20, 2015

# Exhibit 1

Lynes
CONSTRUCTION, INC.
#1 Row Boat Row
Hilton Head Is., S.C. 29928
843-785-4202

# PROPOSAL

May 1, 2007

Greg Gottschlich and Don McNeil
C/o Jack Qualey
Qualey Law Firm
Park Rd, Hilton Head Is., SC 29928

RE: #48 (Lot 27) Sea Lane, Palmetto Dunes, Hilton Head Island, SC

Dear Gentleman,

I have estimated the cost of raising the house to an elevation of 14 feet above sea level at finished floor height. It is at 13.3 feet at present. The estimate is based on the actual work to raise the house and the reasonable expectation of damage that will occur because of the movement of the house (ie; drywall cracking). Damage that could occur but is not expected is the cracking of the stucco walls, the cracking of the tile on the floors and showers, the cracking of mirrors and the breaking of window glass. These kinds of damage were not estimated but have a small chance of happening. I have also included damage to the landscape, sidewalks and driveway due to the difficulty of moving heavy machinery around the house to accomplish the work. All of the heavy beams used to support the house will have to be inserted under the house from the front. This will damage a great deal of the front exterior. The estimate is based on existing quality levels. The landscape plantings will be as large as possible to strive for the closest replacement that can be achieved when replacing 20-year-old landscape plants. I have spoken with the Building and Codes office of the Town about permitting the job and also with an engineer that designed the foundation extension for the house.

PLF-0001
ELS #79-58118

## Scope of Work

Detach the house from the existing foundation and the garage.
Build temporary support walls for the garage/laundry wall, the front entrance wall, the interior staircase and the exterior rear stairs.
Disconnect electrical service, all plumbing waster and water lines and all Heating and Air conditioning condenser units.
Raise the house, J.E. Oswalt and Sons. Professional House Movers.
Install a bond beam around the foundation wall, extend the existing anchor bolts and add a block to the interior piers of the house (Per engineer).
Lower House back onto new foundation additions and install new tie down straps that connect the house to the foundation.

Rebuild the front entrance foyer floor to extend up to the new height of the walls. Install new tile and stucco to match existing. Build new supports for the interior staircase.
Rebuild the walls of the garage/laundry connection. Tie the garage to the house, re-flash and install new stucco to the exterior walls in this area. Install new drywall and trim.
Rebuild the staircase in the garage to accept the new height.
Repair the holes in the garage walls that were made during the raising of the house, Stucco and drywall repairs in this area.
Rebuild the rear stairs to accommodate the new height.
Reconnect the electrical, plumbing and HVAC.
Install new stucco on the new addition of foundation and on the walls was the stucco was affected by the construction.
Rebuild the retaining wall in the front yard that was removed during house raising.
Re-install the front sidewalk, stoop and driveway.
Install new irrigation in the front yard and new landscape plants in the front yard damage from the construction.
Repair damage landscape lights in the front yard.

Assumption: Cracks in the drywall will appear in each room after moving the house.
Wallpaper cannot be matched so all wallpaper will be removed and replaced.
Move and protect all furniture and floors before work on the interior begins.
Repair all cracks in the drywall.
Repaint the interior of the house and the exterior of the house where construction has caused a need for painting.
Re-point the grout in the tile floors and showers.

NOT INCLUDED IN THIS COST:
No tile replacement is included in this cost except for the foyer, which will have to be rebuilt.
No repair to the stucco has been estimated for cracks that could occur in areas of the house that are not directly affected by the construction on the house.

PLF-0002
ELS #79-58113

Cost Breakdown:

| | |
|---|---|
| Permits, Engineering, Plans | $2,100.00 |
| Dumpster and rubbish removal | $4,000.00 |
| Irrigation/ Landscape | $21,400.00 |
| Furniture and house protection | $3,000.00 |
| Final Clean | $1,400.00 |
| Sidewalks | $2,400.00 |
| Driveways | $17,200.00 |
| Block and masonry | $18,400.00 |
| | |
| House moving (J.E. Oswalt and Sons) | $75,000.00 |
| Framing, trim and Siding | $39,110.00 |
| Drywall | $20,600.00 |
| Painting | $35,000.00 |
| Stucco | $12,500.00 |
| Heating and Air Conditioning | $2,250.00 |
| Electrical | $3,000.00 |
| Plumbing | $1,700.00 |
| Tile and Grout | $5,500.00 |
| Wallpaper | $7,900.00 |
| | |
| Supervision | $31,500.00 |
| Overhead | $36,475.00 |
| Profit | $34,043.00 |
| | |
| Total | $374,478.00 |

If you have any question about the scope of work or the cost please call me at (843) 683-4203.
I understand that the work will be scheduled for the fall after the rental season. I will follow with a contract after your review of this proposal. During the estimation of this project I have incurred debt of $1675.00. If the contract is signed this debt will be waived.

Thank you,

Michael R. Lynes
Lynes Construction, Inc
SC License #5489

PLP-0008
ELS #79-58113

# Exhibit 2

**Anchor Construction Co. of Beaufort, Inc.**
22 Hickory Rd. Beaufort, S.C.
Office 843-525-6708 Fax 843-525-9601

December 18, 2008

To: Andrews & Burges Inc.
48 Shanklin Rd.
Beaufort, S.C. 29906

Re: 48 Sea Ln.
Palmetto Dunes, Hilton Head S.C.

To Whom It May Concern:

Please find this quote to include material and labor to complete the following scope of work in order to raise the house 32 inches.

1. Remove plants and shrubs as needed around the house in order to gain access to the exterior foundation.
2. Rework foyer as needed so foyer will be same elevation as existing finish floor.
3. Rework front entrance door and windows to be same elevation as new foyer.
4. Rework front side walk and add steps, so that the side walk and steps meet new finish floor elevation.
5. Build all new lattice on perimeter of house.
6. Build new steps on rear porch to meet new finish floor elevation.
7. Disconnect and reconnect all utilities in order to lift house.
8. Disconnect the garage structure from main house, rebuild steps and structure as needed after house is raised.



PLF-108
ELS #79-58113

9. Disconnect existing tie downs, straps etc, from foundation piers and exterior foundation block walls. Replace old piers with new piers per new engineered plans. Add 4 courses of block to outside foundation wall per engineer plans.
10. Stucco all new exterior foundation block.

Per call w/ Eddie 18. Dec-08 → 11. Structural Engineer, architect + field survey #20k

Total estimated cost for the above work is————————$ 275,336.00

Any question or concerns please call me. Thank you for the opportunity to estimate this project.

Eddie Powell

Eddie Powell

PLF-109
ELS #79-58113

# DEPOSITION EXCERPTS/EXHIBITS

# ROBERT M. DEEB, JR.
# DEPOSITION
# EXCERPTS/EXHIBITS

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

GREGORY M. GOTTSCHLICH and DONALD L. MCNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP, LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR. and CHARLES H. WISEMAN,

Defendants.

----------/

The deposition of ROBERT M. DEEB, JR., ESQUIRE, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Cathy M. Knoettner, Certified Court Reporter and Notary Public, at the Law Offices of Parker, Poe, Adams & Bernstein, L.L.P., 200 Meeting Street, Suite 301, Charleston, South Carolina, on the 4th day of November, 2009, commencing at or about the hour of 11:20 a.m.

HUDSON - DEEB (DIRECT EXAMINATION)

Q All right. Did you ever try to make a living as a writer?

A No.

Q What made you decide to go to law school?

A The restaurant business was not a long-term career for me.

Q Plus, that's hard work, isn't it?

A It was hard work.

Q You're currently employed with the McNair Firm?

A Yes.

Q And you've been there for how long?

A Almost three years now.

Q Are you a shareholder with the firm?

A Yes.

Q Prior to going to work at the McNair Firm, you were with the firm Laurich and Deeb; is that correct?

A That's correct.

Q And you were with Laurich and Deeb for how long?

A Six years.

Q All right. Why did you leave Laurich

HUDSON - DEEB (DIRECT EXAMINATION)

Q Charles Wiseman was with Laurich and Deeb in 2003 when you were still with the firm; is that correct?

A Yes.

Q And he was working with Laurich and Deeb in what capacity?

A As an associate.

Q When did he join Laurich and Deeb?

A I don't recall exactly.

Q Was it before or after the year 2000?

A After the year 2000. I joined the firm in 2000, which was then Laurich.

Q Just Dean Laurich?

A Uh-huh (affirmative).

Q Yes?

A Yes.

Q And I should have stated this at the beginning. I need for you to respond with verbal responses to my questions, please.

A I understand.

Q Obviously if you give me a shake or a nod of the head, I know what you mean, but it makes it tough on the court reporter.

A I understand.

HUDSON - DEEB (DIRECT EXAMINATION)

Q Did any other lawyers with the firm?

A No.

Q What was the firm's general scope of practice in 2003? Residential closings, as you mentioned. You did some commercial work. What else, if anything?

A Nothing, no other work.

Q In 2003, is it true that Mr. Wiseman was doing only residential real estate closings?

A Yes.

Q Is it also true that all the other lawyers in the firm, other than you, were doing only residential real estate closings?

A That's correct.

Q What percentage of your practice in 2003 involved something other than residential real estate closings?

A Probably about 30 -- about a third.

Q A third was something other than residential real estate?

A A third would be in commercial and property owner association representation.

Q When you left the firm Laurich and Deeb, did you and Dean Laurich part on bad

HUDSON - DEEB (DIRECT EXAMINATION)

MS. WALL: Object

THE WITNESS: -- three and a half million.

BY MR. HUDSON:

Q What was your personal income in 2003?

MS. WALL: Object

THE WITNESS: A hundred and sixty-five thousand.

BY MR. HUDSON:

Q That's total income? It includes bonuses, salary, draws?

A At that time I really wasn't a shareholder in the firm. My name was on the letterhead, but it still belonged to Dean Laurich completely.

Q You said you weren't a shareholder completely. What was your specific role with the firm?

MS. WALL: And I'll object to the form of the question. You can answer it if you can.

THE WITNESS: I guess you could call me an associate.

BY MR. HUDSON:

HUDSON - DEEB (DIRECT EXAMINATION)

A I think that it was in the homebuilders association back in 2003 or '4. I don't believe they're a member any longer.

Q Why did the firm become a member of the homebuilders association?

A I used to be legal counsel for the Hilton Head Homebuilders Association.

Q How long did you serve as counsel for the association?

A It was on a pro bono basis approximately four years.

Q Beginning when?

A 1995, probably, or '96.

Q And did you serve continuously until approximately 2000?

A Yes.

Q All right. As counsel for the association, your responsibilities included what?

A Attending board meetings; assisting them when they entered into leases, they leased some space over there; making sure they conformed to their bylaws when they elected officers and directors; writing a column for

HUDSON - DEEB (DIRECT EXAMINATION)

their newsletter.

Q How often do they publish their newsletter?

A I believe it was quarterly.

Q What were some of the topics that you wrote about in your column?

A Contracts, construction contracts. I don't recall; it's been awhile. Mechanic liens, statutes; if new legislation came out that the homebuilders had some interest in, especially on a local level, like new zoning laws, and Beaufort County was rapidly expanding its zoning back in the late '90s so there was a lot of conversations and articles written about the new zoning ordinance that was adopted sometime in the mid-'90s.

Q Did you monitor legislation that was being considered by the Town Council?

A By Hilton Head and by Beaufort County, yes.

Q But you did monitor that; is that correct?

A Some of it, yes.

Q All right. Did you ever write any

HUDSON - DEEB (DIRECT EXAMINATION)

it, which he still is, to my knowledge.

Q Were you ever asked to give talks or seminars to any other members of the homebuilders association when you were serving as its counsel?

A No. They didn't really have seminars.

Q Did you ever have to represent the association in any legal capacity while you were serving as its counsel.

A No.

Q Then moving down in the final paragraph of Exhibit 1, there's a sentence that begins "in 2003", and it says "we closed over 3,000 real estate transactions and received the only 2003 Eagle Award from First American Title Insurance Company for our good service and high volume of closings"; do you see that?

A Yes, I see that.

Q Do you know that statement to be true?

A Yes.

Q Okay. How many transactions did you close in 2003?

A I don't know.

Q Could you figure it out?

HUDSON - DEEB (DIRECT EXAMINATION)

Q Would that have been a statistic that the firm tracked in 2003, which lawyer was involved in the closing?

A No.

Q Do you know if you were the highest producer for the firm in 2003?

MS. WALL: Object to the form.

THE WITNESS: I likely was the highest producer in the firm in 2003.

BY MR. HUDSON:

Q Because that led to one of your issues with Dean Laurich as far as whether or not you were going to stay or leave the partnership; correct?

MS. WALL: Object.

THE WITNESS: It was one of the issues. There's a bunch of issues I left Dean.

BY MR. HUDSON:

Q Tell me about the Eagle Award from First American; what did that consist of?

A A trophy, a big eagle.

Q Anything else?

A It was given to us at the First

HUDSON - DEEB (DIRECT EXAMINATION)

level.

Q Upon what do you base your understanding?

A It's common knowledge on Hilton Head.

Q And the 14-foot FEMA standard is something that's uniform throughout the country or is it specific to Hilton Head, or do you know?

A I don't know for certain.

Q But it's your testimony that that -- at least the current base flood elevation for Hilton Head is 14 feet; is that correct?

A That's correct.

Q How long has that been the case?

A As far as I know, since the late '80s.

Q What's the significance of the base flood elevation level?

A A house is supposed to be built above the base flood elevation level.

Q To comply with the FEMA regulation?

A Yes, I think so.

MS. WALL: Object to the form.

BY MR. HUDSON:

Q And what are the ramifications if a

HUDSON - DEEB (DIRECT EXAMINATION)

A I don't know.

Q Have you ever known?

A No.

Q Never looked into it?

A No. My wife does the insurance shopping for everything; for our cars, for the house, with the exception of life insurance.

Q Do you believe your current house to comply with the base flood elevation level of 14 feet?

A I believe it does, but I couldn't tell you the elevation of my house.

Q I wasn't going to ask you that.

MR. HUDSON: Let me go ahead and get that marked as 2.

(Whereupon, Plaintiffs' Exhibit Number 2 was marked for identification.)

BY MR. HUDSON:

Q Mr. Deeb, I'm going to show you what has been marked as Exhibit 2 and ask you to take a look at that, please, and tell me if you recognize it.

A Yes, this is the -- what I call,

HUDSON - DEEB (DIRECT EXAMINATION)

introductory letter that I sent to the doctors for the closing back in 2003.

Q You characterize it as an introductory letter; is that correct?

A That's correct.

Q Why do you characterize it as such?

A Because it's my first formal communication with a client, formal written communication with a client.

Q Did this letter, this introductory letter serve as your engagement letter with my clients?

A Yes.

Q Who drafted this letter?

A I drafted the form of this letter when I went with the firm in 2000, and then it was tweaked continuously, and it varied according to the closings. For example, we had a different engagement letter for refinances, a different engagement letter for seller representation, a different engagement letter if it was a dual representation scenario, and it would also be different depending on whether or not the client was a previous client and I knew more of the

HUDSON - DEEB (DIRECT EXAMINATION)

MS. WALL: Yes, that's correct.

MR. HUDSON: All right. Fair enough.

MS. WALL: Because that's exactly what I just said on the record.

BY MR. HUDSON:

Q Can you read through the black mark on your document, Mr. Deeb?

A No.

Q All right. Would you like to see my document?

A Okay. (Examines document.) Now I can read it.

Q Okay. And you have certainly seen that document prior to today; is that correct?

A Yes.

Q All right. So this document by its very terms does not limit the services to be provided to my clients by Laurich and Deeb; is that correct?

A That's correct.

Q All right. And then if you look at paragraph seven of the engagement letter on the second page -- you got to flip back to the

HUDSON - DEEB (DIRECT EXAMINATION)

BY MR. HUDSON:

Q The letter does not specify any services that the firm does not intend to provide to clients; is that correct?

MS. WALL: Object to the form.

THE WITNESS: It does not say what we will not do.

BY MR. HUDSON:

Q I mean, it identifies by its terms certain services that the firm intends to provide, but it also says that those services will not be limited to those identified services; isn't that correct?

MS. WALL: Object to form.

THE WITNESS: That's what it says, yes.

BY MR. HUDSON:

Q So how is a client supposed to know what some of those other services may be if they're not defined?

A I don't know.

Q They can't, can they?

A Right, they can't know what they don't know, if that's what you're asking me.

HUDSON - DEEB (DIRECT EXAMINATION)

A No.

Q Do you have a duty as a closing attorney to advise a client of any building code violations of which you are aware at the time of closing?

A Yes.

Q If the house that my clients bought was in fact constructed below the base flood elevation level, would that also be a building code violation?

MS. WALL: Object to the form.

THE WITNESS: I believe it would be a building code violation.

BY MR. HUDSON:

Q Based on what?

A Based on FEMA's requirements, I believe, are incorporated into the Town's building code.

Q How long have you understood that to be the case?

A A long time. Probably as long as I've been in practice.

Q You were aware of that in 2003; correct?

HUDSON - DEEB (DIRECT EXAMINATION)

A I was aware of that in 2003, yes.

Q How much time altogether did you spend working on this particular closing?

A I don't know.

Q Did you keep records of the time you spent on this particular file?

A No.

Q Why not?

A At that firm we didn't keep -- and I don't currently. We didn't keep timesheets and mark down individual time entries. We don't do billable hours. The firm makes its money by just fixed fee real estate closings. So only in commercial or property owners association representation or something else would I keep track of my time.

Q How many loans did you close on December the 2nd of 2003?

A I don't know.

Q Did you spend more or less than one hour on my clients' file prior to closing?

A I imagine I spent more than one hour.

Q More or less than five hours?

A I would say probably about four or five

HUDSON - DEEB (DIRECT EXAMINATION)

to my desk and I open it up and look at the survey and make sure, like I said before, there's no encroachments, there's no setback violations, take a note of the legal description and make sure it comports to the survey and then pass it off to the paralegal.

Q How long did you spend looking at the survey?

A Probably 15 minutes.

Q Did you notice the information contained approximately in the middle of the survey that says two-story stucco/frame residence, FF EL equals 13.3?

A I don't recall, but I'm sure I looked at it.

Q Did that information mean anything to you?

A It means -- at that time I said flood elevation is 13.3.

Q Did you look at any of the information contained in the bottom box on the survey?

A I don't recall. That information is irrelevant. To me, for my purposes, I'm looking at the survey; I'm looking at the property.

HUDSON - DEEB (DIRECT EXAMINATION)

A Because a certified land surveyor did it.

Q And based on the surveyor's certification, it's your testimony that they were entitled to rely on it; is that correct?

A That's correct. For example, when we do subdivision surveys and you'll have a whole subdivision survey done by a surveyor, there's multiple purchasers there and they're all entitled to rely on that document by the seal of the surveyor. Just because it was prepared for the Dyes doesn't mean that the doctors could not rely on that survey.

Q Did you ever recommend to my clients that they consider having this survey recertified?

A I don't recall. But -- I don't recall. I probably wouldn't have. It was fairly recent at that time.

Q Did you ever recommend to my client that they consider getting a new survey done because this one was not prepared for them?

A No, not to my recollection.

Q If you had in fact picked up on the

HUDSON - DEEB (DIRECT EXAMINATION)

finished floor elevation information contained on the survey prior to closing, did you realize that the house was below the base flood elevation of 14 feet?

MS. WALL: Object

THE WITNESS: Again, that's irrelevant to me because that's an insurance agent's issue, and that's covered more fully by the elevation certificate that they review, and the house could have been built any year and conformed to the then existing FEMA regulations.

BY MR. HUDSON:

Q Well, whether it's irrelevant or not or more relevant to somebody than you, did you pick up on that fact, that down in the second block it identifies the base elevation 14 feet when the finished floor elevation is shown to be 13.3?

A I just don't recall. I don't review it for elevation.

Q So is it your testimony that even if you did in fact pick that up, you simply

HUDSON - DEEB (DIRECT EXAMINATION)

concluded you had no obligation or need to disclose it to my clients?

MS. WALL: Object

THE WITNESS: I agree. If I had picked it up, I felt I had no obligation to disclose it to anybody because that was in the court of the insurance agent.

BY MR. HUDSON:

Q And sitting here today, it's your testimony that you simply do not recall whether you in fact picked up on that discrepancy; is that correct?

A That's correct.

MS. WALL: Object to the form.

BY MR. HUDSON:

Q If my clients had told you that they were going to pay for the house with cash and they weren't going to insure it against flood, under those circumstances would you then have seen fit to disclose this information to them?

MS. WALL: Object to the form.

THE WITNESS: I already said no.

BY MR. HUDSON:

HUDSON - DEEB (DIRECT EXAMINATION)

need for the flood. If the seller's attorney doesn't have one, we'll need to order one; correct?

A Correct.

Q Now, at any point in time, do you remember either Erin or Leslee coming to you and saying, Mr. Deeb, what should we do about getting an elevation certificate; should we call Mr. Griffin and see if he's got one; should we order one for these guys? Do you remember there being any discussion?

MS. WALL: Object to the form.

THE WITNESS: I don't recall.

BY MR. HUDSON:

Q Do you have an understanding of what in fact transpired?

A I believe one was faxed to us and then we faxed it onto Seacoast Insurance.

Q And upon what do you base that belief?

A I think in the file there's a copy of the elevation certificate and it has a fax transmittal form on the top of it.

Q Do you know why Mr. Griffin didn't send that to you along with the survey that he sent

HUDSON - DEEB (DIRECT EXAMINATION)

to be?

A Yes.

Q Now, you had a copy of this document in your file prior to closing; correct?

A That's correct.

Q And it's your testimony you never looked at it prior to closing; correct?

A Correct.

Q The only person in your office who saw this document was Leslee Thomas; is that correct?

A And maybe Erin Otten.

Q And they did what with this document?

A Forwarded it onto the insurance agent.

Q Do you know if they ever sent it to my clients?

A I don't know.

(Whereupon, Plaintiffs' Exhibit Number 10 was marked for identification.)

BY MR. HUDSON:

Q Exhibit Number 10, what is that?

A It looks like a memo to the file written by either Erin or Leslee.

HUDSON - DEEB (DIRECT EXAMINATION)

Gottschlich on or about November 20, 2003; is that correct?

A That's correct.

Q Did you draft this document?

A Our office did.

Q And this document was needed for what reason?

A To empower either Chuck or I to close on behalf of the doctors and sign on their behalf.

Q And the closing was in fact carried out pursuant to this specific power of attorney; is that correct?

MS. WALL: Object to the form.

THE WITNESS: Yes. In fact, Chuck executed as attorney-in-fact on behalf of Dr. Gottschlich.

(Whereupon, Plaintiffs' Exhibit Number 13 was marked for identification.)

BY MR. HUDSON:

Q Take a look at Plaintiffs' 13, please. And do you agree with me that this is the specific power of attorney that was executed by

HUDSON - DEEB (DIRECT EXAMINATION)

Don McNeil on or about November 21, 2003?

A Yes.

Q And the purpose of this document was what?

A Again, to empower either Chuck or I to close on behalf of the doctors, to execute the closing documents which would have included the loan package and the settlement statement.

MR. HUDSON: Let's take a quick break. I need to run to the restroom real quick.

MS. WALL: Uh-huh (affirmative.)

(Whereupon, a short break ensued.)

BY MR. HUDSON:

Q Mr. Deeb, are you ready?

A Yes, sir.

Q Mr. Herb Novit has been identified as an expert by your attorney; were you aware of that?

A Yes.

Q Do you know Mr. Novit?

A Yes.

Q How do you know him?

HUDSON - DEEB (DIRECT EXAMINATION)

THE WITNESS: -- years of experience and thousands of closings, I have really seen this issue come up many times to where we'll sit down and they'll be a mistake because the lender has it as a rental property, for example, and a higher interest rate, and we've got to get a new package to get the second home rider done and lower the interest rate because the lender made a mistake on how it was represented to -- didn't read the application correctly.

BY MR. HUDSON:

Q You've had no discussions with Matt Topping about this transaction --

A No.

Q -- since the closing, have you?

A No.

Q What is the customary protocol or what was the customary protocol in 2003, when a closing was being conducted under a power of attorney? Your office wouldn't explain to the purchasers unless they called up or specifically

HUDSON - DEEB (DIRECT EXAMINATION)

asked questions; is that right?

A No, it was really closing specific. Generally you can tell -- again, with a first-time home buyer versus an investment property buyer of a second home to what degree they feel they need more information. We would customarily in every case that it was required to send over a copy of the proposed settlement statement showing all the costs of transaction, the note and the truth and lending which showed the material cost of the loan and the terms of the loan to the client. The client would then sign it, fax it or e-mail it, or whatever, back to us so we know. And if they have questions, they could then call me. And they do; some clients call and say, I've got a question about this, you know, the note rates or adjustable rates and when does it go up and I've got a question about the settlement statement, I've got a question why this is so -- you know, and then we go into more depth if they need it.

Q Does the firm affirmatively reach out to clients to say guys or folks, your closing is coming up two days from now or three days from

HUDSON - DEEB (DIRECT EXAMINATION)

now, whenever, just want to make sure you don't have any questions about the closing process or the loan documents you will be signing?

A Sometimes, yes.

Q Did that happen in this case?

A I don't recall.

Q If you wanted to figure out whether or not that did or did not take place, how would you do it?

A I'd have to look back in the file and see if I made any notes or memos to the file about the doctors being concerned about an issue, or not, and then spoke with them. Generally when I speak with someone, I'll make a note in the file or I'll do a memo to the paralegal that we need to follow up on an issue.

Q Well, you've had an opportunity to review your file prior to your deposition; correct?

A Right, I have.

Q Did you see any indication in your file that you reached out to the doctors to see if they had any questions about the closing process?

HUDSON - DEEB (DIRECT EXAMINATION)

A No, it appears to be it was an uneventful, very smooth closing, and the doctors are working doctors and weren't interested in seeing the file -- the closing occur. They didn't ask me specifics on every page in the closing document.

(Whereupon, Plaintiffs' Exhibit Number 18 was marked for identification.)

BY MR. HUDSON:

Q All right. Take a look at 18, please. And this appears to be the settlement statement for the primary loan; is that correct?

A Yes.

Q Did you review this statement prior to closing?

A I'm sure I did.

Q Do you remember reviewing it or is that just something you know you would have done in the ordinary course of --

A That's something I would have done in the ordinary course. The paralegals would present it to me and say, Bobby, take a look at this before I send it out to the doctors.

# LAURICH & DEEB, P.A.

*ATTORNEYS AND COUNSELORS AT LAW*

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CHARLES H. WISEMAN
CATHERINE WEST OLIVETTI
BYRON A. HAMMOND


November 13, 2003

PLAINTIFF'S EXHIBIT
2 cf

Dr. Donald McNeil
Dr. Gregory Gottschlich
2341 Lane Road
Columbus, OH 43220

In Re: Purchase of 48 Sea Lane
Hilton Head Island, South Carolina

Dear Drs. McNeil and Gottschlich:

Congratulations on your purchase of 48 Sea Lane in Palmetto Dunes. I am pleased to have this opportunity to work with you. Please take the time to review this correspondence, complete the enclosed data sheet, and forward the completed data sheet to me by fax or in the self-addressed envelope enclosed for your convenience.

Reviewing your Contract of Purchase, I note the following issues:

1. Property. As you know, the property is within Palmetto Dunes. Palmetto Dunes is a planned unit development within the Town of Hilton Head Island. Palmetto Dunes is a covenant controlled community administered by the Palmetto Dunes Property Owners' Association, Inc. There are annual assessments which every property owner pays to operate Palmetto Dunes and its amenities. The annual assessments are due at the beginning of each year and will be prorated at Closing. Your annual assessment offsets the costs of the private security force, roadways, common areas, and amenities within Palmetto Dunes. If you do not have a copy of the Covenants and would like one, contact me and I will have a copy made from the Beaufort County records with your title search for a copying cost of $30.00.

2. Purchase Price. The purchase price for the property is $1,395,000.00. $10,000.00 is to be held in escrow as an earnest money deposit. You are financing through Wells Fargo Home Mortgage, Inc. and I believe all is in order with your financing. We will need certified funds by wire or certified check at closing for the balance of the purchase price.

PLF-167
ELS #78-5811S

3. Date of Closing. The date of closing is scheduled for December 2, 2003. Please indicate on the enclosed data sheet whether you intend on being on Hilton Head Island for closing. If not, we can arrange to have the funds necessary for closing wired to our escrow account, or you may forward the funds by certified check through the mail.

4. Inspection. Under the terms of the contract, the Seller must convey the property with all the plumbing, HVAC, appliances and electrical systems in good working order. Other repairs would fall under the Inspection Report Addendum. The Addendum allows you ten days from the date of the execution of your contract to provide the Seller with a copy of an inspection report. In the Addendum, the Seller agreed to a maximum contribution of $2,500.00 for repairs identified in the inspection report. Please let me know if I can assist you with any matters that arise in this regard.

5. Title. The contract does not state the manner in which you plan to take title to the property. I have enclosed a Memorandum outlining the differences between holding title as tenants in common and joint tenants with the right of survivorship in South Carolina. Generally, holding title as tenants in common will insure that each of you will pass your undivided fifty percent (50%) interest in the property according to the terms of each of your wills. Holding title as joint tenants with the right of survivorship will mean that upon a co-tenant's death your fifty (50%) undivided ownership interest will pass to the surviving co-tenant regardless of the terms of your wills. Please verify whether you wish to hold title as joint tenants with the right of survivorship or tenants in common and let me know your decision. Of course, I will gladly answer any questions you may have in this regard.

6. Title Insurance. Since your purchase is being financed, Wells Fargo Home Mortgage will require title insurance for its mortgage interest in your real property. Our firm writes title insurance with First American Title Insurance Company and Stewart Title Insurance Company. We will provide Wells Fargo Home Mortgage with a Mortgagee's policy and will provide you with a policy should you require the same.

7. Legal Costs. Attached is a sheet itemizing some of the issues our law firm will perform on your behalf as your attorney. Our legal fee for this transaction will be $650.00. In addition there is a title search fee of $260.00. Please enclose a check in the amount of $260.00 payable to Laurich & Deeb, P.A. with your data sheet. When we receive your check, we will order the

title search on the property. The title search is necessary to insure that we are aware of all the Seller's mortgages, liens and encumbrances and to process any financing of your purchase. Your $260.00 payment will be reflected as a credit against your costs on your settlement statement at Closing.

8. Utilities. We will coordinate the transfer of your water, sewer and electrical utilities; however, telephone and cable television will be your responsibility. Enclosed is a Palmetto Electric form for your completion. Please return this form along with your data sheet. You may reach Hargray telephone company at (843) 686-5000 to set up your local telephone service and Adelphia Communications at (843) 785-5175 to set up your cable television service.

If you should have any questions or requests regarding this transaction, please call and ask for Leslee Thomas, who will be the paralegal assisting with your purchase.

With best regards, I am

Very truly yours,

LAURICH & DEEB, P.A.

Robert M. Deeb, Jr.

Enclosures: Purchaser's Data Sheet
Palmetto Electric Purchaser Form
Joint Tenancy Memo
Law Firm Services
Privacy Statement

c: Greg Merrill/Dunes Marketing Group
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PLF-159
ELS #79-58113

## MULTIPLE PURCHASERS OF PROPERTY IN SOUTH CAROLINA

## JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP (JTWROS)
## V.
## TENANCY IN COMMON

A common question arises at the time of the purchase of real property located in South Carolina as to the manner of holding title. There are two ways in which co-tenants may hold real property jointly in South Carolina:

(1) as "joint tenants with rights of survivorship (JTWROS)"; or
(2) as "tenants in common"

### JOINT TENANCY

The majority of people are familiar with the principles of a joint tenancy through their experience with joint banking accounts. In a joint tenants with a right of survivorship, the co-tenants own the property as a whole. When one co-tenant dies, his interest passes automatically to the other co-tenant without the need for any formal probate proceedings in South Carolina, and regardless of any claims which creditors may have against the estate of the deceased co-tenant. The existence of a will does not affect the ownership of the land.

A joint tenancy with survivorship rights can, therefore, be a form of estate planning. There are four necessary "unities" in a joint tenancy:

(1) Unity of Interest (the co-tenant's interest are the same)
(2) Unity of Title
(3) Unity of Time
(4) Unity of Possession

Whenever a co-tenant acts in a way that one of these essential unities is destroyed, the joint tenancy is automatically severed. For example, if a co-tenant pledges his interest in property thus held as a security to a loan, or attempts to sell his interest, the joint tenancy is severed. A divorce between the two co-tenants does not, however, in and of itself, necessarily sever the tenancy. In other words, the property will need to be disposed of in the settlement process or by the divorce decree in order to effect a severance.

### TENANCY IN COMMON

When co-tenants hold property as "tenants in common", each owns an undivided, equal interest. Thus, with two co-tenants, each has an undivided one-half (1/2) interest; if there are three co-tenants, each he an undivided one-third (1/3) interest; etc. Where one co-tenant dies, his or her interest, unlike that under a joint tenancy, does not pass automatically to the surviving co-tenant, but rather according to the terms of the will or by laws of intestate succession. In addition, the deceased co-tenant's interest is subject to the claims of creditors. A will is very important in determining the distribution of the estate.

Tenancy in common is characterized by only a single essential unity - that of possession or of the right to possession of the common property. A tenant in common who conveys an interest to a third party ceases to be a co-tenant, and the one who purchases the undivided share of a tenant in common becomes a co-tenant with the remaining owner(s).

### IMPORTANCE OF WILLS

The existence or non-existence of a valid Will has no effect on land held under joint tenancy. Under the right of survivorship, the land automatically is given to the surviving co-tenant(s). However, a valid Will is very important in the distribution of land held as tenants in common.

A valid Will provides several advantages. The most important is that it gives the Testator control of the distribution of his possession. If the owner dies intestate (without a will), a court will appoint an Executor for the Estate. The Executor follows South Carolina's statute of descent and distribution in allocating property. A Will allows the Testator to decide who will distribute the possession and to whom they will be distributed. A Will also enables tax planning which can provide for the minimization of estate taxes. Dying intestate can have the effect of maximizing taxes to be paid.

### SUMMARY

This memorandum is not intended to imply any preference for one form of ownership over the other. It is intended to stress the importance of estate planning and of choosing a form of ownership consistent with that plan. Lauriat & Deeb, P.A. will be happy to discuss the probate and tax ramifications of such a choice with you or your estate and/or tax advisor.

PLF-180
ELS #79-58113

We recognize and respect the privacy expectations of today's consumers and the requirements of applicable federal and state privacy laws. We believe that making you aware of how we use your non-public personal information ("Personal Information"), and to whom it is disclosed, will form the basis for a relationship of trust between us and the public that we serve. This Privacy Statement provides that explanation. We reserve the right to change this Privacy Statement from time to time consistent with applicable privacy laws.

In the course of our business, we may collect Personal Information about you from the following sources:

- From applications or other forms we receive from you or your authorized representative;
- From your transactions with, or from the services being performed by, us, our affiliates, or others;
- From our internet web sites;
- From the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others; and
- From consumer or other reporting agencies.

Our Policies Regarding the Protection of the Confidentiality and Security of Your Personal Information

We maintain physical, electronic and procedural safeguards to protect your Personal Information from unauthorized access or intrusion. We limit access to the Personal Information only to those employees who need such access in connection with providing products or services to you or for other legitimate business purposes.

Our Policies and Practices Regarding the Sharing of Your Personal Information

We may share your Personal Information with our affiliates, such as insurance companies, agents, and other real estate settlement service providers. We also may disclose your Personal Information:

- to agents, brokers or representatives to provide you with services you have requested;
- to third-party contractors or service providers who provide services or perform marketing or other functions on our behalf.

In addition, we will disclose your Personal Information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

One of the important responsibilities of some of our affiliated companies is to record documents in the public domain. Such documents may contain your Personal Information.

Right to Access Your Personal Information and Ability To Correct Errors Or Request Changes Or Deletion

Certain states afford you the right to access your Personal Information and, under certain circumstances, to find out to whom your Personal Information has been disclosed. Also, certain states afford you the right to request correction, amendment or deletion of your Personal Information. We reserve the right, where permitted by law, to charge a reasonable fee to cover the costs incurred in responding to such requests.

All requests must be made in writing to the following address: Betty Parks, Laurich & Deeb, P.A. PO Drawer 6868, Hilton Head Island, SC 29938.

Multiple Products or Services: If we provide you with more than one financial product or service, you may receive more than one privacy notice from us. We apologize for any inconvenience this may cause you.

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PLF-101
ELS #79-58113

Regarding the purchase of real property:

The services to be performed by my office will include, [redacted] the following:

1) Review of the Contract of Sale to determine the Purchaser's rights and obligations.

2) Determination with the Purchaser as to the exact manner in which title to the property is desired to be taken.

3) Review of the proposed Deed presented by the Seller's attorney, as well as, all other necessary Seller Affidavits so as to insure the transfer of good marketable title to the Purchaser.

4) Examination of the title abstract reflecting the public records at the Beaufort County Courthouse to determine any material defects in the title to the property, as well as, the status of judgments against the Seller and any property taxes or other assessments relative to the subject property which may adversely affect the title.

5) Insuring that the recording of the appropriate documentation in the Register of Mesne Conveyances Office for Beaufort County has been accomplished to insure that good title has passed to the Purchaser, including a re-examination of an updated title report of the public records subsequent to the actual settlement so as to verify that all of the closing documentation, as well as, satisfaction of prior liens have been properly entered of public record.

6) Coordination of the various aspects of the actual settlement, including the disbursement and distribution of all sales proceeds to the appropriate parties.

7) Insuring compliance on the part of the Purchaser as to the specific contractual obligations necessary to close in accordance with the loan commitment issued by the lender.

8) Preparation of all necessary documentation to close the loan transaction with the commercial lender, including the rendering of a preliminary legal opinion as to the status of the title, if so required by the lender.

WELLS FARGO HOME MORTGAGE

**Wells Fargo Home Mortgage**

Matt Topping
Home Mortgage Consultant
habla Espanol

51 New Orleans Road
Suite 2
Hilton Head Island, SC 29928
843-842-0614 Office
843-842-4847 Fax
matt.topping@mortgage.wellsfargo.com

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|---|---|---|---|
| To: | Heather | From: | Matt |
| Fax: | 842-2552 | Date: | 11-10-03 |
| Phone: | | Pages: | 27 |
| Re: | McNeil | CC: | |

☐ Urgent ☑ ~~For Review~~ ☐ Please Comment ☑ ~~Please Reply~~ ☐ Please Recycle

- Contract, commitments, Atty client info.

Thanks!

PLAINTIFF'S EXHIBIT
5 a

L&D-00085
ELS #79-58113

Post Office Box 21525
Hilton Head Island
South Carolina 29925

DUNES MARKETING GROUP

(843) 842-3111
(800) 258-5202
Fax Number (843) 842-4788

CONTRACT OF SALE - OFFER AND ACCEPTANCE

Dr. Gregory M. Gottschlich and Dr. Don McNeil

("Purchaser")

whose address is: ~~3610 Vineyard Ridge, Cincinnati, OH 45241~~
2341 Kane Road, Columbus, OH 43220 → Use this Address

Hereby agrees to purchase from

Thomas N. and Jan H. Dye

("Seller")

whose address is: 210 Riverbirch Place Duluth, GA 30097

1. PROPERTY DESCRIPTION. Seller hereby agrees to sell all that lot or parcel of land, with all improvements thereon, and any interest appurtenant thereto, situated in South Carolina and being described as follows:

Legal: 27 TA/P1/BC

Mailing: 48 Son Lane (the "Property")

2. PURCHASE PRICE. The total Purchase Price for the Property is $ 1,395,000.00 to be paid by Purchaser as follows:

| | | |
|---|---|---|
| a. | Earnest Money deposited herewith ("Deposit") | $ 10,000.00 |
| b. | Additional Deposit to be paid by | $ |
| c. | A First Mortgage for at least ____ years at prevailing interest rates and terms | $ 1,116,000.00 |
| d. | Balance in cash at Closing | $ 269,000.00 |

3. FINANCING CONTINGENCY. If referred to in Section 2-C above, this Contract is subject to the Purchaser obtaining a commitment for the financing referenced above from a lender customarily making such loans in Beaufort County and the surrounding area. Purchaser shall use best efforts to obtain such a loan and shall supply the prospective lender(s) with all requisite information. The timing of this financing contingency is as follows:

a. Purchaser's loan application must be submitted within 4 days.
b. Purchaser shall obtain a comfort letter from the lender within 6 days.
c. Purchaser shall obtain a loan commitment within 10 days.

All time periods run from the date of this Contract. The "comfort letter" is to be in a form customarily used by lenders in Beaufort County.

If Purchaser's bona fide application does not result in a commitment within the above time frame, Purchaser shall have the affirmative obligation of notifying Seller or Seller's agent in writing that the financing contingency has not been satisfied and that the Purchaser has elected to terminate this Contract for failure to obtain financing. Such notice must be received by Seller or Seller's agent not later than five (5) days after the financing contingency expiration date. Upon receipt of notice and execution of any required release forms, the Listing Agency (or other Escrow Agent holding the funds) shall return to the Purchaser any sums heretofore paid as earnest money, and upon such payment, this Contract shall have no force and effect and neither party hereto shall have any rights against the other hereunder. Notwithstanding the right to cure time period contained in Section 9, the parties acknowledge and agree that time is of the essence with respect to all time periods contained within this Section 3. No right to cure shall apply to the periods contained in this Section 3. If any requisite action called for by this Section is not taken within the time periods contained in this Section, the financing contingency shall be deemed waived.



L&D-00086
ELS #79-58113

4. FURNISHINGS, SYSTEMS. The property to be sold hereunder includes all heating and air conditioning systems, all fixtures attached to the Property and all plumbing and other equipment, and shall additionally include without limitation the following:
[X] Refrigerator [X] Freezer [X] Washer [X] Dryer [X] Stove/Oven [X] Microwave [X] Cook Top
[X] Dishwasher [X] Ceiling Fans [X] Irrigation System [X] Pool Equipment [ ] Septic System [ ] Furnished
[ ] Other _____

If sold furnished, all furniture & furnishings is included unless specifically excepted by an attached list of excluded items. All appliances, heating, air conditioning, electrical and plumbing systems and fireplace shall be in good working order subject to reasonable wear and tear, which does not adversely affect the normal and regular use thereof. Further, the structure shall be reasonably sound and the roof free of leaks at time of Closing.

5. WOOD INFESTATION REPORT. Seller agrees to provide at its expense at Closing an "Official South Carolina Wood Infestation Report (CL-100)" in which no infestation or damage is reported or if there is damage observed, that it is insufficient to recommend repair. Such report must be dated within 45 days of the Closing and shall be provided to Purchaser's closing attorney not less than seven (7) days prior to closing. If infestation or sufficient damage is observed, Seller shall cause same to be repaired prior to closing or permit Purchaser's closing attorney to escrow funds from the sales proceeds at Closing in an amount equal to the costs of such repair.

6. OTHER TERMS. Other terms and conditions of this Contract are:
INSPECTION ADDENDUM

7. DATE OF CLOSING. The closing of this Contract shall take place on or before December 2, 2003, 20__ (the "Closing") at the office of Purchaser's attorney or other offices stipulated by Purchaser. Unless otherwise provided herein, Seller shall deliver possession of the Property to Purchaser at Closing. Seller and Purchaser authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction.

8. CONDITION OF PROPERTY. Purchaser has viewed the premises and, subject to the terms set forth in Section 4, Section 5 or Section 10, is purchasing the Property in its present condition "as is," except for_____

The parties understand that "as is" means that the property is being conveyed in the condition in which it is presently found subject to the aforementioned sections. Purchaser shall be permitted to have an inspection of the property performed to insure that all heating, air-conditioning, electrical and plumbing systems, fireplace, and appliances are in good working order and that the home is structurally sound and free from leaks in accordance with the requirements of Section 4. At Closing, the Property shall be delivered in the same condition as existing at the time of this Contract except for those required improvements or agreed-upon repairs. The Selling Agent recommends that Purchaser obtain an inspection.

9. DEPOSITS / DEFAULT. All money deposited by Purchaser hereunder shall be applied toward the Purchase Price at Closing. Upon the failure of either party to comply with the terms hereof within the stipulated time, and after receipt of notice of said default with a ten (10) day right to cure, it is understood and agreed by and between the parties hereto that either party may proceed with all rights and remedies at law or in equity against the defaulting party. In the case of a Purchaser default, the Seller may elect, in lieu of all other remedies, the forfeiture of the Deposit as liquidated and agreed upon damages. The parties agree that the Escrow Agent shall not disburse the Deposit until Seller and Purchaser have executed a release form authorizing the disbursement or until a court of competent jurisdiction has directed a disbursement. In the event of a forfeiture of the Deposit, it shall be divided equally between Seller and the Listing Agency; provided, however, that the amount to be received by the Listing Agency shall not exceed the amount of the commission it would have earned had this sale been completed. In the event of any litigation commenced because of a default hereunder, the prevailing parties in such litigation shall be entitled to recover attorney fees and court costs from the non-prevailing parties.



L&D-00087
ELS #79-58113

The Escrow Agent shall not be required to institute or maintain any litigation unless indemnified to its satisfaction for its attorney fees, cost disbursements, and all other expenses and liabilities to which it may, in its judgment, be subjected in connection with this action. The Seller and Purchaser shall at all times indemnify the Escrow Agent against all actions, proceedings, claims and demands arising out of this transaction relating to the holding of the Deposit. In the event of a dispute between the Seller and Purchaser which cannot be resolved, the Escrow Agent shall have the option of depositing the Deposit into the Clerk of Court's Office, pending resolution of the disposition of said funds, and Escrow Agent shall bear no further responsibility for said Deposit. The Purchaser hereby acknowledges that the Deposit shall be held in escrow by the Escrow Agent Dunes Marketing Group

10. RISK OF LOSS AND DAMAGE. In case the Property is wholly or partially damaged by fire, storm or other casualty, Purchaser may elect for ten (10) days after receiving written notice thereof, to proceed hereunder with a mutually agreed adjustment in the Purchase Price, or terminate this Contract and receive back all money deposited hereunder. In the event the Property is damaged by the Purchaser, or by any person upon the Property on the Purchaser's behalf (i.e. – inspector), such damage shall be repaired by Purchaser.

11. PRORATIONS; CLOSING COSTS; ASSESSMENTS. All expenses of ownership (and rents, if any) shall be prorated to the date of Closing. Purchaser is responsible for any applicable real estate transfer fees. Seller shall be responsible for the South Carolina deed-recording fee required by SC Code §12-24-10. Purchaser shall be responsible for County recording fees for the deed and any mortgage. Purchaser shall pay the cost of securing a title examination, title insurance, and a survey (except a Beach Protection Act survey, which is the responsibility of Seller); each party shall pay its own attorneys fees. Unless otherwise agreed to in this Contract, Seller shall be obligated to pay any regime or property owner association special assessment approved by its Board of Directors or similar body prior to closing; provided, however, a special assessment to cover insurance premiums, whenever assessed prior to closing, shall be pro-rated based on ownership over the period covered by the premium.

12. BROKER DISCLAIMER. Seller and Purchaser agree that the Selling Agency & Listing Agency are acting only as real estate agents in this transaction and as such have no responsibility for and make no oral or written representations concerning the condition of the premises, terms of the sale or title to the Property, nor are they responsible or accountable for payment of the Purchase Price or for any other funds, except the Deposit. Neither Agency guarantees payment of any check received as deposit money hereunder. Seller and Purchaser acknowledge that the Agencies: (1) give no guaranty or warranty of any kind, express or implied, as to the physical condition of the Property; (2) give no warranty, express or implied, as to the merchantability or fitness for a particular purpose regarding the Property; (3) give no guaranty or warranty concerning any inspection or report concerning the Property or the accuracy of any published square footage of the Property; (4) give no guaranties or warranties regarding any rental income or other economic benefit of the Property to Purchaser; (5) give no guaranties or warranties regarding any regime or property owner association special assessments which may apply to the Property; and (6) are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure Statement.

13. TITLE. Seller shall convey marketable title to the Property to Purchaser in fee simple by proper deed in recordable form with covenants of general warranty, subject to normal utility easements, applicable restrictive covenants, governmental regulations and assessments. If an owner's title binder can be issued by an ALTA title insurance company at standard rates with standard exceptions for the Beaufort County area, title shall be deemed to be marketable. Purchaser acknowledges that Selling Agency has recommended that an attorney examine the title to the Property on Purchaser's behalf. If the Property is a condominium or subject to covenants or restrictions, Purchaser shall have the obligation to verify all regime and property owner regular or special assessments.

14. NON-RESIDENT TAX WITHHOLDING. Seller shall comply with the provisions of South Carolina Code §12-9-510 and U.S. Internal Revenue Code §1445 (as amended) regarding withholding requirements for sellers who are not South Carolina or U.S. residents.



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15. STATUTORY AND OTHER ADDENDA.

a. The South Carolina Real Estate Agency Disclosure form is attached hereto and incorporated herein.

b. The Beach Management Act is [ ] is not [X] applicable to this Contract; if applicable, attached hereto and incorporated herein is the requisite Beach Management Act Disclosure Addendum.

c. The Purchaser has [X] has not [ ] reviewed a South Carolina Property Condition Disclosure Statement.

d. The South Carolina Vacation Rental Act does [ ] does not [X] apply to this transaction.

e. This Contract applies [ ] does not apply [X] to a residence built prior to 1978. If such residence was built prior to 1978, this Contract is subject to the Lead Based Paint Contingency Addendum and the Lead Based Paint Disclosure, both of which are attached hereto and incorporated herein.

f. Flood Insurance is required [X] is not required [ ] for any federally insured mortgage on the Property.

g. An Inspection Report Addendum is [X] is not [ ] attached to this Contract and incorporated herein by reference.

h. Also attached hereto and incorporated herein are the following Addenda:_____

_____

_____

16. MISCELLANEOUS. The invalidity or unenforceability of any provision of this Contract shall not affect the other provisions hereof and this Contract shall be construed in all respects as if such invalid and unenforceable provision were omitted. This Contract may be executed in counterparts, each of which shall be deemed to be an original. The parties agree that any offer, counteroffer, and/or acceptance may be communicated by the use of facsimile (FAX) and that the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the originals were present on the documents in the handwriting of each party. This Contract shall be governed and construed in accordance with the laws of the State of South Carolina. No failure of a party to exercise any power or right granted hereunder or to insist upon strict compliance with any obligation specified herein, and no practice at variance with the terms hereof, shall constitute a waiver of said power or right unless expressly authorized in writing by the affected party. If either party is a corporation, limited liability company, trust, or partnership, it shall provide evidence that: (i) the persons executing this Contract are authorized to act on behalf of the entity, and (ii) that the entity is validly and legally existing and in good standing and the undersigned individuals agree that the principals of the purchasing entity will personally endorse any financing described above if required by the lender. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns. This Contract may not be assigned by Purchaser without Seller's written consent. This Contract constitutes the entire agreement between the parties hereto and may be modified only in writing.



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THIS IS A LEGALLY BINDING CONTRACT WHEN SIGNED. PURCHASER AND SELLER SHOULD SEEK LEGAL ASSISTANCE IF THE CONTENTS OF THIS CONTRACT ARE NOT UNDERSTOOD. PURCHASER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT.

IN WITNESS WHEREOF, the undersigned parties have executed this Contract on the date set forth beneath their respective signatures. The later date shall be the date of the Contract for purposes of all time periods set forth herein.

WITNESSES:

_____

Purchaser Dr. Gregory M. Gottschlich

Date

_____

Purchaser Dr. Don McNeil

Date

WITNESSES:

_____

Seller Thomas N. Dye

Date

_____

Seller Jan E. Dye

Date

Listing Agent: Ken Oliver Company: Dunes Marketing Group

Selling Agent: Greg Merrill Company: DUNES MARKETING GROUP, a Division of The Byrne Corporation

(The foregoing form may be used only by members in good standing of the Hilton Head Area Association of REALTORS®.)

Revised 7/28/03

_____ This is the unmodified Hilton Head Area Association of REALTORS® recommended contract form.

_____ This form has been modified from that recommended by the Hilton Head Area Association of REALTORS®

Initials: Purchaser_____ Date_____ Seller_____ Date_____ (Page 5)

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ELS #79-58113

ADDENDUM TO CONTRACT OF SALE
INSPECTION REPORT

Property: 48 SEA LANE

Purchaser shall have the right and privilege, at Purchaser's sole expense, to obtain an inspection report ("Report") of the Property, by a professional independent inspection company. Purchaser recognizes that this Property is a resale property, that it is not new construction, and that normal wear and tear is to be expected (for example, loosed windows, interior doors that do not lock or latch, tree trimming, leaf accumulation on the roof, cracks in tile and countertops, and housekeeping items such as filters, light bulbs, painting and cleaning are considered normal wear and tear and are not subject to repair unless otherwise noted in the Contract). The intent of the inspection is to advise the Purchaser of the condition of the Property.

As stated in the Contract to which this Addendum is attached, the Property is being sold to Purchaser in its present condition "as is" with the provision that all appliances, heating and air conditioning systems, electrical and plumbing systems, and fireplace shall be in good working order at time of closing. The Contract further provides that the structure shall be reasonably sound and the roof shall be free of leaks. Nothing contained in this Addendum shall amend, alter, or modify Seller's basic contractual obligations as set forth in the Contract. The maximum total cost referenced below in subparagraph (c) only applies to those repairs recommended by the Report other than Seller's obligations under the Contract to have the appliances, heating and air conditioning systems, electrical and plumbing systems, and fireplace in good working order as well as any other obligations of Seller set forth in the Contract.

The timing of the inspection and resulting obligations generated by said Report is as follows:

(a) The Report must be completed and a copy provided to Seller within TEN (10) days from the full execution of this Contract along with a statement from Purchaser or Purchaser's representative as to any findings in the Report which Purchaser wants Seller to repair/address.

(b) Seller agrees, at a minimum, to make all reasonable repairs recommended in the report pertaining to the *heating, air conditioning, electrical and plumbing systems, fireplace and appliances and structure* so as to comply with paragraph 4 of the Contract. Seller must respond to the Report's findings within FIVE days and advise whether Seller will make all corrections consistent with the recommendations.

(c) Seller agrees to make all reasonable repairs recommended in the Report up to a maximum total cost of $ 2500. In the event that the cost of said repairs exceeds this amount, Seller shall have the option of making the repairs or refusing to make them. If Seller declines to make the additional repairs, Purchaser shall then have the option of (i) accepting the Property with agreed to repairs, (ii) accepting a credit from the Seller in the amount referenced above or (iii) terminating this Agreement by written notice delivered to Seller within forty-eight (48) hours after expiration of the time allowed Seller to respond.

(d) In the event that Purchaser does not submit a copy of the Report and requested repairs to Seller within the allotted time period, then this contingency shall be deemed to have been waived by Purchaser.

(e) In the event Seller agrees to make certain repairs and such repairs are not completed by the date of closing, then Seller agrees to permit Purchaser's closing attorney to escrow the necessary funds from the Seller's proceeds at closing.

Seller and Purchaser acknowledge that _____ (Broker) is acting only as a real estate agent in this transaction and as such has no responsibility for and makes no oral or written representations concerning the condition of the premises. Seller and Purchaser acknowledge that the Broker: (1) gives no guaranty or warranty of any kind, express or implied, as to the physical condition of the Property; (2) gives no warranty, express or implied, as to the merchantability or fitness for a particular purpose regarding the Property; (3) gives no warranty, express or implied, concerning any inspection or report concerning the Property including any such Report as referenced above.

Seller's responsibility in connection with the condition of the Property shall cease at closing and the closing shall constitute Purchaser's acceptance of the Property unless provisions are otherwise made in writing.

SELLER: PURCHASER:

_____ Date: _____ _____ Date: _____

_____ Date: _____ _____ Date: _____

(The foregoing form may be used only by members in good standing of the Hilton Head Area Association of REALTORS®.)

Inspection Addendum B
Revised July 28, 2003

[illegible]

L&D-00091
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## Consent to Dual Agency

(To be completed only upon occurrence of dual agency and after both parties have been identified and informed)

DUKES MARKETING GROUP
(Brokerage Company)

GREG MERRILL
(Licensee)

(Seller/Client)

GOTTSCHLICH / MCNEIL
(Buyer/Client)

48 SEA LANE
(Property Licensee)

The undersigned Seller/Client and/or Buyer/Client voluntarily agrees to modify his or her agency agreement with Brokerage Company/Licensee and receive limited representation. Consent is hereby granted to Brokerage Company/Licensee to act as a dual agent only in the transaction in which the above-named Seller/Client and Buyer/Client are both parties thereto and which involves property at the stated location.

(Seller/Client) (Date)

(Seller/Client) (Date)

(Buyer/Client) (Date)

(Buyer/Client) (Date)

(SC Real Estate Commission Approved)

## Acknowledgment of Relationship Disclosure NOT A CONTRACT

(Seller or Buyer)

(Licensee)

(Brokerage Company)

As a potential Seller or Buyer of real estate, I understand and agree that when working with Brokerage Company/Licensee I will be:

- ☐ Customer - Self Represented
- ☐ Seller/Client - Brokerage Company/Licensee is agent for my property located at:

  _____
- ☐ Buyer/Client - Brokerage Company/Licensee is my agent

Seller/Client or Buyer/Client acknowledges that after entering into our written agency agreement, agent might request a modification in order to act as a dual agent in a specific transaction. If asked:

- ☐ Permission to act as a dual agent will not be considered.
- ☐ Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If I agree, I will execute a separate written consent agreement.

This completed Acknowledgment of Relationship Disclosure is provided to Seller or Buyer for his or her record. A copy signed by Seller or Buyer indicating above stated relationship has been retained by Brokerage Company/Licensee.

(Licensee) (Date)

(Seller or Buyer Copy)

## Agency Disclosure

SC Real Estate License Law requires that:

(A) A licensee shall provide in a timely manner to all buyers and sellers with whom the licensee works: a meaningful explanation of agency relationships in real estate transactions; and a completed agency disclosure form prescribed by the Commission indicating whom the licensee shall represent in a real estate transaction.

(B) A licensee who begins working with a potential buyer shall provide to the potential buyer a completed agency disclosure form at the first substantive contact and must establish at that time of contact, whether buyer will be customer or client.

South Carolina Real Estate Commission
Post Office Box 12847
Columbia, South Carolina 29211-2847
Telephone: (803) 896-4400
Fax: (803) 896-4404
Internet: http://www.llr.state.sc.us/rec.htm

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# CONSUMER INFORMATION

## Agency Relationships in Real Estate

S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
South Carolina Real Estate Commission

## When Buying or Selling Real Estate, Are You a Customer or Client?



7/18/2003 18:55 8439242788 DUKES MARKETING GRP PAGE 12/13

## Consent to Dual Agency

(To be completed only upon occurrence of dual agency and after both parties have been identified and informed)

DUKES MARKETING GROUP
(Brokerage Company)

GREG MERRILL
(Licensee)

(Seller/Client)

COTTSWICH/MERRILL
(Buyer/Client)

42 SEA LANE
(Property Location)

The undersigned Seller/Client and/or Buyer/Client voluntarily agrees to modify his or her agency agreement with Brokerage Company/Licensee and receive limited representation. Consent is hereby granted to Brokerage Company/Licensee to act as a dual agent only in the transaction in which the above-named Seller/Client and Buyer/Client are both parties thereto and which involves property at the stated location.

(Seller/Client) (Date)

(Seller/Client) (Date)

X (Buyer/Client) (Date)

X (Buyer/Client) (Date)

(SC Real Estate Commission Approved)

L&D-00093
ELS #79-5811-3

## Acknowledgment of Relationship Disclosure NOT A CONTRACT

(Seller or Buyer)

(Licensee)

(Brokerage Company)

As a potential Seller or Buyer of real estate, I understand and agree that when working with Brokerage Company/Licensee I will be:

- ☐ Customer - Self Represented
- ☐ Seller/Client - Brokerage Company/Licensee is agent for my property located at:
- ☐ Buyer/Client - Brokerage Company/Licensee is my agent

Seller/Client or Buyer/Client acknowledges that after entering into our written agency agreement, upon receipt request a modification in order to act as a dual agent in a specific transaction. If asked:

- ☐ Permission to act as a dual agent will not be considered.
- ☐ Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If I agree, I will execute a separate written consent agreement.

This completed Acknowledgment of Relationship Disclosure is provided to Seller or Buyer for his or her record. A copy signed by Seller or Buyer indicating above stated relationship has been received by Brokerage Company/Licensee.

(Licensee) (Date)

(Seller or Buyer Copy)

## Agency Disclosure

SC Real Estate License Law requires that:

(A) A licensee shall provide in a timely manner to all buyers and sellers with whom the licensee works: a meaningful explanation of agency relationships in real estate transactions; and a completed agency disclosure form prescribed by the Commission indicating whom the licensee shall represent in a real estate transaction.

(B) A licensee who begins working with a potential buyer shall provide to the potential buyer a completed agency disclosure form at the first substantive contact and must establish at that time of contact whether buyer will be customer or client.

South Carolina Real Estate Commission
Post Office Box 11847
Columbia, South Carolina 29211-1847
Telephone: (803) 896-4400
Fax: (803) 896-4404
Internet: http://www.llr.state.sc.us/rockies

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# CONSUMER INFORMATION

## Agency Relationships in Real Estate

S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
South Carolina Real Estate Commission

## When Buying or Selling Real Estate, Are You a Customer or Client?

WELLS FARGO HOME MORTGAGE

Wells Fargo Home Mortgage, Inc.
51 New Orleans Road
Suite 2
Hilton Head Island, SC 29928
843 842-0600 Office
843 842-4847 Fax

## Attorney/Client Information Sheet

Wells Fargo will be completing the loan request for the following client: McNeil / Gottschlich

Date: 11-10-03

Attorney Information: Lanrich + Deeb 843-785-6868 (O)
843-842-2552 (F)

Borrower: Donald McNeil and Greg Gottschlich

Current Address: 2341 Lane Rd Columbus OH 43220

Contact Information: 614-538-1994 (H-McNeil) 614-579-9225 (C-Mc)
513-769-2765 x104 (W-GoH) 513-702-6642 (C-GoH)

Purchase or Refi: Purchase
Occupancy: 2nd Home
Property Address: 48 Sea Lane HHI SC 29928
Purchase Price or Appraised Value: $1,395,000
Loan Amount or Refi Amount: First $616,000 Second $500,000
Loan Number, First Mortgage: 0133761288
Loan Number, Second Mortgage: 110946
Loan Type, First Mortgage: 7/1 ARM, Fully Amortizing
Loan Type, Second Mortgage: Smart Pay I 10
Interest Rate, First Mortgage: 5.75% o/o w/ Escrow
Interest Rate, Second Mortgage: 3.25% (P-.75%, 3.24 Floor)
Closing Date: 12-2-03
Rate Lock Expiration Date: 12-5-03
Financing Closing Costs?: NO
Sellers Agent: Ken Oliver
Buyers Agent: Greg Merrill

Processor: Christine Talbot: 866.452.3915 x6470 (o) 719.264.4072 (f) - 2nd Mort.

SDC Processing: 800.696.2301 Opt 3 (o) 866.275.7513 (f) - 1st Mort

Other:
***PLEASE SEND TITLE, WIRING INTRUCTIONS, INSURANCE DEC PAGE(S), AND PAYOFF TO PROCESSOR***
Additional Comments:

Please don't hesitate to contact me with any questions. I look forward to working with you on the successful completion of this transaction.

Matt Topping
843.842.0614 Office
843.301.5200 Mobile
843.842.4847 Fax
matt.topping@wellsfargo.com

L&D-00098
ELS #79-58113

WELLS FARGO

*WELLS Fargo Home Equity*
*Loan/Line Commitment Letter*

*Date:* 11/8/2003

WFHE Appl: 1109946
ISSUED TO: Mary Topping LPO# 1807

FAX:
BORROWER: Donald L McNeil
NMI LOAN NUMBER: 0133761288 FAX ISSUED TO LPO ☐ MAP ☐

COMMITMENT EXPIRES: 03/05/2004
CLOSING DATE: 11/17/2003 (If different, please call immediately)
Collateral Address that will secure our Lien is: 48 Sea Lane Hilton Head Island SC 29928

| Approved | AS IS | | |
|---|---|---|---|
| HELOC X | Amount $ 500,000.00 | Term 120 Months | |
| Int Only X | APR 3.250 % | Nominal 3.250 % | |
| HELOAN | Estimated Payment* $ 1,354.17 | Floor 3.240 % | |
| | * If product is HELOC the margin is -0.75 % | | |

THIS TRANSACTION INCLUDES A RESCISSION PERIOD: NO

The following accounts will be paid off with the proceeds of the home equity loan/line. The borrower is responsible for continuing to make monthly payments until proceeds are received

| Creditor | Balance | | Creditor | Balance |
|---|---|---|---|---|
| na | 0.00 | | na | 0.00 |
| na | 0.00 | | na | 0.00 |
| na | 0.00 | | na | 0.00 |
| na | 0.00 | | na | 0.00 |
| na | 0.00 | | na | 0.00 |

The following information and document copies must be submitted to the Wells Fargo Home Equity Loan Processor prior to being prepared(PTD) and/or prior to funding(PTF):

| PTD | PTF | |
|---|---|---|
| ☐ | ☐ | Copy of updated Credit Bureau Report |
| ☐ | ☐ | Copy of Income Verification (☐Paystubs ☐1 Year W-2 ☐2 Year W-2 ☐Last 2 yr.1040 and applicable schedules) ☐Schedule C ☐Partnership Returns ☐Corporate Returns ☐P& L Statements |
| ☐ | ☐ | Subordinate financing subject to first mortgage underwriter approval. |
| ☒ | ☐ | Copy of appraisal (first 2 pages) including any addenda for $ 1,395,000 |
| ☐ | ☐ | Satisfactory review of appraisal information in LIS/LPS, and value to be >= $ |
| ☐ | ☐ | Copy of current Title Search (Check those that apply) ☐Legal and Vesting Only ☐Lien, Legal and Vesting Search |
| ☒ | ☐ | INFORM CLOSING AGENT THAT THEY WILL BE CLOSING THE 2ND WITH 1ST |
| ☒ | ☐ | Wiring instructions including amount of disbursement |
| ☐ | ☐ | Completed and signed ACH form with voided check, if applicable. Please take note that all loans DO NOT qualify for ACH rate reduction, consult your sales rep for further information. |
| ☒ | ☐ | Address where Closing Documents should be sent. |
| ☒ | ☐ | WFHM 1st mortgage not to exceed $ 616,000 |
| ☐ | ☐ | WFHM 1st mortgage underwriting to verify income >= $ /month |
| ☐ | ☒ | Adequate Home Owners Insurance Binder for Applicable Loan Amounts. *Second Mortgage Clause should read: Wells Fargo Bank, N.A., its Successors and/or Assigns, PO Box 49063, Colorado Springs, CO 80949-9063* Flood Insurance Binder for Flood Zone Properties: *Second Mortgage Clause should read: Wells Fargo Bank, N.A., its Successors and/or Assigns, PO Box 650, Minneapolis, MN 55480-0650* |
| ☐ | ☐ | (If applicable) Power of Attorney and/or Copy of TRUST |
| ☐ | ☐ | Copy of Final Inspection(form 442) |
| ☒ | ☐ | Order for WFHE Title Insurance in amount of 500,000 |
| ☒ | ☐ | 1. Need Current asset statements dated within 90 days of the application date for 450K to meet VOA Requirement. *must be non-manufacturing business, 50% retirement can be used* |
| ☒ | ☐ | 2. Need a signed 4506 IRS form<br>3. Need a completed ATC form |
| ☒ | ☐ | 4. Subordinate financing subject to first mortgage underwriter approval |

Note: We Require 3 day lead time for document preparation, shipping of package and wiring of loan or line funds to agent for disbursement.

Underwriter: Vigen Kranenb Loan Processor: Talbot Christine
Any questions, please call: 800-667-5827 ext

Please fax documentation to
719-264-4026

NOTE:

This commitment is based upon a review of all information provided to date and is contingent upon receipt of all stipulations depicted above. Any changes to information previously provided and used in determining this commitment, will require notification and supporting documentation be provided to this office immediately. Any change is defined as:

| | |
|---|---|
| *Decrease in monthly income* | *Increase in first or second loan amount* |
| *Change in employment or credit history* | *Title defects not assuring valid lien position* |
| *Decrease in sales price or property value* | *Increase in monthly credit liabilities* |

dhecmnt

L&D-00099
ELS #79-58113

# COMMITMENT LETTER

Date: NOVEMBER 6, 2003

Lender: WELLS FARGO HOME MORTGAGE, INC.

Borrower(s): DONALD L. MCNEIL
GREGORY M. GOTTSCHLICH

Property Address: 2941 LANE RD
COLUMBUS, OH 43220

The Lender is pleased to inform you that your loan application has been approved, subject to the following terms and conditions.

COMMITMENT TERMS - Based on Lock-In Terms
Commitment Expiration Date: 12/05/03
Property Address: 48 SEA LANE
HILTON HEAD ISLAND, SC 29928
Property Type: SFD: SINGLE FAMILY DWELLING

Loan Number: 0133761288 — Sales Price: $1,995,000

Loan Type: 7/1 YEAR ADJUSTABLE RATE FIRST MORTGAGE LOAN — Loan Amount: ✓ $616,000

Loan Term: 360 MONTHS — Interest Rate: N/A

Mortgage Insurance Monthly Premium: N/A
Mortgage Insurance Initial Premium: N/A
PROCESSING FEE: N/A
Initial Interest Rate: ✓ 5.750% (guaranteed) — Loan Origination Fee: N/A
Index: 1.300% 1 YEAR TREASURY — Loan Discount: N/A
Margin: 2.750%
Interest Rate Caps: 5.000% 2.000% 5.000%
Max. First Adjustment Max. Periodic Adj. Thereafter Max. Lifetime

Monthly Principal and Interest Payment (not including monthly accruals for taxes, hazard insurance or other escrows required by the Lender):
$3,594.81 (Note: This reflects only the initial principal and interest payment, or initially, interest only if you have applied for an interest only loan.)

In the event your Lock-In Agreement or Confirmation Letter expires prior to either loan closing or the expiration of this Commitment, the Interest Rate, Origination Fee, and Discount Points on your loan are subject to change and may be higher. You must re-qualify for the loan at the higher rates.
Lock-In Expiration Date: 12/05/03

EUCOM1 Rev. 08/17/03
Page 1

L&D-00100
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NOT TO EXCEED FROM 11-31 THE NEEDS FIRED HOME TITLE

GENERAL CONDITIONS

- The Lender is under no obligation to extend the expiration date of this Commitment. The Lender reserves the right to charge a fee for any such extension and may require loan documents to be updated, at your cost, prior to closing.

- The Lender reserves the right to withdraw this Commitment or to modify its terms if (1) any material facts appear that you have not previously revealed to the Lender, (2) there is any adverse change in your credit, outstanding liabilities or employment, (3) any material representations made in your loan application are incorrect, or (4) any temporary interest rate buydown funds are not paid as described in this Commitment Letter.

- You may not assign this Commitment under any conditions. The Lender may, however, transfer this Commitment.

| | |
|---|---|
| TITLE MATTERS | A title insurance binder from a company acceptable to the Lender must be provided to the Lender prior to closing. The mortgage title insurance policy must include survey coverage and insure the validity and priority of the Lender's first lien on the property, subject only to conditions acceptable to the Lender. Upon request, you may be required to provide a survey to meet the survey coverage requirement. |
| LEGAL COMPLIANCE | The property must comply with applicable zoning, building, and other laws and regulations. If requested by the Lender or title insurance company, a copy of the Certificate of Occupancy for the property must be provided prior to closing. |
| LEGAL DOCUMENTS | This loan is subject to the terms of the standard Note, Security Instrument, and such other documents deemed necessary by the Lender. |
| PERFORMANCE | You agree to execute all documents required by the Lender to comply with applicable regulations and render the loan saleable in the secondary market. This provision will survive the closing of the loan contemplated herein. |
| PAYMENT OF CLOSING COSTS | You are responsible for payment of all closing costs incurred in this loan transaction. In no event will the Lender be responsible for any closing costs. |
| ESCROWS | Your monthly mortgage payment will include, in addition to principal and interest, amounts allocated for payment of taxes and/or hazard insurance and/or mortgage insurance premiums. At the time of settlement, amounts will be collected to cover all initial costs of these escrows as well as provide necessary reserves for future bills. The monthly amounts for these escrows will be determined at that time. |



L&D-00101
ELS #79-58113

GENERAL CONDITIONS (Cont'd)

| | |
|---|---|
| EXISTING LIENS | Unless otherwise provided in the specific conditions section of this commitment, any and all existing liens on the property must be paid in full at closing. |
| FLOOD INSURANCE | If at any time the property is indicated as being in a Special Flood Hazard Area, as determined by the Federal Emergency Management Agency, flood insurance is required under the National Flood Insurance Act of 1968 as amended. |

CONDITIONS OF LOAN APPROVAL

The following conditions must be satisfied prior to the issuance of Closing Instructions to your settlement agent or attorney:

- Initial Flood Zone Determination Certificate from an approved vendor as mandated by the National Flood Insurance Reform Act of 1968 as amended.

- The seller must be in title as of the date of the sales contract. The Lender reserves the right to re-evaluate loan approvals that do not meet this requirement.

- Lender to receive a satisfactory Appraisal for the subject property, meeting lender's under writing and loan-to-value requirements.

- Borrower to provide the executed sales contract for the property located at:
  48 SEA LANE
  HILTON HEAD ISLAND, SC 29928
  with a minimum sales price of $1,395,000.00. All terms must be acceptable to the Lender. All changes, corrections and deletions to the sales contract must be approved (initialled) by all parties to the contract.

- Subject to receipt and satisfactory review of an acceptable ALTA Title Commitment.

- SATISFACTORY REVIEW OF MOST RECENT TWO (2) YEARS' PERSONAL AND BUSINESS TAX RETURNS FOR DONALD MCNEIL WITH ALL SCHEDULES AND ATTACHMENTS VERIFYING A MONTHLY INCOME OF $45,000.

- SATISFACTORY REVIEW OF MOST RECENT TWO (2) YEARS' PERSONAL AND BUSINESS TAX RETURNS FOR GREG GOTTSCHLICH WITH ALL SCHEDULES AND ATTACHMENTS VERIFYING A MONTHLY INCOME OF $30,000.

- SATISFACTORY REVIEW OF RECENT BANK STATEMENTS (ALL PAGES) VERIFYING A COMBINED BALANCE OF $370,000. ANY RECENT LARGE DEPOSITS ARE SUBJECT TO SATISFACTORY SOURCE OF FUNDS.

- ACCOUNT NUMBERS FOR ALL LIQUID BANK ACCOUNTS DISCLOSED ON APPLICATION TO BE PROVIDED TO LENDER.

- THE APPROVAL, PRICING, AND DOCUMENTATION OF THIS LOAN IS BASED ON THE INFORMATION PROVIDED IN THE APPLICATION TAKEN ON 11/05/2003. CHANGES IN THE LOAN INFORMATION, INCLUDING BUT NOT LIMITED TO PROPERTY VALUE OR LOAN AMOUNT CHANGES, COULD RESULT IN CHANGES TO THE LOAN APPROVAL, PRICING AND DOCUMENTATION REQUIREMENTS.

CONDITIONS OF LOAN APPROVAL (Cont'd)

- SATISFACTORY PROOF THAT COUNTRYWIDE LOAN #9551723 IS PAID IN FULL. (LENDER TO DISPUTE)
- LENDER'S APPRAISAL REVIEW TO INCLUDE ONE STANDARD APPRAISAL AND ONE DESK REVIEW WITH DATA VERIFICATION.
- LENDER TO RECEIVE A COMPLETE COPY OF THE FULLY EXECUTED SECOND MORTGAGE COMMITMENT FROM WFHE, INDICATING A MAXIMUM LOAN AMOUNT OF $500,000 AND A MONTHLY PAYMENT OF $1,354. ALL TERMS TO BE ACCEPTABLE TO LENDER.

CONDITIONS OF LOAN APPROVAL (Cont'd)

The following conditions must be reviewed and satisfied by the lender's Underwriting prior to the signing of Closing Documents for your loan.

CONDITIONS OF LOAN APPROVAL (Cont'd)

The following conditions must be satisfied at the time of loan closing:

- Lender will not originate or purchase any loan that qualifies as a "high cost loan" under any federal, state and/or local high cost lending law. High cost loan screening must be satisfactorily completed as part of the closing process, as applicable, according to federal, state and/or local law.
- Borrower to provide a Hazard Insurance Policy or Insurance Binder.
- Tax Returns to be signed by all applicants.
- Lender to receive an original, signed General Authorization form.
- Lender to receive an original, completed and signed Residential Loan Application form.

ATTACHMENTS

The attachment(s) included in this Commitment Package is (are) listed below. Some of the conditions set forth in this Commitment are more fully explained in the attachment(s).

o Hazard Insurance Requirements

Signed: WELLS FARGO HOME MORTGAGE, INC.

If you have any questions regarding your loan commitment, please contact:

CHRIS DOOLING
Mortgage Counselor
800-696-2301



L&D-00107
ELS #79-58113

BETHEA, JORDAN & GRIFFIN, P.A.
ATTORNEYS AND COUNSELORS AT LAW

SHELTER COVE EXECUTIVE PARK
23-B SHELTER COVE LANE, SUITE 400
HILTON HEAD ISLAND, SC 29928-3588

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843.785.2171
FAX: 843.686.5991

MAINLAND OFFICE:
5 BELFAIR VILLAGE DRIVE
BLUFFTON, SC 29910-3605
843.815.2171
FAX: 843.815.5991

JOSEPH R. BARKER
WILLIAM L. BETHEA, JR.
STEPHEN B. CARTER
HUTSON S. DAVIS, JR.
R. NICHOLAS FELIX
CARY S. GRIFFIN
MICHAEL L. M. JORDAN, CFP
WALTER J. WESTER, III
KEITH M. PARRELLA
SARAH F. ROBERTSON
TONYA L. SAYERS
DAVID J. TIGGES

OF COUNSEL:
JOHN C. WEST

cgriffin@bjglaw.com

PLAINTIFF'S EXHIBIT
6 cf

November 16, 2003

Robert M. Deeb, Jr., Esq.
Laurich and Deeb, P.A.
P.O. Box 6868
Hilton Head Island, SC 29938

Re: Gottschlich and McNeil Acquisition 48 Sea Lane

Dear Bob:

I understand you represent the purchasers in the above captioned transaction. I represent the sellers. To assist you in your title examination, please note that the deed was recorded in Deed Book 1404 at Page 792. I show a mortgage in favor of Lighthouse at Book 1404, Page 795. I also pulled our file and I am enclosing a copy of the recent survey that was completed. Hopefully, this will be of some help to your client.

René Serrato will be working with me here at the office.

old one

With best wishes, I am

Very truly yours,

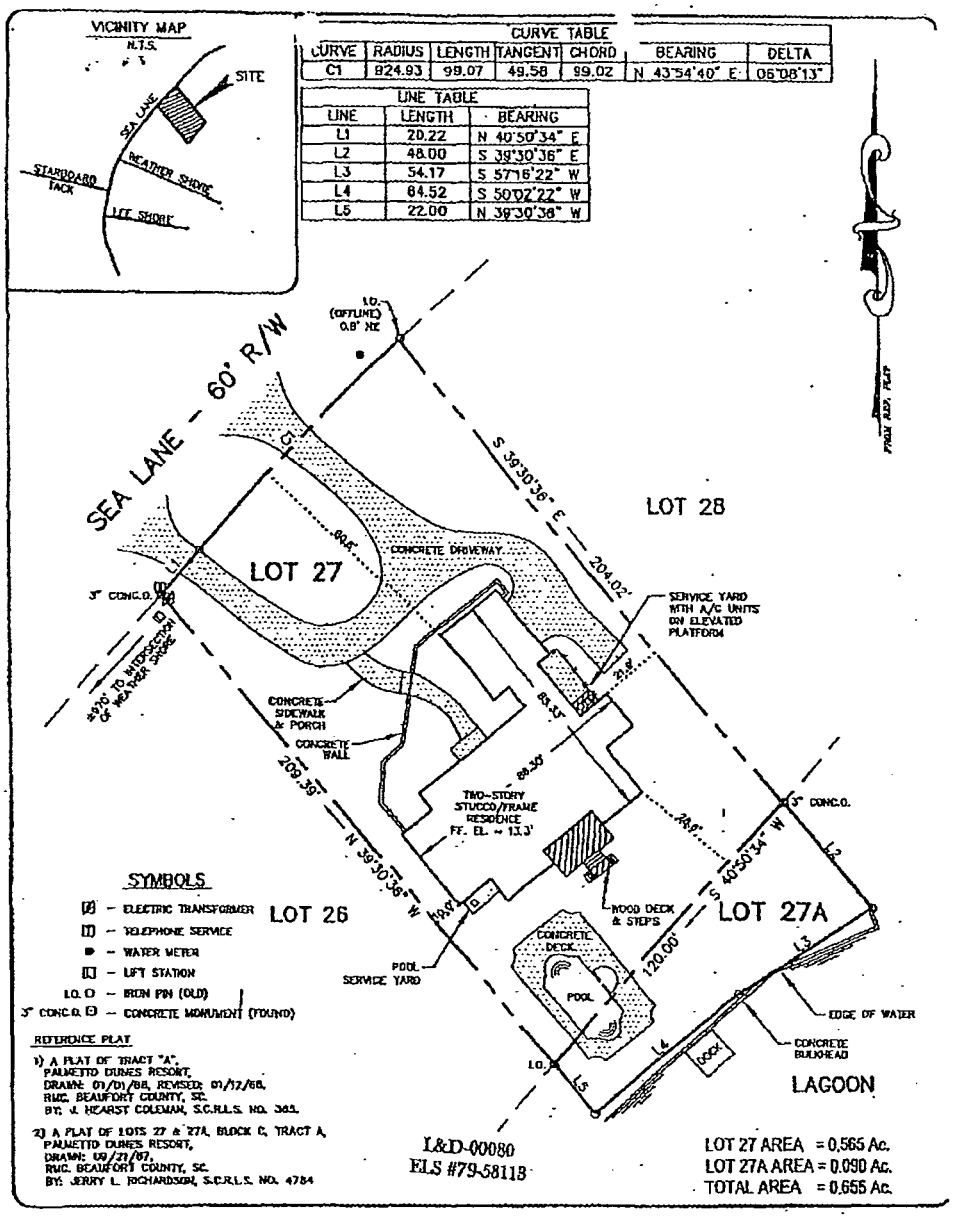
BETHEA, JORDAN & GRIFFIN, P.A.

Cary S. Griffin

CSG:YI
Enclosure
c: Mr. and Mrs. Thomas N. Dye
Mr. Ken Oliver
Mr. Greg Merrill

{318290.1}

L&D-00081
ELS #79-58113




SUBJECT PROPERTY DOES NOT APPEAR TO BE AFFECTED BY THE BEACHFRONT SETBACK REQUIREMENTS OF THE S.C. BEACH PROTECTION ACT OF JULY 1, 1988.

ADDRESS: #48 SEA LANE

DIST.: 520 , MAP: 12A , PARCEL: 168

THIS PROPERTY LIES IN F.E.M.A. ZONE AE
BASE ELEVATION = 14.0'

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.

SOUTH CAROLINA SEA ISLAND LAND SURVEY No.C02160 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA REGISTERED LAND SURVEYOR 13854 JACK JONES

NOT VALID UNLESS EMBOSSED.

ASBUILT SURVEY OF:

LOT 27 & LOT 27A, TRACT A, PARCEL 3, BLOCK C, PALMETTO DUNES RESORT, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR:

THOMAS N. & JAN H. DYE

DATE: 03/28/01 SCALE: 1" = 40'

GRAPHIC SCALE 0 40 80 120

Sea Island Land Survey
P.O. Box 21568, Hilton Head Island, SC 29925 Tel (843) 681-3248
4-D Mathews Court, Hilton Head Island, SC 29926 Fax (843) 689-3671

JOB No: 01096 FILE: 3-744

COPYRIGHT © BY SEA ISLAND LAND SURVEY, INC.

Foulke 4/10/03 2025 LT
4790

BEAUFORT COUNTY SC - ROD
BK 01880 PGS 1093-1094
FILE NUM 2003085502
12/04/2003 11:06:41 AM
REC'D BY V GARVIN RCPT# 203464
RECORDING FEES 15.00

STATE OF SOUTH CAROLINA )
) SPECIFIC POWER OF ATTORNEY
COUNTY OF BEAUFORT )

KNOW ALL MEN BY THESE PRESENTS, which are intended to constitute a Specific Power of Attorney, that Gregory M. Gottschlich, of 3619 Vineyard Ridge, Cincinnati, OH 45241, has made, constituted and appointed by these Presents does make, constitute and appoint Robert M.Deeb, Jr. and/or Charles H. Wiseman, of Laurich & Deeb, P.A., Post Office Drawer 6868, Hilton Head, SC 29938, his true and lawful Attorney-in-fact to handle the transaction set out below:

> The purchase and financing of the real property known as 48 Sea Lane, Palmetto Dunes Resort, Hilton Head Island, Beaufort County, South Carolina. This Specific Power of Attorney expires December 31, 2003. First Mortgage with Wells Fargo Home Mortgage, Inc. in the amount of $716,000.00. Second Mortgage with Wells Fargo Bank in the amount of $400,000.00.

Giving and Granting unto the said Attorney-in-fact full power and authority to do so and perform all and every act, deed, matter and thing with respect to the above transaction, in my name, place, and stead, as fully and effectively for all intent and purposes as I might or could do in my own person if personally present, and I hereby ratify all that my said Attorney-in-fact shall lawfully do or cause to be done by virtue of these Presents.

This Specific Power of Attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate. It is

PLAINTIFF'S EXHIBIT
10 CH

L&D-00096
ELS #79-58113

the intent of the undersigned that the authority conferred upon the above named Attorney-in-fact shall be exercisable notwithstanding my physical disability or mental incompetence in accordance with the South Carolina Probate Code which provides that Powers of Attorney shall not be terminated by the disability or mental incompetence of the principal whenever the document creating the Power of Attorney so provides and established certain safeguards.

I declare that any act or thing lawfully done hereunder shall bind my personal representatives and assigns. I further grant full and unqualified authority to my Attorney-in-fact to delegate any and all of the foregoing powers to any person(s) who my Attorney-in-fact shall select.

IN WITNESS WHEREOF, I have set my Hand and Seal this 20th day of November, 2003.

WITNESSES:

signature of first witness

Gregory M. Gottschlich

signature of 2nd witness/Notary

STATE OF OHIO )
)
COUNTY OF HAMILTON )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above named Gregory M. Gottschlich did personally appear before me this day and duly acknowledge the execution of the foregoing instrument.

Witness my hand and seal this 20th day of November, 2003.

Notary Public for Ohio
My commission expires: 9/2/2004

** TOTAL PAGE.03 **

L&D-00097
ELS #79-58113

5 Tawas 03-28 5/LT 4720 4790

BK 01880 PGS 1091-1092
FILE NUM 2003095501
12/04/2003 11:06:41 AM
REC'D BY V GARVIN RCPT# 203464
RECORDING FEES 15.00

STATE OF SOUTH CAROLINA )
) SPECIFIC POWER OF ATTORNEY
COUNTY OF BEAUFORT )

KNOW ALL MEN BY THESE PRESENTS, which are intended to constitute a Specific Power of Attorney, that **Donald L. McNeil, of 2341 Lane Road, Columbus, OH 43220**, has made, constituted and appointed by these Presents does make, constitute and appoint **Robert M.Deeb, Jr. and/or Charles H. Wiseman**, of Laurich & Deeb, P.A., Post Office Drawer 6868, Hilton Head, SC 29938, his true and lawful Attorney-in-fact to handle the transaction set out below:

> The purchase and financing of the real property known as 48 Sea Lane, Palmetto Dunes Resort, Hilton Head Island, Beaufort County, South Carolina. This Specific Power of Attorney expires December 31, 2003. First Mortgage with Wells Fargo Home Mortgage, Inc. in the amount of $716,000.00. Second Mortgage with Wells Fargo Bank in the amount of $400,000.00.

Giving and Granting unto the said Attorney-in-fact full power and authority to do so and perform all and every act, deed, matter and thing with respect to the above transaction, in my name, place, and stead, as fully and effectively for all intent and purposes as I might or could do in my own person if personally present, and I hereby ratify all that my said Attorney-in-fact shall lawfully do or cause to be done by virtue of these Presents.

This Specific Power of Attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate. It is the intent of the undersigned that the authority conferred upon the

PLAINTIFF'S EXHIBIT 13 CF

L&D-00094
ELS #79-58113

above named Attorney-in-fact shall be exercisable notwithstanding my physical disability or mental incompetence in accordance with the South Carolina Probate Code which provides that Powers of Attorney shall not be terminated by the disability or mental incompetence of the principal whenever the document creating the Power of Attorney so provides and established certain safeguards.

I declare that any act or thing lawfully done hereunder shall bind my personal representatives and assigns. I further grant full and unqualified authority to my Attorney-in-fact to delegate any and all of the foregoing powers to any person(s) who my Attorney-in-fact shall select.

IN WITNESS WHEREOF, I have set my Hand and Seal this 21st day of November, 2003.

WITNESSES:

Signature of first witness

Signature of 2nd witness/Notary

Donald L. McNeil

STATE OF OHIO )
)
COUNTY OF Franklin )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above named Donald L. McNeil did personally appear before me this day and duly acknowledge the execution of the foregoing instrument.

Witness my hand and seal this 21st day of November, 2003.

Notary Public for Ohio
My commission expires:

DAVID F. CARNS
Notary Public - State of Ohio
My Commission Expires July 20, 2008

L&D-00095
ELS #79-58113

** TOTAL PAGE.03 **

# LAURICH, DEEB & WISEMAN, P.A.

*ATTORNEYS AND COUNSELORS AT LAW*

1040 WILLIAM HILTON PARKWAY
CIRCLE BUILDING, SUITE 200
POST OFFICE DRAWER 6868
HILTON HEAD ISLAND, SC 29938-6868
PHONE: (843) 785-6868
FAX: (843) 842-2552
www.laurichdeeb.com
EMAIL: bobd@laurichdeeb.com

ATTORNEYS

EUGENE J. LAURICH
ROBERT M. DEEB, JR.
CHARLES H. WISEMAN
PAULA M. KILGORE

BLUFFTON OFFICE:

104 BUCKWALTER PARKWAY
SUITE 1 F
BLUFFTON, SC 29910
PHONE: (843) 815-5522
FAX: (843) 815-2568


December 8, 2006

*Via Mail*
Dr. Donald L. McNeil
2341 Lane Road
Columbia, OH 43220

PLAINTIFF'S EXHIBIT
24 CK

*Via Fax 513-769-2769 and Mail*
Dr. Gregory M. Gottschlich
3619 Vineyard Ridge
Cincinnati, OH 45241

Re: 48 Sea Lane, Hilton Head Island, SC

Dear Dr. McNeil and Dr. Gottschlich:

It was a pleasure speaking with both of you over the telephone recently. As I discussed in depth with Greg, I will speak with Strimpfel Builders and the Town of Hilton Head Island to determine what can be done with regard to the elevation of your Palmetto Dunes property. From the Town's perspective, we want to ensure that the Town will not obligate you to take any corrective action to raise the residence's minimum elevation. From Strimpfel Builder's perspective, we would like to determine what, if anything, Strimpfel Builders will do to rectify the improper elevation.

Also as I discussed with Greg, Closing on your purchase occurred on December 2, 2003. Accordingly, the statute of limitations for any claims you may have had against your Seller expired on December 2, 2006. I spoke with both of you on Friday, December 1, 2006. However, it was late in the day before I was able to pull the three year old file from our storage. I did not have an opportunity to review the file thoroughly until Monday, December 4, 2006.

I do not practice litigation and never have. I answer many phone calls from clients every day regarding real property issues that are not related to litigation. I did not anticipate the December 1 telephone call would require the need to file an immediate lawsuit to avoid a statute of limitation expiration.

L&D-00005
ELS #79-58113

I have given Greg the names and telephone numbers of three litigation attorneys you may wish to consult regarding any possible claims you may have against the Seller, our firm, your insurance company, Strimpel Builders, or other parties which may have a role in this situation. Those attorneys are:

Stephen Carter, Esq., McNair Law Firm, Phone 843-785-2171
Richard Wieters, Esq., Wieters Law Firm, Phone 843-341-7000
Rick Haight, Esq., Minor, Haight and Arundell Law Firm, Phone 843-785-8040

I will gladly assist with the Town and Strimpel Builders. If you do not wish me to proceed with this assistance, please let me know. Please note that our closing responsibilities include abstracting and reviewing title to the property to ensure that purchasers attain clear title to the property. We also receive all closing funds and disburse those funds to agents, lenders, South Carolina, Beaufort County and other parties at closing. Afterwards, we record all documents in the Beaufort County Register of Deeds Office, and subsequently forward the original, recorded documents back to the appropriate parties.

A review of the legal documentation does not customarily include elevation certificates. Insurance policies are usually obtained by purchasers directly from insurance agents and it appears that our paralegal Leslee Thomas obtained an elevation certificate from the Seller's attorney and forwarded the same on to Dr. McNeil prior to Closing to price insurance premiums. I will keep you updated as to my progress with this unique issue. Of course, call me at any time should you have any questions regarding the residence's elevation or any of the issues raised in this correspondence.

With best regards, I am

Very truly yours,

LAURICH, DEEB & WISEMAN, P.A.

Robert M. Deeb, Jr.

RMD:dc

M:\RMD\Correspondence 2006\McNeil-Gotschlich 03-2023.wpd

L&D-00006
ELS #79-58113

# CHARLES H. WISEMAN'S DEPOSITION EXCERPTS/EXHIBITS

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

GREGORY M. GOTTSCHLICH and DONALD L. MCNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE, JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

----------/

The deposition of CHARLES H. WISEMAN, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Ceil Weser, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting & Video, Inc., 1 Corpus Christie, 107 Executive Center, Hilton Head, South Carolina, on the 1st day of December, 2009, commencing at or about the hour of 2:42 p.m.

HUDSON - WISEMAN (DIRECT EXAMINATION)

against your law license?

A No.

Q What percentage of your current law practice is devoted to residential real estate closings?

A I would say probably 90 percent.

Q And the balance you devote to what?

A I do a little bit of collection work, a little bit of foreclosure, collection foreclosure work now.

I have done a little bit of Homeowner's Association. We are into some general business transactional things, as far as entity formations or buying and selling of some businesses.

Q The 10 percent of your practice that is not devoted to residential real estate closings, has that been spawned in part by the economic downturn?

A Exactly, yes.

Q Was there some period of time where a hundred percent of your practice was devoted to residential real estate closings?

A Yes.

HUDSON - WISEMAN (DIRECT EXAMINATION)

Q And what period of time was that?

A I would say probably from 2001 through 2006.

Q So at the time my clients --

A You are saying with --

Q A hundred percent residential real estate?

A And being with this field?

Q Yes.

A Correct.

Q So at the time my clients bought 48 Sea Lane in December of 2003 you were devoting 100 percent of your practice to residential real estate closings?

A I would say that would be accurate, yes.

Q Sitting here today do you have an independent recollection of the transaction at all beyond what you may have recalled from reviewing documents, et cetera?

A I really don't. I really don't recall any real specifics as to that transaction.

Q What was your role in the transaction?

A My role was to facilitate the final

HUDSON - WISEMAN (DIRECT EXAMINATION)

stage of the closing in executing the closing package.

Q Did you serve as attorney in fact for my clients?

A Yes.

Q Did you serve in any other capacity other than attorney in fact during the closing transaction?

A I signed the settlement statement as settlement agent.

Q As settlement agent your responsibilities included what?

A To make sure that we complied with the all the lender requirements in the closing instructions under the loan documents, make sure we accurately prepared the settlement statement that is being signed by both the buyer and the seller.

Q And is it your testimony that you did in fact comply with all of the lender's requirements in this transaction?

A Yes, I believe we did.

Q During 2003 whenever you were involved in a real estate closing would you always

HUDSON - WISEMAN (DIRECT EXAMINATION)

for a transaction?

A Yes.

Q And would there also have been occasions when Mr. Deeb would have functioned in both capacities as well?

A Yes.

Q How was the determination made with regard to my client's purchase for Mr. Deeb to serve as the closing attorney and you to serve as the attorney in fact?

A I don't really recall the details like I said of that particular transaction. I can only assume that Mr. Deeb was either at the time that we were ready to sign the loan package either temporarily out of the office or in another -- conducting another closing with actual clients that were present for their transaction.

Q Did you ever speak to my clients on the telephone prior to the closing on December 2 of 2003?

A I don't recall if I did.

Q Did you ever have any written communications with my clients prior to December

HUDSON - WISEMAN (DIRECT EXAMINATION)

2, 2003?

A I don't recall that I did.

Q How long did it take you to sign the closing documents as attorney in fact for my clients in this case?

A I could check. Probably about an hour and 15 minutes. That is two packages, plus review, reviewing the closing instructions and title work.

Q Two packages, because there were two separate loans that needed to be closed?

A That is right.

Q Was Mr. Deeb present in the same room when you signed the closing documents for both loans?

A No, I don't believe he was.

Q Would anybody have been present other than you?

A No, I don't believe -- I don't believe, no.

Q Do you recall having any conversations with Mr. Deeb about either of my clients' loans before the closing took place?

A I don't recall.

# C. JOSEPH ROOF'S DEPOSITION EXCERPTS/EXHIBITS

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT ) Case No. 08-CP-07-0517

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiff,

vs.

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

DEPOSITION OF
C. JOSEPH ROOF, ESQUIRE

DATE: OCTOBER 13, 2009

TIME: 10:31 a.m. - 3:49 p.m.

LOCATION: Parker Poe Adams & Bernstein, LLP
1201 Main Street, Suite 1450
Columbia, South Carolina

REPORTED BY: Beth Walters Kornuta

**********

PALMETTO STATE COURT REPORTERS
P. O. Box 50488
Summerville, SC 29485
843.670.1637 Fax: 843.486.0064
Palmettostatecr@yahoo.com

occurred in the closing of this transaction in 2003?

A What is my opinion about what problem occurred?

Q If any?

A Well, I've already stated my opinion that the procedure that was followed with the use of the power of attorney and the manner in which the power of attorney was used was not up to the standards of reasonably competent attorneys. That's one problem.

In addition to that, there was information with and in the hands of, and available to with due diligence, the closing attorney, that was not shared with the client, that being the elevation and the failure of the property to meet the required elevation at this point and in this area.

Q Upon what do you base your opinion that a closing attorney in 2003 had a duty to advise a client with regard to elevation matters?

A I don't think an attorney has a general obligation to ferret out elevation issues and to disclose those. It's when that information is available to the attorney with the exercise of

due diligence and in the fulfillment of the responsibilities at the closing that the attorney has the duty to call those issues, then, to the attention of the parties and to suggest to the parties what solutions, if any, are available to address the problem.

Q And when you say there's "no general obligation to ferret out elevation issues," what do you mean?

A I mean the lawyer doesn't have a duty to go out and determine the elevation of the house and measure it and determine that it doesn't meet it or it does meet it. That is determined by other professionals such as a surveyor. If there were no survey and no survey available, then I think the standard here would be somewhat different.

But if it's there, if it's available, if it's knowledge that comes across the attorney's desk during the course of the closing or the preparation for the closing, then the attorney has a duty to disclose and to share and to advise about that.

Q All right. Looking at Exhibit No. 11, which is the survey in this case, correct?

title insurance and hazard insurance, but down the road somewhere it may become an issue for you. And when you get ready to sell this property, or if you get ready to re-fi even, some issues may arise about this, you know. You need to be aware of it; this is what the problem is, this is how I have dealt with it, and you need to know about it.

Q In this case, it was not a problem in re-fi, was it?

A The re-fi was accomplished, yes.

Q So there was no problem with regard to the elevation, correct, with the re-fi?

A With the re-fi, right.

Q In your Affidavit and Opinion that we've marked as Exhibit No. 2, you state that the Defendants Deeb and Wiseman failed to advise Plaintiffs of issues related to recognized flood plain levels and protective laws, ordinances, rules and regulations related thereto.

What in your opinion should Deeb and Wiseman have known, as closing attorneys, regarding protective laws, ordinances, rules and regulations related to recognized flood plain levels?

A Well, first of all they had to

recognize the problem, and then did just what I was testifying to a minute ago. Then give the buyer advise that this is an issue, recognizing the issue, being aware that there may or may not be areas that you can go into to solve the issue, and letting the buyer come into this transaction, acquire this property, eyes opened and knowing that issues can arise down the road.

That's the duty of the closing attorney. Otherwise, you wouldn't have all these rules about closing attorneys and attorneys being necessary to closings. That's why they're there.

Q What rule and regulation can you cite me to that states that a closing attorney in South Carolina has a duty to advise a buyer with regard to the flood elevation of a particular home?

A I can't give you the specific duty relating specifically to flood. But all defects are issues with reference to the property that come across the attorney's desk and the attorney knows about and should reasonably know about, whether it be a matter of public record, whether it be a matter of showing on the plat, whether it be a matter that is in some extraneous paper and jumps out at the lawyer, you know.

3283.3

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF BEAUFORT | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE<br>FOURTEENTH JUDICIAL CIRCUIT |
| Gregory M. Gottschlich and Donald L. McNeil,<br><br>Plaintiffs,<br><br>vs.<br><br>Strimpfel Custom Homes, Inc., Joseph A. Reeve; Jerry L. Richardson; Coastal Surveying Co., Inc., Thomas N. Dye, Jan H. Dye; Ken Oliver; The Byrne Corporation d/b/a Dunes Marketing Group; Laurich & Deeb, P. A.; Robert M. Deeb, Jr. and Charles H. Wiseman,<br><br>Defendants. | ) | CIVIL ACTION NO. 2008-CP-07-00517<br><br>AFFIDAVIT AND OPINION<br>OF<br>C. JOSEPH ROOF |

PERSONALLY APPEARED before me C. Joseph Roof, who, first being duly sworn, deposes and says:

1. I am an attorney licensed to practice in the State of South Carolina and a partner in the firm of Sherrill Roof Millender, LLP, in Columbia. I was born in Columbia on January 10, 1938; educated in the Columbia public schools; graduated from the University of South Carolina in 1960 with a Bachelor of Science in Business Administration (major - marketing); and from the University of South Carolina School of Law in January of 1963. Admission to the South Carolina Bar occurred April 8, 1963. I am also admitted to practice in the United States District Courts of South Carolina and the Supreme Court of the United States. I have served on a number of committees of the South Carolina Bar, serving as chairman of the Public Relations and the Ethics Advisory Opinions Committees. I also served as a member of the South Carolina Bar House of Delegates from 1986 to 1988. As a contributor to the South Carolina Lawyer, I have had articles published on a number of subjects, most relating to residential real estate closings and the role of the closing attorney in those transactions. I also served as a regular columnist to the South Carolina Bar News and its predecessor, The Transcript, with an article entitled "Notes from the Yellow Pad" and have been a faculty participant and a moderator of South Carolina Bar sponsored and approved Continuing Legal Education programs. I have served as an adjunct professor of law at the University of South Carolina, teaching a course on real estate transactions.

DEFENDANT'S EXHIBIT 2

2. My other activities include the presidency of the Richland County Bar Association in 1987, past chairman of the Richland County March of Dimes, past president of Carolina Land Title Association (a two-state organization of title attorneys and underwriters), and past director of the Palmetto Land Title Association. I am past Chairman of the Board of Directors of the Columbia Action Council and past Chairman of the Board of Directors of the Carolina Carillon. I have served as Justice of District XXV (North and South Carolina) of Phi Alpha Delta Law Fraternity, International. In the Spring of 2007, under the auspices of the Center for International Studies ("CILS"), I served as visiting professor at Warsaw School of Law in Warsaw, Poland, teaching a course in American Business Law after a one-week orientation in Salzburg, Austria. In October, 2008, I served in Salzburg as a guest lecturer during the CILS orientation of United States senior attorneys.

3. My local activities include community theater, serving as president of the Irmo High School Choral Booster Club and on the Lexington County School District Number Five Parents Advisory Council. I previously served as Chairman of the Greater Columbia Chamber of Commerce Transportation Committee and served on a joint transportation committee of the Greater Columbia Chamber of Commerce and the Columbia County (Georgia) Chamber. I am an active member of the National Association of Rail Passengers and past South Carolina Vice President of The Carolinas Association for Passenger Trains.

4. As a practicing attorney since April 8, 1963, the emphasis of my professional effort has been in the area of real property, real property litigation, business and banking matters, conservatorships, and frequently ethical issues. This experience has included prosecuting foreclosure proceedings and Department of Veterans Affairs conservatorships on a statewide basis for more than forty years. I have both defended cases and successfully prosecuted a case involving disciplinary proceedings of South Carolina attorneys. My practice is presently concentrated in banking, business, and related real estate and transactional law. This practice includes the review and interpretation of documents affecting real property.

5. In the case of McNair v. Rainsford, et al., 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998), the South Carolina Court of Appeals recognized me as "a real estate closing expert" witness and as of September, 2008, I have served as a consulting or testifying expert witness in more than 110 matters.

6. The opinions contained in this affidavit are based upon copies of the materials and information provided to me to date, which are a part of the pleadings, exhibits and documents in the captioned proceeding and include items dated and described as follows:

(1) Deed dated March 9, 1973, from Palmetto Dunes Resort, Inc., to Lena S. Wilmer recorded in the Office of Register of Mesne Conveyance on March 14, 1973, in Volume 207 at Page 993 (1st and 4th pages only)

(2) Deed dated August 5, 1985, from Lena S. Wilmer to William J. Byrne recorded August 14, 1985, in the Office of Register of Mesne Conveyance



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in Bok 427 at Page 754

(3) Deed dated March 10, 1987 from William J. Byrne to Joseph A. Reeve and Claudette F. Reeve recorded in the Office of Register of Mesne Conveyances for Beaufort County on March 24, 1987, in Book 472 at Page 1577

(4) Quitclaim Deed dated October 30, 1987, from Greenwood Development Corporation to Joseph A. Reeve and Claudette F. Reeve recorded in the Office of Register of Mesne Conveyance for Beaufort County on November 5, 1987, in Book 489 at Page 902

(5) Application for Building Permit dated November 19, 1987

(6) Work Order of Coastal Surveying Co. dated November 23, 1987

(7) Elevation Certificate dated November 24, 1987

(8) Elevation certificate dated November 24, 1987

(9) Town of Hilton Head Island Subcontractors Post dated December 1, 1987

(10) Building Permit dated May 23, 1988, issued by Town of Hilton Head Island

(11) Deed dated February 17, 1992, from Joseph A. Reeve and Claudette F. Reeve to Ben D. Muldong and Myra Muldong recorded in the Office of Register of Mesne Conveyances for Beaufort County on March 24, 1992, in Book 595 at Page 334

(12) Certificate of Occupancy dated May 23, 1998

(13) Elevation Certificate dated March 28, 2001

(14) Survey dated March 28, 2001, prepared by Sea Island Land Survey by Jack Jones

(15) Title to Real Estate from Ben D. Muldong and Myra Muldong to Thomas N. Dye and Jan H. Dye dated April 2, 2001 and recorded in the Office of the Register of Deeds for Beaufort County on April 9, 2001 in Book 1404 at Page 792 (This deed fails to properly identify the grantees and this could be a fatal error. The title insurer should be put on notice.)

(16) Mortgage dated August 24, 2001, from Thomas N. Dye and Jan H. Dye to Southtrust Mortgage Corporation and recorded August 31, 2001 in the Office of the Register of Deeds for Beaufort County in Book 1466 at Page 1723

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(incomplete - pages 2, 4, and Exhibit "A")

(17) Sellers Disclosure signed by Sellers March 4, 2003, signed by Purchasers on October 25, 2003

(18) Notice of Hazard and Flood Policy Changes from Wells Fargo Home Mortgage effective October 6, 2003

(19) Incoming Wire Acknowledgment dated October 27, 2003, reflecting wire of $5,000.00 from Gregory M. Gottschlich to DMG Trust Account

(20) Incoming Wire Acknowledgment dated October 27, 2003, reflecting wire of $5,000.00 from Donald L. McNeil to Dunes Marketing Real Estate Trust

(21) Fax dated November 5, 2003, from Scott Malaney of Wells Fargo Home Mortgage requesting title commitment and tax information

(22) Lender Title Insurance Requirements dated November 5, 2003

(23) Tax Information Form dated November 5, 2003

(24) Dunes Marketing Group Contract of Sale - Offer and Acceptance signed by Purchaser on November 6, 2003, and by Seller on November 8, 2003

(25) Dunes Marketing Group Exclusive Buyer Agency Agreement dated November 6, 2003

(26) Contract of Sale - Offer and Acceptance dated November 6, 2003

(27) Consent to Dual Agency signed by Purchasers on November 6, 2003, and by Sellers on November 8, 2003

(28) Wells Fargo Home Mortgage Commitment Letter dated November 6, 2003 (1st lien)

(29) Fax transmittal cover dated November 6, 2003, from Benjamin Thompson of Sales Delivery Connection to Matt Topping of Wells Fargo

(30) Dunes Marketing Group Exclusive Buyer Agency Agreement dated November 6, 2003

(31) Wells Fargo Home Equity Commitment Letter dated November 8, 2003 (2nd lien)

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(32) Wells Fargo Home Mortgage Attorney/Client Information Sheet dated November 10, 2003

(33) Approval Letter dated November 10, 2003, from Matt Topping

(34) Fax transmittal cover dated November 10, 2003, from Matt of Wells Fargo Home Mortgage to Heather, transmitting contract, commitment and attorney client information

(35) Memorandum dated November 10, 2003, from Liz Forshee, Dunes Marketing Group to "Whom It May Concern" transmitting fully executed contract

(36) Request for Copy of Transcript or Tax Form dated November 11, 2003, for Gregory M. Gottschlich

(37) Request for Copy of Transcript or Tax Form dated November 11, 2003, for Donald L. McNeil and Trudy A. McNeil

(38) Letter dated November 13, 2003, to Dr. Donald McNeil and Dr. Gregory Gottschlich from Robert M. Deeb, Jr.

(39) Title Insurance Request dated November 13, 2003 from Leslee at Laurich & Deeb

(40) Sales History dated November 14, 2003

(41) Real Property View Screen dated November 14, 2003

(42) Title Search Page dated November 14, 2003

(43) Title Search Worksheet dated November 14, 2003

(44) Letter dated November 16, 2003, from Gary S. Griffin, attorney for sellers, to Robert M. Deeb, Jr., transmitting deed recording information, mortgage information and recent survey

(45) Earnest Money Release Form dated November 18, 2003, signed by Leslee F. Thomas

(46) Request for Waiver of Right of Repurchase from Leslee Thomas to Greenwood Development Corporation dated November 18, 2003

(47) Letter dated November 19, 2003, from Dunes Marketing Group to Laurich

& Deeb transmitting earnest money deposit in the form of check nos. 7548 and 7549 for $5,000.00 each

(48) Fax transmittal to Christine at Wells Fargo from Leslee dated November 20, 2003, transmitting title commitment

(49) Specific Power of Attorney dated November 20, 2003, Gregory M. Gottschlich naming Robert M. Deeb, Jr. or Charles H. Wiseman as Attorney-in-fact, recorded in the Office of the Register of Deeds for Beaufort County on December 4, 2003, in Book 1880 at Page 1093

(50) First American Title Insurance Company Commitment issued November 20, 2003

(51) Specific Power of Attorney dated November 21, 2003, Donald L. McNeil naming Robert M. Deeb, Jr. or Charles H. Wiseman as Attorney-in-fact, recorded in the Office of the Register of Deeds for Beaufort County on December 4, 2003, in Book 1880 at Page 1092

(52) UPS shipping label to Wells Fargo Home Equity dated November 25, 2003 with instruction sample

(53) Bill from Atlantic Pest Control, Inc., dated November 26, 2003

(54) Fax transmittal cover dated November 26, 2003, from Erin (for Leslee) to Dr. McNeil transmitting copy of elevation certificate

(55) Fax transmittal cover dated November 26, 2003, from Erin (for Leslee) at Laurich & Deeb, P. A. To Dr. McNeil transmitting first 2 pages of the appraisal and note about elevation certificate

(56) Fax transmittal cover from Erin from J. Blackshear (for Matt Topping) of Wells Fargo Home Mortgage transmitting first 2 pages of appraisal

(57) Official South Carolina Wood Infestation Report dated November 26, 2003

(58) File notes dated November 26, 2003

(59) Payoff Statement dated November 26, 2003, from SouthTrust Mortgage to Thomas N. Dye

(60) Title Insurance Financial Interest Disclosure dated December 1, 2003

(61) HUD-1 Settlement Statement dated December 2, 2003

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(62) Title to Real Estate dated December 2, 2003, from Thomas N. Dye and Jan H. Dye to Gregory M. Gottschlich and Donald L. McNeil recorded in the Office of the Register of Deeds for Beaufort County on December 4, 2003, in Book 1880 at Page 1090

(63) Waiver Agreement between Greenwood Development Corporation and Donald L. McNeil and Gregory M. Gottschlich dated December 2, 2003, and recorded in the Office of the Register of Deeds for Beaufort County on December 12, 2003, in Book 1883 at Page 2550

(64) Fax transmittal cover dated December 2, 2003, from Teena Farrell of Seacoast Insurance to Leslee

(65) Single Ledger Balance Report showing settlement date of December 2, 2003

(66) Certification Regarding Federal Income Tax Information Report dated December 2, 2003

(67) E-mail dated December 2, 2003, originating from The South Group to Erin Otten with forward to Leslee Thomas regarding incoming wire in the amount of $716,000.00

(68) E-mail dated December 2, 2003, originating from The South Group to Erin Otten regarding incoming wire in the amount of $146,001.00

(69) E-mail dated December 2, 2003, originating from The South Group to Erin Otten regarding incoming wire in the amount of $20,000.00

(70) First American Title Insurance Company Residential Loan Policy Schedule A dated December 2, 2003 insuring Wells Fargo Home Mortgage

(71) E-mail dated December 2, 2003, originating from The South Group to Erin Otten with forward to Leslee Thomas regarding incoming wire in the amount of $148,002.81

(72) E-mail dated December 2, 2003, originating from The South Group to Erin Otten with forward to Leslee Thomas regarding incoming wire in the amount of $399,244.40

(73) Mortgage dated December 2, 2003, from Donald L. McNeil and Gregory M. Gottschlich to Wells Fargo Home Mortgage, Inc., recorded in the Office of the Register of Deeds for Beaufort County in Book 1880 at Page 1095 on December 4, 2003

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(74) Second Home Rider and Fixed/Adjustable Rate Rider, both dated December 2, 2003, as riders to first mortgage

(75) Seller's Affidavit dated December 2, 2003

(76) Affidavit of No Construction and/or Improvements dated December 2, 2003

(77) Notification of Property Transfer dated December 2, 2003, from Lawton Ellis of Bethea, Jordan & Griffin, P. A.

(78) Buyer/Seller Certification dated December 2, 2003

(79) Letter of December 2, 2003, from Chris Dooling of Wells Fargo Home Mortgage to Donald L. McNeil

(80) Initial Escrow Account Disclosure Statement dated December 2, 2003

(81) Certification of Non-foreign Status dated December 2, 2003

(82) Wells Fargo Loan Closing Instructions dated December 2, 2003

(83) Truth in Lending Disclosure Statement dated December 2, 2003

(84) Property Bill Information Worksheet (undated)

(85) Loan Payment Information dated December 2, 2003

(86) Servicing Disclosure Statement dated December 2, 2003

(87) Affiliated Business Arrangement Disclosure dated December 2, 2003

(88) Name Affidavit (for Donald L. McNeil) dated December 2, 2003

(89) Name Affidavit (for Gregory M. Gottschlich) dated December 2, 2003

(90) Request for Copy of Transcript or Tax Form (for Donald L. McNeil) dated December 2, 2003

(91) Request for Copy of Transcript or Tax Form (for Gregory M. Gottschlich) dated December 2, 2003

(92) General Authorization dated December 2, 2003

(93) Notice of Special Flood Hazards dated December 2, 2003



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(94) Uniform Residential Loan Application for Donald L. McNeil dated December 2, 2003

(95) Uniform Residential Loan Application for Gregory M. Gottschlich dated December 2, 2003

(96) Buyer/Seller Certification signed by sellers dated December 2, 2003

(97) Correction Agreement - Limited Power of Attorney dated December 2, 2003

(98) Broad Creek PSD Water Billing Closings dated December 2, 2003

(99) Palmetto Electric Cooperative Service Order dated December 2, 2003

(100) Single Ledger Balance Report reflecting settlement date of December 2, 2003

(101) Mortgage dated December 2, 2003, from Donald L. McNeil and Gregory M. Gottschlich to Wells Fargo Bank, N. A. recorded in the Office of the Register of Deeds for Beaufort County in Book 1880 at Page 1120 on December 4, 2003

(102) Closing Instructions (2nd lien) dated December 2, 2003

(103) HUD-1 Settlement Statement dated December 2, 2003 (2nd lien only)

(104) Acknowledgment of Receipt of Settlement showing settlement date of December 2, 2003

(105) Home Equity Access Line of Credit Agreement dated December 2, 2003

(106) Request for Taxpayer Identification Number and Certification for McNeil dated December 2, 2003

(107) Request for Copy or Transcript of Tax Form (McNeil and Gottschlich) dated December 2, 2003

(108) Settlement Statement reflecting settlement date of December 2, 2003

(109) Agreement to Provide Property/Flood Insurance dated December 2, 2003

(110) Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance dated December 2, 2003

(111) South Carolina Application Disclosure dated December 2, 2003



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(112) Letter of December 2, 2003, from Wells Fargo Home Equity to Donald L. McNeil

(113) Schedules A and B of First American Title Insurance Company commitment dated December 2, 2003 (2nd lien)

(114) UPS shipment receipt dated December 3, 2003, from Laurich & Deeb to Dr. Donald L. McNeil

(115) Notice of Ownership Change dated December 3, 2003, from Laurich & Deeb to Palmetto Dunes Resort

(116) Notice of Change in Ownership dated December 3, 2003, from Laurich & Deeb to Palmetto Electric

(117) Commitment Letter dated December 3, 2003

(118) Single Ledger Balance Report showing transaction date of December 3, 2003

(119) Hazard Insurance Requirements dated December 3, 2003

(120) UPS shipment receipt dated December 3, 2003, from Laurich & Deeb to Wells Fargo Home Mortgage, Inc.

(121) Letter dated December 3, 2003, from Leslee Thomas to Dr. Gregory M. Gottschlich transmitting copies of closing documents

(122) UPS shipment receipt dated December 3, 2003, from Laurich & Deeb to Dr. Gregory M. Gottschlish

(123) Letter dated December 3, 2003, from Leslee Thomas to Dr. Donald L. McNeil transmitting copies of closing documents

(124) UPS shipment receipt dated December 3, 2003, from Laurich & Deeb to Dr. Donald L. McNeil

(125) Letter of December 3, 2003, from Leslee Thomas to Beaufort County Treasurer transmitting check in the amount of $8,055.63 for 2003 Beaufort County taxes

(125) Notice of Change in Ownership dated December 3, 2003, from Laurich & Deeb to Broad Creek PSD

(127) Copies of the following check stub numbers (all disbursed December 3,

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2003) : 24792 payable to Laurich & Deeb in the amount of $398,189.40 (also have copy of this check); 24793 payable to Laurich & Deeb in the amount of $785.00; 24790 payable to Beaufort County Register of Deeds in the amount of $15.00; 24791 payable to Coastal Title Insurance Agency in the amount of $240.00; 24794 payable to Wells Fargo in the amount of $15.00; 24769 payable to Atlantic Pest Control in the amount of $115.00; 24770 payable to Beaufort County Register of Deeds in the amount of $8,720.00; 24771 payable to Beaufort County Register of Deeds in the amount of $10.00; 24772 payable to Bethea, Jordan & Griffin, P. A. in the amount of $750.00; 24773 payable to Broad Creek PSD in the amount of $148.15; 24774 payable to Coastal Title Insurance Agency in the amount of $752.75; 24775 payable to Donald L. McNeil in the amount of $2,343.23; 24776 payable to Dunes Marketing Group in the amount of $78,000.00; 24777 payable to Greenwood Development Corp. in the amount of $50.00; 24778 payable to Gregory M. Gottschilch in the amount of $2,343.23; 24779 payable to Johnson & Son in the amount of $65.00; 24789 payable to Wells Fargo Home Mortgage in the amount of $3,969.70; 24780 payable to Joy Logan, Treasurer in the amount of $8,055.63; 24781 payable to Laurich & Deeb in the amount of $2,819.75; 24782 payable to PD - Community Services Division in the amount of $1,058.85; 24783 payable to S. C. Tax Commission in the amount of $4,900.28; 24784 payable to Sea Coast Insurance in the amount of $2,305.50; 24785 payable to Sea Coast Insurance in the amount of $2,800.00; 24786 payable to Sea Coast Insurance in the amount of $3,529.00; 24787 payable to SouthTrust Mortgage in the amount of $943,382.32; 24788 payable to Thomas N. Dye and Jan H. Dye in the amount of $353,369.82

(128) Letter of December 3, 2003, from Leslee Thomas to Greenwood Development Corp., transmitting Waiver Agreement to be executed

(129) Letter of December 3, 2003, from Leslee Thomas to Payoff Department of SouthTrust Mortgage Corp., transmitting check in the amount of $943,382.32

(130) UPS shipment receipt dated December 3, 2003, from Laurich & Deeb to SouthTrust Mortgage Corp.

(131) First American Title Insurance Company owner's title policy dated December 4, 2003

(132) First American Title Insurance Company Short Form Residential Loan Policy dated December 8, 2003

(133) Letter from Anne Gregg, of Laurich & Deeb, P. A. dated December 12, 2003, and Laurich & Deeb, P. A. check number 24783 in the amount of $4,900.28 to the South Carolina Department of Revenue

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(134) First Page of Satisfied Mortgage from Thomas N. Dye and Jan H. Dye to Southtrust Mortgage Corporation recorded in the Office of the Register of Deeds for Beaufort County on January 6, 2004, in Book 1893 at Page 2419

(135) Transmittal letter dated January 22, 2004, from Leslee Thomas to Wells Fargo Home Mortgage transmitting a copy of the title policy, the original recorded mortgage and the copy of the recorded powers of attorney

(136) Letter of February 9, 2004 from Leslee Thomas of Laurich & Deeb, P. A., to Mr. Donald L. McNeil and Mr. Gregory M. Gottschlich

(137) Fax cover dated December 1, 2006, from Greg Gottschlich to Bob Deeb transmitting 5 pages

(138) Fax transmittal cover dated December 8, 2006, from Bob Deeb, to Dr. Gregory M. Gottschlich

(139) Letter of December 8, 2006, from Robert M. Deeb, Jr., to Dr. Donald L. McNeil and Dr. Gregory M. Gottschlich

(140) E-mails between Diane Conner, Greg Gottschlich, Robert Deeb and Jack Qualey dated February 6, 2007

(141) Fax transmittal cover sheet to Carol at First American from Laurich & Wiseman, P. A., dated July 18, 2007

(142) Summons and Complaint dated February 7, 2008 and drafts of the Amended Summons and the Amended Complaint

(143) Letter from Robert M. Deeb to John D. Hudson, Jr., dated February 11, 2008

(144) Information List (undated)

(145) Attorney/Insurance Preference Check List (undated)

(146) Home Equity Address Verification Request (undated)

(147) Authorization for Automatic Transfer (ACH) (unsigned and undated)

(148) Instructions to the Customer and Notary (undated)

(149) Telephone message from McNeil to Leslee (undated)

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(150) Notice of Wells Fargo Home Mortgage mortgagee clause change (undated)

(151) Rider to Loan Application (unsigned and undated)

(152) Palmetto Dunes Resort - Property Owner Division - Closing Information (Association Statement)

(153) Flood Insurance Requirements (undated)

(154) Substitute Form 1099 for Thomas N. Dye and Jan H. Dye

(155) Contract of Sale between Thomas N. Dye and Jan H. Dye, as seller and Dr. Gregory M. Gottschlich and Dr. Don McNeil, as Purchaser (unsigned and undated)

(156) Consumer Information - Consent to Dual Agency (unsigned and undated)

(157) Addendum to Contract of Sale - Inspection Report (unsigned and undated)

(158) Dunes Marketing Group Contract Information Sheet and Sales Agents Checklist (undated)

(159) Closing Checklist (undated)

(160) Note in file referencing cost of title insurance and various phone numbers (undated)

(161) Laurich Title Abstract Worksheets (5) (undated)

(162) Wiring Instructions for Laurich & Deeb, P. A., referencing McNeil Closing (undated)

These are among the materials I would usually review and consider as an expert in reviewing a matter for possible lawyer malpractice in the setting of real estate closing transaction and to determine the duties and standard of care which should be exhibited by an attorney representing one or more of the parties therein and to form an opinion as to where duties existed and whether a breach of duty has occurred. My review of these materials varied in degree, depending upon my perception of necessity.

7. In submitting this affidavit, I have assumed the accuracy and completeness of the materials and documents listed above. It is noted that some of the items reviewed reflected no dates or signatures and were otherwise incomplete. As to incomplete items, I have assumed they were ultimately completed and executed as presented.

8. The South Carolina Rules of Professional Conduct ("the Rules") succinctly summarize an attorney's minimal ethical duties, and our Supreme Court has adopted the standards of these Rules as a measure of lawyer conduct. Smith v. Haynesworth, Marion, McKay & Guerard, 322 S.C. 433, 472 S.E.2d 612 (1996). While failure of an attorney to comply with the Rules is not evidence of negligence *per se*, it is a circumstance (along with other facts and circumstances) to be considered in determining whether an attorney acted with reasonable care in fulfilling duties to a client. The Rules were amended effective October 1, 2005, and the opinions expressed herein are predicated upon the Rules prior to that date.

9. While a lawyer is obligated to provide competent representation to a client (Rule 1.1), this does not require that a lawyer have special training or prior experience to handle unfamiliar problems. Some important skills, such as drafting, are required in all legal problems. The most fundamental legal skill consists of determining the character of a legal problem. Competent representation includes inquiry into and analysis of the factual and legal elements. The required attention and preparation are determined by what is at stake. Complex transactions require more attention, preparation and communication.

10. While a lawyer must abide by a client's decisions concerning the objectives of representation and may limit the objectives of the representation if the client consents after consultation, the lawyer must discuss with a client the legal consequences of any proposed course of conduct (Rule 1.2). A matter must be explained to the extent reasonably necessary to permit the client to make informed decisions (Rule 1.4). The adequacy of communication depends in part upon the kind of advice and assistance which the client can reasonably expect.

11. "While in many situations an attorney's representation of both a buyer and seller in a real estate transaction may create a conflict of interest . . . if the parties have already agreed on the basic terms of the agreement and the attorney acts primarily as a 'scrivener' the attorney may normally represent both parties after obtaining their consent." Beal v. Mars Larsen Ranch Corp., 586 P.2d 1378 (Idaho 1978). Cited in McNair v. Rainsford, *supra*. It is my opinion that communication of this nature could not be considered adequate unless it is in writing. The case of Darby v. The Furman Co., Inc., 334 S.C. 343, 513 S.E.2d 848 (1999) supports and Rule 1.7 (b) (4), confirms this opinion.

12. An attorney in a real estate transaction owes duties to several parties, especially when the attorney undertakes the preparation of documents for the party's protection. In the Matter of H. Jackson Gregory, 332 S.C.13, 503 S.E.2d 735 (1998).

13. The duties of a closing attorney were generally summarized in the 1987 case of State v. Buyers Service Co., Inc., 292 S.C. 426, 357 S.E.2d 15 (1987). These obligations were re-enforced in Doe v. Condon, 341 S.C. 22, 532 S.E.2d 879 (2000); Doe v. Condon, 351 S.C. 158, 568 S.E.2d 356 (2002); Doe v. McMaster, 355 S.C. 306, 585 S. E.2d 773 (2003) and

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Doe Law Firm v. Richardson, 371 S.C. 14, 636 S.E.2d 866 (2006).

14. Although the representation of multiple clients in a single transaction is permissible under the logic of Rule 1.7(b), it can only be undertaken when each client, after consultation, consents. This consultation must include an explanation of all the implications of common representation with the advantages and risks involved. The Rules define consultation: as "communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question." If a disinterested lawyer would conclude that a client should not consent to the multiple representation, the involved lawyer cannot seek such consent. Obviously a lawyer cannot represent a client if that representation will be directly adverse to another client or if representation will be materially limited by responsibility to the other client [Rule 1.7(a) and (b)]. Under the revised Rules, it is expressed that the consents must be confirmed in writing.

15. As a counselor, an attorney must exercise independent (of the client and others) judgement and render candid advice and refer not only to the law, but also to other considerations. These other considerations include moral, economic, social and political factors relevant to the client's situation (Rule 2.1).

16. I have been asked to render an expert opinion upon the conduct of attorneys Robert M. Deeb ("Deeb"), Charles H. Wiseman ("Wiseman") and their professional association, Laurich & Deeb P. A. (the "Law Firm"), in their representation of Gregory M. Gottschlich and Donald L. McNeil ("Plaintiffs"). The representation occurred in connection with the purchase by Plaintiffs of the real property in Beaufort County, South Carolina, known as #48 Sea Lane, Hilton Head Island, South Carolina, also known as Lot 27, Block C, Tract A Palmetto Dunes Development ("the Real Property"); and the financing of that purchase ("the Transaction"). The Transaction involved and included the granting by Plaintiffs to Deeb and Wiseman, of Specific Powers of Attorney ("the Power of Attorney") to handle the purchase and financing of the Real Property including first and second mortgage financing and the Transaction is fairly represented by the documents listed in paragraph 6. I must, however, challenge the concept that two attorneys of and from the same firm, both given a Power of Attorney by a purchaser of real property, can conduct a transaction in which one acts as a closing attorney and the other acts as attorney-in-fact for the buyer without creating irreconcilable conflicts of interest. It is my opinion that the closing attorney at law cannot avoid assumptions that his partner, purchasing attorney-in-fact, knows and understands the documents he might otherwise explain to a present purchaser. It is my further opinion that the attorney-in-fact cannot know questions to ask of the closing attorney at law. There is an abundance of self-dealing that disclosures and waivers cannot effectively overcome.

17. I understand and am of the opinion that Deeb, Wiseman and the Law Firm were retained by and had duties to Plaintiffs in this Transaction, and also had duties to other parties in the Transaction.

18. After reviewing the documentation and applicable law, it is my opinion that Deeb,

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,Wiseman and the Law Firm breached the duty and standard of care generally required of reasonably competent attorneys in the following particulars:

(1) Failing, in general, to provide competent representation in the protection of the interest of Plaintiffs (Rule 1.1);

(2) Failing to give independent, candid advice, referring not only to the law, but also to other considerations, particularly economic considerations; specifically in failing to recognize that the improvements upon the real property were constructed in a manner that violated mandated elevations and that this would adversely affect Plaintiffs' ability to obtain insurance reasonably needed by Plaintiffs (Rule 2.1);

(3) Failing to advise Plaintiffs of issues related to recognized flood plain levels and protective laws, ordinances, rules and regulations related thereto;

(4) Failing to recognize duties in the Transaction, that if recognized, advised about and acted upon, would enable Plaintiffs to protect their investment in the Real Property;

(5) Failing to reasonably inform Plaintiffs about the elevation issue and in failing to explain the matter to the extent necessary to permit Plaintiffs to make informed decisions (Rule 1.4);

(6) Failing to recognize duties to specifically advise Plaintiffs about the nature and effect of a Statute of Limitation and the need to protect themselves from its consequences;

(7) Failing to recognize a duty to conduct the Transaction in a manner that would assure Plaintiffs sufficient information to understand limitations related to acting through the Power-of-Attorney and their not being physically present at an actual closing and personally reviewing the documentation; and

(8) Failing to determine and advise Plaintiffs of a defective deed in the chain of title.

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C. JOSEPH ROOF

SWORN TO before me this
16th day of March, 2009.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 01-22-2018

SHERRILL ROOF MILLENDER LLP
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EMAIL: WDO@SRMLAW.COM

Monday, March 16, 2009

VIA HAND DELIVERY
John Dwight Hudson, Jr., Esquire
Ellis Lawhorne & Sims, P. A.
1501 Main Street, Fifth Floor
Columbia, South Carolina 29201

Re: Our File Number 3283.3
Gottschlich and McNeil v. Deeb

John, delivered to you with this letter is my completed opinion. If there are areas in which I have not opined and as to which you desire my opinion, please let me know.

I call to your attention a couple of typos in your Complaint. In your case caption you likely don't need the "and" between the names of Thomas N. Dye and Jan H. Dye. Also paragraph 121. references "complaint" and should say "compliant". In Paragraph 122., please correct my name to read C. Joseph Roof.

C. Joseph Roof

CJR/kw
Enclosure

DEFENDANT'S EXHIBIT 24
ROOF
10-13-09

ANDREW J. ATKINS
CATHARINE S. MILES
FRANCHELLE C. MILLENDER, CELA*
C. JOSEPH ROOF
HENRY F. SHERRILL
OF COUNSEL
*CERTIFIED ELDER LAW ATTORNEY BY THE NATIONAL ELDER LAW FOUNDATION

# GREGORY M. GOTTSCHLICH'S DEPOSITION EXCERPTS/EXHIBITS

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT
OF COMMON PLEAS
FOR THE
FOURTEENTH JUDICIAL
CIRCUIT

Gregory M. Gottschlich
and Donald L. McNeil,

Plaintiffs,

-vs-

CIVIL ACTION NO.
2008-CP-07-00517

Strimpfel Custom Homes,
Inc.; Joseph A. Reeve;
Jerry L. Richardson;
Coastal Surveying Co. Inc.;
Thomas N. Dye; Jan H. Dye;
Ken Oliver; and The Byrne
Corporation d/b/a Dunes
Marketing Group, Laurich &
Deeb, P.A.; Robert M. Deeb,
Jr. and Charles H. Wiseman.

Defendants.

VOLUME I

- - -

TELEPHONIC DEPOSITION OF GREGORY M. GOTTSCHLICH, M.D., taken by me, Susan L. Bickert, a Certified Shorthand Reporter and Notary Public in and for the State of Ohio, at large, as upon Cross Examination, at the offices of Allergy and Asthma Affiliates, Inc., 4260 Glendale-Milford Road, Suite 201, Cincinnati, Ohio 45242, on Monday, July 27, 2009, commencing at 9:03 o'clock a.m. on behalf of Defendants Ken Oliver and The Byrne Corporation, d/b/a Dunes Marketing Group.

about five years. Four to five years.

Q And I assume that since you've been with Island Getaway approximately five years that you're happy with their services?

A Yes.

Q And, well, let me ask you this. What's the first time that you saw anything or had any idea that the elevation on 48 Sea Lane was less than what it should be?

A When I saw it or when I became aware of it?

Q Oh, either one. Any idea when you actually saw a document?

A Okay. I was going to say visually looking at the house you wouldn't know. But I became aware that there was a deficiency around Easter of 2006.

Q And how did you become aware?

A I called our insurance agent. This was after Katrina had struck Louisiana, and I discussed with Dr. McNeil that we should increase our insurance. I called our agent, Teena Farrell, when I was on vacation with my kids on Spring Break, made an appointment, went over and spoke with her. And that's when I was made aware of the elevation

deficiency.

Q And did your insurance agent know it prior to you letting her know?

MR. HUDSON: Object to the form.

BY MR. MAHAFFEE (Continuing):

Q You can answer, Doctor.

A You'd have to ask her that. I don't know.

Q Okay. Well, tell me, you know, after Katrina hit you went to see Teena Farrell, your insurance agent, and learned of it. How did you learn of it?

A I was sitting in her office, and I said -- paraphrasing I said, "Teena we'd like to have increased insurance." I was aware that homes in New Orleans had not been covered by insurance because of the tidal surge, and so that the wind policy would not cover a situation like that. It was widely publicized on the news. And I, therefore, met with her, explained that situation to her. And she, as I recall, pulled up our file and at that point said, "You know what? You can't get flood insurance." I said, "Why not?" And she said, "Because your elevation certificate is not adequate." I said, "What's an elevation

certificate?" And she explained -- tried to explain what that was, and that's the start of it.

Q And do you know how she had obtained your elevation certificate?

A No, I do not.

Q Did she give you a copy of the elevation certificate at that time, or did you ever get one, you know, of your own in your own hands?

A I don't recall if she gave me one. She may have. I don't remember if she gave me one that day. I do remember being -- I said, "This must be an error. I can't possibly believe this is true." And she said, "No, it's 13.3 feet." Now that I know that, I presume that's what she told me, but she told me the approximate height. I went home -- I said, "Where would I measure this?" So I got a tape measure -- and I said, "I'll call you back because this has got to be a mistake." So I did go back to the home and measured, you know, where she indicated I should measure, the finished floor elevation. And, of course, that was just a height above the floor, so it would be determined based on, I guess, survey results from what the garage level was and house as well. So I gave her that measurement as I recall, and that's really all that

about, "Gee, what do you do in situations like this? We're really in a pickle here. How can we remedy this?" It was just a casual conversation. I had a couple conversations with Trudy Johnson, however, which were more substantive, and that's when I said, you know, "What's the outcome if we don't?" She said, "Well, you will be compelled to have it fixed." And that was the other reason that prompted us to proceed with litigation.

Q Okay.

A She told me how they're going house by house, and they're going to the beach front homes and they're making -- they're tearing down condominiums and raising them up. And so it heightened our anxiety and put us in a position where we had no alternative but to seek legal remedy.

Q Oh, yes. I was just wanting to know the exploration process.

MR. MAHAFFEE: Madam Court Reporter, I'm looking for once again in that same stack it's L&D, and I'll leave off all the zeros but 79, 80 and 81. Would you please make that Exhibit 2?

(Whereupon, a discussion was held off the record.)

never purchased a home on a coastal area before, either Dr. McNeil or myself, and so flood insurance in Ohio is very different and not the same types of requirements. So I was aware that the Dyes had flood insurance. I was aware that we had to buy flood insurance, and in a global sort of nonprofessional sense I understood in generality what flood zone meant. I didn't understand at the time what an elevation certificate was, nor the deficiency, nor was it described or discussed with us.

Q Did you ever ask anybody with Deeb and Wiseman why they didn't discuss that with you?

MS. WALL: Object to the form.

THE WITNESS: I believe around December 1st, 2006, when I called Mr. Deeb I may have asked that question. And as I recall, he called me back after reviewing the file and said that we had a cause of action based on number 17 of this document. I don't recall specifically saying, "Why didn't you tell me?" but I think it was discussed in some generality at that time. But that's been nearly three years ago, too, so I don't recall the entire conversation.

BY MR. MAHAFFEE (Continuing):

# HERBERT L. NOVIT'S DEPOSITION EXCERPTS/EXHIBITS

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

GREGORY M. GOTTSCHLICH and DONALD L. MCNEIL,

Plaintiffs,

vs.

CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE, JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

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The deposition of HERBERT L. NOVIT, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Ceil Weser, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting & Video, Inc., 1 Corpus Christie, 107 Executive Center, Hilton Head, South Carolina, on the 1st day of December, 2009, commencing at or about the hour of 10:30 a.m.

HUDSON - NOVIT (DIRECT EXAMINATION)

But that doesn't mean that I am competent to say that it was prepared improperly or that is material enough for him to walk. I believe you have to give full disclosure to your clients about things that you learn about.

Now, the fact that something happened that you don't know about or that you aren't involved in doesn't mean I don't think that you failed in your responsibilities. You have to know what you have to know.

BY MR. HUDSON:

Q But the critical issue is to give full disclosure to your client, correct?

A That is correct, of things that you know.

Q How about things you should know?

A Well, of course. If you should know something and you don't know it, then that is a problem.

But I have seen nothing in this transaction to indicate that. The fact that the elevation certificate may have passed through

HUDSON - NOVIT (DIRECT EXAMINATION)

this because you cannot issue -- you could not use this in place of an elevation certificate to get flood insurance. I know that much.

Q But this at least identifies the issue and allows the question to be raised, correct?

A I assume that the elevation certificate is received along with this also identifies it, but that is not something that I would look at.

Q But doesn't this survey at least identify the issue?

A It identifies a possible issue, yes.

Q And while it may not be the closing attorney's duty to advise his client as to the potential implications of this issue, the closing attorney could at least raise the issue to his client, correct?

MS. WALL: Object to the form.

THE WITNESS: If he notices it, but there is no requirement that he notice something like that because he doesn't deal in that.

BY MR. HUDSON:

Q Are there any written standards or guidelines that define a closing attorney's

HUDSON - NOVIT (DIRECT EXAMINATION)

obligations in the context of reviewing a survey?

A The only thing is the recent best practices memo that the Supreme Court sent out that says you review the survey. That is all it says. It doesn't say that you review it for flood insurance. It doesn't say to review it to make sure that the house isn't built higher than the covenants allow. It doesn't say any of that stuff.

Q Right, it doesn't say review it for this or that --

A No.

Q It just says review the survey?

A Review the survey. If you have a survey. But in this case we didn't have a survey because this is not a current survey. This is just a drawing that I would not rely on for a closing.

Q Did Mr. Deeb rely on the survey that comprises part of Exhibit 4 in closing my client's transaction?

A You would have to ask Mr. Deeb that. I doubt if he did, though. I would have to ask

HUDSON - NOVIT (DIRECT EXAMINATION)

go through and try and determine what interest rate was being charged because the client, the principal had already done that. He didn't have an obligation to do anything else other than sign his name.

Q Are you aware of any legal precedent, whether in South Carolina or from another jurisdiction, stating that a closing attorney does not have a duty to review an elevation certificate?

A That he does not have an obligation?

Q Yes, sir.

A No.

Q Are you aware of any precedent from South Carolina or elsewhere that says a closing attorney has a duty to review a survey only for title and title marketability related information?

A No, but I do know that the only thing that the attorney is doing when it comes to a survey is title.

Q Was Mr. Deeb present when this loan closed for my clients?

A I don't know, but I don't think so

# PATRICIA R. FARRELL'S DEPOSITION EXCERPTS/EXHIBITS

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT ) Case No. 08-CP-07-0517

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiff,

vs.

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

DEPOSITION OF
PATRICIA R. FARRELL

DATE: SEPTEMBER 21, 2009

TIME: 1:34 p.m. - 4:53 p.m.

LOCATION: Tupper, Grimsley & Dean, P.A.
611 Bay Street
Beaufort, South Carolina

REPORTED BY: Beth Walters Kornuta

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PALMETTO STATE COURT REPORTERS
P. O. Box 50488
Summerville, SC 29485
843.670.1637 Fax: 843.486.0064
Palmettostatecr@yahoo.com

A I can't speak for the system at that point. We get those quotes typically -- if everything is all right, we get the quotes now right away, and that would be shown in the coverage and rating detail on page two. And as to the submit, yes, it would come back as that.

Q Does this application that you filled out indicate that while the base flood level is 14 feet, the lowest floor on this dwelling was only 13.3 feet?

A Yes, that's correct.

Q How did that affect the premium from Travelers?

A It's higher.

Q Where is that indicated on the coverage and rating detail, if at all?

A It is not indicated, per se, that it's higher because. They just give you a rate.

Q What, under the coverage and rating detail, is the CRS discount?

A That's a community. If the community has fulfilled the compliance issues with the federal flood, they get community discounts.

Q And is the community Hilton Head area wide or smaller?

# 30(b)(6) THE BYRNE CORPORATION D/B/A DUNES MARKETING GROUP – WILLIAM BALDWIN'S DEPOSITION EXCERPTS/EXHIBITS

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

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE, JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

----------/

COPY

The 30(b)(6) deposition for THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP of WILLIAM BALDWIN, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Ceil Weser, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting & Video, Inc., 1 Corpus Christie Place, 107 Executive Center, Hilton Head, South Carolina, on the 19th day of October, 2009, commencing at or about the hour of 10:12 a.m.

HUDSON - BALDWIN (DIRECT EXAMINATION)

Q So any defect that impacts on the value of the house constitutes a latent defect in your opinion?

MR. MAHAFFEE: Objection.

THE WITNESS: Maybe we should use a different word other than latent. That is what I believe it says in real estate law, but I am not sure that -- maybe I don't understand what that means other than it is a defect and that it does impact on the value. Yes, I would say that that is true, it is a defect; and it impacts on the value. And disclosure is required by South Carolina law. The form is in fact in this packet here.

BY MR. HUDSON:

Q And I do want to go through that with you; just not right at this very moment.

Are the attorneys who are named as defendants in this case, specifically Robert M. Deeb, Jr. and Charles Wiseman innocent parties in your opinion?

A I really don't have an opinion on that.

HUDSON - BALDWIN (REDIRECT EXAMINATION)

standards changed at all between 1987 and the present?

MS. WALL: Object to the form.

THE WITNESS: I am not aware of any changes.

BY MR. HUDSON:

Q Do you know that no changes have occurred?

MR. MAHAFFEE: Objection.

THE WITNESS: No, I don't know that. I am not aware of any changes.

MS. DEAN: Objection.

MS. WALL: Objection.

BY MR. HUDSON:

Q You just don't know?

A I just don't know.

Q Assume that the finish floor elevation of 48 Sea Lane is in fact less than 14 feet, would that in your opinion affect the marketability of the house?

MR. MAHAFFEE: Objection.

THE WITNESS: Somewhat.

BY MR. HUDSON:

Q How so?

# ALAN O. CAMPBELL'S DEPOSITION EXCERPTS/EXHIBITS

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT ) Case No. 08-CP-07-0517

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiff,

vs.

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

DEPOSITION OF
ALAN O. CAMPBELL, PE, RRC

DATE: NOVEMBER 16, 2009

TIME: 10:10 a.m. - 12:35 p.m.

LOCATION: Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, South Carolina

REPORTED BY: Beth Walters Kornuta

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PALMETTO STATE COURT REPORTERS
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Summerville, SC 29485
843.670.1637 Fax: 843.486.0064
Palmettostatecr@yahoo.com

Andrews & Burgess Inc.
Engineering & Surveying

December 18, 2008

Mr. Rob Mathison
Via email: rmathlaw@aol.com

**Re: Project 280044 – 48 Sea Lane, Palmetto Dunes, Hilton Head Island**

Dear Rob:

As we have discussed in our various conversations regarding the house at 48 Sea Lane, Palmetto Dunes, we have coordinated with a general contractor, house mover, structural engineer and architect to develop a construction budget to raise the house above the flood plain. The budget, prepared by Anchor Construction Co., is based on raising the house 32". There would be a nominal reduction in the budget if the house were only raised 10".

The construction budget provides an eleven (11) item scope of work. These eleven (11) items do not represent all of the tasks required to raise the house. The list does identify the general categories of work required to raise the house and hopefully helps to demonstrate why it is a $275,000.00 job.

I am sure there will be questions regarding the estimate. In whatever manner is most convenient for you, please relay to me the questions and I will get the answers.

Sincerely,

Steve Andrews, P.E.

DEFENDANT'S
BK EXHIBIT 12
Campbell
11-16-09

PLF-107
ELS #79-5B113

40A Shanklin Road, Beaufort, SC 29906 . 843.466.0369 . Fax 843.466.9766

Anchor Construction Co. of Beaufort, Inc.
22 Hickory Rd. Beaufort, S.C.
Office 843-525-6708 Fax 843-525-9601

December 18, 2008

To: Andrews & Burges Inc.
48 Shanklin Rd.
Beaufort, S.C. 29906

Re: 48 Sea Ln.
Palmetto Dunes, Hilton Head S.C.

To Whom It May Concern:

Please find this quote to include material and labor to complete the following scope of work in order to raise the house 32 inches.

1. Remove plants and shrubs as needed around the house in order to gain access to the exterior foundation.
2. Rework foyer as needed so foyer will be same elevation as existing finish floor.
3. Rework front entrance door and windows to be same elevation as new foyer.
4. Rework front side walk and add steps, so that the side walk and steps meet new finish floor elevation.
5. Build all new lattice on perimeter of house.
6. Build new steps on rear porch to meet new finish floor elevation.
7. Disconnect and reconnect all utilities in order to lift house.
8. Disconnect the garage structure from main house, rebuild steps and structure as needed after house is raised.



PLF-108
ELS #79-58113

9. Disconnect existing tie downs, straps etc, from foundation piers and exterior foundation block walls. Replace old piers with new piers per new engineered plans. Add 4 courses of block to outside foundation wall per engineer plans.
10. Stucco all new exterior foundation block.

Per call w/ Eddie 13-Dec-05

11. Structural Engineer, architect + field survey #20K

Total estimated cost for the above work is----------$ 275,336.00

Any question or concerns please call me. Thank you for the opportunity to estimate this project.

Eddie Powell

Eddie Powell

PLF-109
ELS #79-58113

Lynes
CONSTRUCTION, INC.
#1 Row Boat Row
Hilton Head Is., S.C. 29928
843-785-4202

# PROPOSAL

May 1, 2007

Greg Gottschlich and Don McNeil
C/o Jack Qualey
Qualey Law Firm
Park Rd, Hilton Head Is., SC 29928

RE: #48 (Lot 27) Sea Lane, Palmetto Dunes, Hilton Head Island, SC

Dear Gentleman,

I have estimated the cost of raising the house to an elevation of 14 feet above sea level at finished floor height. It is at 13.3 feet at present. The estimate is based on the actual work to raise the house and the reasonable expectation of damage that will occur because of the movement of the house (ie: drywall cracking). Damage that could occur but is not expected is the cracking of the stucco walls, the cracking of the tile on the floors and showers, the cracking of mirrors and the breaking of window glass. These kinds of damage were not estimated but have a small chance of happening. I have also included damage to the landscape, sidewalks and driveway due to the difficulty of moving heavy machinery around the house to accomplish the work. All of the heavy beams used to support the house will have to be inserted under the house from the front. This will damage a great deal of the front exterior. The estimate is based on existing quality levels. The landscape plantings will be as large as possible to strive for the closest replacement that can be achieved when replacing 20-year-old landscape plants. I have spoken with the Building and Codes office of the Town about permitting the job and also with an engineer that designed the foundation extension for the house.

DEFENDANT'S
BK EXHIBIT 18
Campbell
11-16-09

PLF-0001
FLS #79-58113

## Scope of Work

Detach the house from the existing foundation and the garage.
Build temporary support walls for the garage/laundry wall, the front entrance wall, the interior staircase and the exterior rear stairs.
Disconnect electrical service, all plumbing waster and water lines and all Heating and Air conditioning condenser units.
Raise the house, J.E. Oswalt and Sons Professional House Movers.
Install a bond beam around the foundation wall, extend the existing anchor bolts and add a block to the interior piers of the house (Per engineer).
Lower House back onto new foundation additions and install new tie down straps that connect the house to the foundation.

Rebuild the front entrance foyer floor to extend up to the new height of the walls. Install new tile and stucco to match existing Build new supports for the interior staircase.
Rebuild the walls of the garage/laundry connection. Tie the garage to the house, re-flash and install new stucco to the exterior walls in this area. Install new drywall and trim.
Rebuild the staircase in the garage to accept the new height.
Repair the holes in the garage walls that were made during the raising of the house, Stucco and drywall repairs in this area.
Rebuild the rear stairs to accommodate the new height.
Reconnect the electrical, plumbing and HVAC.
Install new stucco on the new addition of foundation and on the walls was the stucco was affected by the construction.
Rebuild the retaining wall in the front yard that was removed during house raising.
Re-install the front sidewalk, stoop and driveway.
Install new irrigation in the front yard and new landscape plants in the front yard damage from the construction.
Repair damage landscape lights in the front yard.

Assumption: Cracks in the drywall will appear in each room after moving the house.
Wallpeper cannot be matched so all wallpaper will be removed and replaced.
Move and protect all furniture and floors before work on the interior begins.
Repair all cracks in the drywall.
Repaint the interior of the house and the exterior of the house where construction has caused a need for painting.
Re-point the grout in the tile floors and showers.

NOT INCLUDED IN THIS COST:
No tile replacement is included in this cost except for the foyer, which will have to be rebuilt.
No repair to the stucco has been estimated for cracks that could occur in areas of the house that are not directly affected by the construction on the house.

PLF-0002
FLS #79-58113

Cost Breakdown:

| | |
|---|---|
| Permits, Engineering, Plans | $2,100.00 |
| Dumpster and rubbish removal | $4,000.00 |
| Irrigation/ Landscape | $21,400.00 |
| Furniture and house protection | $3,000.00 |
| Final Clean | $1,400.00 |
| Sidewalks | $2,400.00 |
| Driveways | $17,200.00 |
| Block and masonry | $18,400.00 |
| | |
| House moving (J.E. Oswalt and Sons) | $75,000.00 |
| Framing, trim and Siding | $39,110.00 |
| Drywall | $20,600.00 |
| Painting | $35,000.00 |
| Stucco | $12,500.00 |
| Heating and Air Conditioning | $2,250.00 |
| Electrical | $3,000.00 |
| Plumbing | $1,700.00 |
| Tile and Grout | $5,500.00 |
| Wallpaper | $7,900.00 |
| | |
| Supervision | $31,500.00 |
| Overhead | $36,475.00 |
| Profit | $34,043.00 |
| | |
| Total | $374,478.00 |

If you have any question about the scope of work or the cost please call me at (843) 683-4203.
I understand that the work will be scheduled for the fall after the rental season. I will follow with a contract after your review of this proposal. During the estimation of this project I have incurred debt of $1675.00. If the contract is signed this debt will be waived.

Thank you,

Michael R. Lynes
Lynes Construction, Inc
SC License #5489

PLP-0003
ELS #79-58113

# THOMAS E. HARTNETT'S DEPOSITION EXCERPTS/EXHIBITS

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT ) Case No. 08-CP-07-0517

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiff,

vs.

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

DEPOSITION OF
THOMAS E. HARTNETT, GAA, CRB

DATE: OCTOBER 22, 2009

TIME: 10:10 a.m. - 12:47 p.m.

LOCATION: Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, South Carolina

REPORTED BY: Beth Walters Kornuta

**********

PALMETTO STATE COURT REPORTERS
P. O. Box 50488
Summerville, SC 29485
843.670.1637 Fax: 843.486.0064
Palmettostatecr@yahoo.com

also assuming I was going to keep -- you were going to keep on going through it?

MS. WALL: I am.

MR. HUDSON: So can I take it all?

MS. WALL: Sure. Here's your 4M.

A Yes, ma'am, I do recognize this as the e-mail which he sent to me the two estimates to elevate the property.

BY MS. WALL:

Q Did you, in looking at Exhibit 4M, did these materials form the basis of any of your opinions?

A Absolutely.

Q Were you aware that there were estimates before you received these in this e-mail? Had they been discussed with you?

A If I remember correctly, yes, ma'am. I had asked about had there been any estimates to elevate the property.

Q And why were you concerned with elevation of the property as a factor in your opinion?

A Because in my opinion, that's the only cost to cure the problem that exists, and that's -- that's the way to cure it and that's the

cost to cure it. So that's the basis of my opinion as to ...

Q Is there any other way, in your opinion, to cure the elevation issue?

A Ms. Wall, if it's a code violation, and I understand it is at the Town of Hilton Head Island, I don't know of any other way to do it other than to elevate the property, to build up the first floor elevation.

Q What about building up the floor itself?

A Well, you still haven't solved that problem. I don't think -- you make it where, you know, your furniture and all will be a little bit higher, but I just don't think that solves the problem.

Q Why not?

A I just answered that. I just don't think it solves the problem. It's just -- you're going to have extra subflooring underneath it of eight inches. And to start with -- I just don't think it solves the problem.

Q All right. Elevation, is it measured to the heighth of the lowest finished floor?

MR. HUDSON: Objection.

that premium was excessive because of the fact that the house either had been jury-rigged, if you want to call it that, or by elevating the first floor higher than what it is now by building on top of the existing floor, if it was anything different than what a normal house built properly in the first place was, then it would still be something that would cost more money or would create somewhat of a problem.

And it may affect marketing the property, if it would have to be disclosed.

Q If the house were raised, we're at 14 feet, what disclosure obligation would there be?

A I don't know that you'd have to disclose anything then because you would have cured the problem. It no longer creates a problem.

Q Are you familiar with and prepared to testify to an opinion regarding cost, availability of excess flood insurance; that is, flood insurance over the minimum mandated?

A No.

(Email Report Dated 10/15/09, Defendants Laurich & Deeb, P.A.'s, Robert M. Deeb, Jr.'s and Charles H. Wiseman's Exhibit No. 4N is marked for

of Hilton Head which stated that the base floor elevation was 14.16?

A Ms. Wall, I read in Dr. Gottschlich's deposition where there was some dispute, one surveyor had come up with one number and one had come up with another. So I was aware of the fact that there was some dispute as to whether or not the elevation was 13.3 or 14, whatever.

Q And you have not done any independent measurements, research, nor hired any independent person to go out and do an elevation measurement of the home at issue, have you?

A No, ma'am.

Q So as you sit here today, you cannot testify to a fact what the actual elevation of that house is, can you?

A No, ma'am, I can't.

Q Now you go on to say in your e-mail that we've marked as Exhibit 4N that the measure -- and I'm quoting -- "The measure of damage is somewhere between the two estimates you have forwarded to me for raising the house," end quote. And are you referencing there the earlier e-mail attachment that we identified as 4M, that had an estimate by Lynes and an estimate by

Anchor?

A Yes, ma'am.

Q And one has a number, a total number of $374,478 and the other has a total estimate of $275,336, correct?

A That's what shows on those estimates, yes, ma'am.

Q So it's your opinion that the measure of damages is somewhere between those two numbers, correct?

A Yes. That is correct, Ms. Wall.

Q Now you go on to say -- you reference the Town of Hilton Head and an issue as to whether the Town of Hilton Head will insist that the code violation be corrected and fines the owner if it is not. Do you have any information, as you sit here today, on the position of the Town of Hilton Head?

A Yes, ma'am, I do.

Q What is your information?

A When I took the trip to Hilton Head with counsel to inspect the subject property, I was told that he would be taking the deposition of Ms. Trudy Johnson, who was -- I can't remember Ms. Johnson's title, the Flood Administrator or

# 30(b)(6) HILTON HEAD ISLAND – TRUDIE JOHNSON'S DEPOSITION EXCERPTS/EXHIBITS

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

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE, JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

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The 30(b)(6) deposition FOR HILTON HEAD ISLAND OF TRUDIE JOHNSON, a witness in the above-entitled cause, taken pursuant to Notice and Subpoena, before Ceil Weser, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting & Video, Inc., 1 Corpus Christie, 107 Executive Center, Hilton Head, South Carolina, on the 20th day of October, 2009, commencing at or about the hour of 3:05 p.m.

HUDSON - JOHNSON (DIRECT EXAMINATION)

Q But that recommendation comes from you and no one else, correct?

A Correct.

Q And you recommend that the town take action by doing what and to whom?

A We would assist the property owner using our knowledge of flood plain management standards to obtain compliance with the regulations. Assisting them in permitting and helping them with the requirements for compliance.

Q And how would the town assist my clients in this case?

A We might suggest alternative methods for compliance.

Q The town might or the town would?

MR. MAHAFFEE: Objection.

THE WITNESS: It is my job to assist the property owners of Hilton Head Island with compliance, and in my knowledge I can suggest alternatives. That is my job.

BY MR. HUDSON:

Q What are my client's alternatives in

HUDSON - JOHNSON (DIRECT EXAMINATION)

this case?

MR. MAHAFFEE: Objection.

THE WITNESS: The house can be elevated. The house can be retrofitted.

BY MR. HUDSON:

Q All right.

You said the house can be elevated. Explain that a little bit.

A The top of the lowest floor is required to be at or above 14 feet. If it is not at this time, then the floor structure can be elevated according to the U.S. Army Corp of Engineers' manuals, and so that a new foundation IS put in place so that it is at 14 feet MSL or the interior could be retrofitted.

Q To accomplish what?

A So that the top of the lowest habitable floor is 14 feet.

Q The bottom line is the first finished floor needs to be at a finished elevation of 14 feet or greater, is that correct?

A That is correct.

Q And the two ways to accomplish that as

HUDSON - JOHNSON (DIRECT EXAMINATION)

collected in that.

BY MR. HUDSON:

Q Fines collected from his client?

A Yes.

Q Assuming the house at 48 Sea Lane has a negative elevation, that is in violation of the applicable town code, correct?

MS. WALL: Objection.

MR. HAIGHT: Objection.

MR. MAHAFFEE: Objection.

THE WITNESS: Assuming it does, yes, I understand.

BY MR. HUDSON:

Q It is in violation of the code, correct?

MR. MAHAFFEE: Objection.

THE WITNESS: If it does have a negative violation, it is in violation of the town code, correct.

BY MR. HUDSON:

Q Are you aware of any applications for variances in the past being submitted based on a negative elevation level of the property?

A Not since I have been employed by the

# RONALD STRIMPFEL'S DEPOSITION EXCERPTS/EXHIBITS

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

GREGORY M. GOTTSCHLICH AND DONALD L. McNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP, LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR. AND CHARLES H. WISEMAN,

Defendants.

----------/

The deposition of RONALD STRIMPFEL, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Cathy M. Knoettner, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting & Video Services, 107 Executive Center, Hilton Head Island, South Carolina, on the 1st day of July, 2009, commencing at or about the hour of 10:00 a.m.

HUDSON - STRIMPFEL (DIRECT EXAMINATION)

various parties?

A For the Town. It's for FEMA for the insurance company, for insurance for flood. That's the legal ramification.

Q But with regard to the copy to the developer, you just don't know what the basis for that was?

A No.

Q In instances where an updated elevation certificate is prepared for residential dwellings, do you know if that updated certificate must be provided to the Town of Hilton Head?

A No, I don't know that. You mean like if the house has been built for several years and they do an update?

Q Yes.

A I do not know if the Town requires that or not.

Q Based on your experience in the residential construction industry, what, in your opinion, would be some ways to go about attempting to rectify the negative elevation level that exists with 48 Sea Lane?

HUDSON - STRIMPFEL (DIRECT EXAMINATION)

MR. MAHAFFEE: Objection.

MS. WALL: Object to the form.

MR. HUDSON: That's one of those instances where I say you can still answer.

THE WITNESS: I mean, do I have to answer?

MR. HUDSON: You do

THE WITNESS: I guess the only way to rectify -- you mean to raise it, to get it to an elevation as required, you either add to the top or you -- you add to the top of the finished floor or you raise the foundation.

BY MR. HUDSON:

Q All right. Explain to me what you mean by you add to the top of the finished floor.

A Eleven inches, you have a finished floor now, you add one step required to adjust to, and you add 11 inches to the first floor. If it's got a 10-foot ceiling, or whatever it is, it would be a 9-foot ceiling on the first floor. You'd have to cut in, recut your doors. Unless you have 8-foot doors, you got to go 6.8

# PLEADINGS/DISCOVERY

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF BEAUFORT | IN THE COURT OF COMMON PLEAS<br>FOR THE<br>FOURTEENTH JUDICIAL CIRCUIT |
| Gregory M. Gottschlich and Donald L. McNeil,<br><br>Plaintiffs,<br><br>v.<br><br>Strimpfel Custom Homes, Inc.; Joseph A. Reeve; Jerry L. Richardson; Coastal Surveying Co. Inc.; Thomas N. Dye; Jan H. Dye; Ken Oliver; The Byrne Corporation d/b/a Dunes Marketing Group, Laurich & Deeb, P.A.; Robert M. Deeb, Jr. and Charles H. Wiseman.<br><br>Defendants. | CIVIL ACTION NO. 2008-CP-07-00517<br><br>**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS KEN OLIVER AND THE BYRNE CORPORATION D/B/A DUNES MARKETING GROUP'S MOTION FOR SUMMARY JUDGMENT** |

Plaintiffs Gregory M. Gottschlich and Donald L. McNeil (collectively "Plaintiffs") submit this memorandum in opposition to Defendants The Byrne Corporation d/b/a Dunes Marketing Group ("Dunes") and Ken Oliver's ("Oliver") (collectively "Defendants Dunes") motion for summary judgment scheduled to be heard on December 16, 2009.

## BACKGROUND

This case concerns a house Plaintiffs own at 48 Sea Lane in Palmetto Dunes on Hilton Head Island ("house"). Plaintiffs purchased the house in December of 2003 from Defendants Thomas and Jan Dye. The house's lowest finished floor was constructed substantially below the applicable 14 foot base flood elevation level imposed by the Town of Hilton Head Island ("Town") in conjunction with the National Flood Insurance Program ("NFIP") administered by the Federal Emergency Management Agency ("FEMA"). This



elevation defect has caused damage to Plaintiffs in the form of increased annual premiums for federally mandated flood insurance coverage, ineligibility (or, alternatively, extremely high annual premiums) for excess flood insurance coverage, diminution in the house's value, potential future fines to be levied against the property by the Town for the existing ordinance violation, substantial costs and expenses associated with bringing the house compliant with applicable Town ordinance, and substantial legal fees, costs and expenses associated with this lawsuit. The case involves numerous defendants, among them the homebuilder (Strimpfel Custom Homes, Inc.), the individuals who sold Plaintiffs the house (Thomas and Jan Dye), the real estate broker and agent(s) who represented Plaintiffs and the seller defendants during the sale transaction (Dunes Marketing Group and Ken Oliver), and Plaintiffs' closing attorneys (L&D, Deeb, and Wiseman). The case involves numerous claims founded upon alleged construction defects, misrepresentations arising out of the sale transaction, and professional malpractice and breach of contract by Plaintiffs' closing attorneys.

For purposes of the hearing on Dunes Marketing Group and Ken Oliver's ("Defendants Dunes") summary judgment motion on December 16, 2009, this memorandum is directed, to the extent practicable, only to Plaintiffs' claims against Defendants Dunes.

## FACTS

Defendants Dye purchased the house at 48 Sea Lane, their second house on Palmetto Dunes, in 2001 from Ben and Myra Muldong. (Oliver Dep. p. 25, ln. 19 – p. 26, ln. 2.) On March 28, 2001, Sea Island Land Survey issued a survey and elevation certificate to Defendants Dye for the house, both of which showed the lowest finished floor elevation to

be 13.3 feet (13.3') – or 0.7 feet less than the applicable fourteen foot base flood elevation. (Am. Compl. ¶ 27; Pls.' Answers to Interrogs. To Each Pl. from Def. Oliver and Dunes Mktg. Group, Answer No. 12.) Upon receipt of the Sea Island land survey elevation certificate in early 2001, Defendant Thomas Dye likely first learned of the house's negative elevation. (T. Dye Dep. p 74, ln 25 – p. 75 ln 7; p. 77, lns 14-25; p. 93, ln 24 – p. 95 ln 2.)

Defendants Dye contracted with Oliver and Dunes to list the house for sale in 2003. (Oliver Dep. p. 61, ln. 15 – p. 62, ln. 10; Ex. 8) Defendants Dye were also represented by an attorney, Cary Griffin. (Baldwin Dep. Ex. 15.) At the time, Griffin was also serving as corporate attorney for Dunes Marketing Group and secretary for The Byrne Corporation. (Baldwin Dep. p. 110, lns. 9-12.) Plaintiffs entered into an Exclusive Buyer Agency Agreement with Dunes Marketing, and were represented by Dunes agent, Greg Merrill. (Baldwin Dep. Ex. 7; Am. Compl. ¶ 21; Ex. F.)

At the direction of Oliver, Defendants Dye completed a 24 point South Carolina Residential Property Condition Disclosure Statement ("disclosure statement"). (Oliver Dep. p. 45, ln. 13 – p. 46, ln. 6.) Defendants Dye signed the disclosure statement and returned it to Oliver. (Id.) Despite Defendant Thomas Dye's knowledge of the house's negative elevation, in the disclosure statement, item 17 ("Violations or variances of building codes or zoning ordinances") was checked as "No." (Am. Compl. ¶ 22, Ex. G.) In preparing to make an offer on 48 Sea Lane, Plaintiffs were presented with and signed a "Consent to Dual Agency" form because 48 Sea Lane was listed by Dunes and Plaintiffs were also represented by Dunes. (Gottschlich Dep. p. 144, lns. 22 – 25.) Dunes Marketing never expressed "any ramifications ... consequences ... negative outcomes ... limitations ... or restrictions on the performance, ethics or expertise that would be rendered" on Plaintiffs'

behalf in conjunction with the execution of the "Consent to Dual Agency." (Gottschlich Dep. p. 144, lns. 7-16.) Around the same time, Defendants Dye, through their realtor Oliver, provided Plaintiffs with a signed, completed disclosure statement through their realtor Merrill. (Oliver Dep. p. 44, ln. 21 – p. 47, ln. 20.)

Plaintiffs, relying on the representations made in the disclosure statement, executed a contract of sale for the house with Defendants Dye in November 2003. (Am. Compl. ¶ 22.) Pursuant to the contract, Plaintiffs bought the house from Defendants Dye in December 2003 for $1,395,000.00. (Am. Compl. ¶¶ 6, 26.) Commissions totaling $78,700 were paid to Dunes, Oliver and Merrill when the sale closed. (Baldwin Dep. p. 164, ln. 4 – p. 165, ln. 17.)

After Hurricane Katrina caused catastrophic damage to the Gulf Coast in August 2005, Plaintiffs sought quotes for excess flood insurance for the house in the event a similar disaster should befall the Hilton Head Island area. (Am. Compl. ¶ 27.) In the process of doing so, Plaintiffs were informed by Seacoast Insurance Company around April 10 – 20, 2006 that their house was not eligible for excess flood insurance because its lowest finished floor, at least according to the aforementioned elevation certificate issued for Defendants Dye by Sea Island Land Survey on March 28, 2001 showed the house as below the applicable fourteen foot base flood elevation. (Pls.' Answers to Interrogs. to Each Pl. from Def. Oliver and Dunes Mktg. Group, Answer No. 12.)

During the course of investigating the situation with the house's elevation, Plaintiffs – Greg Gottschlich ("Gottschlich") in particular – spoke with representatives from the Town, Coastal Surveying, Sea Island Land Survey, Laurich & Deeb, P.A. and possibly other entities. Gottschlich had the Town send him a copy of various documents and records

relating to the house. In mid 2006, Gottschlich called Sea Island Land Survey and requested that it verify the information in its March 28, 2001 elevation certificate, which Sea Island did. (Pls' Answers to Interrogatories to Each Plaintiff from Defendants Oliver and Dunes Marketing Group, Answer No. 12.) Thereafter, Gottschlich contacted Coastal Surveying and requested that it too verify the accuracy of the March 28, 2001 certificate issued by Sea Island, which Coastal Surveying also did. (Id.)

Having confirmed the house's negative elevation and unable to otherwise resolve the issue with the parties or the Town, Plaintiffs commenced litigation on February 18, 2008, less than two years after learning of the elevation issue.

## STANDARD OF REVIEW

Summary judgment is only proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005). All ambiguities, conclusions, and inferences rising from the evidence must be construed most strongly against the moving party. Id. 608 S.E.2d at 159. "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Bennett v.

Investors Title Ins. Co., 370 S.C. 561, 635 S.E.2d 660 (Ct. App. 2006). Likewise, "even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn for them, summary judgment should not be granted." Hill v. York County Sheriff's Dept. 313 S.C. 303, 437 S.E.2d 179 (Ct. App. 1993).

The Supreme Court of South Carolina, abrogating prior case law indicating to the contrary, has recently held that an opposing party need only present a mere scintilla of evidence to survive summary judgment in cases where the burden of proof is the preponderance of the evidence standard. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009).

## ANALYSIS

### I. BREACH OF DUTY

"Real estate agents occupy a fiduciary relationship with their clients and are under a legal obligation as well as a high moral duty to give loyal service to the principal." Darby v. Furman Co., Inc., 334 S.C. 343, 346-347, 513 S.E.2d 848, 849-850 (1999) (citing Hamby v. St. Paul Mercury Indemn. Co., 217 F.2d 78, 80 (4th Cir.1954)); see also Designer Showrooms, Inc. v. Kelley, 304 S.C. 478, 405 S.E.2d 417 (Ct.App. 1991) ("A [real estate] broker owes a duty to its principal to keep it fully and properly informed of all material facts."). The duty of an agent to make full disclosure to his principal of all material facts relevant to the agency is fundamental to the fiduciary relationship of principal and agent. Id. (citing Bost v. Bankers Fire & Marine Ins. Co., 242 S.C. 274, 283, 130 S.E.2d 907, 911-12 (1963)). A buyer's agent shall perform duties including "disclosing to the buyer all relevant facts concerning the transaction which are actually known to the licensee or, if acting in a reasonable manner, should have been known to the licensee...." S.C. Code Ann. 40-57-

137(H)(2)(c) (1976). A real estate licensee is liable to a purchaser if he knew or had "reasonable cause to suspect the information was false incomplete, or misleading." S.C. Code Ann. § 27-5-70 (Supp. 2007).

Defendants Dunes suggest that their duties to Plaintiffs were limited or diminished by way of the "Consent to Dual Agency." Plaintiffs' real estate expert, Thomas Hartnett, spoke to that issue in assessing the duties of real estate brokers, determining based on S.C. Code Ann. 40-57-137 that no matter the type of agency agreement a brokerage company is still bound by the "duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting ... whether .... a seller's agent, a buyer's agent, or a dual agent." (Hartnett Dep. p. 60, lns. 2-10.) Hartnett opined that Dunes played "fast and loose with state law regarding dual agency" because the "Consent to Dual Agency" was never adequately explained to Plaintiffs and was signed after writing the sales contract. (Hartnett Dep. p. 58, ln. 16 – p. 60, ln. 24.) Bill Baldwin, Director of Sales and Marketing for Dunes, testified that an agent has a duty to advise clients of the need to read the dual agency, but Baldwin did not know whether that was ever done. (Baldwin Dep. p. 115, ln. 20 – p. 117, ln. 4.) In fact, Dunes Marketing never expressed any limitations to the services Plaintiffs would receive as a result of consenting. (Gottschlich Dep. p. 144, lns. 7-16.) Hartnett continued "I think the duties of a real estate agent are more than just providing the key and opening the door and showing somebody a house, that they [Dunes and agents] had certain responsibilities to those clients, especially [due to] the fact that they were out-of-town clients." (Hartnett Dep. p. 61, lns. 12-17.) Ultimately, Hartnett concluded that, based on state law and practices of real estate professionals, Dunes failed to comply with state law

requirements for acknowledgment of dual agency and the agents failed to diligently pursue the fulfillment of their duties. (Hartnett Dep. p. 61, lns. 5-21.)

Defendants Dunes misapprehend the nature of an agent's duty. The duty does not arise based on the agent's knowledge of particular types of information – rather it is a general duty to make full disclosure that accompanies the relationship between agent or broker and principal. Darby at 346-347, 513 S.E.2d at 849-850. Agents also have more particular duties of competence in their field: Dunes Marketing, through the deposition testimony of Bill Baldwin, Director of Sales and Marketing[1], and Ken Oliver admitted that real estate brokers are expected to have general knowledge of insurance and specific knowledge about floods and flood elevation levels due in part to the possibility of encountering a house not built to code. (Baldwin Dep. p. 56, ln. 22 – p. 58, ln. 6.; Oliver Dep. p. 22, ln. 20 – p. 23, ln. 2.) Along those lines, Defendant Oliver acknowledged in his deposition that the defect at issue was material to the transaction and should have been disclosed to the other parties if known. (Oliver Dep. p. 54, ln. 25 – p. 55, ln. 6; p. 57, lns. 9-23.)

Defendants Dunes look to the Residential Property Condition Disclosure provision attributing the statements to the sellers, but they fail to acknowledge the aforementioned section providing for liability where a licensee has reasonable cause to suspect that the sellers have provided information that was "false, incomplete, or misleading." S.C. Code Ann. § 27-5-70 (Supp. 2007). Defendants Dunes claim to have known nothing of the defect and offer up their own depositions as proof. Even if true, the standard of care encompasses whether they should have known based on the information reasonably available to them.

[1] Baldwin testified that, as Director of Sales and Marketing, he is "in charge of all offices, anything to do whatsoever with Dunes Marketing Group." (Baldwin Dep. p. 21, lns. 20-21.)

Moreover, a bald assertion is only relevant to summary judgment proceedings in the absence of contrary evidence. In this case, Plaintiffs have provided sufficient evidence to support a finding that they did know or should have known of the house's negative elevation. In their depositions, Bill Baldwin on behalf of Dunes and Ken Oliver both testified that they were familiar with base flood elevation on Hilton Head Island. (Baldwin Dep. p. 56, lns. 3-11; Oliver Dep. p. .) Dunes and Oliver acknowledged that Dunes agents receive training with regard to flood insurance and elevation levels. (Oliver Dep. p. 21, ln. 24 – p. 23, ln. 3.) An officer of the corporation, attorney Cary Griffin, also represented Defendants Dye and transmitted to Defendant Oliver and Greg Merrill letters purporting to enclose a survey, which showed the negative elevation.[2] (Baldwin Dep. p. 110, lns. 9-12; Ex 15.) This information should have given rise to two actions on the part of Defendants Dunes: (1) disclose the presence of a potential elevation issue to the parties to the sale transaction, which they knew or should have known of by virtue of having been sent a copy of the survey, and (2) revisit the sellers' disclosure statement. Three individuals at Dunes Marketing, two agents and a corporate officer, all of whom would have been familiar with the base flood elevation on Hilton Head Island were in possession of information revealing the elevation defect. Therefore, sufficient evidence exists for denying Defendants Dunes' motion.

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[2] Defendants Dunes offer deposition testimony by Director of Marketing and Sales, Bill Baldwin, as evidence they never received the survey as an enclosure to the letter from Cary Griffin. Oliver can't recall the letter or the survey at all and Merrill is deceased. (Oliver Dep. p. 19, lns. 2-5; p. 52, lns. 5-11.) The face of the letter suggests Oliver and Merrill did receive the enclosure, Baldwin has no personal knowledge of whether Merrill or Oliver received the survey. His only point of reference is the absence of a survey in the official Dunes file. (Baldwin Dep. 177, ln. 2-19.) However, Oliver testified that the Dunes master files are populated by the agents, and this one was largely populated by his file after the commencement of litigation. (Oliver Dep. p. 15, ln. 21 – p. 17, ln. 24.) Oliver also testified that not all documents make it to the file (Id.); and he doesn't always place surveys in the file. (Oliver Dep. p. 73, lns. 9-13.)

Additionally, the decision by the Florida Court of Appeal in Revitz v. Terrell, 572 So.2d 996 (Fla. App. 3 Dist., 1990) is very germane to Defendants Dunes' breach of duty in this case. When the rationale for the court's decision in Revitz is applied to Gottschlich's deposition testimony concerning the source of the estimated insurance premium information provided to him prior to purchasing the house, namely Dunes agent Greg Merrill, a question of fact exists as to whether Defendants Dunes at least had reasonable cause to suspect a problem with the house's elevation. (A COPY OF THE REVITZ DECISION AND RELVENT EXCERPTS FROM GOTTSCHLICH'S DEPOSITION TESTIMONY ARE ATTACHED HERETO AS THE FINAL EXHIBIT.)

## II. STATUTE OF LIMITATIONS

### a. Plaintiffs' claims are subject to the discovery rule and are not barred by the statute of limitations.

Plaintiffs' claims against Defendants Dunes are subject to the discovery rule set forth in S.C. Code Ann. §15-3-535 (1976). Section 15-3-535 states that "all actions initiated under §15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." Id. "[U]nder the discovery rule, the statute of limitations begins to run when a reasonable person of common knowledge and experience would be on notice that a claim against another party might exist." Epstein v. Brown, 363 S.C. 372, 382, 610 S.E.2d 816, 821 (2005). Knowledge of injury alone is insufficient to give rise to a suspicion of a cause of action against another. True v. Monteith, 327 S.C. 116, 120, 489 S.E.2d 615, 617 (1997). The statute of limitations can only be triggered by knowledge of "facts sufficient to put an injured person on notice of the existence of a cause of action against another." Epstein at 376, 610 S.E.2d at 818 (citing True, 327 S.C. 116, 489 S.E.2d 615). The date the statute of

limitations runs in a particular case and application of the discovery rule "are questions of fact for the jury when the parties present conflicting evidence. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 338, 534 S.E.2d 672, 681 (2000); see Arant v. Kressler, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997).

Plaintiffs did not learn the house was below the applicable base flood elevation, but more importantly of the adverse implications of the negative elevation (i.e. Plaintiffs' injury), until approximately April 10 – April 20, 2006, at which time Greg Gottschlich was informed by Seacoast Insurance that the house was not eligible for excess flood insurance. (Gottschlich Dep. p. 14, ln. 18 – p. 15, ln. 1.) In the months following, Plaintiffs diligently investigated the details and potential implications associated with the negative elevation. For instance, they communicated with the two separate survey companies that had issued the two elevation certificates containing conflicting elevation information to understand which, if either, of the two was accurate. (Pls' Answers to Interrogatories to Each Plaintiff from Defendants Oliver and Dunes Marketing Group, Answer No. 12.) Plaintiffs also contacted Trudie Johnson at the Town to try to gain insight into the situation. (Gottschlich Dep. p. 33, lns. 3-9.) Upon suspecting they might potentially have recourse against others involved in the purchase transaction, Gottschlich contacted closing attorney Robert Deeb, Jr. of Laurich, Deeb & Wiseman, P.A. on December 1, 2006, less than three years after closing. Defendant Deeb eventually informed Plaintiffs, by way of a letter dated December 8, 2006, that they may have claims against a number of parties to the transaction.[3]

[3] Defendants Dunes also cherry pick a quotation from the Amended Complaint in an attempt to pass an uninformed opinion of a fellow defendant as grounds for summary judgment. The quote comes from a December 8, 2006 letter from Defendant Deeb to Plaintiffs referenced herein, where Defendant Deeb suggested that the statute of limitations may have run with respect to certain parties; however, in his deposition, he acknowledged that he was not a litigator and based his opinion on the fact that three years has passed since the closing. (Deeb Dep. p. 208, lns. 3-7.)

Defendants Dunes make much of the fact that McNeil cannot recall whether he received a fax with the elevation certificate attached. Defendants Dunes point to data markings made by a fax machine as proof Plaintiffs received the elevation certificate. Ironically, Defendant Oliver similarly cannot recall receiving a survey, while the face of a letter sent to him and his possession suggests he did. The incongruity of these arguments dictates that one must fail. Even if Plaintiffs received the elevation certificate, it is unreasonable to expect laymen to appreciate the significance of this document, especially since Plaintiffs did not order the document, pay for the document or request the document.

Defendants Dunes also rely heavily upon Dorman v. Campbell, 331 S.C. 179, 500 S.E.2d 786 (1998) for the proposition that Plaintiffs' had notice of their claim. Dorman can be readily distinguished on the basis of the following facts unique to that case: 1) letter to closing attorney from sellers attorney specifically advising of and disclaiming any liability for bedroom constructed without permit below base flood elevation; 2) testimony that Defendants specifically discussed issue with Plaintiffs; 3) survey and elevation certificate prepared *for Plaintiffs* to use in closing; 4) no conflicting elevation certificates; and 5) the ground level improvements constituting the violation were perceivable with the naked eye. Moreover, the court based its finding of notice principally on the letter from sellers' attorney specifically describing and discussing the potential ramifications of the issue. The evidence of notice in this case is significantly more limited.

Plaintiffs filed their original summons and complaint (which was timely served upon all named defendant) on February 18, 2008, and they filed (and timely served) their amended complaint naming additional parties on March 20, 2009. Both pleadings were filed and served within three years of Plaintiffs being informed of the negative elevation, as

well as at least one adverse implication arising out of the issue, in mid April 2006. For the foregoing reasons, Defendants' statute of limitations defense is without merit.

## III. BREACH OF CONTRACT

Plaintiffs' breach of contract action is based on the "Exclusive Buyer Agency Agreement" with Defendant Dunes Marketing Group, dated November 6, 2003. (Am. Compl. ¶ 21; Ex. F.) In the agreement, Dunes promises to "Represent the Buyer throughout the entire transaction ... provide information, facts, advantages, and disadvantages ... [and] assist attorneys, lenders, etc. in the closing of the property." As evidenced by the aforementioned failure to disclose the negative elevation issue with the house despite being in possession of such information, Defendants Dunes principally failed in providing information and assisting in the closing of the property.

## IV. SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

The South Carolina Unfair Trade Practices Act ("SCUTPA") permits recovery by Plaintiffs who suffer loss "as a result of the use or employment by another person of an unfair or deceptive method, act or practice." S.C. Code Ann. 39-5-140(a) (1976). Unfair or deceptive acts or practices must have an impact upon the public interest to be actionable under the SCUTPA; and such acts or practices impact the public interest if they "have the potential for repetition." York v. Conway Ford, Inc., 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997). Defendants Dunes hold themselves out as "better trained" real estate professionals and market their ability to perform certain real estate services, but in this case failed to meet the measure of their own mark. (Baldwin Dep. pp. 90-92.) Defendants Dunes imply that their conduct "only affects parties to the transaction and provides no basis for UTPA claim." Dunes own deposition testimony contradicts such an implication; as Dunes

Director of Sales and Marketing, Bill Baldwin testified that knowledge or understanding of flood elevations is important due to the existence of other houses built below the applicable base flood elevation. (Baldwin Dep. p. 57, ln. 15 – p. 58, ln. 6.) Underscoring that concern, Town Floodplain Administrator, Trudie Johnson testified that the Town possesses a list of 600 properties suspected to have defects impacting flood insurance. (Johnson Dep. p. 53, ln. 19 – p. 54, ln. 14.)

Dunes also note in their Memorandum in Support of Summary Judgment that "alleged acts or practices have the potential for repetition where Defendant remains in the same business and faced with opportunities to repeat the conduct." See York v. Conway Ford, Inc., 325 S.C. 170, 480 S.E.2d 726 (1997). Defendants Dunes are still in the business of representing buyers and sellers in real estate transactions, and given the number of homes in the Town with elevation issues, are faced with at least 600 opportunities to repeat the conduct.

## CONCLUSION

For the reasons set forth above, Defendants motion for summary judgment should be denied.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

ELLIS, LAWHORNE & SIMS, P.A.

BY: _____

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12/16, 2009

# CASE LAW

572 So.2d 996, 16 Fla. L. Weekly 81
(Cite as: 572 So.2d 996)

District Court of Appeal of Florida,
Third District.

Robert REVITZ, Appellant,
v.
Roy A. TERRELL, Jr., Charlyne S. Terrell, A.F. "Jerry" Egan, Inc., and Faye Buchanan, jointly and severally, Appellees.
Nos. 88-3097, 89-293.

Dec. 26, 1990.

Purchaser brought suit against vendors and their real estate broker, alleging fraudulent nondisclosure of facts concerning building code violation, illegal elevation and flood insurance. The Circuit Court for Monroe County, Sandra Taylor, J., rendered judgment for defendants, and purchaser appealed. On motion for clarification, the District Court of Appeal, Ferguson, J., held that circuit court applied improper test of materiality.

Reversed and remanded.

West Headnotes

**[1] Vendor and Purchaser 400 ⇐36(2)**

400 Vendor and Purchaser
400I Requisites and Validity of Contract
400k32 Misrepresentation and Fraud by Vendor
400k36 Quality or Value
400k36(2) k. Quality or Condition. Most Cited Cases

Fact that real estate contract did not address matter of flood insurance did not render building code violations and illegal elevation immaterial; any fact which substantially affected value of property was material and vendor was obligated to disclose it to purchaser.

**[2] Brokers 65 ⇐102**

65 Brokers
65VIII Rights, Powers, and Liabilities as to Third Persons
65k102 k. Misrepresentation or Fraud of Broker. Most Cited Cases

If vendors' real estate agent knew, or reasonably should have known, that $350 per annum flood insurance premium was based on habitable elevation level of at least 11 feet, when home had habitable elevation level of four feet above sea level, then agent had duty to disclose these facts to purchaser.

**[3] Fraud 184 ⇐22(1)**

184 Fraud
184I Deception Constituting Fraud, and Liability Therefor
184k19 Reliance on Representations and Inducement to Act
184k22 Duty to Investigate
184k22(1) k. In General. Most Cited Cases

Even if building code violations and illegal elevation were apparent, purchaser satisfied his duty to exercise reasonable diligence by specifically inquiring why other homes on the street were built on stilts.

*996 Michael Tarre, Beckmeyer and Mulick, Tavernier, Robin Greene, Miami, for appellant.

Grossman & Roth and Paul J. Levine, Miami, for appellees.

Before BARKDULL, NESBITT and FERGUSON, JJ.

ON MOTION FOR CLARIFICATION

FERGUSON, Judge.

Revitz appeals from a final judgment for the defendants on his complaint for rescission of a real

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estate contract and damages. The complaint alleged fraudulent misrepresentations and nondisclosure, or, mutual mistake concerning building code violations and the availability of low-price flood insurance.

Revitz purchased a house in the Florida Keys in 1986. The house was built in 1979. It is undisputed that the original owner, who was also the builder, fraudulently obtained a building permit for the house by stating that the ground floor was to be used for only parking and storage. Local *997 flood zone ordinances required the habitable areas of the home to be at least fifteen feet above sea level. In violation of the building permit, the original owner had constructed a finished bedroom, fireplace, and bathroom on the ground floor which is only four feet above sea level. The original owner also falsified the application for the federal flood insurance program, FEMA, which, as a condition for insurance, required the first habitable level of the house to be at least eleven feet above sea level. The falsified application represented that the elevation level of the first habitable floor was over fourteen feet. Based on that information, flood insurance was issued for a premium rate of $350 per year.

The original owner later sold the house to the Terrells who assumed the existing policy of flood insurance. When they assumed the policy, the Terrells continued the fraud, as the trial court found, by falsely informing the insurance agent that the ground floor was used only for storage and parking. The policy was therefore continued at the existing policy premium rate of $350 per year.

In 1985, the Terrells listed their home for sale with Faye Buchanan and her company, Egan Realty. Buchanan lived only a few houses away from the Terrells and testified at trial that she was familiar with local building ordinances and knew that the property was located in a flood zone. Revitz testified that when Buchanan first showed him the house, he asked her why all the other houses on the street were on stilts, that Buchanan misinformed him, intentionally or negligently, that the house was built prior to the regulations controlling elevation, and that she also told him that the flood insurance premium on the house was approximately $350 per year. Buchanan, allegedly, never advised Revitz that the home was in a special flood hazard area or that the enclosed first floor violated local ordinances. Buchanan disputed most of Revitz's key testimony.

Revitz purchased the property and renewed the existing policy of flood insurance. After he moved in, at the request of the bank which held his mortgage, Revitz obtained a floor elevation certificate. The certificate showed the first habitable living area elevation level as slightly over four feet. When neighbors suggested that the elevation of the house was "improper" for flood insurance purposes, Revitz called his insurance agent and provided him with the true base-floor elevation level. The insurance agent informed Revitz that someone had lied about the elevation in order to obtain flood insurance and that due to the low elevation level of the first-floor enclosure, any flood loss would not be covered under the policy.[FN1] The agent further advised Revitz to inform the insurance carrier about the first-floor enclosure since concealment of the true facts could cause a voidance of the policy.[FN2] Revitz requested a quote for flood insurance based on the true information and was told that the premium would be $36,000 a year. He then brought this action against the Terrells and the real estate broker. The federal flood insurance policy was allowed to lapse.

FN1. Whether a loss would be covered under the existing policy was a fact contested at trial.

FN2. 18 U.S.C. § 1001, governing FEMA, provides in part, that:

> whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies [or] conceals ... a material fact, or makes any false, fictitious or

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> fraudulent statements or representation ... shall be fined not more than $10,000 or imprisoned not more than five years, or both.

At trial, a principal defense raised was that there was no fraud because neither the Terrells nor their agent was obligated to disclose the facts concerning the building code violations, illegal elevation, or flood insurance, because any such representations were not material. After reviewing the exhaustive findings in the final judgment, we reverse on grounds that the trial court misconstrued Florida law regarding fraudulent nondisclosure in the sale of real property.

The leading Florida case on rescission of real estate contracts based on fraud or nondisclosure is *Johnson v. Davis,* 480 So.2d 625 (Fla.1985). The supreme court *998 held in that case that "where the seller of a home knows of facts materially affecting the value of a property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer." *Id.* at 629.

[1] In this case the court found that the building code violations resulting in an illegal elevation and prohibitively expensive flood insurance were not material, as a matter of law, because the contract of sale did not address that subject. That is not the test for materiality in transactions of this nature. *Johnson* provides that any fact which substantially affects the value of the property is material. The undisputed and material facts presented at the nonjury trial are that the house is located in a flood zone, that it was built in violation of local ordinances regarding elevation, and that flood insurance would cost $36,000 per year because living quarters have been constructed on the ground floor. It follows that the house is actually worth less than a house identically constructed outside a flood zone, which could be insured for only $400 per year.

Although the *Johnson* court provided examples of the types of facts that a buyer has a duty to disclose, including leaking roofs, flooding, insect infestations, and cracks in walls and foundations, that list is not exclusive. [FN3] Courts in other jurisdictions have held that nonconformity of the property to local building ordinances and zoning laws is a material fact which must be disclosed. [FN4] It is also significant in this case that the purchaser, according to his testimony, would not have entered into the real estate contract if the true facts were known. *See Hauben v. Harmon,* 605 F.2d 920, 924 (5th Cir.1979) (under Florida law a fact is material if, but for the alleged nondisclosure or misrepresentation, the aggrieved party would not have entered into the contract).

> FN3. For a discussion on the scope of the seller's duty to disclose facts, see Note *Real Property-Seller's Liability for Nondisclosure of Real Property Defects,* 14 Fla.St.U.L.Rev. 359 (1986).

> FN4. *See e.g., Britton v. Parkin,* 176 Mich.App. 395, 438 N.W.2d 919 (1989) (purchasers entitled to rescind real estate contract based on vendor's incorrect representations concerning zoning). *Border v. McClung,* 93 Cal.App.2d 692, 209 P.2d 808 (1949) (kitchen built in violation of local zoning ordinance is material fact entitling buyer to rescission); *Curran v. Heslop,* 115 Cal.App.2d 476, 252 P.2d 378 (1953) (violation of building code is material fact affecting the desirability of property).

[2] The law was settled even before *Johnson* that where there is no duty on the seller to divulge material facts, once a seller makes representations regarding a condition, he is under a duty to disclose the complete truth. *Ramel v. Chasebrook Constr. Co.,* 135 So.2d 876 (Fla. 2d DCA 1961); *see generally* W. Keeton *Prosser and Keeton on the Law of Torts* § 106, at 737 (5th ed.1984). Assuming that the seller's agent knew, or reasonably should have known, that the $350 per annum flood insurance premium was based on a habitable elevation level

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of at least eleven feet, there was a duty to disclose that fact to the buyer.[FN5]

FN5. The rule on fraudulent nondisclosure as stated in *Johnson* applies to real estate brokers. *Rayner v. Wise Realty Co.*, 504 So.2d 1361 (Fla. 1st DCA 1987). *See generally* Annotation, *Brokers Liability for Misrepresentation of Physical Defects*, 46 A.L.R. 4th 546 (1986).

[3] Appellees contend that even if the facts not disclosed were material, they were readily observable to the buyer. We hold, however, that even if the defect was apparent, Revitz's duty to exercise reasonable diligence was satisfied when he specifically inquired why other homes on the street were built on stilts.[FN6] Revitz was entitled to rely on the agent's representations that flood insurance would cost only *999 $400 annually-a representation by implication that the existence of living quarters on the ground floor presented no unusual insurance coverage problem. *Besett v. Basnett*, 389 So.2d 995 (Fla.1980) (recipient may rely on truth of representation, even though its falsity could have been ascertained had he made investigation, unless he knows representations to be false or its falsity is obvious to him).

FN6. The trial court made no finding as to whether the real estate agent had actual knowledge that the flood insurance premium was based on a habitable space elevation level of at least eleven feet. Based on evidence in the record, there is a material fact issue as to whether she knew, or should have known, that the $350 premium was out of line: (1) the agent was very familiar with local flood zone ordinances, (2) she lived only a few houses from the Revitz house, and (3) the Revitz house was the only one on the street not built on stilts. Our reversal, however, is based on the trial court's misinterpretation of Florida law.

The trial court applied an incorrect test in concluding that certain facts were immaterial in that they were not addressed in the real estate contract. For that reason, the judgment must be reversed.[FN7]

FN7. It is unnecessary to decide whether the trial court erred in requiring the plaintiff to elect-prior to trial-between the remedies of rescission and damages as it appears from the record that the issue was not preserved for review. *See Barbe v. Villeneuve*, 505 So.2d 1331, 1333 (Fla.1987).

Reversed and remanded for further consistent proceedings.

Fla.App. 3 Dist.,1990.
Revitz v. Terrell
572 So.2d 996, 16 Fla. L. Weekly 81

END OF DOCUMENT

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT
OF COMMON PLEAS
FOR THE
FOURTEENTH JUDICIAL
CIRCUIT

Gregory M. Gottschlich
and Donald L. McNeil,

Plaintiffs,

-vs-

CIVIL ACTION NO.
2008-CP-07-00517

Strimpfel Custom Homes,
Inc.; Joseph A. Reeve;
Jerry L. Richardson;
Coastal Surveying Co. Inc.;
Thomas N. Dye; Jan H. Dye;
Ken Oliver; and The Byrne
Corporation d/b/a Dunes
Marketing Group, Laurich &
Deeb, P.A.; Robert M. Deeb,
Jr. and Charles H. Wiseman.

Defendants.

VOLUME I

- - -

TELEPHONIC DEPOSITION OF GREGORY M. GOTTSCHLICH, M.D., taken by me, Susan L. Bickert, a Certified Shorthand Reporter and Notary Public in and for the State of Ohio, at large, as upon Cross Examination, at the offices of Allergy and Asthma Affiliates, Inc., 4260 Glendale-Milford Road, Suite 201, Cincinnati, Ohio 45242, on Monday, July 27, 2009, commencing at 9:03 o'clock a.m. on behalf of Defendants Ken Oliver and The Byrne Corporation, d/b/a Dunes Marketing Group.

- - -

Fargo would not allow you to have any rental pool or rental agreement regarding this house?

A No, because we discussed that with Matt Topping, who was the agent for Wells Fargo, and we also discussed it with Greg Merrill, who was our agent from Dunes Marketing, and that was the intent. It wasn't hidden. So --

Q And you said the person with whom you discussed it with Wells Fargo, what was the name again?

A Matt Topping.

Q And how do you spell that last name?

A I believe it's T-O-P-P-I-N-G.

Q I'm sorry. There's noise in the background. I didn't hear. Go ahead again, please.

A I believe it is T-O-P-P-I-N-G.

I can't be certain we discussed it with him, but I would think that we probably did. We definitely discussed it at length with Dunes Marketing via Greg Merrill because we generated a pro forma based on expenses and rental income projected and so forth, and it was also customary --

Q You'll agree with me that somebody with Dunes Marketing can't control the requirements, if you will, of Wells Fargo; correct?

Q Yes, sir. At or near the time of closing, yes, sir.

A At or near the time of the closing we expected there would be insurance. I had a pro forma that I generated based on the insurances that the Dyes had previously paid. We through the recommendation of Greg Merrill from Dunes Marketing solicited, requested bids for insurance from Seacoast to maintain the limits that the Dyes had. As to -- and we relied upon the amount of insurance that we were continuing to be adequate to meet the requirements of the lender. But I didn't specifically read this at the time. I relied upon Laurich and Deeb and Bob Deeb to assure -- make assurances that -- or determine that what we were obtaining met the requirements.

Q And do you know whether or not Mr. and Mrs. Dye who sold you the home whether or not they had had the house and property insured with the same people?

MS. GRAHAM: Objection.

THE WITNESS: I believe they did. I believe that's how we came to call Seacoast in the first place. We inherited, so to speak, the other vendors they had used for landscaping services and

Q And as far as the amount financed, has that changed from what's listed on there?

A Well, that's with -- this was a pro forma. It wasn't an actual. This was before wE finalized things. I generated this, had another friend that was interested -- a couple other people were interested in going in with us on it initially, and it didn't eventuate into that. So this was just, as it says, a Pro Forma, and it doesn't reflect the actual exact loan amounts and so forth.

Q I understand. And the people who thought about going in with you, why did they not go in?

A One person had two dogs they wanted to take down there, and I'm allergic to dogs so that wouldn't work. And I can't remember why another person.

Q And what was the reason that you did this Pro Forma?

A It was a -- it was and is a large expenditure. And for something of this magnitude financially I and Dr. McNeil also, I think, I can state want to make wise use of our dollars and do appropriate diligence and looking at every aspect of what we're investing in.

have flood insurance, which I did discuss with Mr. Merrill, and what was it in general, very general terms. Beyond that, I didn't understand the nuances or details of FEMA requirements and benchmarks and elevation certificates and finished floor levels and et cetera. So I don't recall seeing this, but it's possible we received it but didn't have any explanation from anybody as to what it really entailed or what it implied.

Q How did you know how much premium to pay to obtain the required flood insurance required by your lender?

A Well, as I said I believe in the Pro Forma that I had, we obtained information from Mr. Merrill on what the Dyes were paying for flood insurance. So when we received a quote for the flood insurance at the closing, it was in line with what they had been paying, I believe, and it didn't raise a red flag to me. It was a component cost of doing --

Q Did you receive the quote from Seacoast Insurance, Inc.?

A I don't recall specifically, but I would -- I don't recall. I'm not sure where it came from, but I assume it would have come from Seacoast.

starts with Ext. Maint. Could you just tell me what those are?

A Are you in the left-hand column? I'm having a hard time --

Q It's about halfway down the page.

A Okay.

Q And then it's kind of by itself in the middle of the page. There's three columns, and it starts with it says Ext. Maint, 3,900 and then 325.

A Oh, okay. The bottom third of the page. I guess that's probably exterior maintenance. Or I'm not certain.

Q What was the purpose of this spread sheet consisting of it starts with Ext. Maint and goes all the way through to Total?

A The purpose was to have an estimate of what the true cost would be to maintain the home.

Q Who provided you these estimates?

A I believe Mr. Merrill probably provided those to us 'cause I didn't contact the Dyes directly.

Q Did he explain to you how he came up with these estimates?

A My recollection is that he got them

# DEPOSITION EXCERPTS/EXHIBITS

# KENNETH OLIVER DEPOSITION EXCERPTS/EXHIBITS

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

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE, JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

----------/

The deposition of KENNETH OLIVER, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Ceil Weser, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting & Video, Inc., 1 Corpus Christie Place, 107 Executive Center, Hilton Head, South Carolina, on the 19th day of October, 2009, commencing at or about the hour of 4:19 p.m.

HUDSON - OLIVER (DIRECT EXAMINATION)

applicable base flood elevation?

MS. WALL: Object to the form.

THE WITNESS: Yes.

BY MR. HUDSON:

Q Sitting here today do you know what the actual elevation level of the first finish floor is at 48 Sea Lane?

A No.

Q During your tenure with Dunes Marketing Group have you ever been involved in any transactions in which elevation has been an issue to any degree?

A No.

Q The same question with regard to the availability or unavailability of flood insurance?

A During what period?

Q During your tenure with Dunes Marketing have you ever been involved in a transaction where flood insurance or the lack of flood insurance was an issue?

A No.

Q Have you received any training, whether continuing education, special presentations,

HUDSON - OLIVER (DIRECT EXAMINATION)

what have you, with regard to elevation levels in residential construction?

A Meetings at our office; so I would say yes.

Q How many?

A Three or four.

Q When did they occur?

A Probably in the last five years or sooner.

Yeah, that I remember.

Q What was discussed at any of those meetings?

A Well, mostly the insurance and the insurance company coming and talking to us about flood insurance, insurance for homes, condominiums, contents insurance, liability insurance, maybe updates on any -- if they had updates that they think would be pertinent.

Q How would you incorporate the information provided to you into your daily practices as a real estate agent? Why did you need to know any of this?

A Well, when people are purchasing property they could have questions about

HUDSON - OLIVER (DIRECT EXAMINATION)

insurance, so just to have a general knowledge of insurance and requirements.

Q And at no point in time during any of these meetings was it ever stated that if a house is below the base flood elevation level flood insurance premiums may be affected?

A I don't recall. I wouldn't recall that.

Q Have you ever been informed during any of these meetings if a house was below the applicable base flood elevation level it would constitute a code violation within the Hilton Head town limits?

A Probably.

Q Who would have indicated or provided that information to you?

A Probably the agent that was there.

Q What agent? The insurance agent?

A Right.

Q Do you specifically remember getting that information from an insurance agent?

A No.

Q Who were some of the insurance agents who had given these type talks?

HUDSON - OLIVER (DIRECT EXAMINATION)

filed against State Farm dealing with flood insurance down here a while back.

Were you part of that by chance?

A No.

Q Does that ring a bell to you at all?

A No.

Q When did you first meet Thomas or Janice Dye?

A I can't recall. A long time ago.

Q Can you give me an approximate year?

A Eighties, late eighties. I don't know. I would have to look back in the file.

Q When did you first start working with the Dye's?

A When I first met them I think they walked into our office, so whenever that first contact was. I don't really recall.

Q Would it have been before they bought 48 Sea Lane from the Muldong's in 2001?

A Yes.

Q How many houses have you helped the Dye's purchase in Hilton Head?

A One.

Q And that being 48 Sea Lane?

HUDSON - OLIVER (DIRECT EXAMINATION)

A Correct.

Q To your knowledge have the Dye's ever owned a property at Mooring Buoy, 180 something?

A Yes.

Q Did you assist them in their purchase of that property?

A No.

Q Do you know who did?

A I think it was Schembra Real Estate.

Q And do you know why they ended up using Schembra after having I assumed worked with you for some period of time?

A Good question.

Q It sticks out in your mind.

Do you know how long the Dye's owned their house at Mooring Buoy before they decided to buy the house at 48 Sea Lane?

A No, I don't.

(Whereupon, Plaintiff's Exhibit Number 2 was marked for identification.)

Q Mr. Oliver, I am showing you what we have marked as Exhibit 2.

Look at that real quick and let me know

HUDSON - OLIVER (DIRECT EXAMINATION)

Q And this agreement would have been effective in November and December of 2003, is that correct?

A Correct.

Q Are you still operating under this agreement, or has there been a subsequent --

A I don't know if there is a new agreement or not.

(Whereupon, Plaintiff's Exhibit Number 6 was marked for identification.)

BY MR. HUDSON:

Q Look at Exhibit 6, please.

Have you looked at it?

A Yes.

Q Do you recognize the document?

A Yes, I do.

Q It appears to be what?

A A seller's disclosure for 48 Sea Lane.

Q To your knowledge is this the seller's disclosure that would have been filled out by the Dye's for 48 Sea Lane?

A Correct.

Q Did you fill this document out for the

HUDSON - OLIVER (DIRECT EXAMINATION)

Dye's?

A No.

Q Did you have any discussions with the Dye's around the time when one or both of them were filling it out?

A I don't recall.

Q Do you recall either of the Dye's having any questions about how they ought to answer certain questions in this disclosure form?

A No.

Q When was this document provided to the Dye's for the first time?

A I would assume when they got their listing agreement when they were listing the property.

Q And at some point in time after the document was filled out, did the Dye's provide you with the copy that they had filled out?

A This copy? Is that what your -- that I got this copy from them or --

Q Not necessarily this copy, but just a copy of the seller's disclosure form after the Dye's had filled it out?

HUDSON - OLIVER (DIRECT EXAMINATION)

A Yes.

Q When would you have received that document?

A I think the same time that the listing agreement would be coming back.

Q If you look on the third page of this form in the owner's acknowledgment section, there is a date of 3/4/03, do you see that?

A Yes.

Q So based on that date can we assume that you would have received the document on or soon after March 4, 2003?

A Yes.

Q Did you review the document upon receipt from the Dye's?

A Yes.

Q Any concerns or questions upon reviewing the document?

A No.

Q Item 22 on the second page has a question mark out to the right-hand side of it, do you see that?

A Yes.

Q Do you know whose handwriting that is?

HUDSON - OLIVER (DIRECT EXAMINATION)

A No, I don't.

Q Do you recall if item 22 was an issue that was discussed between the Dye's and you at any point in time?

A I don't recall.

Q Do you know why that question mark is present where it is?

A Possibly they didn't understand what it was in the beginning. I don't know.

Q When the Dye's returned this document to you after completing it was it done under a cover letter?

A I don't recall.

Q At some point in time did you provide this document to Greg Merrill?

A Yes.

Q When would that have been?

A Prior to the purchasers writing a contract.

Q After you provided it to Mr. Merrill did you receive any follow-up from him with regard to any questions or concerns about the disclosure?

A Not that I recall.

HUDSON - OLIVER (DIRECT EXAMINATION)

Q Would you agree with me that a finish floor elevation level below 14 feet is material in this case?

MS. WALL: Object to the form.

MR. MAHAFFEE: Objection.

THE WITNESS: Material?

MS. WALL: Object to the form.

THE WITNESS: That it is material in? What do you mean?

BY MR. HUDSON:

Q That it is material, your definition?

MR. MAHAFFEE: Objection.

THE WITNESS: Material? If it has any relevance?

BY MR. HUDSON:

Q If that is how you choose to define it, that is fine.

MS. WALL: Object to the form.

MR. MAHAFFEE: Yes, objection.

THE WITNESS: Help me out a little bit again on what your actual question is.

BY MR. HUDSON:

Q If 48 Sea Lane in fact has a finish

HUDSON - OLIVER (DIRECT EXAMINATION)

floor elevation of 13.3 feet as of November 16, 2003, in your opinion based on your experience in the real estate industry, would that bit of information be material to this transaction?

A Yes.

MR. MAHAFFEE: Objection.

BY MR. HUDSON:

Q Why?

MR. MAHAFFEE: Objection.

THE WITNESS: Because it was done in '01. If the first finished floor is supposed to be at 14 feet, and if it is at 13.3 it would be below the code.

BY MR. HUDSON:

Q It is too low, right?

A According to this.

Q Right.

Now in or about or on or about November 16 of 2003 had you been provided a copy of this survey, reviewed it, and seen this finish floor elevation information on it, would you have appreciated the significance of it?

MR. MAHAFFEE: Objection.

THE WITNESS: I still look over

HUDSON - OLIVER (DIRECT EXAMINATION)

Q That would make it awfully confusing, wouldn't it?

MS. WALL: Object to the form.

THE WITNESS: I don't know how to answer -- how you want me to answer that.

BY MR. HUDSON:

Q If you had been aware of the fact that the dwelling was less than 14 feet or the first finished floor of the dwelling was less than 14 feet prior to the closing, would you have disclosed that knowledge?

A Yes.

Q To whom?

A To the attorneys.

Q Which ones?

A Representing my client.

Q Would you have told your clients directly?

A Yes.

Q Would you have told Greg Merrill?

A Yes.

Q Do you know if Greg Merrill received a copy of this survey in November of 2003?

WALL - OLIVER (CROSS-EXAMINATION)

along with this, since this document Exhibit 6 is only three pages?

A The listing agreement.

Q All right.

A I would think.

Q Anything else that you can think of?

A No.

Q Let me hand you what we are going to mark as next in order.

(Whereupon, Plaintiff's Exhibit Number 8 was marked for identification.)

BY MS. WALL:

Q I am going to hand you what we will mark as Exhibit 8, which is a two-page document and ask you if that is a copy of the listing agreement?

A It is.

Q Does that have more pages than what I have handed to you? Are we missing anything, because if not that is two pages; the Dye's disclosure statement is three pages. That gets us up to five pages, and we are looking for 12.

A I can't remember if we had a two-page

WALL - OLIVER (CROSS-EXAMINATION)

listing. Now it is a lot longer. If I am looking -- and these aren't numbered pages I would say these are the two pages of the listing agreement then.

Q Did you fill out that listing agreement that we have marked as Exhibit Number 8?

A Yes, I did.

Q So that is in your handwriting?

A Correct.

Q And where did you get the information to put in there?

A Tax records.

Q Any information directly from the Dye's?

A Not that I am aware of. I am thinking on here that maybe there could be one other page that would have -- that lists like appliances, if it has a two-car garage. I don't see that on here.

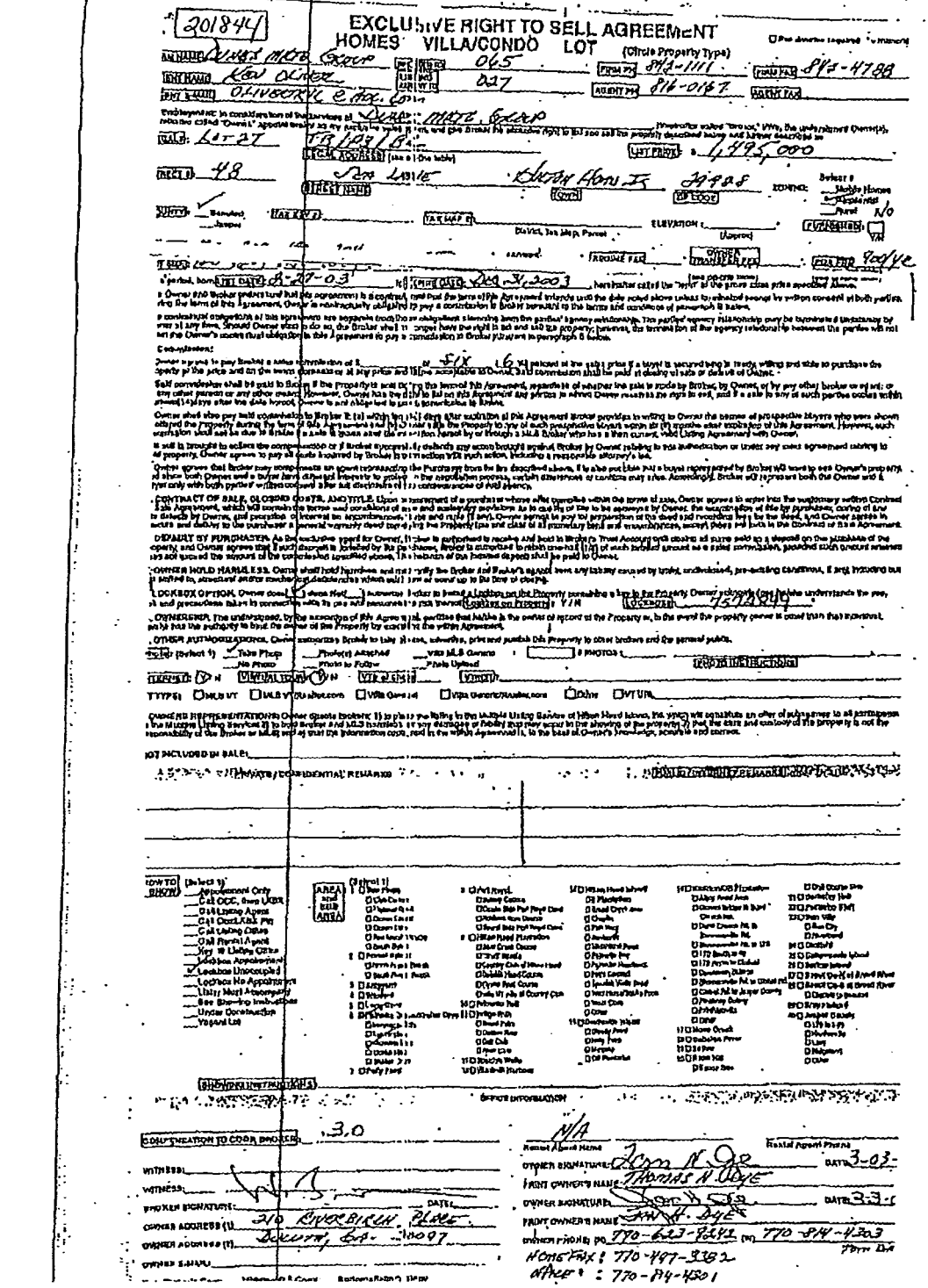
Q I am going to hand you what we will mark as Exhibit 9 and ask you what that is.

(Whereupon, Plaintiff's Exhibit Number 9 was marked for identification.)

201844

# EXCLUSIVE RIGHT TO SELL AGREEMENT

HOMES VILLA/CONDO LOT (Circle Property Type)



PLAINTIFF'S EXHIBIT 8

a period, from [EFF DATE] 3-27-03 to [EXP DATE] Aug 27, 2003, hereinafter called the "term" of this agreement unless terminated sooner by written consent of both parties.

Owner and Broker understand that this agreement is a contract and the term of this Agreement extends until the date noted above unless terminated sooner by written consent of both parties. During the term of this Agreement, Owner is contractually obligated to pay commission to Broker pursuant to the terms and conditions of paragraph 8 below.

Contractual obligations of this agreement are separate from those [illegible] arising from the parties' agency relationship. The parties' agency relationship may be terminated unilaterally by either at any time. Should Owner elect to do so, the Broker shall no longer have the right to list and sell the property; however, the termination of the agency relationship between the parties will not end the Owner's contractual obligation in this Agreement to pay the commission to Broker pursuant to paragraph 8 below.

Consideration:

Owner agrees to pay Broker a sales commissions of $ [illegible] or 5 1/2 % (6 %) percent of the sales price if a buyer is secured who is ready, willing and able to purchase the property at the price and on the terms contained or at any price and terms acceptable to Owner, said commission shall be paid at closing of sale or default of Owner.

Said commission shall be paid to Broker if the Property is sold during the term of this Agreement, regardless of whether the sale is made by Broker, by Owner, or by any other broker or agent, or any other person or any other means. However, Owner has the right to list and sell this Agreement any period to which Owner reserves the right to list, and if a sale to any of such parties occurs within [illegible] days after the date hereof, Owner is not obligated to pay commission to Broker.

Owner shall not pay said commission to Broker if: (a) within ten (10) days after execution of this Agreement Broker provides in writing to Owner the names of prospective buyers who have shown or offered the Property during the period this Agreement is in effect and to whom sale the Property to any of such prospective buyers within the [illegible] termination of this Agreement. However, such commission shall not be due to Broker if a sale is made after the termination hereof by or through a MLS Broker who has a then current, valid Listing Agreement with Owner.

It shall be brought to collect the compensation or if Broker succeeds in defending any action brought against Broker by Owner relating to this authorization or unless any sales agreement relating to said property, Owner agrees to pay all costs incurred by Broker in connection with such action, including a reasonable attorney's fee.

Owner agrees that Broker may compensate an agent representing the Purchaser from the fee described above. It is also possible that a buyer represented by Broker will want to see Owner's property without first both Owner and a buyer have otherwise consented in writing. In the negotiation process, certain dual interests or conflicts may arise. Accordingly, Broker will represent both the Owner and the buyer only with both parties' written consent after full disclosure of all circumstances of any interest.

CONTRACT OF SALE, CLOSING COSTS, AND TITLE. Upon acceptance of a purchaser whose offer complies within the terms of sale, Owner agrees to enter into the customary written Contract of Sale Agreement, which will contain the terms and conditions of sale and customary provisions as to clarity of title to be conveyed by Owner, the examination of title by purchaser, survey of the property to be checked by Owner, and provision of interest on encumbrances, if any, and costs, if any. Owner agrees to pay all expenses of the deed and recording fees for the deed, and Owner agrees to execute and deliver to the purchaser a general warranty deed conveying the property free and clear of all monetary liens and encumbrances, except those permitted by the Contract of Sale Agreement.

DEFAULT BY PURCHASER. As the exclusive agent for Owner, Broker is authorized to receive and hold in Broker's trust account and disburse all sums paid as a deposit on the purchase of the property, and Owner agrees that if such deposit is forfeited by the purchaser, Broker is authorized to retain one-half (1/2) of such forfeited amount as a sales commission, provided such amount retained does not exceed the amount of the commission specified above. The balance of the forfeited deposit shall be paid to Owner.

OWNER HOLD HARMLESS. Owner shall hold harmless and indemnify the Broker and Broker's agents from any liability caused by latent, undisclosed, pre-existing conditions, if any, including but not limited to, structural and/or environmental problems which exist or occur up to the time of closing.

LOCKBOX OPTION. Owner does [X] does not [ ] authorize Broker to install a lockbox on the Property containing a key to the Property. Owner acknowledges that Owner understands the risks and precautions taken in connection with the use and placement of this lockbox. Lockbox on Property: [illegible] VIN [illegible] Lockbox #: 7512249

OWNERSHIP. The undersigned, by the execution of this Agreement, certifies that he/she is the owner of record of the Property or, in the event the property owner is other than individual, he/she has the authority to bind the owner of the Property by execution of the within Agreement.

OTHER AUTHORIZATIONS. Owner authorizes Broker to take photos, advertise, print and publish this Property to place brokers and the general public.

PHOTO: (Select 1) [X] Take Photo [ ] Photo(s) Accepted [ ] VRS MLS Source [ ] PHOTOS: [illegible] PHOTO INSTRUCTIONS:
[ ] No Photo [ ] Photo to Follow [ ] Photo Upload

INTERNET: [X] Y [ ] N VIRTUAL TOUR: [X] Y [ ] N VT Type: [illegible] VT URL: [illegible]

TYPES: [ ] MLS VT [ ] MLS VT Quicktime [ ] VRS Gen 2.0 [ ] VRS Generic/Realview.com [ ] Other [ ] VT UPL [illegible]

OWNER'S REPRESENTATIONS: Owner directs Broker: 1) to enter the listing in the Multiple Listing Service of Metro Rural Estates, Inc. which will constitute an offer of subagency to all participants in the Multiple Listing Service; 2) to hold Broker and MLS harmless from any damages or liability that may occur in the showing of the property; 3) that Owner is the sole and exclusive owner of the property or has the responsibility of the Broker or MLS; and 4) that the information contained in the within Agreement is, to the best of Owner's knowledge, accurate and correct.

NOT INCLUDED IN SALE: [illegible]

PRIVATE / CONFIDENTIAL REMARKS [illegible]

SHOW TO: (Select 1)
[ ] Appointment Only
[ ] Call OCC, then LMK
[ ] Call Listing Agent
[ ] Call Docu/Lock Pd
[ ] Call Listing Office
[ ] Call Rental Agent
[ ] Key in Lock-a-Door
[ ] Lockbox Appointment
[X] Lockbox Unoccupied
[ ] Lockbox No Appointment
[ ] Listor Must Accompany
[ ] Sign Showing Instructions
[ ] Under Owner Instruct
[ ] Vacant Lot

AREA and SUB AREA: (Select 1)
1 [ ] Blue Ridge
[ ] Blue Ridge
[ ] Ellijay
[ ] Morganton
[ ] Ocoee Area
[ ] Ocoee Rec
[ ] Ocoee Rec
2 [ ] Parker Area
[ ] Ocoee Area
[ ] Royal Area
3 [ ] Hyatt
4 [ ] Hudson
5 [ ] Lake Area
6 [ ] Mountain Area
[ ] Hiawassee
[ ] Young Harris
[ ] Blue Ridge
[ ] Blue Ridge
[ ] Blue Ridge
7 [ ] Other Area
8 [ ] Rural Rental
[ ] Rental County
[ ] Condo, Bldg Per Story Data
[ ] Residence Area Unique
[ ] Board Bldg Per Story Data
9 [ ] Multi Family Marketplace
[ ] Multi Family Comps
[ ] Small Multi
[ ] Property Data of Above Multi
[ ] Multi Family Comps
[ ] Owner Area Comps
[ ] Condo, Lot Sales of Property Data
10 [ ] Property Data
[ ] Retail Data
[ ] Office Area
[ ] Golf Club
[ ] Golf Data
11 [ ] Industrial Data
[ ] Industrial Data
12 [ ] Rental Business
13 [ ] Other Rental Information
OR Information
[ ] Retail Comp Area
[ ] Comps
[ ] Comps
[ ] Comps
[ ] Comps
14 [ ] Business Broker
[ ] Business Area
[ ] Business
[ ] Business
15 [ ] Multi-Use/OR Information
[ ] Alpha Retail Area
[ ] Income Analysis for Survey
Comps Data
[ ] Retail Comps Area for Property
[ ] Comps Area for Property
[ ] Retail Comps Area for Property
[ ] Comps Area for Property
[ ] Comps Area for Property
[ ] Comps Area for Property
[ ] Comps Area for Property
[ ] Comps Area for Property
16 [ ] Mixed Use
17 [ ] Outdoor Area
18 [ ] Business
19 [ ] Business
[ ] Comps Area
20 [ ] Other Area
[ ] Other
21 [ ] Secondary Area
22 [ ] Residential Area
23 [ ] Area City
[ ] Area City
[ ] Unincorporated
24 [ ] Chatsworth
25 [ ] Copperhill Area
26 [ ] Ranger Area
27 [ ] Rural Ga-tn at Brasstown Area
28 [ ] Rural Ga-tn at Brasstown Area
[ ] Outside Georgia
29 [ ] Ranger Area
30 [ ] Jasper Region
[ ] 120 to 140
[ ] Murphy
[ ] Lucy
[ ] Ridgeland
[ ] Other

SHOWING INSTRUCTIONS: [illegible]

OFFICE INFORMATION: [illegible]

COMPENSATION TO COOP. BROKER: 3.0

WITNESS: [illegible]
WITNESS: [illegible]
BROKER SIGNATURE: [illegible] DATE: [illegible]
OWNER ADDRESS (1): 210 RIVERBIRCH PLACE
OWNER ADDRESS (2): BLUE RIDGE, GA. 30097
OWNER E-MAIL: [illegible]

N/A
Assistant's Name [illegible] Phone [illegible]
OWNER SIGNATURE: Thomas N Doye DATE: 3-03-03
PRINT OWNER'S NAME: THOMAS N DOYE
OWNER SIGNATURE: Thomas N Doye DATE: 3-3-03
PRINT OWNER'S NAME: THOMAS N. DOYE
OWNER PHONE (H): 770-633-5412 (W): 770-894-4283
HOME Fax: 770-497-3392
Other: 770-894-4301

Top—Broker's Copy Middle—MLS Copy Bottom—Seller's Copy Form D-003

# THOMAS N. DYE DEPOSITION EXCERPTS/EXHIBITS

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

GREGORY M. GOTTSCHLICH and DONALD L. MCNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP, LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR. and CHARLES H. WISEMAN,

Defendants.
----------/

The deposition of THOMAS N. DYE, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Theresa Saxon, Certified Court Reporter and Notary Public, at the Law Offices of Tupper, Grimsley & Dean, P.A., 611 Bay Street, Beaufort, South Carolina, on the 5th day of November 2009, commencing at or about the hour of 10:35 a.m.

HUDSON - DYE (DIRECT EXAMINATION)

BY MR. HUDSON:

Q Did you have an understanding in 2001 as to why an Elevation Certificate was needed?

A No. It was apparently required by someone that was dealing with us, insurance or mortgage or someone.

Q Did you ask anyone why it was required?

A I don't recall asking anybody about it, no.

Q What did you do with this document when you received it?

MR. MAHAFFEE: Objection.

MS. GRAHAM: Objection.

THE WITNESS: If I received it directly, I probably gave it to the proper person, which would probably be the attorney or whoever is handling putting the documents together, whoever required the document.

BY MR. HUDSON:

Q Did you review it?

A I wouldn't say I reviewed it. I probably looked at it.

Q Did you pay attention to any of the

HUDSON - DYE (DIRECT EXAMINATION)

elevation information contained on the document when you did look at it?

MS. GRAHAM: Objection.

MR. MAHAFFEE: Objection.

THE WITNESS: I probably saw the elevation that was on there, yes.

BY MR. HUDSON:

Q Did you understand what the information meant?

A No. I mean, it just meant that that's what the elevation was. That's all I understood.

Q Were you curious as to the significance of any of the information contained on the Elevation Certificate?

MS. GRAHAM: No.

BY MR. HUDSON:

Q Why not?

MS. GRAHAM: Objection.

THE WITNESS: I mean, I couldn't think of a reason to be concerned about it. I mean, you know, when you go into something like this, you're depending on your agent, your attorneys and all

HUDSON - DYE (DIRECT EXAMINATION)

knowledge about elevations.

BY MR. HUDSON:

Q But do you have some knowledge about elevations?

MS. GRAHAM: Objection.

THE WITNESS: I mean, if somebody tells me -- the only knowledge I have, if I look at the document and it says the elevation of the house is 13-3, that means it's 13-3. That's my knowledge.

BY MR. HUDSON:

Q At what point in time did you first appreciate the fact that the lowest finished floor elevation of 48 Sea Lane was determined to be 13.3 feet?

MS. GRAHAM: Objection.

THE WITNESS: It may have been when I received this document. I mean, I don't know if the very first time, but I'm assuming that I may have looked at this document and became knowledgeable of it at that time, at the time it was performed.

HUDSON - DYE (DIRECT EXAMINATION)

Johns Creek?

A Correct.

Q And she states that it appears as though it is about to short sell for $600,000; is that correct?

A That's correct. There's an offer on it for that.

Q That offer is currently pending?

A Yes.

Q It has not yet been accepted; is that correct?

A Correct.

Q How long is that offer open for?

A I don't know if there is a timetable.

Q Have you had discussions with your daughter about this lawsuit?

MS. GRAHAM: Objection.

THE WITNESS: I'm sure at some times we've said some things about it. We don't discuss it in -- I don't discuss it in detail with her.

BY MR. HUDSON:

Q And it's your testimony that you simply didn't know that the house at 48 Sea Lane had a

HUDSON - DYE (DIRECT EXAMINATION)

negative elevation; is that correct?

MS. GRAHAM: Objection.

MS. WALL: Objection.

THE WITNESS: I may have known after I saw the certificate that it had a negative -- what you call a negative elevation.

BY MR. HUDSON:

Q After you first saw the Sea Island Elevation Certificate?

A It's possible that I would have known it, yes.

Q If you did know it at that point in time, why did you not see fit to inform my clients of that fact?

MS. GRAHAM: Objection.

THE WITNESS: I didn't feel like it was an issue. It had never been an issue with me, and apparently it wasn't an issue with the clients that had it before. I just didn't think it was important for them to know. We furnished all the documents everybody wanted, and I just didn't see that as a

WALL - DYE (CROSS-EXAMINATION)

huge issue.

MR. HUDSON: All right. I think that's all the questions I've got.

Thank you, sir.

CROSS-EXAMINATION

BY MS. WALL:

Q Mr. Dye, my name is Susan Wall. I represent some of the other Defendants in this lawsuit, specifically Mr. Deeb, Mr. Wiseman, and Laurich & Deeb. I just have a few questions before for you to follow up.

I believe you were asked and you simply didn't recall with regard to how or why a survey was obtained at the time that you purchased the home in 2001; is that correct?

MR. HUDSON: Objection.

THE WITNESS: That's correct.

(Whereupon, Plaintiffs' Exhibit Number 12 was marked for identification.)

BY MS. WALL:

Q Let me hand you what we've marked as Exhibit 12. Does this refresh your recollection at all that in order to purchase the home, your

# 30(b)(6) THE BYRNE CORPORATIN D/B/A DUNES MARKETING GROUP – WILLIAM BALDWIN DEPOSITION EXCERPTS/EXHIBITS

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

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE, JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

----------/

COPY

The 30(b)(6) deposition for THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP of WILLIAM BALDWIN, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Ceil Weser, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting & Video, Inc., 1 Corpus Christie Place, 107 Executive Center, Hilton Head, South Carolina, on the 19th day of October, 2009, commencing at or about the hour of 10:12 a.m.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SOUTH CAROLINA 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - FAX 843-785-5837

HUDSON - BALDWIN (DIRECT EXAMINATION)

A Yes.

Q And in 1985 do you have an understanding of what the applicable base flood elevation was?

A Well, in general it is all of Hilton Head is in a flood plain; and so it is 14 feet everywhere except for what they call surge zones or something like that, and that is basically the oceanfront and it is higher than 14 feet there. It is 17 feet there, storm surge.

Q How long has the applicable base flood elevation been 14 feet within the town of Hilton Head Island?

A Since the day it was incorporated in 1985.

Q And you base that knowledge on what?

A Basically just reading.

Q Reading what?

A Well, the town produces flyers, brochures, information, about floods and hazards. And as a real estate broker I am expected to have some knowledge about this subject, so I have read about it.

And actually it was in place since

HUDSON - BALDWIN (DIRECT EXAMINATION)

1977. It is just that the Beaufort County was responsible until Hilton Head became a town.

Q When you say as a real estate broker I am expected to have some knowledge of this subject, "this subject" you are referring to is what?

A Floods, flood elevations.

Q Flood insurance?

A Well, insurance is another specialty and I am not -- I mean I have a general knowledge of insurance and how it works, but we really refer people to insurance companies for specifics.

Q Why do you as a real estate broker need to have any knowledge or understanding of flood elevations?

A Well, you know, there is a possibility that somewhere out there there could be a house that is not built to code. But that is not true in Palmetto Dunes.

But in some of the older areas of Hilton Head Island that were built back in the '60s; in North and South Forest Beach, for example, there are a lot of these little cinder

HUDSON - BALDWIN (DIRECT EXAMINATION)

block houses that are built on the ground. Generally when people buy them they destroy them and build a new house on top of them anyway, but there is no telling what the elevation might be on those properties unless you have it surveyed.

Q You testified that there is a possibility that somewhere out there a house may not be built to code, correct?

A Yes, I also stipulated not in Palmetto Dunes.

Q That is right, you said not in Palmetto Dunes?

A Right.

Q Upon what do you base that statement? How do you know that there are no houses that are not built to code in Palmetto Dunes?

A Construction really started in 1979; so the law was already in place in 1977.

If there is any houses in there I am not aware of them.

Q And when you say built to code, are you talking about that each and every house to your knowledge in Palmetto Dunes is completely code compliant; or are you referring to code in the

HUDSON - BALDWIN (DIRECT EXAMINATION)

which agents from Dunes Marketing Group have represented either the buyer or the seller?

A Yes.

Q How many?

A Lots.

Q For how long?

A 30 years.

Q How do you know Cary Griffin?

A He is our corporate attorney. He is the secretary for The Byrne Corporation. He has been a closing attorney for us for 30 years.

Q Do you know Mr. Griffin socially?

A We live in the same neighborhood. Occasionally we go to a party where we might be there. I mean we are not friends, great close friends. It is a business relationship, but I know him better than probably any of the others, because I interface with him more often.

Q Is Mr. Griffin or his current firm the McNair Law Firm providing legal representation to the Dunes Marketing Group or Mr. Oliver in any regard in this particular litigation?

MR. MAHAFFEE: Objection.

THE WITNESS: No.

HUDSON - BALDWIN (DIRECT EXAMINATION)

not give advice?

A Well, it is pretty difficult to represent two people at the same time and give advice to them. How do you do that and protect each one's interests? So you just don't give any advice at all, and it is disclosed dual agency, by the way; so the buyer and the seller are required to read what their rights are, and then make an election to either allow it or not, which of course was done in this case.

Q What requires the buyer and the seller to read what their rights are?

A It is a state form.

Q The form requires that they read it?

A Yes, the state requires that they read it, yes; and that they choose and they have to sign that they have chosen and they understand what they have just signed.

Q Does an agent have a duty to advise his or her clients that they need to read the dual agency disclosure form before signing it?

A Sure.

We would ask you to read anything before you signed it, right?

HUDSON - BALDWIN (DIRECT EXAMINATION)

Q Is that a question to me?

A Yeah.

Yes, the answer is yes. Yes, we would ask them to read it.

Q Do you know if Mr. Merrill did so in this case with my clients?

MR. MAHAFFEE: Objection.

THE WITNESS: I really don't know. He was trained to.

BY MR. HUDSON:

Q But again, you haven't spoken with him at all about this transaction?

A He is dead.

Q That is right?

A So --

Q But prior to his dying you did not speak with him about this transaction, is that correct?

A Right.

MR. MAHAFFEE: Objection.

BY MR. HUDSON:

Q So it is fair to say that you don't know what he did or did not tell my clients with regard to that dual agency disclosure form, is

HUDSON - BALDWIN (DIRECT EXAMINATION)

that correct?

MR. MAHAFFEE: Objection.

THE WITNESS: That is correct.

They did sign it, however.

BY MR. HUDSON:

Q Are there any materials that Dunes Marketing Group publishes that explains an agent's duties with regard to informing clients or advising clients of dual agency agreements?

A We are not permitted to do that. We have to use a state form that you have.

Q And that is all that Dunes Marketing Group can use?

A Unless they are enter an exclusive buyer's agency and then an exclusive buyer's agency is a unique form; each brokerage house has one.

Q What is an exclusive buyer's agency? What does that do?

A Well, that is a contract between the real estate company and the agent and the buyer, and it clearly informs the buyer what we are going to do for them.

For example, offer advice and guidance

HUDSON - BALDWIN (DIRECT EXAMINATION)

identification.)

BY MR. HUDSON:

Q I show you what we have marked as Exhibit 11.

I am asking you to look at Exhibit 11 to see if it would confirm the amount of the commission to Dunes Marketing Group?

A Yes, it does.

Q And that amount would be $78,700?

A That is correct.

Q How much of that amount went to the company?

A Well, it would depend on the commissions schedule for the agent. So in rough numbers it would have been maybe 30 percent, but the actual numbers you have got that information somewhere in here or you have gotten it anyway regarding which agents received what amount.

Q Well, and I don't doubt that it is in there.

A Okay.

Q But if we assume that approximately 30 percent went to the company, we can assume the balance would have gone to Mr. Merrill or

HUDSON - BALDWIN (DIRECT EXAMINATION)

Mr. Oliver, is that correct?

A That is correct.

Q And would it have been split 50-50 between the two of them?

A No. Mr. Oliver would have received a higher percentage because the commissions are predicated on productivity and his productivity was higher than Mr. Merrill's, so Mr. Merrill was paid the lesser commission than Mr. Oliver. It is a sliding scale arrangement starting at 50-50 and going to 75/25.

Mr. Oliver's commission I know would have been 75 percent. I don't remember what Mr. Merrill's was.

Q 75 percent?

A Of half.

Q Okay, got you.

Have you seen either of the two repair estimates that have been prepared during the course of this litigation for raising the elevation of 48 Sea Lane?

A You know, there has been so much stuff, you know, and I read some of it. And some of it I don't read to be honest with you.

PLAINTIFF'S EXHIBIT 7 CW 10-15-09



DEPOSITION EXHIBIT Collectively 10 slb

DUNES MARKETING GROUP
EXCLUSIVE BUYER AGENCY AGREEMENT

This EXCLUSIVE BUYER AGENCY AGREEMENT (the "Agreement") by and between GREGORY A. GOTCHEY and DAN BRAGER (the "Buyer"), and Dunes Marketing Group, a division of The Byrne Corporation ("Dunes").

1. Terms of Agency. Buyer hereby appoints Dunes as Buyer's exclusive agent for the purpose of representing Buyer in finding and buying real property in _____ Beaufort/Jasper County.

2. Effect of Employing Buyer Agency. By appointing Dunes as Buyer's exclusive agent, Buyer agrees to conduct all negotiations for the property described above in Section 1 through Dunes, and to refer to Dunes all inquiries received in any form from brokers, salespersons, prospective sellers or any other source, during the time this Agreement is in effect.

3. Term. The term of this Agreement shall begin 11-4 2003 and shall continue through OCTOBER 4, 2004.

4. Compensation of Dunes. In consideration of the services to be performed by Dunes, Buyer agrees to pay Dunes a brokerage fee of 2 % of 0 or $_____.

In the alternative, Dunes and Buyer have agreed that the brokerage fee shall be paid to Dunes totally from the Listing Broker, as agreed to through the Listing Broker's offer to cooperate (i.e. MLS, flyers, etc.)(_____/Buyer's initials here).

Dunes's fees will be deemed earned when Buyer is under contract to purchase any property procured by Dunes or found by the Buyers themselves. The term "purchase" in the Agreement shall include any purchase, option, exchange, lease or trade entered into. This fee will be due and payable at closing or upon Buyer's default. If Buyer defaults, the total compensation that would have been due to Dunes will be due and payable immediately in cash from the Buyer.

In addition, such brokerage fee described in this Section 4 shall be earned, due and payable to Dunes by the Buyer if property of the nature contemplated herein is purchased by the Buyer within 90 days after the termination of this Agreement or any extensions thereof, if such property was introduced to the Buyer during the term of this Agreement by Dunes or any third party.

5. Other Potential Buyers. Buyer understands that other prospective purchasers may be represented by Dunes and that such other prospective purchasers may seek property, submit offers and contract to purchase property through Dunes, including the same or similar property as Buyer seeks to purchase. Buyer acknowledges, understands and consents to such representation of other prospective purchasers by Dunes through its agents.

6. Description of Services. Dunes shall:

a. Use professional knowledge and skills to locate real properties which may be available for purchase through the Multiple Listing Service ("MLS") or any other source the Agent may be aware of.

b. Show real property to the Buyer that meets Buyer's needs.

c. Represent the Buyer throughout the entire transaction in the purchase of real property which may include the following:

(i) Provide assistance with financing opportunities.
(ii) Provide information, facts, advantages and disadvantages. ←
(iii) Negotiate all details of the Purchase Agreement.
(iv) Assist attorneys, lenders, etc. in the closing of the property.

PLR-0057
ELS #79-58113

7. Possibility of Dual Agency. Buyer acknowledges that the Dunes also enters into contracts with persons (the "Seller") who wish to sell property. Such property is commonly known as a "Company Listing". If the Buyer wishes to view a Company Listing, Dunes may, with both Buyer's and Seller's consent, serve as a dual agent, after Dunes fully discloses the consequences of dual agency status. Since both Seller and Buyer have different interests to protect in the negotiation process, certain differences or conflicts may arise. Accordingly, Dunes will represent both the Buyer and the Seller only with their written consent.

8. Miscellaneous. No assignment of rights obtained by Buyer pursuant to this Agreement shall operate to defeat any of Dunes' rights under this Agreement. Buyer acknowledges that Dunes is being retained solely as a real estate agent and recommends that Buyer seek independent professional advice concerning the condition of the property and legal and tax matters. Buyer shall hold harmless and indemnify Dunes from any liability caused by latent, undisclosed, pre-existing conditions, if any, arising from property purchased by Buyer under this Agreement, including but not limited to, structural and/or mechanical deficiencies which existed up until the time of closing. The parties hereto shall not discriminate in regard to any prospective Seller because of the race, creed, color, sex, marital status, national origin, familial or handicapped status of such person. This Agreement constitutes the entire agreement between the parties relating to the subject thereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. In the event of litigation relating to enforcement of rights under this Agreement, the prevailing party shall be entitled to recover all litigation expenses, including attorney's fees and court costs, from the non-prevailing party.

9. Additional Provisions.

_____

_____

IN WITNESS WHEREOF, this Agreement is hereby agreed to and duly executed.

Witness: _____ Buyer _____ Date 11/6/03

Witness: _____ Buyer _____ Date 11/6/03

Dunes Marketing Group
Post Office Box 21325
Hilton Head Island, SC 29925

Dunes:

By: _____ Date _____

PLF-0058
ELS #79-58113

BETHEA, JORDAN & GRIFFIN, P.A.
ATTORNEYS AND COUNSELORS AT LAW

SHELTER COVE EXECUTIVE PARK
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DAVID J. TIDDES

OF COUNSEL:
JOHN C. WEST

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PLAINTIFF'S EXHIBIT 15 10-19-07 cw

November 16, 2003

Robert M. Deeb, Jr., Esq.
Laurich and Deeb, P.A.
P.O. Box 6868
Hilton Head Island, SC 29938

Re: Gottschlich and McNeil Acquisition 48 Sea Lane

Dear Bob:

I understand you represent the purchasers in the above captioned transaction. I represent the sellers. To assist you in your title examination, please note that the deed was recorded in Deed Book 1404 at Page 792. I show a mortgage in favor of Lighthouse at Book 1404, Page 795. I also pulled our file and I am enclosing a copy of the recent survey that was completed. Hopefully, this will be of some help to your client.

René Serrato will be working with me here at the office.

old one

With best wishes, I am

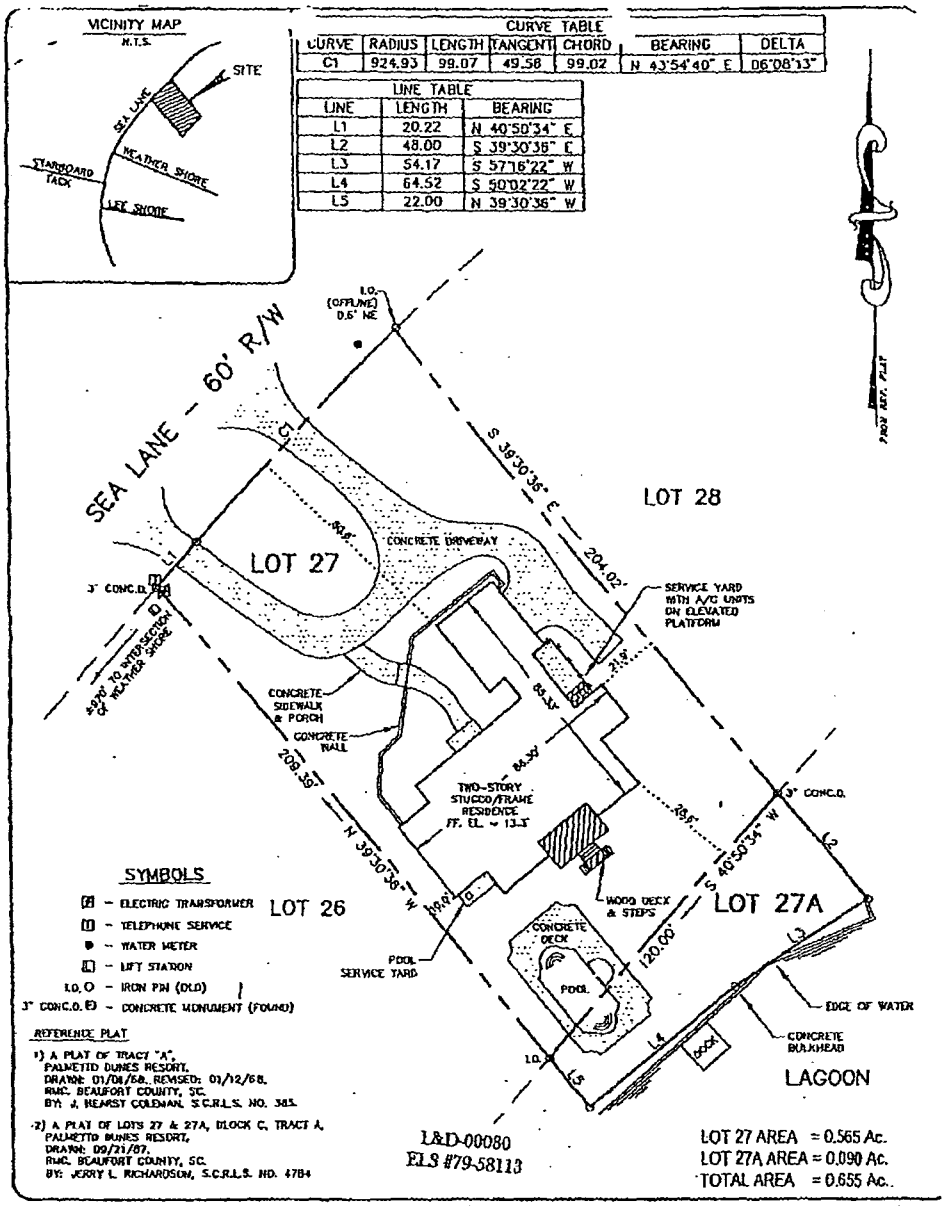
Very truly yours,

BETHEA, JORDAN & GRIFFIN, P.A.

Cary S. Griffin

CSG:YI
Enclosure
c: Mr. and Mrs. Thomas N. Dye
Mr. Ken Oliver
Mr. Greg Merrill
[318290.1]

L&D-00081
ELS #79-58113




SUBJECT PROPERTY DOES NOT APPEAR TO BE AFFECTED BY THE BEACHFRONT SETBACK REQUIREMENTS OF THE S.C. BEACH PROTECTION ACT OF JULY 1, 1988.

ADDRESS: 848 SEA LANE

DIST.: 520 , MAP: 12A , PARCEL: 168

THIS PROPERTY LIES IN F.E.M.A. ZONE A7
BASE ELEVATION = 14.0'

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.

SOUTH CAROLINA SEA ISLAND LAND SURVEY No. C02150 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA REGISTERED LAND SURVEYOR 13858 JACK JONES

NOT VALID UNLESS EMBOSSED

ASBUILT SURVEY OF:

LOT 27 & LOT 27A, TRACT A, PARCEL 3, BLOCK C, PALMETTO DUNES RESORT, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR:

THOMAS N. & JAN H. DYE

DATE: 03/28/01 SCALE: 1" = 40'

GRAPHIC SCALE 0 40 80 120

SIS Sea Island Land Survey
P.O. Box 21568, Hilton Head Island, SC 29925
4-D Mathews Court, Hilton Head Island, SC 29926
Tel (843) 681-3248
Fax (843) 689-3671

JOB No: 01096 FILE: 3-744

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# GREGORY M. GOTTSCHLICH
# DEPOSITION
# EXCERPTS/EXHIBITS

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT
OF COMMON PLEAS
FOR THE
FOURTEENTH JUDICIAL
CIRCUIT

Gregory M. Gottschlich
and Donald L. McNeil,

Plaintiffs,

-vs-

CIVIL ACTION NO.
2008-CP-07-00517

Strimpfel Custom Homes,
Inc.; Joseph A. Reeve;
Jerry L. Richardson;
Coastal Surveying Co. Inc.;
Thomas N. Dye; Jan H. Dye;
Ken Oliver; and The Byrne
Corporation d/b/a Dunes
Marketing Group, Laurich &
Deeb, P.A.; Robert M. Deeb,
Jr. and Charles H. Wiseman.

Defendants.

VOLUME I

- - -

TELEPHONIC DEPOSITION OF GREGORY M. GOTTSCHLICH, M.D., taken by me, Susan L. Bickert, a Certified Shorthand Reporter and Notary Public in and for the State of Ohio, at large, as upon Cross Examination, at the offices of Allergy and Asthma Affiliates, Inc., 4260 Glendale-Milford Road, Suite 201, Cincinnati, Ohio 45242, on Monday, July 27, 2009, commencing at 9:03 o'clock a.m. on behalf of Defendants Ken Oliver and The Byrne Corporation, d/b/a Dunes Marketing Group.

about five years. Four to five years.

Q And I assume that since you've been with Island Getaway approximately five years that you're happy with their services?

A Yes.

Q And, well, let me ask you this. What's the first time that you saw anything or had any idea that the elevation on 48 Sea Lane was less than what it should be?

A When I saw it or when I became aware of it?

Q Oh, either one. Any idea when you actually saw a document?

A Okay. I was going to say visually looking at the house you wouldn't know. But I became aware that there was a deficiency around Easter of 2006.

Q And how did you become aware?

A I called our insurance agent. This was after Katrina had struck Louisiana, and I discussed with Dr. McNeil that we should increase our insurance. I called our agent, Teena Farrell, when I was on vacation with my kids on Spring Break, made an appointment, went over and spoke with her. And that's when I was made aware of the elevation

deficiency.

Q And did your insurance agent know it prior to you letting her know?

MR. HUDSON: Object to the form.

BY MR. MAHAFFEE (Continuing):

Q You can answer, Doctor.

A You'd have to ask her that. I don't know.

Q Okay. Well, tell me, you know, after Katrina hit you went to see Teena Farrell, your insurance agent, and learned of it. How did you learn of it?

A I was sitting in her office, and I said -- paraphrasing I said, "Teena we'd like to have increased insurance." I was aware that homes in New Orleans had not been covered by insurance because of the tidal surge, and so that the wind policy would not cover a situation like that. It was widely publicized on the news. And I, therefore, met with her, explained that situation to her. And she, as I recall, pulled up our file and at that point said, "You know what? You can't get flood insurance." I said, "Why not?" And she said, "Because your elevation certificate is not adequate." I said, "What's an elevation

about, "Gee, what do you do in situations like this? We're really in a pickle here. How can we remedy this?" It was just a casual conversation. I had a couple conversations with Trudy Johnson, however, which were more substantive, and that's when I said, you know, "What's the outcome if we don't?" She said, "Well, you will be compelled to have it fixed." And that was the other reason that prompted us to proceed with litigation.

Q Okay.

A She told me how they're going house by house, and they're going to the beach front homes and they're making -- they're tearing down condominiums and raising them up. And so it heightened our anxiety and put us in a position where we had no alternative but to seek legal remedy.

Q Oh, yes. I was just wanting to know the exploration process.

MR. MAHAFFEE: Madam Court Reporter, I'm looking for once again in that same stack it's L&D, and I'll leave off all the zeros but 79, 80 and 81. Would you please make that Exhibit 2?

(Whereupon, a discussion was held off the record.)

wishes to view a Company Listing, Dunes may, with both Buyer's and Seller's consent, serve as a dual agent after Dunes fully discloses the consequences of dual agency status." Did you have a conversation with anyone at Dunes Marketing Group concerning the consequences of the dual agency status?

A My only recollection would be that it was a part -- because it was a Dunes listing and the agent for the sellers was also a Dunes agent that it was a Dual Agency Agreement. Not that there were any ramifications of it being a Dual Agency Agreement or any consequences to us or any negative outcomes to that or any limitations or restrictions on the performance, ethics or expertise that would be rendered on our behalf by the agent we had, which was Gregg Merrill. So, no.

Q And when you started your relationship with Dunes Marketing Group, it was under an Exclusive Buyer Agency Agreement and then it was later changed to a Dual Agency Agreement; correct?

A I believe it must have changed when we made an offer on a property that was a Dunes Marketing property, as I said, and had two different agents involved, yes.

# THOMAS E. HARTNETT
# DEPOSITION
# EXCERPTS/EXHIBITS

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT ) Case No. 08-CP-07-0517

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiff,

vs.

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE; JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

# DEPOSITION OF THOMAS E. HARTNETT, GAA, CRB

DATE: OCTOBER 22, 2009

TIME: 10:10 a.m. - 12:47 p.m.

LOCATION: Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, South Carolina

REPORTED BY: Beth Walters Kornuta

**********

PALMETTO STATE COURT REPORTERS
P. O. Box 50488
Summerville, SC 29485
843.670.1637 Fax: 843.486.0064
Palmettostatecr@yahoo.com

just don't see it. I apologize. Anyway -- thank you. It said that I would also testify to real estate brokers, agents, disclosure obligations and breaches thereof, with regard to the subject transaction. And that's all that, really, I'm prepared to render an opinion in this case.

Q All right. Would you tell us what your opinion is with regard to the second topic? The first topic I think, based on your testimony, you've already given us that opinion. Tell us what your opinion is --

A I do not think that the brokers or the agent complied with the requirements of state law relative to the agreement for an acknowledgment of dual agency.

Q Of course I'm going to ask you what is the basis for that opinion?

A Well -- thank you, ma'am. Again, this is -- but you already cited the section and subsection, I think, of state law. But under Section (M), or subsection M of Section 40-57-137, it says, "A licensee may act as a disclosed dual agent only with the prior informed and written consent of all parties. Consent is presumed to be informed if a party signs a completed copy of the

agency disclosure form which was prescribed by the commission.

"The form shall specify the transaction in which a licensee shall serve as dual agent and shall state (1) a licensee may act as a disclosed dual agent only with the prior informed and written consent of all parties. The informed consent must be evidenced by a dual agency agreement, promulgated by the commission, and must be signed by the buyer before writing an offer and by the seller before signing the sales contract."

At the time this -- conclusion of this sale of this contract took place, Mr. Merrill was operating as an exclusive buyer's agent. That agreement is signed by, I assume, Drs. Gottschlich and McNeil on November the 6th of 2003. The contract of sale is signed November the 6th, 2003. The Dual Agency Agreement is signed November the 6th, 2003.

In speaking with Drs. McNeil and Gottschlich, they -- it's their position that they were not informed as to what type of agency it constituted. They were not told that they would get any lesser representation than they would

under any other type of agency.

And Section 40-57-137 in state law, paragraph A, "A real estate brokerage company that provides services through an agency agreement" -- doesn't matter which kind -- "for a client is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting as set forth in this chapter," whether you are a seller's agent, a buyer's agent, or a dual agent.

In this case, Mr. Merrill was representing absentee purchasers, purchasers who do not reside in South Carolina, who were not here during the completion of this transaction, and I think they had an extraordinary duty to be especially careful in their representation of Dr. McNeil and Dr. Gottschlich.

And I just think under -- and again, I'm -- it's a technicality, perhaps. But the law requires that those things be signed prior to writing the sales contract. It might have been. But it seems awfully odd that they were all signed on the same day. I'm boring you to death; I can see that.

(At this point there is an off-the-record

conversation.)

BY MS. WALL:

Q I apologize. You're not boring me at all. I'm just so cold.

A Well, either that or I'm putting you to sleep by keeping you awake. It's my opinion that based on law, based on practices of real estate brokers, they really didn't do their responsibility with real diligence. They made a lot of money; about an $80,000 commission that was made. And so they had a lot of money to make.

And I think the duties of a real estate agent are more than just providing the key and opening the door and showing somebody a house, that they had certain responsibilities to those clients, especially the fact that they were out-of-town clients.

And for that kind of commission, I don't think they acted responsibly in representing Dr. McNeil and Dr. Gottschlich, and that's basically what my opinion is of that.

Q Are you aware that the same real estate brokerage company represented the seller when it was sold to the Plaintiffs in this case?

A Well, that's what created the dual

# 30(b)(6) HILTON HEAD ISLAND – TRUDIE JOHNSON DEPOSITION EXCERPTS/EXHIBITS

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

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE, JERRY L. RICHARDSON; COASTAL SURVEYING CO., INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE BYRNE CORPORATION d/b/a DUNES MARKETING GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.; and CHARLES H. WISEMAN,

Defendants.

----------/

The 30(b)(6) deposition FOR HILTON HEAD ISLAND OF TRUDIE JOHNSON, a witness in the above-entitled cause, taken pursuant to Notice and Subpoena, before Ceil Weser, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting & Video, Inc., 1 Corpus Christie, 107 Executive Center, Hilton Head, South Carolina, on the 20th day of October, 2009, commencing at or about the hour of 3:05 p.m.

HUDSON - JOHNSON (DIRECT EXAMINATION)

Because if I do then I am required to pursue it.

BY MR. HUDSON:

Q Trudie, is it your testimony under oath that you have no reason to believe that other houses in Palmetto Dunes have a negative elevation?

MR. MAHAFFEE: Objection.

MR. HAIGHT: Objection.

MS. WALL: Objection to form.

THE WITNESS: No reason to believe? I don't really know what you mean by that.

No information has been brought to my attention that there are other violations in Palmetto Dunes.

BY MR. HUDSON:

Q Doesn't the town have a list of other properties that it knows or believes to be at an elevation of less than 14 feet?

MS. WALL: Objection.

THE WITNESS: That is privileged information that has been sent to me by the National Flood Insurance Program

HUDSON - JOHNSON (DIRECT EXAMINATION)

for purposes of verification with the property owners should they come forward. It is not to be used by me to enact compliance.

BY MR. HUDSON:

Q The existence of that list is not privileged.

I am simply asking if the town in fact has such a list?

A It has been supplied a list, yes.

Q And how many properties are on that list?

A 600.

Q 600 properties.

Of those 600 properties are any of them in Palmetto Dunes?

MR. MAHAFFEE: Objection.

THE WITNESS: I haven't read the list to tell you the honest truth. Probably there might be, but that list went in a file and when the property owner comes into me and seeks help because their flood insurance has been increased exorbitantly; then I look for

# PLEADINGS/DISCOVERY