

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

SC Court of Appeals

Mikell R. Scarborough, Master-in-Equity

Case No. 2012-CP-10-8447  
Appellate Case No 2014-001273

Montclair Property Owners Association, Inc. and  
Montclair Property Owners Association Board of  
Directors for and on behalf of all owners of the  
Montclair Horizontal Property Regime, as assignees of  
Montclair Associates Limited Partnership, Cremco,  
LLC, and Montclair Homes, LLC, . . . . . Respondents,

v.

Church Creek Construction, LLC, . . . . . Appellant.

RECORD ON APPEAL – VOLUME I

|                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>C. Mitchell Brown<br/>Brian P. Crotty<br/>Miles E Coleman<br/>NELSON MULLINS RILEY &amp; SCARBOROUGH LLP<br/>Post Office Box 11070<br/>Columbia, SC 29211<br/>(803) 799-2000</p> <p>Thomas H. Hesse<br/>PRATT-THOMAS WALKER, PA<br/>Post Office Drawer 22247<br/>Charleston, SC 29413-2247<br/>(843) 727-2250</p> <p><i>Attorneys for Appellant</i></p> | <p>Stephen L. Brown<br/>Joseph E. Dapore<br/>Edward D. Buckley Jr.<br/>Russell G. Hines<br/>YOUNG CLEMENT RIVERS LLP<br/>Post Office Box 993<br/>Charleston, SC 29402<br/>(843) 577-4000</p> <p><i>Attorneys for Respondents</i></p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
MONTCLAIR PROPERTY OWNERS )  
ASSOCIATION (A SOUTH CAROLINA )  
NON-PROFIT CORPORATION), AND )  
MONTCLAIR PROPERTY OWNERS )  
ASSOCIATION BOARD OF )  
DIRECTORS FOR AND ON BEHALF )  
OF ALL OWNERS OF THE )  
MONTCLAIR HORIZONTAL )  
PROPERTY REGIME, )

Plaintiffs, )

vs. )

BRUCE E. KINNEY, INDIVIDUALLY )  
AND AS AN INCORPORATOR FOR )  
MONTCLAIR HOMES, LLC; )  
MONTCLAIR HOMES, LLC, AS SC )  
LIMITED LIABILITY COMPANY )  
(DECLARANT - MASTER DEED); )  
CREMCO, LLC, AN ILLINOIS LIMITED )  
LIABILITY COMPANY; MONTCLAIR )  
ASSOCIATES LIMITED )  
PARTNERSHIP, AN ILLINOIS, )  
LIMITED PARTNERSHIP, )  
MONTCLAIR PROPERTY OWNERS )  
ASSOCIATION A/K/A MONTCLAIR )  
HOMEOWNERS ASSOCIATION )  
(GRANTOR CONTROL PERIOD), )  
BRUCE E. KINNEY AS AN OFFICER )  
OR DIRECTOR IN THE MONTCLAIR )  
PROPERTY OWNERS ASSOCIATION )  
A/K/A MONTCLAIR HOMEOWNERS )  
ASSOCIATION (GRANTOR CONTROL )  
PERIOD), A SC NON-PROFIT )  
CORPORATION; AND CHURCH )  
CREEK CONSTRUCTION, LLC, )  
LARRY ELSEY, INDIVIDUALLY, AND )  
D/B/A ECI OR ELSEY )  
CONSTRUCTION, A/K/A ELSEY )  
CONSTRUCTION INC ; AND ROGER )  
LOCKEY, )

Defendants. )

IN THE COURT OF COMMON PLEAS  
THE NINTH JUDICIAL CIRCUIT  
CASE NO : 2008-CP-10-6897

BY

*Julie J. Armstrong*

JULIE J. ARMSTRONG  
CLERK OF COURT

2012 MAY 18 PM 3:47

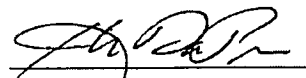
FILED

**PLAINTIFFS' STIPULATION OF  
DISMISSAL WITH PREJUDICE AS TO  
CLAIMS AGAINST DEFENDANT LARRY  
ELSEY, INDIVIDUALLY, AND D/B/A ECI  
OR ELSEY CONSTRUCTION, A/K/A ELSEY  
CONSTRUCTION, INC. AND DEFENDANT  
ROGER LOCKEY**

COMES NOW Plaintiff Montclair Property Owners Association (A South Carolina Non-Profit Corporation), and Montclair Property Owners Association Board of Directors for and on Behalf of All Owners of the Montclair Horizontal Property Regime (hereinafter collectively "Montclair POA"), by and through its undersigned counsel, pursuant to S C Rule of Civil Procedure 41(a)(1)(B), and hereby stipulates to the dismissal, with prejudice, of Montclair POA's claims against Defendants Larry Elsey, Individually, and d/b/a ECI or Elsey Construction, a/k/a Elsey Construction, Inc (hereinafter collectively "Defendant ECI") and Roger Lockey (hereinafter "Defendant Lockey") in the above-captioned action, as the matter involved has been settled by these parties

Respectfully submitted,

YOUNG, CLEMENT RIVERS, LLP



Joseph E. DaPoie, Esq.

P.O. Box 993

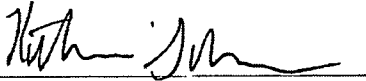
Charleston, SC 29402

Attorney for Plaintiffs

This 17<sup>th</sup> day of May, 2012

**PLAINTIFFS' STIPULATION OF DISMISSAL WITH PREJUDICE AS TO CLAIMS  
AGAINST DEFENDANT LARRY ELSEY, INDIVIDUALLY, AND D/B/A ECI OR  
ELSEY CONSTRUCTION, A/K/A ELSEY CONSTRUCTION, INC. AND DEFENDANT  
ROGER LOCKEY**

WE CONSENT



R. Michael Ethridge

Katie W Sullivan

Carlock Copeland & Stan

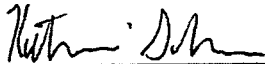
40 Calhoun Street, Suite 400

Charleston, SC 29401

Attorneys for Defendant Larry Elsey, Individually, and d/b/a ECI or Elsey Construction, a/k/a  
Elsey Construction, Inc

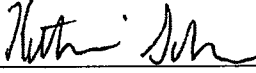
**PLAINTIFFS' STIPULATION OF DISMISSAL WITH PREJUDICE AS TO CLAIMS  
AGAINST DEFENDANT LARRY ELSEY, INDIVIDUALLY, AND D/B/A ECI OR  
ELSEY CONSTRUCTION, A/K/A ELSEY CONSTRUCTION, INC. AND DEFENDANT  
ROGER LOCKEY**

WE CONSENT.

 (with express permission of  
Charles G. Blackburn, Esquire Charles Blackburn - see attached  
J. Ryan Oates, Esquire email)  
Murphy & Grantland, P.A.  
P.O. Box 6648  
Columbia, SC 29260  
Attorneys for Roger Lockey

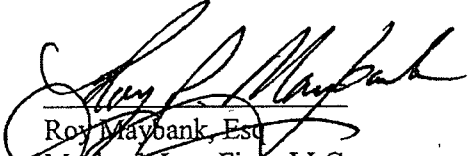
**PLAINTIFFS' STIPULATION OF DISMISSAL WITH PREJUDICE AS TO CLAIMS  
AGAINST DEFENDANT LARRY ELSEY, INDIVIDUALLY, AND D/B/A ECI OR  
ELSEY CONSTRUCTION, A/K/A ELSEY CONSTRUCTION, INC. AND DEFENDANT  
ROGER LOCKEY**

WE CONSENT

 (with express permission of Tom  
Thomas H. Hesse, Esq. Hesse - see attached email)  
Pratt-Thomas, Epting & Walker, PA  
Post Office Drawer 22247  
Charleston, SC 29413-2247  
Attorney for Church Creek Construction, LLC

**PLAINTIFFS' STIPULATION OF DISMISSAL WITH PREJUDICE AS TO CLAIMS  
AGAINST DEFENDANT LARRY ELSEY, INDIVIDUALLY, AND D/B/A ECI OR  
ELSEY CONSTRUCTION, A/K/A ELSEY CONSTRUCTION, INC. AND DEFENDANT  
ROGER LOCKEY**

WE CONSENT:



Roy Maybank, Esq.  
Maybank Law Firm, LLC  
P.O. Box 12579  
Charleston, SC 29422  
Attorney for Montclair Homes, LLC

**PLAINTIFFS' STIPULATION OF DISMISSAL WITH PREJUDICE AS TO CLAIMS  
AGAINST DEFENDANT LARRY ELSEY, INDIVIDUALLY, AND D/B/A ECI OR  
ELSEY CONSTRUCTION, A/K/A ELSEY CONSTRUCTION, INC. AND DEFENDANT  
ROGER LOCKEY**

WE CONSENT

Thomas Pritchard with express permission of Thomas  
Pritchard & Elliot, LLC Pritchard-see attached email)  
P O Box 630  
Charleston, SC 29402  
Attorney for CREMCO, LLC and Montclair Associates Limited Partnership

**Sullivan, Katie W.**

---

**From:** Thomas B Pritchard [tpritchard@pritchard-elliott.com]  
**Sent:** Wednesday, May 09, 2012 1 40 PM  
**To:** Sullivan, Katie W ; DeMato, Amanda, Anissa Terpstra, Arthur C. Pelzer, Barbara Porter, Brown, Denise, Charles Blackburn; DaPore, Joseph E (Joe), J Ryan Oates, Jennifer , Michelle Hartley; Ethridge, R. Michael, Roy Maybank; Susan Gladden, Tom Hesse  
**Cc:** Simpson, Summar, Ethridge, R Michael  
**Subject:** RE: Montclair Property Owners Association, Inc v Montclair Homes, LLC, et al

You have my permission to sign as well

*Sincerely,*  
*Thomas B Pritchard, Attorney at Law*

 <http://www.pritchard-elliott.com/Includes/Ter>

*Pritchard & Elliott, Attorneys And Counselors At Law, LLC*  
*129 Broad Street, Charleston, SC 29401*  
*Phone: (843) 722-3300; Fax: (843) 722-3379*  
*Email: [tpritchard@pritchard-elliott.com](mailto:tpritchard@pritchard-elliott.com)*

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---

**From:** Sullivan, Katie W. [mailto:ksullivan@carlockcopeland.com]  
**Sent:** Wednesday, May 09, 2012 12:28 PM  
**To:** DeMato, Amanda; Anissa Terpstra; Arthur C. Pelzer; Barbara Porter; Brown, Denise; Charles Blackburn; DaPore, Joseph E. (Joe); J. Ryan Oates; Jennifer ; Michelle Hartley; Ethridge, R. Michael; Roy Maybank; Susan Gladden; Thomas B. Pritchard; Tom Hesse  
**Cc:** Simpson, Summar; Ethridge, R. Michael  
**Subject:** Montclair Property Owners Association, Inc. v. Montclair Homes, LLC, et al.

All,

Attached please find the respective Stipulations of Dismissal re: the claims against ECI and Lockey. Please let me know if you have any requested changes. With the exception of the Plaintiffs' Stipulation of Dismissal, the Stipulations of Dismissal are without prejudice as discussed. **If they are acceptable, please execute your signature page on each document and return the original to me for filing (or you can send me an email giving me permission to sign for you).** Pursuant to Rule 41, each party must consent to each Stipulation of Dismissal (or we will have to submit a proposed order to the court). Feel free to call me if you'd like to discuss.

5/18/2012

ROA\_0008



Katie Sullivan  
Carlock Copeland & Stair  
40 Calhoun Street, Suite 400  
Charleston, SC 29401  
843-266-8233 (tel)  
843-727-2995 (fax)  
[ksullivan@carlockcopeland.com](mailto:ksullivan@carlockcopeland.com)

5/18/2012

ROA\_0009

**Sullivan, Katie W.**

---

**From:** Charles G. Blackburn [CBlackburn@murphygrantland.com]  
**Sent:** Wednesday, May 09, 2012 1 29 PM  
**To:** Tom Hesse  
**Cc:** Sullivan, Katie W.; DeMato, Amanda; Anissa Terpstra, Arthur Pelzer; Barbara A. Porter, Brown, Denise; DaPore, Joseph E. (Joe); J. Ryan Oates, Jennifer, Michelle Hartley, Ethridge, R. Michael, Roy Maybank, Susan Gladden; Thomas Pritchard, Simpson, Summar  
**Subject:** Re: Montclair Property Owners Association, Inc. v. Montclair Homes, LLC, et al  
You have my permission to sign for me.  
Charles

Sent from my iPhone

On May 9, 2012, at 1:25 PM, "Tom Hesse" <[thh@p-tw.com](mailto:thh@p-tw.com)> wrote:

Katie,

You have permission to sign for me as the attorney for Church Creek. Thanks.

Tom

---

**From:** Sullivan, Katie W. [mailto:[ksullivan@carlockcopeland.com](mailto:ksullivan@carlockcopeland.com)]  
**Sent:** Wednesday, May 09, 2012 12:28 PM  
**To:** DeMato, Amanda; Anissa Terpstra; Arthur Pelzer; Barbara Porter; Brown, Denise; Charles Blackburn; DaPore, Joseph E. (Joe); J. Ryan Oates; Jennifer ; Michelle Hartley; Ethridge, R. Michael; Roy Maybank; Susan Gladden ; Thomas Pritchard; Tom Hesse  
**Cc:** Simpson, Summar; Ethridge, R. Michael  
**Subject:** Montclair Property Owners Association, Inc. v. Montclair Homes, LLC, et al.

All,

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5/18/2012

ROA\_0010

Katie Sullivan

Carlock Copeland & Stair

40 Calhoun Street, Suite 400

Charleston, SC 29401

843-266-8233 (tel)

843-727-2995 (fax)

[ksullivan@carlockcopeland.com](mailto:ksullivan@carlockcopeland.com)

5/18/2012

ROA\_0011

**Sullivan, Katie W.**

---

**From:** Tom Hesse [thh@p-tw.com]  
**Sent:** Wednesday, May 09, 2012 1:32 PM  
**To:** Sullivan, Katie W.; DeMato, Amanda, Anissa Terpstra, Arthur Pelzer, Barbara Porter, Brown, Denise, Charles Blackburn; DaPore, Joseph E. (Joe); J. Ryan Oates, Jennifer; Michelle Hartley, Ethridge, R. Michael; Roy Maybank; Susan Gladden; Thomas Pritchard  
**Cc:** Simpson, Summar, Ethridge, R. Michael  
**Subject:** RE: Montclair Property Owners Association, Inc v Montclair Homes, LLC, et al.

Katie,

You have permission to sign for me as the attorney for Church Creek. Thanks.

Tom

---

**From:** Sullivan, Katie W. [mailto:ksullivan@carlockcopeland.com]  
**Sent:** Wednesday, May 09, 2012 12:28 PM  
**To:** DeMato, Amanda; Anissa Terpstra; Arthur Pelzer; Barbara Porter; Brown, Denise; Charles Blackburn; DaPore, Joseph E. (Joe); J. Ryan Oates; Jennifer; Michelle Hartley; Ethridge, R. Michael; Roy Maybank; Susan Gladden; Thomas Pritchard; Tom Hesse  
**Cc:** Simpson, Summar; Ethridge, R. Michael  
**Subject:** Montclair Property Owners Association, Inc. v. Montclair Homes, LLC, et al.

All,

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Katie Sullivan  
Carlock Copeland & Stair  
40 Calhoun Street, Suite 400  
Charleston, SC 29401  
843-266-8233 (tel)  
843-727-2995 (fax)  
[ksullivan@carlockcopeland.com](mailto:ksullivan@carlockcopeland.com)

5/18/2012

ROA\_0012

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-10-6897

MONTCLAIR PROPERTY OWNERS  
ASSOCIATION (A SOUTH CAROLINA NON-  
PROFIT CORPORATION) AND MONTCLAIR  
PROPERTY OWNERS ASSOCIATION BOARD OF  
DIRECTORS FOR AND ON BEHALF OF ALL  
OWNERS OF THE MONTCLAIR HORIZONTAL  
PROPERTY REGIME

BRUCE E. KINNEY, AS AN INCORPORATOR  
FOR MONTCLAIR HOMES, LLC;  
MONTCLAIR HOMES, LLC, A SC LIMITED  
LIABILITY COMPANY (DECLARANT -  
MASTER DEED); CREMCO, LLC, AN  
ILLINOIS LIMITED LIABILITY COMPANY,  
MONTCLAIR ASSOCIATES LIMITED  
PARTNERSHIP, AN ILLINOIS LIMITED  
PARTNERSHIP; MONTCLAIR PROPERTY  
OWNERS ASSOCIATION A/K/A  
MONTCLAIR HOMEOWNERS  
ASSOCIATION (GRANTOR CONTROL  
PERIOD); BRUCE E. KINNEY AS AN  
OFFICER OR DIRECTOR IN THE  
MONTCLAIR PROPERTY OWNERS  
ASSOCIATION A/K/A MONTCLAIR  
HOMEOWNERS ASSOCIATION (GRANTOR  
CONTROL PERIOD), A SC NON-PROFIT  
CORPORATION; CHURCH CREEK  
CONSTRUCTION, LLC; LARRY ELSEY,  
INDIVIDUALLY, AND D/B/A ECI OR ELSEY  
CONSTRUCTION A/K/A ELSEY  
CONSTRUCTION INC. AND ROGER  
LOCKEY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

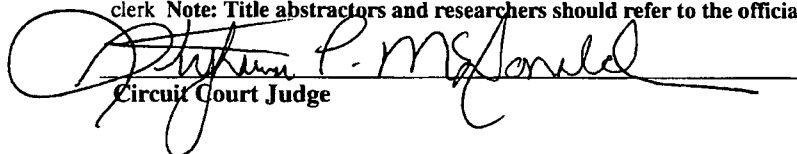
This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Judgment in a Civil Case

FILED  
2012 OCT -4 AM 10:42  
JULIE J. ARMSTRONG  
CLERK OF COURT

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                                                   |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                                                   |                                                          |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below)                          | Judgment Amount To be Enrolled<br>(List amount(s) below) |
| Montclair Property Owners Association, Inc. and Montclair Property Owners Association Board of Directors for and on the Behalf of all Owners of the Montclair Horizontal Property Regime                     | Montclair Homes, LLC and Montclair POA, Grantor Controlled Period | \$ 1,600,000.00                                          |
| Montclair Property Owners Association, Inc. and Montclair Property Owners Association Board of Directors for and on the Behalf of all Owners of the Montclair Horizontal Property Regime                     | MALP/CREMCO                                                       | \$ 1,400,000.00                                          |
|                                                                                                                                                                                                              |                                                                   | \$                                                       |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                                                   |                                                          |

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

  
Circuit Court Judge

2163  
Judge Code

10/04/12  
Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MONTCLAIR PROPERTY OWNERS  
ASSOCIATION (A SOUTH CAROLINA  
NON-PROFIT CORPORATION) AND  
MONTCLAIR PROPERTY OWNERS  
ASSOCIATION BOARD OF  
DIRECTORS FOR AND ON BEHALF  
OF ALL OWNERS OF THE  
MONTCLAIR HORIZONTAL  
PROPERTY REGIME,

PLAINTIFFS,

vs.

BRUCE E. KINNEY, AS AN  
INCORPORATOR FOR MONTCLAIR  
HOMES, LLC; MONTCLAIR HOMES,  
LLC, A SC LIMITED LIABILITY  
COMPANY (DECLARANT - MASTER  
DEED); CREMCO, LLC, AN ILLINOIS  
LIMITED LIABILITY COMPANY;  
MONTCLAIR ASSOCIATES LIMITED  
PARTNERSHIP, AN ILLINOIS  
LIMITED PARTNERSHIP;  
MONTCLAIR PROPERTY OWNERS  
ASSOCIATION A/K/A MONTCLAIR  
HOMEOWNERS ASSOCIATION  
(GRANTOR CONTROL PERIOD);  
BRUCE E. KINNEY AS AN OFFICER  
OR DIRECTOR IN THE MONTCLAIR  
PROPERTY OWNERS ASSOCIATION  
A/K/A MONTCLAIR HOMEOWNERS  
ASSOCIATION (GRANTOR CONTROL  
PERIOD), A SC NON-PROFIT  
CORPORATION; CHURCH CREEK  
CONSTRUCTION, LLC; LARRY  
ELSEY, INDIVIDUALLY, AND D/B/A  
ECI OR ELSEY CONSTRUCTION  
A/K/A ELSEY CONSTRUCTION INC.  
AND ROGER LOCKEY,

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2008-CP-10-6897

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2012 OCT -4 AM 10:42

FILED

JUDGMENT IN A CIVIL CASE

DEFENDANTS. )  
)  
)

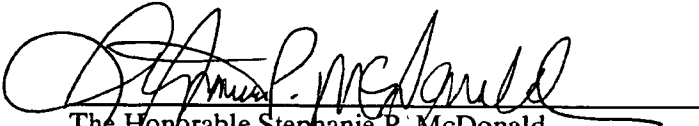
This matter comes before me upon a settlement of certain claims asserted in this action which was set for trial before me on October 1, 2012. The terms of the settling parties' agreement are hereby entered as the judgment of this court as follows:

1. At the time of the signing of this Order, Bruce Kinney, individually, was previously dismissed from this case and no longer a party to this action.
2. The Plaintiffs, Montclair Property Owners Association, Inc. ("Montclair"), will release Montclair Homes, LLC, including its members, officers and directors; Montclair Property Owners Association, a/k/a Montclair Homeowners Association (Grantor Controlled Period) and any of its members, officers or directors during the grantor controlled period and all Kinney entities insured under any insurance policies issued by Auto Owners Insurance Company upon payment in the amount of \$1,600,000.00 to Plaintiffs and its counsel by November 5, 2012.
3. Plaintiffs will release all claims against Auto Owners Insurance Company upon all policies allegedly providing coverage to any of the persons or entities who are involved in this dispute or who are insured under those policies.
4. Bruce Kinney and Montclair Homes, LLC and all other Kinney entities will release and dismiss all claims against Auto Owners Insurance Company in the declaratory judgment action pending in the United States District Court for South Carolina.
5. Montclair Homes, LLC and Montclair Property Owners Association (during the period Montclair Homes, LLC controlled the board of the POA) shall assign to Plaintiffs and Auto Owners Insurance Company all claims, rights and causes of action against any insurance policies or carriers which denied coverage or which could have been obligated to defend or indemnify Bruce Kinney or Montclair Homes, LLC or any of his present or former entities in this case. No such claims shall exist against the settling insurance carriers.
6. Montclair Homes, LLC shall assign all claims for contribution against Church Creek Construction, LLC within five (5) days of the date of this order.
7. The Plaintiffs' direct claims against Church Creek Construction Company are dismissed with prejudice. Nothing contained in this judgment shall be deemed to release, limit or discharge the contribution claims to be assigned to the Plaintiffs hereunder.
8. The Plaintiffs will release Montclair Associates Limited Partnership, CREMCO, and MALP's general partners in consideration of payment of the sum of \$1,400,000.00 payable by November 5, 2012. That sum shall be paid as follows: Scottsdale Insurance Company shall pay the sum of \$1,192,500.00; Chubb Insurance shall pay the sum of \$192,500.00; and MALP/CREMCO shall pay the sum of \$15,000.00.



9. Within five (5) days of the entry of this judgment, MALP and CREMCO shall assign to the Plaintiffs all rights and claims in contribution against Church Creek Construction Company, LLC. Nothing contained in this judgment shall be deemed to release, limit or discharge the contribution claims to be assigned to the Plaintiffs.
10. Church Creek Construction Company has contributed nothing toward this settlement. In consideration of payments by or on behalf of Montclair Homes, LLC, MALP, and CREMCO, the liability of Church Creek Construction, LLC to the Plaintiffs is hereby extinguished; however, nothing contained in this judgment shall be deemed to release, limit or discharge the contribution claims to be assigned to the Plaintiffs.
11. Montclair Homes, LLC.; Montclair Property Owners Association, a/k/a Montclair Homeowners Association (Grantor Controlled Period) and any of its members, officers or directors during the grantor controlled period shall release all claims against MALP, CREMCO and MALP's general partners. MALP, CREMCO and MALP's general partners shall release all claims against Bruce Kinney individually, Montclair Homes, LLC; including all members of Montclair Homes, LLC and Montclair Property Owners Association, a/k/a Montclair Homeowners Association (Grantor Controlled Period) and any of its members, officers or directors during the grantor controlled period.
12. The Plaintiffs have full authority to enter into this settlement through its board of directors.
13. Upon full compliance with this judgment, the Plaintiffs agree to satisfy it by filing a notification of judgment in this Court.

IT IS SO ORDERED.

  
The Honorable Stephanie P. McDonald  
Ninth Judicial Circuit

Charleston, South Carolina

Dated: October 4, 2012

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Montclair Property Owners Association )  
(a South Carolina non-profit corporation), )  
and Montclair Property Owners Association )  
Board of Directors for and on behalf of all )  
owners of the Montclair Horizontal )  
Property Regime, )

Case No. 2008-CP-10-6897

Plaintiffs )

vs. )

Bruce E. Kinney, individually and as an )  
incorporator for Montclair Homes, LLC; )  
Montclair Homes, LLC, as SC Limited )  
Liability Company (declarant – Master )  
Deed); CREMCO, LLC, an Illinois Limited )  
Liability Company; Montclair Associates )  
Limited Partnership, an Illinois, Limited )  
Partnership, Montclair Property Owners )  
Association a/k/a Montclair Homeowners )  
Association (Grantor Control Period); Bruce )  
E. Kinney as an Officer or Director in the )  
Montclair Property Owners Association )  
a/k/a Montclair Homeowners Association )  
(Grantor Control Period), a SC Non-profit )  
Corporation; and Church Creek )  
Construction, LLC and/or Elsey )  
Construction, Inc. (ECI) and Roger Lockey, )

Defendants )

**SATISFACTION AND  
CANCELLATION OF JUDGMENT**

FILED  
2017 DEC 28 PM 4:22  
JULIE A. MORGAN  
CLERK OF COURT

WHEREAS, Plaintiffs and Defendants have engaged in good-faith negotiations and have now agreed to fully, finally, and forever end and resolve any and all disputes that now exist or may exist between them;

The Plaintiffs hereby acknowledge full, complete, and final satisfaction of the judgment entered in its favor in the above-captioned action on or about October 4, 2012, against the

Defendants in the total amount of Three Million and No/100 Dollars (\$3,000,000.00), plus any and all accrued legal interest, attorneys' fees, costs, penalties and/or other allowances of any kind or nature whatsoever, the entirety of which is to be marked satisfied and forever cancelled and discharged.

WHEREFORE, the Plaintiffs and its counsel hereby authorize and direct the Clerk of Court for Charleston County or other appropriate officer to enter the satisfaction and cancellation of record of the entirety of said judgment.

**<SIGNATURES ON FOLLOWING PAGE>**

We Stipulate:

**FOR THE PLAINTIFFS:**

**Montclair Property Owners Association:**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Montclair Property Owners Association  
Board of Directors for and on Behalf of  
All Owners of the Montclair Horizontal  
Property Regime:**

*Ram G. Laddar*

By: *Lawrence A. Laddar*

Date: *12-11-12*

|                               |   |                              |
|-------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS |
|                               | ) |                              |
| COUNTY OF CHARLESTON          | ) | NINTH JUDICIAL CIRCUIT       |
|                               | ) |                              |
| MONTCLAIR PROPERTY OWNERS     | ) | CASE NO. 2012-CP-10-8447     |
| ASSOCIATION, INC. AND         | ) |                              |
| MONTCLAIR PROPERTY OWNERS     | ) |                              |
| ASSOCIATION BOARD OF          | ) |                              |
| DIRECTORS FOR AND ON BEHALF   | ) |                              |
| OF ALL OWNERS OF THE          | ) |                              |
| MONTCLAIR HORIZONTAL          | ) |                              |
| PROPERTY REGIME, AS ASSIGNEES | ) |                              |
| OF MONTCLAIR ASSOCIATES       | ) |                              |
| LIMITED PARTNERSHIP, CREMO,   | ) |                              |
| LLC AND MONTCLAIR HOMES, LLC  | ) |                              |
|                               | ) |                              |
|                               | ) |                              |
| PLAINTIFFS,                   | ) |                              |
|                               | ) |                              |
| vs.                           | ) |                              |
|                               | ) |                              |
| CHURCH CREEK CONSTRUCTION,    | ) |                              |
| LLC,                          | ) |                              |
|                               | ) |                              |
| DEFENDANT.                    | ) |                              |

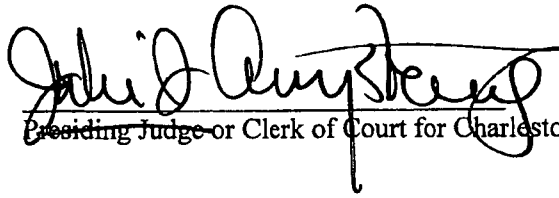
**CONSENT  
ORDER OF REFERENCE**

**FILED**  
 2013 MAY - 16 AM 8:38  
 JULIE J ARMSTRONG  
 CLERK OF COURT  
 BY 

It appearing that this action involves the principles of equity set forth in §15-38-20 of the S C. Code Ann., and it further appearing that this is a proper matter to refer to the Master-in-Equity for Charleston County in accordance with Rule 53 of the South Carolina Rules of Civil Procedure for a final hearing; upon motion of Plaintiffs' Counsel;

IT FURTHER APPEARING that the Defendant has consented to the reference;

NOW THEREFORE, IT IS ORDERED that this case be, and the same is hereby, referred to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, to direct entry of final judgment after appropriate hearing in this action under Rule 53(e)(1), South Carolina Rules of Civil Procedure. Any appeal from the final judgment entered by the Master-in-Equity shall be directed to the South Carolina Court of Appeals.

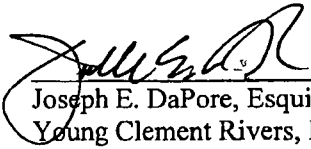


Presiding Judge or Clerk of Court for Charleston County

Charleston, South Carolina

Dated 5/8/13

WE MOVE:

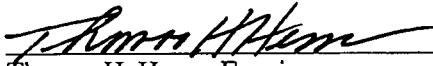


Joseph E. DaPore, Esquire  
Young Clement Rivers, LLP  
P.O. Box 993  
Charleston, SC 29402  
Attorneys for Plaintiffs

Charleston, South Carolina

Dated: 4-25-2013

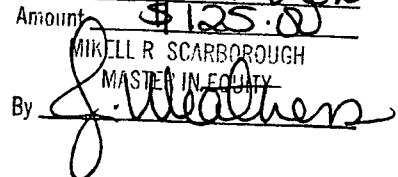
WE CONSENT:



Thomas H. Hesse, Esquire  
Pratt-Thomas Walker, P.A.  
16 Charlotte Street  
Post Office Drawer 22247  
Charleston, SC 29413-2247  
Attorneys for Defendant

Charleston, South Carolina

Dated: April 22, 2013

Date 4-29-2013  
Amount \$125.00  
PAID  
By   
MIKELL R. SCARBOROUGH  
MASTER IN EQUITY

## FORM 4

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-8447

Montclair POA, Inc.

Church Creek Construction, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

## DISPOSITION TYPE (CHECK ONE)

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

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

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

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

## INFORMATION FOR THE PUBLIC INDEX

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

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Montclair Property Owners Association, Inc   | Church Creek Construction, LLC           | \$475,000.00                                             |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

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

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

Circuit Court Judge

3062

Judge Code

11/13/2013

Date

**For Clerk of Court Office Use Only**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO. 2012-CP-10-8447

MONTCLAIR PROPERTY OWNERS )  
ASSOCIATION, INC. AND )  
MONTCLAIR PROPERTY OWNERS )  
ASSOCIATION BOARD OF )  
DIRECTORS FOR AND ON BEHALF )  
OF ALL OWNERS OF THE )  
MONTCLAIR HORIZONTAL )  
PROPERTY REGIME, AS ASSIGNEES )  
OF MONTCLAIR ASSOCIATES )  
LIMITED PARTNERSHIP, CREMCO, )  
LLC AND MONTCLAIR HOMES, LLC )

PLAINTIFFS, )

vs. )

CHURCH CREEK CONSTRUCTION, )  
LLC, )

DEFENDANT. )

**MASTER'S FINAL ORDER AND  
JUDGEMENT**

2013 NOV 14 AM 9:35  
CLERK OF COURT  
J. M. S. S.

This is an action for contribution brought against the Defendant, Church Creek Construction, LLC, by the Plaintiffs, Montclair Property Owners Association, Inc. and Montclair Property Owners Association Board of Directors for and on behalf of All Other Owners of the Montclair Horizontal Property Regime, as assignees of Montclair Associates Limited Partnership, CREMCO, LLC and Montclair Homes, LLC. It arises out of underlying construction-defect-related litigation associated with the conversion of an apartment complex into condominium units for sale to the public. As reflected in the case caption, the Plaintiffs bring this contribution action against the Defendant after having been assigned the claim by certain defendants in the underlying case.



The matter was referred on May 6, 2013. The matter came on for a hearing on the merits before this Court, the Master-in-Equity for Charleston County, South Carolina, on July 24, 2013. The evidence of record consists of the parties' stipulation of facts, exhibits presented to the Court by agreement of the parties, certain deposition testimony from the underlying case, and the testimony of live witnesses called during the hearing. After duly considering the evidence, this Court arrives at the following findings of fact and conclusions of law, and renders this Final Order and Judgment.

### **JURISDICTION AND VENUE**

This Court has jurisdiction over the parties and the subject matter of this action and venue is proper herein. By consent order, this case was referred to this Court, and all parties have stipulated that this matter is properly heard and decided by this Court.

### **FACTS AND PROCEDURAL BACKGROUND**

The following facts were agreed upon in the parties' stipulation and/or were established by the additional testimony and evidence received prior to and during the July 24, 2013 hearing. The current contribution case grew out of the settlement of underlying litigation; specifically, a condominium building defect case that will be referred to in this Order as the "underlying case," which was pending in Charleston County, captioned *Montclair Property Owners Association et al. v Kinney et al.*, and further identified by Case No. 2008-CP-10-6897.

The facts in the underlying case were as follows. The Defendant in this contribution case, Church Creek Construction, LLC (hereinafter "CCC"), a licensed South Carolina contractor, working through subcontractors, did repairs on the common elements of numerous wood frame, multi-family buildings comprising the Montclair condominiums (located in Mount Pleasant, South Carolina) between the Fall of 2003 and the Spring of 2005. The evidence shows

that CCC performed work in some fashion on common elements in the buildings that housed as much as ninety percent (90%) of the total units at the Montclair condominiums.

Evidence was presented that CCC had listed in its various invoices work on buildings that housed 218 of total 240 units. (Exhibits 36, 83 and 46; Hearing Tr. p. 68, line 10 - Hodgin.) This work consisted of some roof repairs, siding/building envelope repairs, and general wood-rot repairs, as well as repair of the firewalls in the attics of many of the buildings. This work was intended to address a scope of work given to CCC by both the owner and condo converter, Montclair Homes, LLC, as well as by the former owner, Montclair Associates Limited Partnership (hereinafter "MALP"), the entity that sold the buildings to the condo converter (Montclair Homes) for ultimate sale to the public. (Dep. of Bruce Kinney, Vol. 1, p. 36, line 23 – p. 39, line 9; p. 49, line 17 – p. 50, line 16; p. 64, line 19 – p. 65, line 2.)

The Plaintiffs argued that there were three (3) primary "groups" of defendants in the underlying case for purposes of analyzing the facts under the contribution statutes. They were: (1) Montclair Homes, the direct converter and seller of the condominium units to the public; (2) the MALP and CREMCO group that sold the apartment complex to Montclair Homes to be converted; and (3) the construction group comprised of CCC and its subcontractors, Roger Lockey and Larry Elsey d/b/a/ ECI Construction.

The condominium converter, Montclair Homes, through its managing member, Bruce Kinney, testified (Dep. of Bruce Kinney, Vol. 1, p. 101, line 3 – p. 102, line 17) that it knew CCC was a licensed South Carolina contractor and that CCC had assured Montclair Homes that it could fix the various things it wanted addressed, which were noted in a report prepared by Montclair Homes' architect that was admitted into evidence by agreement. (Exhibit 5.) Likewise, CCC working directly for MALP, the seller of the property, agreed with MALP to

repair certain firewall code deficiencies in the buildings that had been discovered by MALP's engineers during a property condition assessment just prior to sale to Montclair Homes.

The Plaintiffs presented live testimony and evidence by way of an expert engineer and by the president of the Board that the property was found by the owners after it was turned over in the 2005 timeframe to be in very poor condition, with deficiencies noted in the CCC firewall repairs, siding repairs, and CCC repairs to the common elements. In the underlying case, Plaintiffs' experts testified that repair costs sufficient to bring the buildings to a "good condition" (as was noted in Exhibit 5) would be in excess of \$12,000,000.

The Plaintiffs' expert testified in this hearing and in the underlying case that the building codes adopted and in effect for repair work done by CCC in the 2003-2005 timeframe were violated by CCC. These violations in CCC's attempted repairs of the buildings occurred both on the exterior building envelopes and on the interior firewalls in the attics. Both of these areas where CCC did work were to areas which were described as common elements by the Plaintiffs' Master Deed. For example, the Plaintiffs' expert, Derek Hodgin, P.E., testified that the 2000 International Building Code was in effect for the exterior repairs (Hearing Tr. p. 62 - Hodgin) and Mr. Hodgin showed photos (Exhibits 266 and 103E) that showed step flashing and code-required weather resistant barrier wrap missing where new Georgia Pacific siding was replaced in the 2004 timeframe by CCC (Hearing Tr. pp. 77-78 - Hodgin), which appears to have caused additional building damage and wood rot since the time of the repairs by CCC in 2004, and which new damage will have to be ultimately repaired again by the Plaintiffs. (Hearing Tr. p. 78 - Hodgin.) The Plaintiffs' expert also testified that the building codes in effect had not been complied with on CCC's attempted firewall repairs. (Hearing Tr. pp.83-84; pp. 88-89 - Hodgin; Exhibits 290 and 291.)

CCC claimed it was given a very limited scope of work by Montclair Homes on the exterior and did what was required to "take it back to good wood" and it also did what was necessary to fix wood rot and other problems that were either found on the list of problems to be repaired given to it by the condominium converter, Montclair Homes, and firewall repair list given to it by the previous owner, MALP. The Plaintiffs presented expert testimony that the work done by CCC to the common elements during the conversion mentioned above was deficient, directly caused property damage and that CCC and its subcontractors failed to perform in a workmanlike fashion and/or failed to comply with the applicable building codes in effect for the time period of the conversion work. CCC did not hire an expert for the underlying case nor present any expert testimony in this hearing regarding the repairs it performed. Instead, it relied on the deposition testimony from the underlying case, primarily of Roger Lockey and Larry Elsey who were the hands on subcontractors working for CCC on the repairs.

Elsey was a partner with Kevin Molony in the CCC venture and was also a subcontractor to CCC on the Montclair job. Elsey acted for CCC mainly as a supervisor in the field directing crews. Lockey was a carpenter and was paid by Elsey and/or CCC to do primarily exterior repair work on the buildings at Montclair. (Dep. of Roger Lockey, p. 6, lines 8-17; p. 7, lines 4-11; p. 7, lines 18-23.) It is noted and was stipulated by the parties that these two subcontractors or employees of CCC paid \$525,000 to buy their peace in the underlying case in May 2012. CCC was not released as a part of that settlement and the parties specifically reserved the right to go to trial against the remaining entities. (Stipulations of Fact, ¶ 10.) It was admitted in testimony of Kevin Molony, one of the principals of CCC that a general contractor is responsible for the work of his subcontractors.



In the final settlement, which occurred in the October 2012 timeframe as trial of the underlying suit was starting, \$3,000,000 was paid by Montclair Homes and MALP. That \$3,000,000 broke down as follows: \$1,600,000 was paid by Montclair Homes and \$1,400,000 was paid by MALP. CCC did not contribute to this settlement and to date has not paid any money for the releases but has benefitted in that its liability was extinguished. (Exhibits 284 and 285.)

The Court has reviewed the releases from the aforementioned settlements and the documents assigning the instant contribution claim to the Plaintiffs, all of which are exhibits to the parties' stipulation of facts. The parties stipulated and this Court has determined that the right to proceed in contribution in favor of MALP, CREMCO, and Montclair Homes as against CCC for paying to extinguish CCC's liability was assigned to the Plaintiffs as a part of the overall settlement. In late December of 2012, the Plaintiffs brought this contribution action as assignee of the contribution right that existed in favor of MALP, CREMCO, and Montclair Homes when they originally paid the \$3,000,000 for the release of all remaining parties in the underlying case.

The live witness testimony presented during the July 24, 2013 hearing and the additional evidence of record has given this Court a full view of the nature of the underlying case and the settlements. The Court now makes the following findings of fact and conclusions of law concerning contribution.

#### **FINDINGS OF FACT**

1. The Court finds the real property, buildings, and all activities that gave rise to this case and to the underlying case occurred in Charleston County. Also, that the parties have consented to this reference and that this Court has the jurisdiction to enter this Final Order and

Judgment. Further, the Court finds the evidence presented supports the stipulations of fact entered into by the parties and it adopts by reference all stipulations of fact agreed to and filed with this Court and makes the same a part hereof.

2. The Court finds, and it was not disputed at the hearing, that CCC performed and supervised construction-related activities on the exteriors of the buildings at Montclair for the converter group, Montclair Homes, and did firewall repairs for MALP, the seller of the apartments to Montclair Homes, for the apartment-to-condominium conversion between the Fall of 2003 and the Spring of 2005. The Court, having reviewed the complaint and evidence of record, finds that it is appropriate to adopt the Plaintiffs' view that there were three (3) "groups" of defendants, each group having members with common interests for purposes of applying contribution law in an equitable fashion. The Court finds these groups to be the "Converter Group," the "Seller of the Apartments Group," and the "Construction Group." The Court finds as a fact that the last invoice from Roger Lockey/CCC for repair work is dated April 8, 2005, as referenced in Exhibit 36. The Court finds these repaired areas of the buildings were common elements and were areas that the Plaintiffs in the underlying suit claimed were in substandard and damaged condition due, in part, to defective repairs by CCC. The Court also notes the last units were sold to the public in the May 2005 timeframe and all construction and conversion activity had taken place by that date.

3. The Court finds that the Plaintiffs alleged in their Third Amended Complaint in the underlying case (Exhibit 283) deficient and negligent construction causing property damage to them against CCC, MALP, and Montclair Homes. (Hearing Tr. p. 36, lines 7-21 – Laddaga.) The Court finds that at the time of the release of CCC in November 2012, there was no less than seven (7) separate defendants left which, but for the releases, would have gone to a jury trial with

a real possibility that joint and several liability would be established. For purposes of this analysis, all of these defendants were members of three (3) groups: the MALP group (seller of the apartments to the converter); the Montclair Homes group (seller of the condos to the public); and CCC group (the construction group including already settled Lockey, Elsey and ECI). All seven (7) of these defendants which could have been found by a jury to be liable did logically and equitably fit into one of these three groups.

4. The Court finds that, in April 2012, there was a partial settlement by the Plaintiffs. CCC's subcontractors Elsey, ECI and Lockey settled out for \$525,000, as is stipulated to by the parties. The Court finds the total amount of all settlements after all settlements had extinguished all claims was \$3,525,000. Of this total amount paid, \$3,000,000 was paid under releases that extinguished the liability of CCC. The Court finds that the settlement of \$525,000 by the subcontractors by its terms did not affect the Plaintiffs' right to proceed forward against the remaining defendants, MALP, Montclair Homes, and CCC. The Plaintiff did proceed until final settlement for \$3,000,000 occurred in the October/November 2012 timeframe with these remaining parties.

5. The Court finds that the work of CCC was negligent and caused consequential damage to Plaintiff's property other than to the work itself and that the negligent construction work combined and concurred with the negligence of the other two defendant groups and contributed to the Plaintiffs' indivisible damages. Plaintiffs established by expert testimony that CCC's work in many areas of the exteriors of the building envelope and also in the repair of the firewalls was deficient and violated the building codes in effect for the time period when CCC performed repairs through its subcontractors. This was established to the satisfaction of the Court by a preponderance of the evidence. The Court notes negligent repairs of the firewalls did



affect a life safety system within the buildings. The Court finds that many of the areas of the exteriors of the buildings will need to be repaired again after the CCC repairs, including the repair of consequential damage, and that the firewalls will need to be redone, all at a considerable expense to the Plaintiffs. The Court finds that the Defendant CCC did not present any alternative cost of repair estimate and that the Plaintiffs' cost to repair the buildings was in the \$12,000,000 range.

6. The Court finds that the Plaintiffs did have viable causes of action still existing upon which they were proceeding to trial in the underlying case at the time of settlement in November 2012. Some of the causes of action sounded in tort and were for deficient construction with all three groups of defendants alleged to have been jointly and severally responsible. Indeed, these were the most significant causes of action in light of the evidence of record. The Plaintiffs' Second and Ninth causes of action this Court finds were common to all defendants and sounded in tort for negligent construction causing property damage and were being pursued at the time the final settlement occurred in the underlying case. This Court is convinced that the release which CCC had the benefit of by virtue of the payment by MALP and Montclair Homes had substantial value to CCC. Had a verdict been rendered below in tort for negligent construction, CCC and the other defendants would have faced substantial common liability but for their liability being extinguished by settlement.

#### **CONCLUSIONS OF LAW**

This Court concludes as a matter of law it is directed by statute and case law to decide the facts and determine final judgment as per S.C. Code Ann. §§15-38-10 to -70 and under principles of equity what amount, if any, CCC is responsible for by way of contribution to the previous settlement which took place in the underlying case. The Court concludes that

contribution under the pre-July 2005 contribution statutes controls this Court's decision. The Court notes that, after July 2005, the contribution statutes added a section, §15-38-15. This Court notes §15-38-15 by its effective date mandate did not apply to the facts in the underlying case as causes of action and all operative facts occurred prior to July of 2005. This Court finds the facts of this case to clearly establish the underlying deficient construction had all taken place well before the change in the law in July of 2005 and therefore our contribution laws as they existed before the July 2005 legislative change apply to the facts in this case.<sup>1</sup>

The Court concludes as a matter of law that since the pre-July 2005 statutes apply, no allocation analysis is required as exists in the "new" §15-38-15 statute; however, the Court is required under the pre-July 2005 contribution statutes to "apply principles of equity" and a "pro-rata analysis." (emphasis added). This Court concludes under §15-38-20, entitled "Right of Contribution," that the following general principles apply to the facts of this case: "where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them." Also, the statutes pre-July 2005 indicate that this Court should attempt to use a pro-rata approach to determine what the non-contributing tortfeasor should pay by way of contribution.

Under the pre-July 2005 statutes, §15-38-30 lists the factors for determining pro rata liability of tortfeasors as follows: "In determining the pro rata shares of tortfeasors in the entire liability (1) their relative degrees of fault shall not be considered; (2) if equity requires, the

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<sup>1</sup> This Court spent a considerable amount of time determining what "common liability" is under the statute. As stated at trial, the issue before the Court is "what is the common liability?" This Court concludes that if the S C. Contribution Among Tortfeasors Act has any meaning, that it would apply under these facts under the pre-2005 statute. In the event the post-2005 statute applies, the Court concludes there would be no liability under these facts.



collective liability of some as a group shall constitute a single share; and (3) principles of equity applicable to contribution generally shall apply.”

In this case, the Court has found that viable claims existed against all of the “groups” of defendants. There were three groups of defendants, and the Elsey, ECI and Lockey subcontractors clearly belonged to the “Construction” group. The right of contribution exists only in favor of a tortfeasor [or group] who [have] paid more than [their] pro rata share of the common liability, and their [paying groups] total recovery is limited to the amount paid by [them] in excess of [their] pro rata share. Also, this section states, “No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.”

The Court first finds that extinguishment of a tortfeasor’s potential liability is a prerequisite and the statute states a tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable. The Court finds that in the November 2012 settlement, CCC’s liability was extinguished for a total payment of \$3,000,000. The parties have so stipulated and therefore this statutory requirement has been met.

Applying the above plain statutory language, the Court believes an analysis of the facts of this case turn on the question of what was the “common liability,” which was clearly extinguished. Said another way, what common liability did CCC face that was extinguished and what limits are placed on its payment back to those who extinguished that common liability in CCC’s favor.

At the contribution trial, the Plaintiffs raised several possible ways to analyze the “common liability” CCC faced. Had CCC proceeded to jury trial in the underlying case, the

common liability could have been substantially more than the \$3,000,000, which was ultimately paid in extinguishing CCC's liability. The Plaintiffs discussed at the hearing before this Court the analysis that the best evidence of what common liability was extinguished is the total of both settlements divided by the three groups giving credit for the \$525,000 already paid by the Construction group (Elsey and Lockey). That analysis ends with each group on a pro rata basis being responsible for \$1,175,000 (\$3,525,000 divided by 3 groups = \$1,175,000). Under that analysis, since the Construction group had already, through Elsey and Lockey paid \$525,000, that group would owe an additional \$650,000. If it "paid back" to MALP and Montclair Homes in contribution an additional \$650,000, then each group would have contributed \$1,175,000. As it now stands, MALP paid \$1,400,000, Montclair Homes paid \$1,600,000, and the Construction group (exclusive of CCC) paid only \$525,000 and needed an additional contribution of \$650,000. The Court believes, however, the correct interpretation of the contribution act as it applies in these facts lies within a careful reading of §15-38-20 (b).

Section 15-38-20 is entitled "Right of contribution." Section "B" reads:

(B) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

The Court emphasizes that the limit on contribution in this section is a recovery by the tortfeasor to the amount in excess of his pro rata share. This Court believes the limit in this case to be whatever the excess is above the "common liability" pro rata share. Since the words "common liability" in this same section seem to refer to the amount actually paid for the settlement from which the contribution right is created. It would seem to follow, and this Court finds that the \$3,000,000 settlement is the only settlement that gave rise to any contribution



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claim. The parties have, in fact, so stipulated that the subcontractor settlement (\$525,000) did not refer in any way to contribution. Therefore, within the facts of our case, the term "common liability" would equate to the amount paid for the global release which finally extinguished everyone's liability in this case for \$3,000,000.

This Court notes that at common law there was no right of contribution as among joint tortfeasors and therefore contribution statutes have long been determined to be in derogation of common law. Being in derogation of common law, our courts require strict construction of the statutes and a strict reading of the language of §15-38-20. G&P Trucking v. Parks Auto, 357 S.C. 82, 591 S.E.2d 42 (Ct. App. 2003); *see also* Cowden Enterprises, Inc. v. East Coast Millwork Distributors, 363 S.C. 540, 611 S.E.2d 259 (Ct. App. 2005). This Court also notes that only a settlement which gives rise to the extinguishing of liability can allow a joint tortfeasor to have contribution as against another joint tortfeasor who does not contribute to the settlement but who nevertheless has its joint liability extinguished. Said differently, in order for a tortfeasor to recover in contribution from another joint tortfeasor, extinguishment of non-contributing joint tortfeasor's liability must have resulted directly from settlement itself. G&P Trucking, 357 S.C. 82, 591 S.E.2d 42. Furthermore, the law favors settlements over trials. The statute does not require a jury verdict to determine contribution among tortfeasors.

Under the facts of this case, no contribution rights arose from the settlement of the subcontractors in April 2012. Members of the Construction group paid \$525,000 and the parties agreed that those releases were only intended to buy peace for those subcontractors. Those releases did not extinguish CCC's liability. The second settlement in October/November 2012 was different. Three Million Dollars was paid by two of the remaining three defendant (groups) and they in effect bought a release for all three groups for their potential joint common liability



including the non-contributing joint tortfeasor CCC. That was by a strict reading of the statutes the “common liability” out of which we determine pro-rata shares and the amount of appropriate contribution.

In weighing the evidence, the Court finds that CCC and its subcontractors did in fact conduct negligent construction activities on multiple parts of the common elements of these buildings and did contribute to causing the Plaintiffs’ significant consequential property damage. Therefore, this Court finds CCC was a joint tortfeasor with MALP and Montclair Homes and finds the overall November 2012 settlement to have been a fair and reasonable settlement in light of significant potential liability all three groups of remaining defendants faced at trial. Equity would demand some contribution back to those who paid to extinguish CCC’s liability.

A section of the contribution statutes both pre and post July 2005 in our state require this Court to deal with a potential set-off under the facts in this case. The Court finds that §15-38-50 entitled “Effect of Release” must be applied if the Court so determines. That statute provides:

**§15-38-50.** Effect of release; covenant not to sue, or not to enforce judgment.

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

- (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
- (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

First, this Court is aware that the affirmative defense of “set-off” was not pled as an affirmative defense in this case by CCC. Normally, affirmative defenses must be pled or they are waived. Rule 8(c), SCRCP; Wright v. Craft, 372 S.C. 1, 21, 640 S.E.2d 486, 497 (Ct App.

2006) ("The failure to plead an affirmative defense is deemed a waiver of the right to assert it."). Section 15-38-50, however, provides a set-off by operation of law. See Ellis v. Oliver, 355 S.C. 106, 515 S.E.2d 268 (Ct. App. 1999). Therefore, the set-off arising from the settlement of the subcontractors of \$525,000 must be applied to reduce the claim against CCC from the contribution it is being asked to make which grew out of the \$3,000,000 settlement.

If analyzed as if no other settlement had occurred, then the "pro rata share" of the \$3,000,000 for each group would be \$1,000,000. However, because the statute requires a set-off and also because the equities favor that the \$525,000 should be credited to the Construction group's payment of its fair share of the common liability, the \$525,000 early sub-contractor settlement amount must be subtracted from the \$1,000,000 "pro rata" Construction group's share (final settlement) leaving a fair and equitable contribution balance of \$475,000.

CCC contends it only "touched" 65% of the buildings. However, this was sufficiently rebutted in the Court's opinion by the Plaintiffs' experts that CCC touched slightly in excess of 90% of the buildings. The Plaintiffs introduced evidence that CCC's own invoices indicated it worked on buildings housing 218 of 240 units, or slightly over 90%. (Exhibits 83 ("Units worked on by CCC") and 43 ("Firewall repairs by Mark Ackerman").) This Court finds the Plaintiffs' evidence to be compelling and of greater weight as it includes actual invoices from CCC demonstrating where it worked. This Court therefore declines to deduct 10% from the amount of fair contribution CCC should pay.

The release which extinguished CCC's liability was purchased in the context of a possible joint and several liability. This Court's analysis becomes one of what is CCC's share pro rata. Only after the change in the law after July of 2005 does the analysis shift to what was the percent of its liability to the common liability for purposes of determining contribution. It is



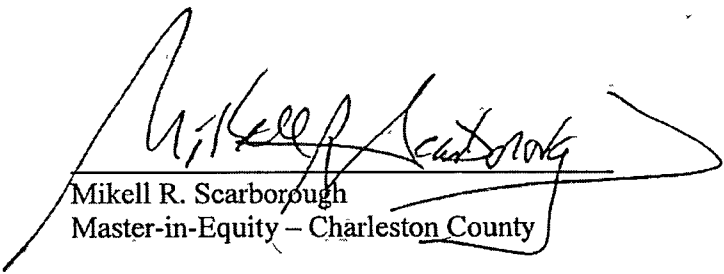
clear that although the causes of action arose near the time of a change in the law on how a construction defendant's contribution share is arrived at, the facts of this case were still clearly under the old joint and several format and therefore must be decided accordingly. The Plaintiffs in the underlying case would have been entitled to a joint and several verdict. Clearly, all events took place pre-July 2005, and CCC would not have had the benefit of an allocation analysis brought in by the contribution statute change post July of 2005.

### JUDGMENT

Having reviewed the evidence in light of the Uniform Contribution Among Tortfeasors Act as it existed pre-July 2005, and having applied the applicable law and principles of equity to the stipulated and established facts before it, the Court hereby awards the Plaintiffs the sum of \$475,000 as against Defendant Church Creek Construction, LLC. The clerk is hereby

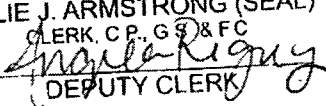
ORDERED to enter and enroll judgment for the Plaintiffs in the amount of \$475,000.00 against Church Creek Construction, LLC in accordance with this decision.

AND IT IS SO ORDERED.

  
Mikell R. Scarborough  
Master-in-Equity – Charleston County

Charleston, South Carolina

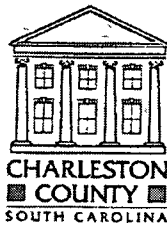
Dated: Nov. 13, 2013

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & FC  
By   
DEPUTY CLERK

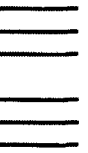
**JULIE J. ARMSTRONG**

CLERK OF COURT, C P & G S  
100 BROAD STREET, SUITE 106,  
CHARLESTON, SC 29401-2258

**RETURN SERVICE REQUESTED**



www3.charlestoncounty.org



61



THOMAS HAYDEN HESSE  
PO BOX 22247  
CHARLESTON SC 29413-2247

**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC**

**Master Order-defnt's motion to reconsider is denied**

**CASE NO: 2012CP1008447**

**Montclair Property Owners Association Inc VS Church Creek Construction LLC**

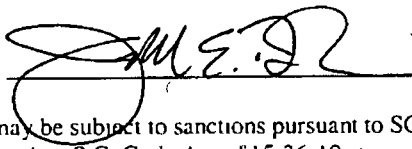
This judgment was entered on the 09th day of May, 2014, and a copy mailed first class on Tuesday, May 13, 2014, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at [www3.charlestoncounty.org](http://www3.charlestoncounty.org).

☐ Medical (620)  
☐ Other (699)

☐ Out-of State Depositions (650)  
☐ Sexual Predator (510)

Submitting Party Signature:



Date: 12/5/08

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

NINTH JUDICIAL CIRCUIT

Montclair Property Owners Association )  
(A South Carolina non-profit corporation) )  
and Montclair Property Owners )  
Association Board of Directors for and on )  
behalf of all owners of the Montclair )  
Horizontal Property Regime, )

CASE NO 2008-CP-10-6897

Plaintiffs,

vs.

Bruce E Kinney, individually and as an )  
incorporator for Montclair Homes, LLC, )  
Montclair Homes, LLC, a SC Limited )  
Liability Company (declarant – Master )  
Deed); CREMCO, LLC, an Illinois )  
Limited Liability Company, and Montclair )  
Associates Limited Partnership, an Illinois )  
Limited Partnership, )

Defendants,

**SUMMONS**  
(Jury Trial Demanded)

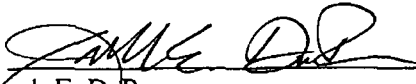
2008 DEC -5 PM 2:22  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

TO THE ABOVE-NAMED DEFENDANT.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices, 28 Broad Street, Charleston, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint

YOUNG CLEMENT RIVERS, LLP

By   
Joseph E. DaPore  
P.O. Box 993, Charleston, SC 29402  
(843) 726-5446; jdapore@yclaw.com  
Attorneys for the Plaintiffs

Charleston, South Carolina  
Dated 12-5-08

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

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Deed), CREMCO, LLC, an Illinois )  
Limited Liability Company; and Montclair )  
Associates Limited Partnership, an Illinois )  
Limited Partnership, )

Defendants, )

CASE NO. 2008-CP-10-6897

**COMPLAINT**  
(Jury Trial Demanded)

FILED  
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JULIE J. ARMSTRONG  
CLERK OF COURT

TO THE ABOVE NAMED DEFENDANTS

The Plaintiffs allege and show the following

1. The Plaintiffs, the Montclair Property Owners Association, Inc., is a South Carolina non-profit corporation doing business primarily in Mt. Pleasant, South Carolina, Charleston County

2 Each owner of a unit at the Montclair Horizontal Property Regime is by virtue of their ownership and the governing documents a member in the Plaintiff homeowner association

3 The Plaintiff, Montclair Property Owners Association, Inc , is governed by its board of directors who are charged with the management of the horizontal property regime known as Montclair Horizontal Property Regime. The board of directors is responsible by law

for the operation, control, maintenance and repair of the property and is by virtue of state law and the governing documents of the regime vested with the authority and power necessary to carry out its responsibility to the owners regarding maintenance of the common elements of the regime.

4 The Plaintiff, Montclair Horizontal Property Regime, was created pursuant to South Carolina laws, namely, the South Carolina Horizontal Property Act, and pursuant to the filing of a master deed hereinafter described which was filed on November 7, 2003, in the Charleston County RMC Office.

5. The Plaintiffs' Horizontal Property Regime consists of 240 condominium units contained in 39 buildings on approximately 26 acres of land in Mt. Pleasant, South Carolina, Charleston County.

6 Upon information, Defendant Montclair Associates Limited Partnership is an Illinois limited partnership that was in a joint venture with Defendant Bruce Kinney, Montclair Homes, LLC, and CREMCO, LLC, in the development and transformation of Montclair Apartments into a Horizontal Property Regime now known as Montclair Horizontal Property Regime and in the sale of units in that Horizontal Property Regime for profit.

7 Defendant Bruce Kinney was the incorporator of the Plaintiff Homeowners Association acting as the developer.

8 Defendant CREMCO, LLC, was, at all times pertinent, an Illinois limited liability company doing business at 345 Canal Street, Chicago, Illinois. CREMCO, LLC, did business in Charleston County, South Carolina during the pertinent time periods

9 Upon information, CREMCO, LLC, was in the business of managing commercial and residential properties and at all times pertinent acted as managing agent for Defendant

Montclair Associates Limited Partnership, an Illinois limited partnership doing business at 345 Canal Street, Chicago, Illinois, with respect to its ownership of the 39 buildings comprising Montclair Apartments in Mt. Pleasant, South Carolina

10. The Defendant Montclair Homes, LLC, is, upon information and belief, a dissolved South Carolina limited liability company having been dissolved on or about December 25, 2005, and having done business in South Carolina as a limited liability company between its effective dates of May 8, 2003, and December 25, 2005. Montclair Homes, LLC, was the “primary condominium developer”, the grantor on the master deed, and the direct seller of the individual condominium units to the public.

11. Defendant Bruce Kinney was the primary individual member of Montclair Homes, LLC, in the development of Montclair Horizontal Property Regime and was a member of that limited liability South Carolina company, Defendant Montclair Homes, LLC, which was formed to purchase from Defendant Montclair Associates Limited Partnership, an Illinois partnership, the property for development originally known as Montclair Apartments and with a purpose to convert those apartments into a South Carolina Horizontal Property Regime and to sell the 240 units for profit. Mr. Kinney, upon information and belief, participated in and/or approved the actions and practices of Montclair Homes, LLC, and Montclair Associates Limited Partnership which constitute the basis for this lawsuit as set forth below.

12. The Plaintiffs are residents of Charleston County, South Carolina

13. Defendant Bruce Kinney is a resident of Charleston County, South Carolina

14. The subject real estate is located in Charleston County, South Carolina.

15. Venue is proper in Charleston County, South Carolina, and the Charleston County court of Common Pleas has jurisdiction over the parties to hear this matter

16 Plaintiffs demand a trial by jury as to all issues triable to a jury

### FACTS

17. The Montclair apartment buildings consisting of 160 garden (one level plans in a 2-story building) and 80 (2-story level townhouse units), including a club house and two swimming pools.

18 The construction of the 240 units/apartments is primarily slab on grade, conventional wood frame construction with Masonite siding, some brick facades and asphalt shingle roofs. These 39 buildings were constructed between 1980 and 1990.

19 Upon information and belief, the property Montclair Apartments was sold by Travelers Indemnity Corporation to Defendant Montclair Associates Limited Partnership on February 11, 1992

20 Upon information, Montclair Associates Limited Partnership, an Illinois limited partnership having an address of 345 Carnal Street, Suite 201, Chicago, Illinois, sold the property to Defendant declarant Montclair Homes, LLC, a South Carolina limited liability company having an address of c/o Kinney Associates, Inc., 315 Davis Street, Evanston, Illinois, on or about November 6, 2003

21 Upon information, the next day, November 7, 2003, a master deed was filed with the Charleston County RMC Office by the Declarant Montclair Homes, LLC, submitting the land and improvements, to wit these 26 acres, 39 buildings and 240 units to a South Carolina Horizontal Property Regime to be known as Montclair Horizontal Property Regime thus creating a South Carolina condominium as set forth in South Carolina Code Ann. §27-31-10, et.seq , to be governed and operated pursuant to South Carolina law.



22 Upon information, prior to the sale of the property from Montclair Associates Limited Partnership to grantor Montclair Homes, LLC, several inspections had been performed over several years for the owner Defendant Montclair Associates Limited Partnership and for Defendant "CREMCO, LLC" by an architectural/engineer consulting firm which inspections were comprehensive and designed to "assess the structural condition of the Montclair Apartments" and to generally survey the general conditions of the buildings and systems. One such report was dated April, 2003.

23. This engineering report sent to Defendant CREMCO, LLC, and to Defendant Montclair Associates Limited Partnership made reference to previous inspections and noted exterior Masonite siding "Masonite X-90" which had been installed on all 39 buildings and which was the subject of a class action suit. The report dated April of 2003 concluded that there were on the 39 buildings at Montclair Apartments "numerous areas on the painted siding which are buckling or warping" and "several areas where the siding has deteriorated and needed replacement".

24. The engineering report prepared for Defendant CREMCO, LLC, and Defendant Montclair Associates Limited Partnership by its engineer consultant further referenced repairs which would in the future need to be done to different components of the buildings and grounds such as asphalt/road work, repair of the drainage areas, repair of fire walls in attics, etc. This April 2003 report mentioned the "Masonite claims class action administrator" had been notified of the claim and had, in fact, sent claim settlement forms and settlement checks which were being held by the engineering firm, American Consulting, Inc. The report represented that "repairing all of the exterior composite wood surfaces is not included in this report until the Masonite issue is resolved".

25 That upon information and belief, at some point prior to purchasing the property, Montclair Homes, LLC, became aware of and reviewed this report dated April of 2003. Montclair Homes, LLC, gained the knowledge contained in this report in that, upon information, it was shared by Defendant Montclair Associates Limited Partnership prior to recordation of the master deed with Defendant Montclair Homes, LLC, and Defendant Bruce Kinney

26 That upon information, prior to the filing of the master deed by the grantor in November of 2003, the grantor Montclair Homes, LLC, commissioned a South Carolina architect, Robert Epps, to prepare a disclosure report dated August of 2003 to be given to each prospective purchaser of units at Montclair in an effort to comply with its duties created by South Carolina Code Ann. §27-31-430 entitled "Disclosure of Physical Condition of Building"

27. That this Epps report dated August of 2003 was given to each prospective purchaser by the grantor specifically stating that the purpose of the report was to make a disclosure "of the physical condition of each residential unit and building" and to "determine the structural stability of each unit and review the general condition of the materials as they contributed to the performance of their intended purpose and to the life expectancy of the buildings" With respect to the exterior condition of the buildings, this report given to each prospective purchaser stated in pertinent part that:

As to the exterior of the buildings

"The residential buildings were painted during the period of 1994-1995. With the exception of a few random observations of spot peeling, the paint finish appears to be performing well."

As to roofs/roofing

“The existing roofing was installed in 1994 and appears to be in good condition.” “Such roofing generally has a productive life of 15-20 years ”

28. This August 2003 report given to each prospective purchaser by Defendant Montclair Homes, LLC, made many characterizations of exterior siding problems noted as being “minor” and gave no opinion to the Plaintiffs as to the useful life expectancy of the siding/building envelope as a common element.

29 The report concluded and it was represented to all purchasers by the grantor Montclair Homes, LLC, that the buildings had been well maintained and were in “good to very good” condition. The report concluded that the buildings should have a life of 75 to 100 years and beyond.

30 That upon information, Defendant Montclair Associates Limited Partnership was aware that this Epps report was given to each purchaser at the time of sale.

SALE OF UNITS AND CONTROL PERIOD

31. That from the date of filing of the master deed (November 7, 2003) until mid 2005, the primary developer, Montclair Homes, LLC, as grantor controlled the board of directors pursuant to the terms of the master deed. The primary developer made all decisions and was in control of what amounts were reserved for future maintenance of all common elements. The primary developer, Montclair Homes, LLC, was in charge of all repairs being done

32. That the Plaintiffs were given the Epps report by the developer dated August 27, 2003, referred to above and the Plaintiffs relied on its representations that it was a bonafide disclosure of the physical condition of the buildings by the Defendants. The prospective

purchasers and Plaintiffs were not made aware of the report dated April 2003 by the engineering firm referred to in Paragraphs 22, 23, 24 and 25.

33. That upon information and belief, at the time the developer/grantor left and the owner-controlled board of directors took over in late 2005, they began to study the financial conditions of the Montclair Horizontal Property Regime to determine its financial status.

34. In September 2006, an outside full reserve study was commissioned by the Plaintiffs which outside firm concluded in late 2006 that roughly 217,200 square feet of exterior composite Masonite siding was "in poor overall condition" and that "we have noticed visibly apparent defects in the subject siding other than normal visible deterioration". This reserve study advised Montclair of partial and eventual total replacement of the Masonite siding.

35. Since the reserve study has been completed, the Masonite siding has been partially replaced on two locations of two buildings. At the time of these replacements, extensive wood rot and deterioration were noted not only on the exterior siding itself but also within the structure of the walls behind the siding.

36. The board of directors has been advised that in the very near future, they would need to expend millions of dollars for exterior building common element repairs, including roof replacements, paving and road repair.

37. Upon information, the Plaintiffs will also have to expend significant money for roads and drainage issues as well which was not disclosed to them as prospective purchasers by the primary developer or by the Defendants at the sale in amounts totaling hundreds of thousands of dollars.

38. That at no time did the primary developer, Defendant Montclair Homes, LLC, during the sales or during the control period before the developer turned over the regime to the

current board of directors make any attempt to establish an appropriate level of reserves, commence a reserve study or require that the regime fees be set at levels which would establish adequate reserves for replacement of these common elements described above

39. At the time the control period ended in late 2005 the primary developer had failed to establish money in reserves to pay for future replacement of common elements despite the distressed condition of the common elements which were known to it and to the other joint venturers, Defendants Bruce Kinney, Montclair Associates Limited Partnership and Defendant CREMCO, LLC

40. Recent investigations have determined that all of the Masonite siding need to be replaced due to extensive and ongoing water infiltration through the building envelope and that the replacement needs to be done as soon as possible to prevent further water intrusion damage into the wall structures of the units.

41. Recent investigations have shown the Plaintiffs will be required in the next few years to replace all of the asphalt shingle roofs. The board has replaced several of the roofs within the past two years due to water intrusion damage being very extensive and allowing water to intrude into the buildings and damage the structure of the buildings. Many, if not all, of the roofs have exhausted their useful life expectancy.

42 Defendant Bruce Kinney as an incorporator of Montclair Homes, LLC, and as a developer had superior knowledge of the nature of the Masonite problems on the exterior of the buildings and did not insure that the grantor, his corporation, accurately communicated information that the Masonite siding was substandard, deteriorating and had exceeded its useful life expectancy and had numerous areas which should have been replaced as was stated in

various reports commissioned by the predecessor in interest, Defendant Montclair Associates Limited Partnership.

43 Defendant Bruce Kinney, individually and as an incorporator in Defendant Montclair Homes, LLC, failed to take responsible and appropriate steps to insure the grantor, as developer, set appropriate reserves for the replacement of the Masonite siding and other common elements during the control period prior to relinquishing control to the owner-controlled board of directors

44. Bruce Kinney, individually and as an incorporator, failed to act upon knowledge he had concerning the ongoing failure of the Masonite siding and building envelope of the Montclair Horizontal Property Regime by failing to have the proper information disseminated to the owners during the control period about the true hidden costs associated with correcting the building envelope problems

45 The Plaintiffs by and through their board of directors of the Montclair Horizontal Property Regime on behalf of all owners have a claim against Defendant Bruce Kinney as a member of the developer Montclair Homes, LLC, a dissolved corporation pursuant to §33-44-808 of the South Carolina Code of Laws annotated for the shortfalls in the reserves, failure to fund the reserves and failure of the dissolved developer corporation to adequately represent the physical condition of the common elements of the regime and failure to accurately represent the true useful life expectancy of the building envelopes at the time of sale.

46. Upon information, all assets from the development of Montclair Horizontal Property Regime have been distributed by the dissolved corporation Montclair Homes, LLC, to its various members including Bruce Kinney of the Montclair Homes, LLC, as per their various interests

47. Extensive and immediate repairs are needed to exterior Masonite surfaces of the 39 buildings in order to prevent further ongoing damage.

48 That by South Carolina Statute §27-31-430 and by common law, Defendant Montclair Homes, LLC, had a duty to accurately represent to the Plaintiffs at Montclair Horizontal Property Regime that the Masonite siding was failing and had exceeded its useful life expectancy at the time the master deed was filed and that it would be very expensive to replace.

49 Defendant Montclair Homes, LLC, had a duty to recognize that the architectural report given to each purchaser dated August 27, 2003, was misleading, inaccurate and incomplete in that it characterized the condition of the roofs as “good”, made no reference concerning the siding failing to provide a water-tight exterior and gave no life expectancy of the existing Masonite siding as a common element as required by law. As such, this was a failure to accurately represent this critical information to the Plaintiffs regarding their common elements which information was clearly known to the Defendants

50 That upon information, Bruce Kinney had personal knowledge that there was a class action pending on the siding issue at Montclair and as an incorporator and principal member of Montclair Homes, LLC, had an affirmative duty to represent through this developer corporation that the siding at Montclair and roofs at Montclair had exceeded or were about to exceed their useful life expectancy and that the residents and owners of the units would be put to great expense in the form of special assessments needed to replace these common elements

51 At no time did any of the Defendants disclose the fact that Defendant Montclair Associates Limited Partnership had in fact “settled” the Masonite class action claim or make any reasonable attempt to accurately explain how this would affect the Plaintiffs future costs in maintaining the regime.

52. That having this knowledge, neither Bruce Kinney individually or as a member of the dissolved corporation Defendant Montclair Homes, LLC, nor Montclair Homes, LLC, took reasonable and appropriate steps to fully disclose the aforementioned physical conditions to prospective homeowners, set adequate reserves, or make the Plaintiffs fully aware of the situation during the control period.

53 That due directly to the failure to disclose fully the true life expectancy of common elements by the Defendants, the Plaintiffs have been, and will be, damaged in that the reserve accounts going forward are woefully underfunded

THE JOINT VENTURE OR ENTERPRISE

54. That upon information, all Defendants were involved in a joint venture or enterprise in that they shared a common purpose, shared information concerning the property, had the same mailing address, financed the property, directed the course of the venture, were involved in disseminating information to each prospective purchaser at each sale of every unit, and shared in the profits made from the sale of each unit at Montclair Horizontal Property Regime

55 That the development of the Montclair Horizontal Property Regime as a condominium development was a joint enterprise between all of the Defendants and all Defendants are liable for the actions committed by the other defendants which were committed within the scope of the enterprise

56 That over many years, from approximately 1992 to 2003, Montclair Associates Limited Partnership as owner of the property became aware through CREMCO, LLC, the property manager on the Montclair, Mt Pleasant, South Carolina, property that the property had various building issues and construction defects, among others, that the Masonite siding



extensively used on virtually all of the 39 buildings had exceeded or was about to exceed its useful life expectancy.

57. That during April of 2003, Defendant CREMCO, LLC, hired an engineering consultant firm to evaluate among other things the Masonite siding issue at Montclair, Mt Pleasant, South Carolina, and to produce a "property condition assessments" for Defendant Montclair Associates Limited Partnership. This April 2003 report included a "capital needs" replacement reserve of the various component parts and common elements of the 240 units at Montclair, Mt. Pleasant Apartments

58 That upon information and belief, this report prepared for CREMCO, LLC, was given by CREMCO, LLC, to Montclair Associates Limited Partnership during 2003. Montclair Associates Limited Partnership entered into negotiations with Bruce Kinney for the sale of the property to Montclair Homes, LLC Montclair Homes, LLC, and Bruce Kinney with full knowledge from CREMCO, LLC, and Montclair Associates Limited Partnership presented a plan to Montclair Associates Limited Partnership to convert the apartments to condominiums under South Carolina law pursuant to the South Carolina Horizontal Property Regime Act.

59. That Montclair Associates Limited Partnership having full knowledge of the impaired physical condition of the buildings transferred this knowledge to Bruce Kinney and Montclair Homes, LLC, grantor on the master deed. Included in this April 2003 report was an attached projected dollar value, prepared by the engineering firm that authored the report, of the deferred maintenance on the property which as of April 2003 totaled approximately \$900,000 exclusive of the Masonite siding issue and exclusive of the replacement costs for the roofs over the near term

60. With this knowledge, Montclair Homes, LLC, after purchase of the property, on November 6, 2003, directed its counsel to prepare a master deed, which was filed on November 7, 2003, and immediately began selling the 240 condominium units. Those sales continued from November of 2003 until May of 2005 without this knowledge being transferred to the Plaintiffs.

61 That Defendant Montclair Associates Limited Partnership was the lender and was further a joint venturer with grantor Montclair Homes, LLC, and through Montclair Associates' agent, CREMCO, LLC. Defendant Montclair Associates Limited Partnership produced a letter from the same engineering firm CREMCO, LLC. This letter dated November 6, 2003, originating from CREMCO, LLC, on stationery from the engineering firm characterized the Masonite siding problem as affecting only a "small percentage" of the siding and characterized the likelihood of recovery in the class action suit as "probably low" and that in their opinion, "it would be better to spend the money on routine maintenance and isolated repairs".

62 Upon information, these characterizations by the engineering firm hired by the defendants did not accurately apprise the prospective owners of the nature of the problem and, in fact, characterized the problem as minor when, in fact, it was at that time a multi-million dollar problem. That Defendants CREMCO, LLC, Montclair Associates Limited Partnership, Montclair Homes, LLC, and Bruce Kinney knew or should have known that this letter, generated immediately prior to the sales, enabled and assisted the grantor Defendant Montclair Homes, LLC, in making a negligent disclosure of the physical condition of the exterior of the buildings, at the point of sale, with each buyer of a unit at the Montclair Condominiums. As such, each Defendant acquiesced in and is responsible for the actions of every other defendant acting within the scope of the enterprise.

63 When Montclair Homes, LLC, did later participate in the Masonite class action suit while in control of the board of directors, it settled the claim and received approximately \$25,000. This amounts to less than one (1%) percent of what will be needed by the Plaintiffs to repair the Masonite exterior building envelope problems. At no time during the control period did the Defendants attempt to disclose to the Plaintiffs the shortfall or fund the shortfall in the Plaintiffs' regime reserve accounts or attempt to disclose the true nature of the building envelope problems to the Plaintiffs prior to the control period ending and the grantor corporation's dissolution

64 That as a result, property damage in the form of water intrusion continued to occur at all of the buildings and it has continued up until this time.

**FIRST CAUSE OF ACTION**

Negligent and Grossly Negligent Misrepresentation as to Defendants Bruce Kinney,  
Individually, and Montclair Homes, LLC

65. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint

66. That Defendant Bruce Kinney knew of the condition of the Masonite siding or had reason to know of its poor condition and need for replacement prior to any sale of any units at Montclair.

67 That Defendant Bruce Kinney's knowledge of the poor condition of the siding and other common elements was imputed to his developer entity Montclair Homes, LLC, at its incorporation date of May 8, 2003

68 That both Defendant Bruce Kinney and other individual member defendants of Montclair Homes, LLC, and Montclair Associates Limited Partnership negligently and jointly gave misleading information at the time of sale to all prospective purchasers and the Plaintiffs

regarding the physical condition of the property when they had a duty to accurately and fully state information concerning the physical condition of the building envelopes and other common elements.

69 That at all times during the sale negotiations, these Defendants had a duty created by both common law and statutory law dealing with the sale of a converted property to disseminate accurate information and they breached this duty with respect to the disclosure of information concerning the physical condition of the building envelopes. That this breach amounts to negligence and gross negligence and entitles the Plaintiffs to both actual and punitive damages

70. That as a direct result, the Plaintiffs have suffered, and will suffer, actual damages in the form of repairs, assessments and loss of use, etc.

71. That at all times the Plaintiffs were at the time of sale and later during the control period justified in relying on the representations of the Defendant Developers regarding the condition of the property and the proper setting of reserve funds for repair of the common elements.

### **SECOND CAUSE OF ACTION**

Neghgent Misrepresentation by all Defendants as Members of a Joint Venture or Enterprise

72. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint.

73 That upon information and belief, all Defendants as members of the joint venture or enterprise negligently misrepresented the physical condition of the common elements of the regime as to the Plaintiffs

74. That upon information as joint venturers, all Defendants had sufficient knowledge of material facts and control of the joint venture to fulfill their duty to the Plaintiffs to fully disclose the defects and they failed to take reasonable steps to do so.

75 That as a direct result, the Plaintiffs were damaged by the Defendants' failure to speak up about the problems and to fully disclose information which they had gained prior to the sales taking place or during the control period

76. Further, the actions of all Defendants amounted to gross negligence in that a direct statute was violated dealing with the duty to disclose the physical condition of the property

77 That each member Defendant of the joint venture or enterprise is liable for the negligent acts of the others, committed within the scope of the joint enterprise

78 As a direct and proximate result, the Plaintiffs are entitled to an award of actual and punitive damages.

### **THIRD CAUSE OF ACTION**

Breach of Fiduciary Duty, Failure to Adequately Reserve as to All Defendants

79 That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint

80 That upon information, all Defendants were involved in a joint venture in that they shared information concerning the property, financed the property, directed the course of the venture, were involved in each sale of every unit, and shared in the profits made from the sale of each unit at Montclair Horizontal Property Regime. Further, each Defendant was fully cognizant of the problems that would be caused by a failure to fully advise the Plaintiffs of the physical condition of their property.

81 That all defendants owed a fiduciary duty to the Horizontal Property Regime and Owners Association at Montclair to insure that at the time the common elements and control thereof were transferred from the developer to the homeowners association the common elements were in good repair or that sufficient funds had been reserved to effectuate any repairs.

82. That all defendants failed to exercise appropriate fiduciary duties in that at the time the units were sold during the control period and that at the time of transfer of control from the developer to the homeowner association the common elements were not in good repair and there was a shortfall of millions of dollars in reserves for the repair of the common elements

83 As a direct and proximate result, the Plaintiffs have been damaged as aforementioned in that they are now forced to make up a tremendous shortfall in reserves to repair common elements

84 That this shortfall was directly and proximately caused by the breach of the fiduciary duty and the failure of any one of the Defendants to have exercised appropriate fiduciary responsibilities as aforementioned.

85 That as a result, the Plaintiffs are entitled to actual and punitive damages for the shortfalls in reserves and cost of repair of the various common elements as well as per the damages

#### **FOURTH CAUSE OF ACTION**

Breach of Express Warranties and/or Advertisements as to All Defendants

86. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint.

87 That at all times all Defendants held out and advertised the condominiums during the sale period as "Luxury Condominiums" and that said condominiums were "nearly maintenance free".

88. Said advertisements were misleading and contributed to the damage suffered by the Plaintiffs who relied thereon in that they misled Plaintiffs purchasers regarding the quality and maintenance requirements of said homes.

89 As a direct result, the Plaintiffs suffered actual damage as a result of this breach of this express warranty

#### **FIFTH CAUSE OF ACTION**

##### **Failure to Comply with South Carolina Condominium Disclosure of Physical Condition of Buildings as to Bruce Kinney and Montclair Homes, LLC**

90. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint

91 That Defendants Bruce Kinney and Montclair Homes, LLC, as grantors, had a duty to comply strictly with §27-31-430 of the South Carolina Code of Laws requiring disclosure of the present condition of all common elements to prospective purchasers.

92. That Defendants failed to comply with this requirement and failed to disclose the useful life of the common elements; namely, the useful life of the exterior building envelopes and other common elements such as the roofs, roads and drainage common elements as required by statute.

93 As a direct and proximate result, the buyers were not made aware of the need for extensive repairs and replacement of common elements within a very short period of time after the control period ended on or about September, 2005. As a result, the Plaintiffs will suffer, and have suffered, actual damages

94 This failure of disclosure will result in the expenditure of millions of dollars to replace or repair common elements as stated

95 This failure to comply with the South Carolina law constitutes an unfair claims practice under South Carolina law and entitles the Plaintiffs to attorney's fees under §27-31-430, South Carolina Code Ann

**SIXTH CAUSE OF ACTION**

As to Bruce Kinney and Other Unnamed Members of Montclair Homes, LLC, for Disbursements from a Dissolved LLC under South Carolina §33-44-808

96 That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint

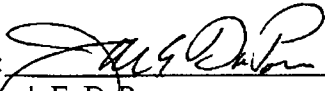
97. That upon information, the grantor/developer entity Montclair Homes, LLC, has dissolved and disbursed assets to its members, including Defendant Bruce Kinney

98 That the Plaintiffs are entitled to a judgment against the individual defendant members of the Montclair Homes, LLC, as per statute §33-404-808, South Carolina Code Ann , for all sums and judgments rendered against the dissolved corporation in amounts equal to the members' distributed assets as per South Carolina law.

WHEREFORE, the Plaintiffs pray for judgment on all causes of action against the Defendants, jointly and severally, above in an amount sufficient to repair the defects in the Plaintiffs' residence and to reimburse the Plaintiffs for the amounts expended on repairs to date, interest, together with consequential damages, forensic costs, redesign fees, punitive damages, costs of this action, attorneys fees and any other relief this Honorable Court deems proper Further, these Plaintiffs demand a trial by jury.



YOUNG CLEMENT RIVERS, LLP

By:   
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Attorneys for the Plaintiffs

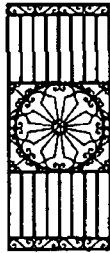
Charleston, South Carolina

Dated 12.5.08

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December 5, 2008

**HAND DELIVERY**

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

Re: Montclair Property Owners Association (A South Carolina non-profit corporation) and Montclair Property Owners Association Board of Directors for and on behalf of all owners of the Montclair Horizontal Property Regime vs. Bruce E. Kinney, individually and as an incorporator for Montclair Homes, LLC; Montclair Homes, LLC, a SC Limited Liability Company (declarant – Master Deed), CREMCO, LLC, an Illinois Limited Liability Company; and Montclair Associates Limited Partnership, an Illinois Limited Partnership  
Case No. 2008-CP-10-\_\_\_\_\_  
YCR File 13752-20081514

Dear Ms. Armstrong

Enclosed please find an original and six (6) copies of Civil Action Cover Sheet, Summons, and Complaint in the above-referenced matter. Please file the original and return the file-stamped copies to me. I have also enclosed a check in the amount of \$150.00 to cover all filing fees.

If you have any questions please do not hesitate to contact me.

With kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

  
Amanda K. DeMato  
Legal Assistant

AKD/akd

Enclosure(s)

cc: Terrie J. Bergdorf, CMCA, AMS, Montclair Property Owners Association, Inc.

ROA\_0066

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MONTCLAIR PROPERTY OWNERS  
ASSOCIATION (A SOUTH CAROLINA  
NON-PROFIT CORPORATION) AND  
MONTCLAIR PROPERTY OWNERS  
ASSOCIATION BOARD OF  
DIRECTORS FOR AND ON BEHALF  
OF ALL OWNERS OF THE  
MONTCLAIR HORIZONTAL  
PROPERTY REGIME,

PLAINTIFFS,

vs.

BRUCE E. KINNEY, INDIVIDUALLY  
AND AS AN INCORPORATOR FOR  
MONTCLAIR HOMES, LLC;  
MONTCLAIR HOMES, LLC, A SC  
LIMITED LIABILITY COMPANY  
(DECLARANT - MASTER DEED);  
CREMCO, LLC, AN ILLINOIS  
LIMITED LIABILITY COMPANY;  
MONTCLAIR ASSOCIATES LIMITED  
PARTNERSHIP, AN ILLINOIS  
LIMITED PARTNERSHIP;  
MONTCLAIR PROPERTY OWNERS  
ASSOCIATION a/k/a MONTCLAIR  
HOMEOWNERS ASSOCIATION  
(GRANTOR CONTROL PERIOD);  
BRUCE KINNEY AS AN OFFICER OR  
DIRECTOR IN THE MONTCLAIR  
PROPERTY OWNERS ASSOCIATION  
a/k/a MONTCLAIR HOMEOWNERS  
ASSOCIATION (GRANTOR CONTROL  
PERIOD), A SC NON-PROFIT  
CORPORATION; CHURCH CREEK  
CONSTRUCTION, LLC AND LARRY  
ELSEY, INDIVIDUALLY, AND D/B/A  
ECI OR ELSEY CONSTRUCTION,  
A/K/A ELSEY  
CONSTRUCTION INC.; AND ROGER  
LOCKEY,

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO 2008-CP-10-6897

2010 AUG 30 PM 4: 21  
JULIE J. ARISTON  
CLERK OF COURT

FILED

**SUMMONS FOR THIRD AMENDED  
COMPLAINT**

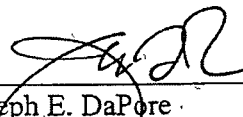
(Jury Trial Demanded)

DEFENDANTS. )  
)  
)  
\_\_\_\_\_)

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Third Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices, 28 Broad Street, Charleston, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint

YOUNG CLEMENT RIVERS, LLP

By: 

Joseph E. DaPore

P.O. Box 993, Charleston, SC 29402

(843) 720-5446; jdapore@ycrlaw.com

Attorneys for the Plaintiffs

Charleston, South Carolina

Dated: 8.27.10

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

NINTH JUDICIAL CIRCUIT

MONTCLAIR PROPERTY OWNERS )  
ASSOCIATION (A SOUTH CAROLINA )  
NON-PROFIT CORPORATION) AND )  
MONTCLAIR PROPERTY OWNERS )  
ASSOCIATION BOARD OF )  
DIRECTORS FOR AND ON BEHALF )  
OF ALL OWNERS OF THE )  
MONTCLAIR HORIZONTAL )  
PROPERTY REGIME, )

CASE NO. 2008-CP-10-6897

PLAINTIFFS, )

vs. )

BRUCE E. KINNEY, INDIVIDUALLY )  
AND AS AN INCORPORATOR FOR )  
MONTCLAIR HOMES, LLC; )  
MONTCLAIR HOMES, LLC, A SC )  
LIMITED LIABILITY COMPANY )  
(DECLARANT - MASTER DEED); )  
CREMCO, LLC, AN ILLINOIS )  
LIMITED LIABILITY COMPANY; )  
MONTCLAIR ASSOCIATES LIMITED )  
PARTNERSHIP, AN ILLINOIS )  
LIMITED PARTNERSHIP; )  
MONTCLAIR PROPERTY OWNERS )  
ASSOCIATION a/k/a MONTCLAIR )  
HOMEOWNERS ASSOCIATION )  
(GRANTOR CONTROL PERIOD); )  
BRUCE KINNEY AS AN OFFICER OR )  
DIRECTOR IN THE MONTCLAIR )  
PROPERTY OWNERS ASSOCIATION )  
a/k/a MONTCLAIR HOMEOWNERS )  
ASSOCIATION (GRANTOR CONTROL )  
PERIOD), A SC NON-PROFIT )  
CORPORATION; CHURCH CREEK )  
CONSTRUCTION, LLC; LARRY )  
ELSEY, INDIVIDUALLY, AND D/B/A )  
ECI OR ELSEY CONSTRUCTION, )  
A/K/A ELSEY CONSTRUCTION INC.; )  
AND ROGER LOCKEY )

**THIRD AMENDED COMPLAINT**  
**(JURY TRIAL DEMANDED)**

FILED  
JULIE J. ARISTON  
CLERK OF COURT

2010 AUG 20 PM 4:22

DEFENDANTS. )

TO: ABOVE-NAMED DEFENDANTS:

The Plaintiffs allege and show the following:

1 The Plaintiffs, the Montclair Property Owners Association, Inc., is a South Carolina non-profit corporation doing business primarily in Mt. Pleasant, South Carolina, Charleston County.

2. Each owner of a unit at the Montclair Horizontal Property Regime is by virtue of their ownership and the governing documents a member in the Plaintiff homeowner association.

3. The Plaintiff, Montclair Property Owners Association, Inc., is governed by its board of directors who are charged with the management of the horizontal property regime known as Montclair Horizontal Property Regime. The board of directors is responsible by law for the operation, control, maintenance and repair of the property and is by virtue of state law and the governing documents of the regime vested with the authority and power necessary to carry out its responsibility to the owners regarding maintenance of the common elements of the regime.

4. The Plaintiff, Montclair Horizontal Property Regime, was created pursuant to South Carolina laws, namely, the South Carolina Horizontal Property Act, and pursuant to the filing of a master deed hereinafter described which was filed on November 7, 2003, in the Charleston County RMC Office.

5. The Plaintiffs' Horizontal Property Regime consists of 240 condominium units contained in 39 buildings on approximately 26 acres of land in Mt. Pleasant, South Carolina, Charleston County.

6. Upon information, Defendant Montclair Associates Limited Partnership (hereinafter "MALP") is an Illinois limited partnership that was in a joint enterprise with Defendant Bruce Kinney (hereinafter "Kinney"), Montclair Homes, LLC, (hereinafter Montclair Homes) and CREMCO, LLC, in the development and transformation of Montclair Apartments into a Horizontal Property Regime now known as Montclair Horizontal Property Regime and in the sale of units in that Horizontal Property Regime for profit

7. Defendant Kinney was the incorporator of the Plaintiff Homeowners Association acting as an officer, and a Board member and/or officer of the Defendant Montclair Property Owners Association, LLC (hereinafter "Montclair POA") a/k/a Defendant Montclair Homeowners Association (hereinafter "Montclair HOA") from approximately September, 2003, until May 15, 2005, when the grantor turned over the functioning of the regime business to the Plaintiff as per the Master Deed for the Montclair Horizontal Property Regime. Defendant Montclair POA, LLC a/k/a Defendant Montclair HOA (grantor controlled) was formed as a South Carolina Limited Liability Corporation on or about September 26, 2003. The Defendant Montclair POA, LLC a/k/a Defendant Montclair HOA is sued for wrongful acts done or omitted during the period which began on its incorporation in September of 2003 and ended approximately May 15, 2005. This is the grantor control period

8. Defendant CREMCO, LLC, was, at all times pertinent, an Illinois limited liability company doing business at 345 Canal Street, Chicago, Illinois. CREMCO, LLC, did business in Charleston County, South Carolina during the pertinent time periods.

9. Upon information, Defendant CREMCO, LLC, was in the business of managing commercial and residential properties and at all times pertinent acted as managing agent for Defendant MALP, an Illinois limited partnership doing business at 345 Canal Street, Chicago,

Illinois, with respect to its ownership of the 39 buildings comprising Montclair Apartments in Mt. Pleasant, South Carolina prior to the sale of this property to Defendant Montclair Homes.

10. The Defendant Montclair Homes is, upon information and belief, a dissolved South Carolina limited liability company having been dissolved on or about December 25, 2005, and having done business in South Carolina as a limited liability company between its effective dates of May 8, 2003, and December 25, 2005. Defendant Montclair Homes was the grantor on the Master Deed and the direct seller of the individual condominium units to the Plaintiff members.

11. Defendant Kinney was the primary individual member of Defendant Montclair Homes in the creation of the Montclair Horizontal Property Regime and was a member of that limited liability South Carolina company, Defendant Montclair Homes, which was formed to purchase from Defendant MALP the Montclair Apartments and convert those apartments into a South Carolina Horizontal Property Regime and to sell the 240 units for profit. Defendant Kinney, upon information and belief, participated in and/or approved the actions and practices of Defendant Montclair Homes, Defendant MALP, Defendant CREMCO, and the Defendant Montclair-POA, LLC a/k/a Defendant Montclair HOA from before and during September 2003 until May of 2005 when the grantor control period ended which various activities constitute the basis for this lawsuit as set forth below.

12. The Plaintiffs are residents of Charleston County, South Carolina.

13. Defendant Kinney is a resident of Charleston County, South Carolina.

14. Defendant Montclair POA, LLC a/k/a Defendant Montclair HOA (grantor controlled) is a resident of Charleston County, South Carolina and was a SC non-profit corporation during the control period.



15. The subject real estate is located in Charleston County, South Carolina.
16. Venue is proper in Charleston County, South Carolina, and the Charleston County court of Common Pleas has jurisdiction over the parties to hear this matter.
17. Plaintiffs demand a trial by jury as to all issues triable to a jury.

#### FACTS

18. The Montclair buildings consists of 160 garden (one level plans in a 2-story building) and 80 (2-story level townhouse units), including a club house and two swimming pools.

19. The construction of the 240 Montclair units/apartments is primarily slab on grade, conventional wood frame construction with Masonite siding, some brick facades and asphalt shingle roofs. These 39 buildings were constructed between 1980 and 1990.

20. Upon information and belief, the property was sold by the Travelers Indemnity Corporation to Defendant MALP on February 11, 1992.

21. Defendant Montclair POA, LLC a/k/a Defendant HOA (grantor controlled) of Mt. Pleasant, SC, is sued as the non-profit corporate entity which was established by Articles of Incorporation dated September 2003. This entity is also known as the Montclair Property Owners Association, LLC, as per the Master Deed and Articles of Incorporation. This Defendant as the grantor-controlled entity existed beginning in September of 2003 when it came into existence until 2005 when the control period ended by virtue of an appointment of Plaintiff board members consisting of owners of the several units at Montclair. This entity was established to "exercise all rights and powers of the Association as specified in the Master Deed and Bylaws". The Master Deed and Bylaws are incorporated herein by reference.

22. Upon information, Defendant MALP, an Illinois limited partnership having an address of 345 Canal Street, Suite 201, Chicago, Illinois, sold the property to Defendant declarant Montclair Homes, a South Carolina limited liability company having an address of c/o Kinney Associates, Inc., 315 Davis Street, Evanston, Illinois, on or about November 6, 2003.

23. Upon information, the next day, November 7, 2003, a Master Deed was filed with the Charleston County RMC Office by the Declarant Montclair Homes submitting the land and improvements, to wit: these 26 acres, 39 buildings and 240 units to a South Carolina Horizontal Property Regime to be known as Montclair Horizontal Property Regime thus creating a South Carolina condominium as set forth in South Carolina Code Ann. §27-31-10, et.seq., to be governed and operated pursuant to South Carolina law.

24. Upon information, prior to the sale of the property from Defendant MALP to grantor Defendant Montclair Homes several inspections had been performed over several years for the owner Defendant MALP and for Defendant "CREMCO, LLC" by an architectural/engineer consulting firm, American Consulting, Inc. (hereinafter "ACE") which inspections were comprehensive and designed to "assess the structural condition of the Montclair Apartments" and to generally survey the general conditions of the buildings and systems. One such report was dated April, 2003.

25. This engineering report by ACE sent to Defendant CREMCO, LLC, and to Defendant MALP made reference to previous inspections and noted exterior Masonite siding "Masonite X-90" which had been installed on all 39 buildings and which was the subject of a class action suit. The report dated April of 2003 concluded that there were on the 39 buildings at Montclair Apartments "numerous areas on the painted siding which are buckling or warping" and "several areas where the siding has deteriorated and needed replacement".

26. The engineering report by ACE prepared for Defendant CREMCO, LLC, and Defendant MALP referenced repairs which would in the future need to be done to different components of the buildings and grounds such as asphalt/road work, repair of the drainage areas, repair of fire walls in attics, etc. This April 2003 report mentioned the "Masonite claims class action administrator" had been notified of the claim and had, in fact, sent claim settlement forms and settlement checks which were being held by the engineering firm, American Consulting, Inc. The report represented that "repairing all of the exterior composite wood surfaces is not included in this report until the Masonite issue is resolved". An earlier report dated November 18, 2002 issued to the same defendants by ACE mentioned repair or replacement of all the exterior siding was a priority that needed immediate attention.

27. That upon information and belief, at some point prior to purchasing the property, Defendant Montclair Homes became aware of and reviewed this ACE report dated April of 2003. Defendant Montclair Homes gained the knowledge contained in this report in that, upon information, it was shared by Defendant MALP prior to recordation of the Master Deed with Defendant Montclair Homes and Defendant Kinney. Upon information, Defendant Montclair Homes and Defendant Kinney may not have become aware of the November 18, 2002 report.

28. That upon information, prior to the filing of the Master deed by the grantor in November of 2003, the grantor Montclair Homes commissioned a South Carolina architect, Robert Epps, to prepare a separate disclosure report dated August of 2003 to be given to each prospective purchaser of units at Montclair in an effort to comply with its duties created by South Carolina Code Ann. §27-31-430 entitled "Disclosure of Physical Condition of Building".

29. That this Epps report dated August of 2003 was given to each prospective purchaser by the grantor specifically stating that the purpose of the report was to make a

disclosure "of the physical condition of each residential unit and building" and to "determine the structural stability of each unit and review the general condition of the materials as they contributed to the performance of their intended purpose and to the life expectancy of the buildings". With respect to the exterior condition of the buildings, this Epps report given to each prospective purchaser stated in pertinent part that:

As to the exterior of the buildings

"The residential buildings were painted during the period of, 1994-1995. With the exception of a few random observations of spot peeling, the paint finish appears to be performing well."

As to roofs/roofing

"The existing roofing was installed in 1994 and appears to be in good condition." "Such roofing generally has a productive life of 15-20 years."

30. This August 2003 Epps report given to each prospective purchaser and to the Plaintiffs by Defendant Montclair Homes made many characterizations of exterior siding problems noted as being "minor" and gave no opinion to the Plaintiffs as to the useful life expectancy of the siding/building envelope as a common element.

31. The report concluded and it was represented to all purchasers by the grantor Montclair Homes that the buildings had been well maintained and were in "good to very good" condition. The report concluded that the buildings should have a life of 75 to 100 years and beyond.

32. That upon information, Defendant Montclair Homes Defendant Kinney, Defendant CREMCO and Defendant MALP were aware that this Epps report was given to each purchaser at the time of sale.

### SALE OF UNITS AND CONTROL PERIOD

33. That from the date of the Articles of Incorporation of Defendant Montclair POA, LLC a/k/a Montclair HOA (grantor controlled, i.e., September 23, 2003, until mid 2005), was controlled by the Defendant Montclair Homes and Defendant Kinney pursuant to the terms of the Master Deed. Defendants Kinney, Montclair Homes and Montclair POA a/k/a Montclair HOA made all decisions and were in control of what amounts were reserved for future maintenance of all common elements.

34. That in an attempt to remedy, repair or replace the Masonite siding problems as mentioned in the ACE report, it has recently been discovered that Defendant Kinney, Defendant Montclair Homes, CREMCO and MALP hired subcontractors to repair various areas of the exterior cladding of the buildings. Upon information, Defendants Church Creek Construction (hereinafter "Church Creek"), Larry Elsey, individually, and d/b/a ECI or Elsey Construction, a/k/a Elsey Construction, Inc. (hereinafter "Elsey Construction") and Defendant Roger Lockey (hereinafter "Lockey") were the subcontractors who performed this work for the above Defendants on all of the buildings comprising the Plaintiffs' property.

35. Upon information, these various Defendant subcontractors working for the Defendants failed to follow good construction practice and failed to properly flash areas of the siding, roof to wall intersections, windows and said failures have allowed water to intrude into the wall cavity and cause property damage to the wall cavity, common elements, and interior of the units where personal property of some owners has been damaged. Upon information, said property damage caused by an occurrence, has occurred in every year since 2003 until recent destructive testing by Plaintiffs' experts uncovered this damage. Upon information, said water damage is to areas of the buildings other than the areas of work of the above Defendants.

36. That these repair attempts by the Defendants and their subcontractor Defendants were deficient and were a breach of their duties to act in the best interest of the homeowners and were negligent repairs as will be more fully set forth herein.

37. That, with the knowledge of all Defendants except Church Creek, Elsey Construction and Defendant Lockey, the Plaintiff homeowners were at the time of sale given the Epps report dated August 27, 2003, referred to above and the Plaintiffs justifiably relied on its representations that it was a bonafide disclosure of the physical condition of the buildings by the Defendants. The prospective purchasers and Plaintiffs at the end of the grantor-controlled period were not made aware of the ACE report dated April 2003 by the engineering firm referred to above in Paragraphs 24 and 25 in that the sellers negligently failed to give that report to the Plaintiff purchasers and further failed to give an earlier ACE report concerning the buildings dated in November of 2002 to the Plaintiffs at any time prior to or during the control period.

38. That upon information and belief, at the time the grantor left and the owner-controlled board of directors took over in 2005, the Plaintiff Board first began to study the financial conditions of the Montclair Horizontal Property Regime to determine its financial status.

39. In September 2006, an outside full reserve study was published by a consultant hired by the Plaintiff Board which outside firm concluded in late 2006 that roughly 217,200 square feet of exterior composite Masonite siding was "in poor overall condition" and that "we have noticed visibly apparent defects in the subject siding other than normal visible deterioration". This reserve study advised the Plaintiff Board of partial and eventual total replacement of the Masonite siding on an expedited basis.

40. In documents recently discovered during this lawsuit, it is now evident that in the 2003 and 2004 timeframe Defendants Montclair Homes, Kinney, CREMCO and MALP hired Defendant Church Creek, Defendant Elsey Construction and Defendant Lockey as subcontractors to repair siding, roofs, and building envelope deficiencies as outlined in the ACE reports. These repairs by Defendants Church Creek, Elsey Construction and Defendant Lockey were upon information defective repairs in providing adequate waterproofing of the buildings. As a direct result of the faulty repairs, numerous leaks occurred after the repairs and these leaks and water intrusion have continued to occur from 2003 until 2008 when they were discovered. This water intrusion resulted in property damage caused by an occurrence and in physical injury to the property of the Plaintiffs and to the interior of units resulting in damage of personal property.

41. Since the reserve study in 2006 referred to above was completed, the Masonite siding has been partially replaced on two locations of two buildings. At the time of these replacements, extensive wood rot and deterioration were noted not only on the exterior siding itself but also within the structure of the walls behind the siding and even into some interior units causing property damage to the personal property of the various owners. Upon information, this damage was due to the repair efforts mentioned above and is to areas of the common elements which were not worked on directly by the Defendants.

42. The Plaintiff board of directors has been advised that in the very near future, they would need to expend millions of dollars for exterior envelope common element repairs, including roof replacements, siding replacement, repairs of interior personal property, paving and road repair which will require extensive special assessments.

43. Upon information, the Plaintiffs will also have to expend significant money for roads, drainage issues, life safety-fire separation repairs, as well which were negligently disclosed to them.

44. That at no time did the grantor, Defendant Montclair Homes, Defendant Montclair POA, LLC a/k/a Defendant Montclair HOA (grantor controlled) or Defendant Kinney as a board member during the control period, during the sales or during the control period before the grantor turned over the regime to the current board of directors make an adequate attempt to establish an appropriate level of reserves, commence an independent a reserve study or require that the regime fees be set at appropriate levels which would establish adequate reserves for replacement of these common elements described above. These acts by the Board of Defendant Montclair POA, LLC a/k/a Defendant Montclair HOA (between 2003 and May 2005) were negligent and wrongful acts or omissions by these boards and their officers or board members during the control period.

45. The Plaintiffs by and through their current board of directors of the Montclair Horizontal Property Regime on behalf of all owners have a claim against Defendant Kinney-as a member of the grantor Montclair Homes, a dissolved corporation pursuant to §33-44-808 of the South Carolina Code of Laws annotated for the shortfalls in the reserves, failure to fund the reserves and failure of the dissolved grantor corporation to adequately represent the physical condition of the common elements of the regime; failure to accurately represent the true useful life expectancy of the building envelopes at the time of sale, and failure to adequately repair the buildings of the regime.

46. Upon information, all assets from the sales of Montclair Horizontal Property Regime units have been distributed by the dissolved corporation Defendant Montclair Homes to



its various members including Defendant Kinney of Montclair Homes as per their various interests.

47. That by South Carolina Statute §27-31-430 and by common law, Defendant Montclair Homes and Defendant Montclair POA, LLC a/k/a Defendant Montclair HOA had a duty to accurately represent to the Plaintiffs at Montclair Horizontal Property Regime that the Masonite siding and other common elements were failing and had exceeded their useful life expectancy at the time the master deed was filed and that they would be very expensive to replace.

48. That upon information, all Defendants except Lockey, Church Creek and Elsey Construction had knowledge that there was a nationwide class action pending on the siding-issue at Montclair and had an affirmative duty to represent that the siding, roofs and other common elements at Montclair had exceeded or were about to exceed their useful life expectancy and that the residents and owners of the units would be put to great expense in the form of future special assessments needed to replace these common elements.

49. Upon information, during the control period, Defendant Kinney, Defendant Montclair Homes and Defendant Montclair POA, LLC a/k/a Defendant Montclair HOA (grantor controlled) settled the Masonite class action claims for a fraction of the actual costs needed to do repairs to the siding envelope. These Defendants failed to address the reserve shortfall with any meaningful or reasonable communication to the homeowners and Plaintiffs regarding the settlement or the true costs the Plaintiffs would face after the control period ended for repairs to the siding and other common elements.

50. That having this knowledge, neither Defendant Kinney individually or as a member of the dissolved corporation Defendant Montclair Homes, nor Defendant Montclair

Homes, nor the other joint enterprise defendants took any reasonable and appropriate steps to fully disclose the aforementioned physical conditions to prospective homeowners, set adequate reserves, or make the Plaintiffs fully aware of the deficiencies with the common elements during the control period. These failures to communicate by the Defendants were negligent acts which have harmed the current owners.

51. That due directly to the negligent failure to disclose the life expectancy of the above common elements by the Defendants or to adequately repair the common elements, the Plaintiffs have been, and will be, damaged in that the reserve accounts at the time of the turnover were woefully underfunded and they are faced with extensive repair costs.

THE JOINT ENTERPRISE  
By Joint Enterprise Defendants Bruce Kinney, Montclair Homes, LLC,  
Montclair Associates Limited Partnership and CREMCO

52. That for this cause of action, the above Defendants, Defendant Kinney, Defendant Montclair Homes, Defendant MALP and Defendant CREMCO, were involved in a joint enterprise in that they shared a common purpose, shared information concerning the property, had the same mailing address, financed the property, directed the course of the enterprise, set the budget for repairs, performed repairs, were involved in disseminating information to each prospective purchaser at each sale of every unit, and shared in the profits made from the sale of each unit at Montclair Horizontal Property Regime.

53. That the development of the Montclair Horizontal Property Regime as a condominium development was a joint enterprise between the above Defendants and all joint enterprise defendants are liable for the actions committed by all defendants which were committed within the scope of the joint enterprise

54. That during April of 2003, Defendant CREMCO, LLC, hired an engineering consultant firm to evaluate among other things the Masonite siding issue at Montclair, Mt. Pleasant, South Carolina, and to produce a "property condition assessments" for Defendant MALP. This April 2003 report included a "capital needs" replacement reserve of the various component parts and common elements of the 240 units at Montclair, Mt. Pleasant Apartments.

55. That upon information and belief, this report prepared for CREMCO was given to Defendant MALP during 2003. MALP entered into negotiations with Defendant Kinney for the sale of the property known as Montclair Apartments to Montclair Homes. Montclair Homes and Defendant Kinney presented a plan to MALP to repair and convert the apartments to condominiums under South Carolina law pursuant to the South Carolina Horizontal Property Regime Act.

56. That Defendant MALP having knowledge of the physical condition of the buildings transferred this knowledge to Defendant Kinney and Defendant Montclair Homes, grantor on the Master Deed. Included in this April 2003 report was an attached projected dollar value, prepared by the engineering firm that authored the report, of the deferred maintenance on the property which as of April 2003 totaled approximately \$900,000 exclusive of the Masonite siding issue and exclusive of the replacement costs for the roofs over the near term. This information was not given to the Plaintiffs during the grantor-control period nor was it given to any of the individual homeowners at the sale of the units.

57. Upon information, Defendant Montclair Homes, after purchase of the property, on November 6, 2003, directed its counsel to prepare a master deed, which was filed on November 7, 2003, and it immediately began selling the 240 condominium units. That it has recently been discovered that many communications, advertisements and contracts between Defendant

Montclair Homes and homeowners were signed beginning in August of 2003, prior to the Master Deed being filed. Communications with the Plaintiff Homeowners and advertisement to the Plaintiff Homeowners began in approximately August of 2003 and continued until all units were sold in May of 2005. Further upon information, repairs began by the joint enterprise Defendants in the July-August timeframe of 2003.

58. At each closing of each property from August of 2003 until May of 2005, a letter was given to each purchaser by the joint enterprise defendants. This letter dated November 6, 2003, originating from CREMCO, LLC, on stationery from the engineering firm American Consulting, Inc. (ACE), characterized the Masonite siding problem as affecting only a "small percentage" of the siding and characterized the likelihood of recovery in the class action suit as "probably low" and concluded that "it would be better to spend the money on routine maintenance and isolated repairs". This negligent communication had the effect of misinforming the Plaintiffs on the nature and extent of the siding problems and the adequacy of the repairs being performed by these Defendants.

59. All joint-enterprise Defendants had a duty to all prospective purchasers and to the Plaintiffs to provide accurate information regarding the siding issue and the information provided by both the above-referenced letter of November 6<sup>th</sup> and the Epps report did not provide accurate information.

60. When Defendant Kinney, Defendant Montclair Homes and Defendant Montclair POA, LLC a/k/a Defendant Montclair HOA (grantor controlled) did later participate in the Masonite class action settlement process while in control of the board of directors, they settled the claims on all 39 buildings and received approximately \$25,000 net. This amounts to less than one (1%) percent of what will be needed by the Plaintiffs to repair the Masonite exterior

building envelope problems and resulting damage to individual homeowners' personal property. At no time during the control period did the Defendants attempt to make a reasonable disclosure to the Plaintiffs of the shortfall or fund the shortfall in the Plaintiffs' regime reserve accounts prior to the control period ending and the grantor corporation's dissolution.

61. That as previously mentioned, the Defendants began repairing the exterior siding, roofs and exterior building envelopes of the buildings using Defendant Church Creek, Defendant Elsey Construction and Defendant Lockey as subcontractors in approximately July or August of 2003.

62. Defendant Church Creek, Defendant Elsey Construction and Defendant Lockey worked as a subcontractor under the direction of these defendants. The defendants directed what repairs needed to be made to make the buildings waterproof. These repairs to siding, flashing, roofs, attics and windows on all buildings were deficient and were not in compliance with the building codes in effect in Mt. Pleasant, SC, at the time (approximately 2003 and 2004) and were not in conformance with good construction practice. As a direct result, these building envelope repair efforts failed allowing water intrusion and causing property damage caused by an occurrence to areas inside the walls and to the interior of the units themselves which has recently been discovered in destructive testing.

#### **FIRST CAUSE OF ACTION**

(Declaratory Judgment pursuant to S.C. Code §15-53-10 - §15-53-140 and Rule 57 of the S.C.R.C.P. as to All Defendants)

63. The allegations contained in paragraphs 1-67 are realleged and restated as if repeated verbatim below.

64. Plaintiffs bring this cause of action against Defendant Kinney, individually and as incorporator for Montclair Homes and other Defendants involved with the conversion and/or

sale of the Montclair condominium units pursuant to section 15-53-10 *et seq.* of the South Carolina Code and Rule 57 of the South Carolina Rules of Civil Procedure seeking a declaration that a certain provision of the Master Deed is void and unenforceable against Plaintiffs.

65. The Master Deed of Montclair Horizontal Property Regime is dated November 7, 2003, and is signed by James Kinney, Vice-President of Montclair Homes, LLC.

66. The Master Deed consists of one hundred eleven pages, including exhibits, a cover page and table of contents

67. The Master Deed contains various clauses, provisions, and terms which are oppressive, one-sided, unconscionable, overreaching and contrary to the law and public policy of South Carolina. The Plaintiffs seek declaratory judgment from this Court, that the terms of Article 10, Section 10.12 of its Master Deed as drafted by the Defendants are void, invalid and unenforceable

68. Article 10, Section 10.12 of the Master Deed states:

**Restriction on Expense of Litigation.** Notwithstanding any contrary provision contained in this Master Deed, in no event may the Association commence any action or proceeding against any person seeking equitable relief, or seeking either an unspecified amount of damages or damages in excess of \$25,000.00, or any action or proceeding where the estimated cost of legal fees exceeds \$5,000.00, unless the following conditions are satisfied: (a) the decision to commence such action or proceeding shall be taken at an annual or special meeting of the Association; (b) a budget for such litigation, including all fees and costs assuming trial and all potential appeals, shall have been prepared by the attorneys who will be engaged by the Association for such purpose, and shall have been mailed or delivered to all Owner and posted at the principal office of the Association at least 30 days prior to such meeting; and (c) at such meeting the owners representing an aggregate ownership interest of Two-thirds (2/3) or more of the Common Elements shall approve the decision to commence, and the proposed budget for, such action or proceeding, and shall concurrently approve the imposition of a Special Assessment to fund the costs of such action or proceeding in the accordance with the approved budget. The Association shall be authorized to expend funds for such proceeding in excess of the amount contemplated by the approved budget only after an amended budget has been approved in accordance with the procedures specified in the foregoing subparts (a), (b) and (c). The procedural requirements set forth in this paragraph 10.12, however, shall not apply to any action to collect or otherwise enforce Assessments and any related fines, late

charges, penalties, interest, or costs and expenses, including reasonable attorneys' fees, in an amount of \$25,000.00 or less, or any such action where the estimated cost of legal fees is less than \$5,000.00. All of the costs and expenses of any action or proceeding requiring the approval of the Owners in accordance with this paragraph shall be funded by means of a Special Assessment pursuant to paragraph 10.6, and in no event may the Association use reserve funds or contingency funds, reallocate previously budgeted operating funds, or incur an indebtedness in order to pay any costs and expenses incurred for such purpose. Further, if the Association commences any action or proceeding against a particular Owner or particular Owner(s) against whom suit is being considered shall be exempted from the obligation to pay the Special Assessment(s) levied in order to pay the costs and expenses of such action or proceeding. The monetary thresholds stated in this paragraph 10.12 shall increase by the greater 3% or the CPI Index each year on the anniversary of filing this Master Deed. The provisions of this paragraph 10.12 cannot be amended without the approval of at least 75% of all Allocated Interests.

69. The Developer inserted Article 10, Section 10.12 in the Master Deed, and the Developer did not specifically bargain for Article 10, Section 10.12 with any of the condominium owners or any purchasers of the units.

70. Article 10, Section 10.12 of the Master Deed was drafted by the Grantor Defendants. It is ambiguous when read in concert with the South Carolina Horizontal Property Act and the Bylaws of the regime. All ambiguities should be resolved against the Grantor Defendant and in favor of the Plaintiff Homeowner.

71. Article 10, Section 10.12 of the Master Deed is inconsistent with the Bylaws and the South Carolina Horizontal Property Act in that it unreasonably hinders the Board's statutory duty to maintain the common elements and the Board's power, right and duty to make application for special assessments and to do those things required in the Bylaws and statutes of South Carolina to maintain the common elements of the regime.

72. By inserting such a provision in the Master Deed, the Developer and Defendants sought to insulate themselves from liability from the conversion and sale of the condominium units which the Developer and other Defendants are liable under the laws of South Carolina in violation of their fiduciary duty to the owners and Board.

73. The only parties to benefit from the insertion of such a provision in the Master Deed are the Developer and the other Defendants and they do not have proper standing to assert this provision in order to hinder this lawsuit.

74. The Plaintiffs request that Article 10, Section 10.12 of the Master Deed be declared inapplicable to the claims of the Plaintiffs and/or unenforceable and invalid under the laws of South Carolina

#### SECOND CAUSE OF ACTION

(Negligent Construction and Repairs by the Joint Enterprise Defendants; Defendant Kinney, Defendant Montclair Homes, Defendant MALP, and Defendant CREMCO)

75. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint.

76. Defendants Kinney, Montclair Homes, CREMCO and MALP during the control period (August 2003 to May 2005) performed construction activities in repairing, modifying and attempting to fix the exterior building envelope at Montclair Homeowners Property Regime including siding, windows, flashing, attics, roofs and etc.

77. This repair work was performed thru subcontractors Defendant Church Creek, Defendant Elsey Construction and Defendant Roger Lockey. The work included siding and roofing work to many of the buildings and said work was deficient in that it failed to render the buildings water tight and generally was not in conformity with good construction practice as more fully explained below

78. That upon information, the work was performed by subcontractors Defendant Church Creek, Defendant Elsey Construction and Defendant Lockey prior to the apartments being placed into the stream of commerce by sales directly to purchasers by the joint enterprise defendants. It was foreseeable by all Defendants that the repair work on the exteriors of the



buildings would directly affect the Plaintiffs if it was not done properly. As such, all Defendants owed a duty of care to the purchasers/Plaintiffs to conform said work to the industry standards for waterproofing of exterior building envelopes and to the applicable building codes.

79. That upon information, all Defendants who performed or directed repairs breached their duty to repair these exterior siding envelopes and roofs in a proper fashion, according to the applicable building codes and in conformance with good construction practice as is more fully set forth below

80. These repair deficiencies and defects which exist at the Plaintiffs' property are the proximate and direct result of the negligence and/or gross negligence of these defendants, as co-general contractors and subcontractors in one or more of the following particulars:

- (a) In failing to properly develop and construct the repair plans and by failing to employ practices and methods of construction and repair conforming with accepted industry standards; and/or using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturer's installation instructions;
- (b) In failing to properly supervise the Defendant subcontractors and/or other trades in order to ensure that all work proceeded in accordance with good and adequate plans and specifications for exterior repairs and also in conformity with the customary and ordinary standards of the construction industry;
- (c) In accepting non-conforming or defective materials or site conditions;
- (d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with good and adequate plans and specifications and the manufacturer's instructions, and
- (e) In constructing the repairs in violation of applicable building codes.

81. The above joint enterprise Defendants' work was in breach of their duties owed to the Plaintiffs to perform the repairs using good construction practices and as per the building

code. As a direct result of the breach of the duties and workmanship of the subcontractors listed above, water intruded through the building envelope and into the interior of the buildings where it caused physical injury to tangible property other than the work itself and to the personal property of the individual homeowners and of the Plaintiff. This property damage was the direct result of an occurrence which, upon information, has occurred in every year since 2003.

82. As a direct and proximate result, Plaintiffs have suffered damages and continue to suffer property damage and are entitled to the recovery of monetary damages in the amount of the cost that will be needed to repair the subject property, reasonable attorney's fees, consequential damages, including loss of use, and punitive damages where applicable, plus costs, prejudgment interest, and postjudgment interest.

### **THIRD CAUSE OF ACTION**

(Breach of Implied Warranty of Workmanship as to Joint Enterprise Defendants)

83. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint.

84. That for this cause of action, these Defendants impliedly warranted to the Plaintiffs that the subject property would be repaired in a careful, diligent, and workmanlike manner, free of construction defects:

85. As set forth more fully above, these Defendants breached the implied warranty of workmanship and, as a result, directly caused property damage to areas other than the work itself as mentioned.

86. As a direct and proximate result, Plaintiffs have suffered damages and continue to suffer property damage caused by an occurrence and are entitled to the recovery of damages in the amount of the cost that will be required to repair the subject property, reasonable attorney's

fees, consequential damages, including loss of use, punitive damages where applicable, plus costs, prejudgment interest, and postjudgment interest

#### **FOURTH CAUSE OF ACTION**

(Negligent and Grossly Negligent Misrepresentation as to Defendants Bruce Kinney, Individually, Montclair Homes, LLC, Montclair Property Owners Association, LLC a/k/a Defendant Montclair Homeowners Association (grantor controlled), MALP and CREMCO)

87. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint.

88 That the Defendants above had a duty to communicate accurate information to the Plaintiffs concerning the condition of the exteriors of the buildings, the adequacy of repairs and the need for adequate reserves to address the future replacement issues.

89 The above Defendants negligently failed to adequately inform the Plaintiffs or individual purchasers of the construction issues outlined above and their need for immediate and comprehensive repair or replacement.

90. That these Defendants failed in their duties aforesaid and negligently and jointly gave inaccurate, negligent, grossly negligent, or incomplete information at the time of sale and during the control period to the Plaintiffs regarding the physical condition of the property. That it was foreseeable that this failure to give adequate information would cause harm to the Plaintiffs. This breach of duty and inaccurate information caused physical injury to tangible property of the Plaintiffs from July or August 2003 until the present time in that it allowed the property damage to occur as stated above. As a direct and proximate result, Plaintiffs will be required to expend great sums of money to repair this property damage to the Plaintiffs' structure and to the personal property of the homeowners and they will suffer a loss of use when the repairs are made.

91. That at all times the Plaintiffs were at the time of sale and later during the control period justified in relying on the representations of the above Defendants regarding the condition of the property, adequacy of the repairs to the property, and the proper setting of reserve funds during the control period for repair of the common elements and were unaware of the ongoing property damage which was occurring and which has occurred in every year since 2003.

#### **FIFTH CAUSE OF ACTION**

(Breach of Fiduciary Duty; Failure to Adequately Reserve as to All Defendants except Church Creek Construction, Elsey Construction and Roger Lockey)

92. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint.

93. That all defendants except Defendant Church Creek Defendant Elsey Construction or Defendant Lockey owed a fiduciary duty to the Horizontal Property Regime and Plaintiff Property Owners Association to insure that at the time the common elements and control thereof were transferred from the grantor to the Plaintiff homeowners association the common elements were in good repair or that sufficient funds had been reserved to effectuate any repairs to the common elements.

94. That all defendants except Defendant Church Creek, Defendant Elsey Construction and Defendant Lockey failed to fulfill their fiduciary duties in that at the time the units were sold and during the control period and at the time of transfer of control from the Defendants to the Plaintiff homeowner association the common elements were not in good repair and there was a shortfall of millions of dollars in reserves for the repair of the common elements.

95. That this reserve shortfall was directly and proximately caused by the breach of the fiduciary duty and the failure of any one of the Defendants to take reasonable steps and exercise good business judgment to act in the best interests of the Plaintiffs. That it was

foreseeable that this breach would cause harm to the Plaintiffs and, in fact, the breach of the fiduciary duty did cause damage to the Plaintiffs.

96. That as a result, the Plaintiffs are entitled to actual and punitive damages for the shortfalls in reserves and cost of repair of the various common elements as well as per the damages for the breach of this duty.

#### **SIXTH CAUSE OF ACTION**

(Breach of Express Warranties and/or Advertisements as to Defendants Bruce Kinney, Montclair Homes, LLC, Montclair Associates Limited Partnership and CREMCO)

97. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint.

98. That at all times the above Defendants held out and advertised the condominiums during the sale period from August of 2003 until May of 2005 as "Luxury Condominiums" and represented the condominiums were "nearly maintenance free".

99. Said advertisements were negligent and had a misleading effect and contributed to the damage suffered by the Plaintiffs who relied thereon in that they misled Plaintiffs purchasers regarding the quality and maintenance requirements of their homes. The Plaintiffs had a right to rely on these advertisements and warranties when they were made concerning the condition of their homes and to believe they were accurate at the point of sale and during the control period.

100 That these Defendants had a duty to give accurate representations in their advertisements for sale concerning the condition and quality of the homes and they breached this duty. That the Plaintiffs had a right to rely on the accuracy of the representations made at the point of sale and during the control period by the Defendants.

101. As a direct and proximate result of this breach, the Plaintiffs will suffer actual damage in the form of repair costs as a result of this breach of these express warranties and advertisements as aforementioned.

**SEVENTH CAUSE OF ACTION**

(Failure to Comply with South Carolina Condominium Disclosure of Physical Condition of Buildings as to Bruce Kinney and Montclair Homes, LLC)

102. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint.

103. That Defendant Kinney and Defendant Montclair Homes, as grantors, had a duty to comply strictly with §27-31-430 of the South Carolina Code of Laws requiring disclosure of the present condition of all common elements to prospective purchasers.

104. That Defendants failed to comply with this requirement and failed to disclose to Plaintiffs the useful life of the common elements; namely, the useful life of the exterior building envelopes and other common elements such as the roofs, roads and drainage common elements as required by statute.

105. As a direct and proximate result, neither the buyers nor the Plaintiff were made aware of the need for extensive repairs and replacement of common elements as is contemplated in the above statute. As a result of the breach of this duty, the Plaintiffs will suffer, and have suffered, actual damages in the form of physical injury to tangible property which was unknown to the Plaintiffs and which, upon information, has been occurring in every year since at least 2003 and continues until the present time.

106. This failure of disclosure under this statute on Defendants' part will result in the expenditure of millions of dollars to replace or repair common elements as stated and will result in extensive loss of use of the buildings during repairs to them.

107. This failure to comply with the South Carolina law constitutes an unfair claims practice under South Carolina law and entitles the Plaintiffs to attorney's fees and other remedies as per §27-31-430, South Carolina Code Ann.

**EIGHTH CAUSE OF ACTION**

(As to Bruce Kinney and Other Unnamed Members of Montclair Homes, LLC, for Disbursements from a Dissolved LLC under South Carolina §33-44-808)

108. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint.

109. That upon information, the grantor entity Montclair Homes has dissolved and disbursed assets to its members including Defendant Kinney.

110. That the Plaintiffs are entitled to a judgment against the individual defendant members of the Montclair Homes, as per statute §33-404-808, South Carolina Code Ann., for all sums and judgments rendered against the dissolved corporation in amounts equal to the members' distributed assets as per South Carolina law.

**NINTH CAUSE OF ACTION**

(Negligent Construction as to Defendants Church Creek Construction, LLC, Elsey Construction and Roger Lockey)

111. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint.

112. That Defendant Church Creek, Defendant Elsey Construction and Defendant Lockey are licensed general contractors in the State of South Carolina doing business primarily in Charleston, South Carolina.

113. That upon information, between 2003 and late 2005, Defendant Church Creek, Defendant Elsey Construction and Defendant Lockey were hired by Defendant Kinney, Defendant Montclair Homes, Defendant CREMCO and Defendant MALP to perform exterior

repairs on the siding, roofs, attics, and windows, and many other exterior elements of the buildings at Montclair Homeowners Property Regime.

114. That these repairs were performed at the request of one or more of the joint enterprise Defendants to address exterior siding, water intrusion or water intrusion through roofs or walls

115. That these repairs were deficient in that they failed to comply with industry standards, building codes in effect or good construction practice in one or more of the following particulars:

- (a) In failing to properly develop and construct the repairs by failing to employ practices and methods of construction conforming with accepted industry standards; and/or using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturer's instruction;
- (b) In failing to properly supervise the subcontractors of these defendants and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;
- (c) In accepting non-conforming or defective materials;
- (d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions; and
- (e) In constructing the repairs in violation of applicable building codes.

116 These Defendants and their subcontractors owed the Plaintiffs a duty in doing these repairs to comply with good construction practice, the building codes in affect and these Defendants failed in that duty and this failure led to water intrusion into the wall cavity and interior of the units and has caused physical injury to tangible property of the Plaintiffs and interior damage to property other than the work itself.



117. That as a direct result of the property damage caused by an occurrence in every year since 2003, the Plaintiffs will be required to expend large sums for repairs to the buildings to areas other than the areas worked on by these Defendants and Plaintiffs have and will suffer loss of use of the buildings when repairs are accomplished.

**TENTH CAUSE OF ACTION**

(Breach of Implied Warranty of Workmanship as to Defendants Church Creek, Elsey Construction and Roger Lockey)

118. That for this cause of action, the Plaintiffs reallege and incorporate by reference all previous allegations in this Complaint.

119. That for this cause of action, the above Defendants; Defendant Church Creek, Defendant Elsey Construction and Defendant Lockey, impliedly warranted to the Plaintiffs that the subject property would be repaired in a careful, diligent, and workmanlike manner, free of construction defects.

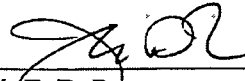
120. As set forth more fully above, these Defendants breached the implied warranty of workmanship and, as a result, directly caused property damage to areas other than the work itself as mentioned.

121. As a direct and proximate result, Plaintiffs have suffered damages and continue to suffer property damage caused by an occurrence and are entitled to the recovery of damages in the amount of the cost that will be required to repair the subject property, reasonable attorney's fees, consequential damages, including loss of use, punitive damages where applicable, plus costs, prejudgment interest, and postjudgment interest.

WHEREFORE, the Plaintiffs pray for judgment on all causes of action against the Defendants, jointly and severally, above in an amount sufficient to repair the defects in the Plaintiffs' residence and to reimburse the Plaintiffs for the amounts expended on repairs to date,

interest, together with consequential damages, forensic costs, redesign fees, punitive damages, costs of this action, attorneys fees and any other relief this Honorable Court deems proper. Further, these Plaintiffs demand a trial by jury

YOUNG CLEMENT RIVERS, LLP

By:   
Joseph E. DaPore  
P.O. Box 993, Charleston, SC 29402  
(843) 720-5446; jdapore@ycrlaw.com  
Attorneys for the Plaintiffs

Charleston, South Carolina

Dated: 8.27.10

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MONTCLAIR PROPERTY OWNERS'  
ASSOCIATION, INC. AND  
MONTCLAIR PROPERTY OWNERS'  
ASSOCIATION BOARD OF  
DIRECTORS FOR AND ON BEHALF  
OF ALL OWNERS OF THE  
MONTCLAIR HORIZONTAL  
PROPERTY REGIME, AS ASSIGNEES  
OF MONTCLAIR ASSOCIATES  
LIMITED PARTNERSHIP, CREMO,  
LLC AND MONTCLAIR HOMES, LLC

PLAINTIFFS,

vs.

CHURCH CREEK CONSTRUCTION,  
LLC,

DEFENDANT.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-10-

SUMMONS

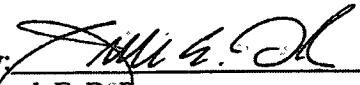
FILED  
2012 DEC 31 PM 2:33  
JULIE J. ARMS IRONG  
CLERK OF COURT  
RY

TO: THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices, 25 Calhoun Street, Suite 400, Charleston, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

[SIGNATURE ON NEXT PAGE]

YOUNG CLEMENT RIVERS, LLP

By:   
Joseph E. DaFore

By:   
Edward D. Buckley

P.O. Box 993, Charleston, SC 29402  
(843) 720-5446; jdapore@ycrlaw.com  
Attorneys for the Plaintiffs

Charleston, South Carolina

Dated: 12.28.12

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
MONTCLAIR PROPERTY OWNERS )  
ASSOCIATION, INC. AND )  
MONTCLAIR PROPERTY OWNERS )  
ASSOCIATION BOARD OF )  
DIRECTORS FOR AND ON BEHALF )  
OF ALL OWNERS OF THE )  
MONTCLAIR HORIZONTAL )  
PROPERTY REGIME, AS ASSIGNEES )  
OF MONTCLAIR ASSOCIATES )  
LIMITED PARTNERSHIP, CREMO, )  
LLC AND MONTCLAIR HOMES, LLC )

PLAINTIFFS, )

vs. )

CHURCH CREEK CONSTRUCTION, )  
LLC, )

DEFENDANT. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-10-

COMPLAINT

FILED  
2012 DEC 31 PM 2:33  
JULIE J. ARISTARONG  
CLERK OF COURT

The Plaintiffs, above named, hereby allege the following:

1. Montclair Property Owners Association, Inc., is a non-profit corporation organized and existing under the laws of the State of South Carolina doing business in Charleston County, South Carolina. The Plaintiff is governed by its Board of Directors which is charged with the management of the horizontal property regime known as Montclair Horizontal Property Regime.

2. Each owner of a unit at the Montclair Horizontal Property Regime is by virtue of their ownership and the governing documents, a member of the Montclair Property Owners Association, Inc.

3. Upon information and belief, Church Creek Construction, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina and at all times relevant hereto was authorized to do business in Charleston County, South Carolina.

4. On December 5, 2008, Plaintiffs filed the underlying action, Charleston County Case Number 2008-CP-10-6897, Montclair Property Owners Association, Inc. (A South Carolina non-profit corporation) and Montclair Property Owners Association Board of Directors for and on behalf of all owners of the Montclair Horizontal Property Regime v. Bruce E. Kinney, individually and as an incorporator for Montclair Homes, LLC; Montclair Homes, LLC, a SC Limited Liability Company (declarant-Master Deed); CREMCO, LLC, an Illinois Limited Liability Company; and Montclair Association Limited Partnership, an Illinois Limited Partnership regarding the conversion of the Montclair Apartments to condominiums.

5. On January 12, 2010, Plaintiffs filed a Second Amended Complaint in the underlying action adding claims against Church Creek Construction, LLC, Elsey Construction Inc. (ECI) and Roger Lockey for negligent construction and breach of implied warranty of workmanship arising out of the conversion of the Montclair Apartments to condominiums.

6. On May 18, 2012, Plaintiffs entered a Stipulation of Dismissal in the underlying action as to its claims against Defendant Elsey Construction Inc. and Roger Lockey.

7. On October 4, 2012, a judgment was entered in the underlying matter against Montclair Homes, LLC and Montclair POA, Grantor Controlled Period for the sum of \$1,600,000.00 and against Montclair Associates Limited Partnership and CREMCO, LLC for \$1,400,000.00 (hereinafter collectively referred to as "Settling Defendants"). Defendant Church Creek Construction, LLC contributed nothing toward the settlement of these judgments in the underlying action and all claims in the underlying action against Defendant Church Creek

Construction, LLC, were dismissed with prejudice (see Judgment attached hereto as Exhibit A) and all liability of Church Creek Construction, LLC, was extinguished in the underlying action by the payment to the Plaintiffs. The Settling Defendants, as a part of the settlement with the Plaintiffs, assigned their claims for contribution against Defendant Church Creek Construction LLC to the Plaintiffs.

8. Pursuant to the judgment entered in the underlying action, Settling Defendants assigned to Plaintiff Montclair Property Owners Association, Inc., working through its board of Directors, all rights, title and interest in their contribution claims against Defendant Church Creek Construction, LLC for contribution in connection with the underlying case (see Assignment of Claims attached hereto as Exhibit B).

**FOR A FIRST CAUSE OF ACTION**  
**(Contribution)**

9. Each and every allegation set forth in the preceding paragraphs are incorporated herein by express reference as if set forth verbatim below.

10. In exchange for the valuable consideration tendered by Montclair Homes, LLC, Montclair Associates Limited Partnership and its individual members and CREMCO, LLC, in the underlying matter, Plaintiffs agreed to settle all of its claims against the Settling Defendants.

11. In settling the underlying litigation, Settling Defendants compensated the Plaintiffs for acts or omissions performed or not performed by Defendant Church Creek Construction, LLC, which acts contributed to the damages as alleged in the underlying action.

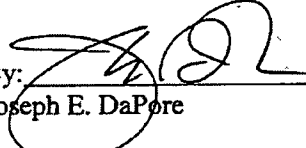
12. In consideration of payments by or on behalf of Montclair Homes, LLC, Montclair Associates Limited Partnership, and CREMCO, LLC in the underlying litigation, the liability of Defendant Church Creek Construction, LLC, to the Plaintiffs was extinguished.

14. Having extinguished the liability of Defendant Church Creek Construction, LLC in the underlying litigation and by the assignment of all rights, title and interest in their claims for contribution against Church Creek Construction, LLC, by Montclair Homes, LLC, Montclair Associates Limited Partnership and CREMCO, LLC, to Plaintiffs, Plaintiffs as assignees are entitled to contribution from Defendant Church Creek Construction, LLC, under the terms of the South Carolina Contribution Among Tortfeasors Act, S.C. Code Ann. §15-38-10, et seq.

15. Pursuant to the judgment entered in the underlying litigation, Plaintiffs filed a Satisfaction and Cancellation of Judgment on December 28, 2012.

WHEREFORE, Plaintiffs pray for judgment on their contribution claim against Defendant Church Creek Construction, LLC, that the Court award Plaintiffs costs and attorney's fees, and for such other and further relief as this Court may deem just and proper under the principles of equity set forth in §15-38-20 of the S.C. Code Anno.

YOUNG CLEMENT RIVERS, LLP

By:   
Joseph E. DaPore

By:   
Edward D. Buckley

P.O. Box 993, Charleston, SC 29402  
(843) 720-5446; jdapore@ycrlaw.com  
Attorneys for the Plaintiffs

Charleston, South Carolina

Dated: 12.28.12



FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-10-6897

MONTCLAIR PROPERTY OWNERS  
ASSOCIATION (A SOUTH CAROLINA NON-  
PROFIT CORPORATION) AND MONTCLAIR  
PROPERTY OWNERS ASSOCIATION BOARD OF  
DIRECTORS FOR AND ON BEHALF OF ALL  
OWNERS OF THE MONTCLAIR HORIZONTAL  
PROPERTY REGIME

BRUCE E. KINNEY, AS AN INCORPORATOR  
FOR MONTCLAIR HOMES, LLC;  
MONTCLAIR HOMES, LLC, A SC LIMITED  
LIABILITY COMPANY (DECLARANT -  
MASTER DEED); CREMCO, LLC, AN  
ILLINOIS LIMITED LIABILITY COMPANY;  
MONTCLAIR ASSOCIATES LIMITED  
PARTNERSHIP, AN ILLINOIS LIMITED  
PARTNERSHIP; MONTCLAIR PROPERTY  
OWNERS ASSOCIATION A/K/A  
MONTCLAIR HOMEOWNERS  
ASSOCIATION (GRANTOR CONTROL  
PERIOD); BRUCE E. KINNEY AS AN  
OFFICER OR DIRECTOR IN THE  
MONTCLAIR PROPERTY OWNERS  
ASSOCIATION A/K/A MONTCLAIR  
HOMEOWNERS ASSOCIATION (GRANTOR  
CONTROL PERIOD), A SC NON-PROFIT  
CORPORATION; CHURCH CREEK  
CONSTRUCTION, LLC; LARRY ELSEY,  
INDIVIDUALLY, AND D/B/A ECI OR ELSEY  
CONSTRUCTION A/K/A ELSEY  
CONSTRUCTION INC. AND ROGER  
LOCKEY

PLAINTIFF(S)

DEFENDANT(S)

|                     |                                                                                                                                                  |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Submitted by: _____ | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br>or<br><input type="checkbox"/> Self-Represented Litigant |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Judgment in a Civil Case

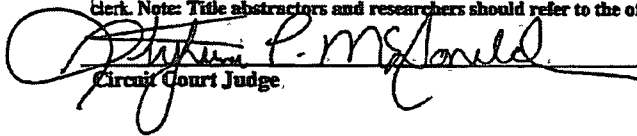
SCRPC Form 4C (12/2011)

Page 1

EXHIBIT A

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                                                   |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                                                   |                                                          |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below)                          | Judgment Amount To be Enrolled<br>(List amount(s) below) |
| Montclair Property Owners Association, Inc. and Montclair Property Owners Association Board of Directors for and on the Behalf of all Owners of the Montclair Horizontal Property Regime                     | Montclair Homes, LLC and Montclair POA, Grantor Controlled Period | \$ 1,600,000.00                                          |
| Montclair Property Owners Association, Inc. and Montclair Property Owners Association Board of Directors for and on the Behalf of all Owners of the Montclair Horizontal Property Regime                     | MALP/CREMCO                                                       | \$ 1,400,000.00                                          |
|                                                                                                                                                                                                              |                                                                   | \$                                                       |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                                                   |                                                          |

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

  
Circuit Court Judge

2163  
Judge Code

10/04/12  
Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MONTCLAIR PROPERTY OWNERS  
ASSOCIATION (A SOUTH CAROLINA  
NON-PROFIT CORPORATION) AND  
MONTCLAIR PROPERTY OWNERS  
ASSOCIATION BOARD OF  
DIRECTORS FOR AND ON BEHALF  
OF ALL OWNERS OF THE  
MONTCLAIR HORIZONTAL  
PROPERTY REGIME,

PLAINTIFFS,

vs.

BRUCE E. KINNEY, AS AN  
INCORPORATOR FOR MONTCLAIR  
HOMES, LLC; MONTCLAIR HOMES,  
LLC, A SC LIMITED LIABILITY  
COMPANY (DECLARANT - MASTER  
DEED); CREMCO, LLC, AN ILLINOIS  
LIMITED LIABILITY COMPANY;  
MONTCLAIR ASSOCIATES LIMITED  
PARTNERSHIP, AN ILLINOIS  
LIMITED PARTNERSHIP;  
MONTCLAIR PROPERTY OWNERS  
ASSOCIATION A/K/A MONTCLAIR  
HOMEOWNERS ASSOCIATION  
(GRANTOR CONTROL PERIOD);  
BRUCE E. KINNEY AS AN OFFICER  
OR DIRECTOR IN THE MONTCLAIR  
PROPERTY OWNERS ASSOCIATION  
A/K/A MONTCLAIR HOMEOWNERS  
ASSOCIATION (GRANTOR CONTROL  
PERIOD), A SC NON-PROFIT  
CORPORATION; CHURCH CREEK  
CONSTRUCTION, LLC; LARRY  
ELSEY, INDIVIDUALLY, AND D/B/A  
ECI OR ELSEY CONSTRUCTION  
A/K/A ELSEY CONSTRUCTION INC.  
AND ROGER LOCKEY,

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2008-CP-10-6897

2012 OCT -4 AM 10:42  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

FILED

JUDGMENT IN A CIVIL CASE

DEFENDANTS. }

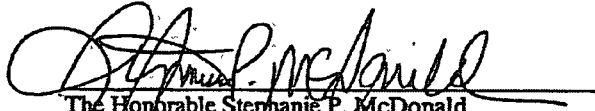
This matter comes before me upon a settlement of certain claims asserted in this action which was set for trial before me on October 1, 2012. The terms of the settling parties' agreement are hereby entered as the judgment of this court as follows:

1. At the time of the signing of this Order, Bruce Kinney, individually, was previously dismissed from this case and no longer a party to this action.
2. The Plaintiffs, Montclair Property Owners Association, Inc. ("Montclair"), will release Montclair Homes, LLC, including its members, officers and directors; Montclair Property Owners Association, a/k/a Montclair Homeowners Association (Grantor Controlled Period) and any of its members, officers or directors during the grantor controlled period and all Kinney entities insured under any insurance policies issued by Auto Owners Insurance Company upon payment in the amount of \$1,600,000.00 to Plaintiffs and its counsel by November 5, 2012.
3. Plaintiffs will release all claims against Auto Owners Insurance Company upon all policies allegedly providing coverage to any of the persons or entities who are involved in this dispute or who are insured under those policies.
4. Bruce Kinney and Montclair Homes, LLC and all other Kinney entities will release and dismiss all claims against Auto Owners Insurance Company in the declaratory judgment action pending in the United States District Court for South Carolina.
5. Montclair Homes, LLC and Montclair Property Owners Association (during the period Montclair Homes, LLC controlled the board of the POA) shall assign to Plaintiffs and Auto Owners Insurance Company all claims, rights and causes of action against any insurance policies or carriers which denied coverage or which could have been obligated to defend or indemnify Bruce Kinney or Montclair Homes, LLC or any of his present or former entities in this case. No such claims shall exist against the settling insurance carriers.
6. Montclair Homes, LLC shall assign all claims for contribution against Church Creek Construction, LLC within five (5) days of the date of this order.
7. The Plaintiffs' direct claims against Church Creek Construction Company are dismissed with prejudice. Nothing contained in this judgment shall be deemed to release, limit or discharge the contribution claims to be assigned to the Plaintiffs hereunder.
8. The Plaintiffs will release Montclair Associates Limited Partnership, CREMCO, and MALP's general partners in consideration of payment of the sum of \$1,400,000.00 payable by November 5, 2012. That sum shall be paid as follows: Scottsdale Insurance Company shall pay the sum of \$1,192,500.00; Chubb Insurance shall pay the sum of \$192,500.00; and MALP/CREMCO shall pay the sum of \$15,000.00.

Don  
-1-

9. Within five (5) days of the entry of this judgment, MALP and CREMCO shall assign to the Plaintiffs all rights and claims in contribution against Church Creek Construction Company, LLC. Nothing contained in this judgment shall be deemed to release, limit or discharge the contribution claims to be assigned to the Plaintiffs.
10. Church Creek Construction Company has contributed nothing toward this settlement. In consideration of payments by or on behalf of Montclair Homes, LLC, MALP, and CREMCO, the liability of Church Creek Construction, LLC to the Plaintiffs is hereby extinguished; however, nothing contained in this judgment shall be deemed to release, limit or discharge the contribution claims to be assigned to the Plaintiffs.
11. Montclair Homes, LLC.; Montclair Property Owners Association, a/k/a Montclair Homeowners Association (Grantor Controlled Period) and any of its members, officers or directors during the grantor controlled period shall release all claims against MALP, CREMCO and MALP's general partners. MALP, CREMCO and MALP's general partners shall release all claims against Bruce Kinney individually, Montclair Homes, LLC; including all members of Montclair Homes, LLC and Montclair Property Owners Association, a/k/a Montclair Homeowners Association (Grantor Controlled Period) and any of its members, officers or directors during the grantor controlled period.
12. The Plaintiffs have full authority to enter into this settlement through its board of directors.
13. Upon full compliance with this judgment, the Plaintiffs agree to satisfy it by filing a notification of judgment in this Court.

IT IS SO ORDERED.

  
The Honorable Stephanie P. McDonald  
Ninth Judicial Circuit

Charleston, South Carolina

Dated: October 4, 2012

|                                |   |                              |
|--------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS |
|                                | ) |                              |
| COUNTY OF CHARLESTON           | ) | NINTH JUDICIAL CIRCUIT       |
|                                | ) |                              |
| MONTCLAIR PROPERTY OWNERS      | ) | CASE NO. 2008-CP-10-6897     |
| ASSOCIATION (A SOUTH CAROLINA  | ) |                              |
| NON-PROFIT CORPORATION) AND    | ) |                              |
| MONTCLAIR PROPERTY OWNERS      | ) |                              |
| ASSOCIATION BOARD OF           | ) |                              |
| DIRECTORS FOR AND ON BEHALF    | ) |                              |
| OF ALL OWNERS OF THE           | ) |                              |
| MONTCLAIR HORIZONTAL           | ) |                              |
| PROPERTY REGIME,               | ) |                              |
|                                | ) |                              |
| PLAINTIFFS,                    | ) |                              |
|                                | ) |                              |
| vs.                            | ) |                              |
|                                | ) |                              |
| BRUCE E. KINNEY, INDIVIDUALLY  | ) |                              |
| AND AS AN INCORPORATOR FOR     | ) |                              |
| MONTCLAIR HOMES, LLC;          | ) |                              |
| MONTCLAIR HOMES, LLC, A SC     | ) |                              |
| LIMITED LIABILITY COMPANY      | ) |                              |
| (DECLARANT - MASTER DEED);     | ) |                              |
| CREMCO, LLC, AN ILLINOIS       | ) |                              |
| LIMITED LIABILITY COMPANY;     | ) |                              |
| MONTCLAIR ASSOCIATES LIMITED   | ) |                              |
| PARTNERSHIP, AN ILLINOIS       | ) |                              |
| LIMITED PARTNERSHIP;           | ) |                              |
| MONTCLAIR PROPERTY OWNERS      | ) | ASSIGNMENT OF CLAIMS         |
| ASSOCIATION A/K/A MONTCLAIR    | ) |                              |
| HOMEOWNERS ASSOCIATION         | ) |                              |
| (GRANTOR CONTROL PERIOD);      | ) |                              |
| BRUCE E. KINNEY AS AN OFFICER  | ) |                              |
| OR DIRECTOR IN THE MONTCLAIR   | ) |                              |
| PROPERTY OWNERS ASSOCIATION    | ) |                              |
| A/K/A MONTCLAIR HOMEOWNERS     | ) |                              |
| ASSOCIATION (GRANTOR CONTROL   | ) |                              |
| PERIOD), A SC NON-PROFIT       | ) |                              |
| CORPORATION; CHURCH CREEK      | ) |                              |
| CONSTRUCTION, LLC; LARRY       | ) |                              |
| ELSEY, INDIVIDUALLY, AND D/B/A | ) |                              |
| ECI OR ELSEY CONSTRUCTION      | ) |                              |
| A/K/A ELSEY CONSTRUCTION INC.  | ) |                              |
| AND ROGER LOCKEY,              | ) |                              |

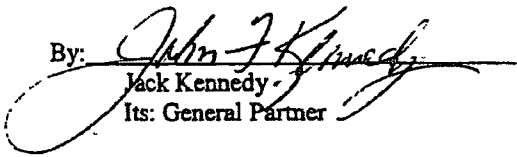
EXHIBIT B

DEFENDANTS. )

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Montclair Associates, Limited Partnership and CREMCO hereby assign to Montclair Property Owners Association, Inc., all rights, title and interest in their claims against Church Creek Construction Company for contribution in connection with the above captioned litigation.

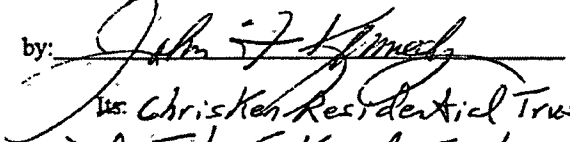
MONTCLAIR ASSOCIATES,  
LIMITED PARTNERSHIP

By:

  
Jack Kennedy  
Its: General Partner

CREMCO, LLC

by:

  
Us: Chrisken Residential Trust,  
G.P., John F. Kennedy, Trustee,  
Chrisken Operating Limited  
Partnership, Member

|                                |   |                              |
|--------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS |
|                                | ) |                              |
| COUNTY OF CHARLESTON           | ) | NINTH JUDICIAL CIRCUIT       |
|                                | ) |                              |
| MONTCLAIR PROPERTY OWNERS      | ) | CASE NO. 2008-CP-10-6897     |
| ASSOCIATION (A SOUTH CAROLINA  | ) |                              |
| NON-PROFIT CORPORATION) AND    | ) |                              |
| MONTCLAIR PROPERTY OWNERS      | ) |                              |
| ASSOCIATION BOARD OF           | ) |                              |
| DIRECTORS FOR AND ON BEHALF    | ) |                              |
| OF ALL OWNERS OF THE           | ) |                              |
| MONTCLAIR HORIZONTAL           | ) |                              |
| PROPERTY REGIME,               | ) |                              |
|                                | ) |                              |
| PLAINTIFFS,                    | ) |                              |
|                                | ) |                              |
| vs.                            | ) |                              |
|                                | ) |                              |
| BRUCE E. KINNEY, INDIVIDUALLY  | ) |                              |
| AND AS AN INCORPORATOR FOR     | ) |                              |
| MONTCLAIR HOMES, LLC;          | ) |                              |
| MONTCLAIR HOMES, LLC, A SC     | ) |                              |
| LIMITED LIABILITY COMPANY      | ) |                              |
| (DECLARANT - MASTER DEED);     | ) |                              |
| CREMCO, LLC, AN ILLINOIS       | ) |                              |
| LIMITED LIABILITY COMPANY;     | ) |                              |
| MONTCLAIR ASSOCIATES LIMITED   | ) |                              |
| PARTNERSHIP, AN ILLINOIS       | ) |                              |
| LIMITED PARTNERSHIP;           | ) | ASSIGNMENT OF CLAIMS         |
| MONTCLAIR PROPERTY OWNERS      | ) |                              |
| ASSOCIATION A/K/A MONTCLAIR    | ) |                              |
| HOMEOWNERS ASSOCIATION         | ) |                              |
| (GRANTOR CONTROL PERIOD);      | ) |                              |
| BRUCE E. KINNEY AS AN OFFICER  | ) |                              |
| OR DIRECTOR IN THE MONTCLAIR   | ) |                              |
| PROPERTY OWNERS ASSOCIATION    | ) |                              |
| A/K/A MONTCLAIR HOMEOWNERS     | ) |                              |
| ASSOCIATION (GRANTOR CONTROL   | ) |                              |
| PERIOD), A SC NON-PROFIT       | ) |                              |
| CORPORATION; CHURCH CREEK      | ) |                              |
| CONSTRUCTION, LLC; LARRY       | ) |                              |
| ELSEY, INDIVIDUALLY, AND D/B/A | ) |                              |
| ECI OR ELSEY CONSTRUCTION      | ) |                              |
| A/K/A ELSEY CONSTRUCTION INC., | ) |                              |
| AND ROGER LOCKEY,              | ) |                              |

EXHIBIT B

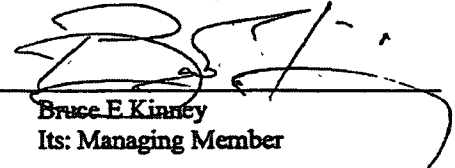


DEFENDANTS. )

---

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Montclair Homes, LLC hereby assigns to Montclair Property Owners Association, Inc. all rights, title and interest in its claims against Church Creek Construction Company for contribution in connection with the above captioned litigation.

MONTCLAIR HOMES, LLC

By: 

Bruce E Kinney  
Its: Managing Member

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO : 2012-CP-10-8447

Montclair Property Owners Association, Inc. and )  
Montclair Property Owners Association Board of )  
Directors for and on behalf of all Owners of the )  
Montclair Horizontal Property Regime, as )  
Assignees of Montclair Associates Limited )  
Partnership, Cremo, LLC and Montclair Homes, )  
LLC )

Plaintiffs,

vs

Church Creek Construction, LLC,

Defendant

**DEFENDANT'S ANSWER TO  
PLAINTIFF'S COMPLAINT**

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2013 FEB -1 PM 2:32

FILED

TO: JOSEPH E. DAPORE, ESQUIRE AND EDWARD D. BUCKLEY, ESQUIRE, ATTORNEYS FOR  
THE PLAINTIFF.

Defendant Church Creek Construction, LLC, answering the Complaint of the Plaintiffs herein,  
which state and allege as follows:

**FOR A FIRST DEFENSE**

1. Each and every allegation of the Complaint not hereinafter specifically admitted is deemed  
denied and strict proof demanded thereof.

2. Upon information and belief, Defendant admits the allegations of paragraph 1 and 2.

3. Defendant admits the allegations of Paragraphs 3, 4, 5, and 6.

4. Answering Paragraph 7, Defendant craves reference to Exhibit A reference therein and  
denies any allegations inconsistent with what is set forth in Exhibit A.

5. Answering Paragraph 8, Defendant craves reference to Exhibit B reference therein and  
denies any allegations inconsistent to what is set forth in Exhibit B



6. Answering Paragraph 9, Defendant restates and realleges the previous Paragraphs as if repeated verbatim herein.

7. Defendant admits the allegations of Paragraph 10.

8. Defendant denies the allegations of Paragraph 11.

9. Defendant admits the allegations of Paragraph 12.

10 Defendant denies the allegations of Paragraph 14. (There is no Paragraph 13 to the Complaint.)

11. Defendant admits the allegations of Paragraph 15.

**FOR A SECOND DEFENSE**  
**(Insufficient Facts to Constitute a Cause of Action)**

12. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein

13. Defendant would show that the allegations of the Complaint fail to state facts sufficient to constitute a cause of action and/or causes of action against this Defendant.

**FOR A THIRD DEFENSE**  
**(Contributory Negligence)**

14. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

15. Defendant would show that the damages alleged by the Plaintiffs, which damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton, negligent, careless and grossly negligent acts and conduct of the Plaintiffs, which actions combined and concurred with any negligence on the part of this Defendant, which negligence is hereby specifically denied, to produced such damages, without which the same would not have occurred

**FOR A FOURTH DEFENSE  
(Comparative Negligence)**

16. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

17. Defendant would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton, negligent, careless and grossly negligent acts and conduct of the Plaintiffs, which acts were greater than any acts of negligence on the part of Defendant, which acts on the part of Defendant are hereby specifically denied, to produce such injury and/or damages and without which the same would not have occurred.

**FOR A FIFTH DEFENSE  
(Failure to Mitigate)**

18. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

19. Defendant would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and/or damages are hereby specifically denied, were due to and caused by the Plaintiffs' failure to mitigate, which failure is a complete bar to recovery by the Plaintiffs.

**FOR A SIXTH DEFENSE  
(Sole Negligence of Third Parties)**

20. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

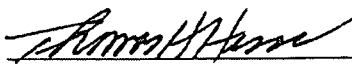
21. Defendant would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and/or damages are hereby specifically denied, were due to and were the proximate result of the sole negligence and/or recklessness of third persons or parties, for whose conduct Defendant are not liable.

**FOR A SEVENTH DEFENSE  
(Statute of Limitations)**

22. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

23. Defendant would assert that the Plaintiffs are barred by the applicable Statute of Limitations.

WHEREFORE, having fully answered the Complaint of the Plaintiff herein, Defendant prays that same be dismissed with cost.



Thomas H. Hesse  
Pratt-Thomas Walker, P.A.  
16 Charlotte Street  
Post Office Drawer 22247  
Charleston, SC 29413-2247  
Tel: 843.727.2250  
[thh@p-tw.com](mailto:thh@p-tw.com)  
Counsel for Defendant

January 30, 2013

Charleston, South Carolina.

**CERTIFICATE OF SERVICE**

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Rules of Civil Procedure by electronic transmission or by hand delivery or by regular United States Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s) on this 31 day of January, 2013.  
Charleston, South Carolina



PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET  
CHARLESTON SC 29403PO DRAWER 22247  
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WWW P-TW COM

Direct Dial. (843) 727.2250  
Fax: (843) 727 2248  
Email. [thh@p-tw.com](mailto:thh@p-tw.com)Honorable Julie A. Armstrong  
Charleston County Clerk of Court  
106 Judicial Center  
100 Broad Street  
Charleston, SC 29401

January 30, 2013

E DOUGLAS PRATT-THOMAS

G TRENHOLM WALKER

W ANDREW COWDER JR

JON L AUSTEN

LINDSAY K SMITH-YANCEY (SC NC)

THOMAS H HESSE (SC GA)

IAN W FREEMAN (SC CA)

DANIEL S McQUEENEY JR

KATHLEEN FOWLER MONOC

JOHN P LINTON JR

OF COUNSEL

THOMAS P GRESSETTE JR (SC USVI)

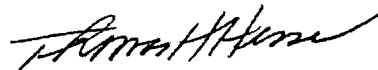
Re *Montclair Property Owners Association, et al. v. Church Creek Construction, LLC*  
Case No.. 2012-CP-10-8447  
Insured. Church Creek Construction, LLC  
Claim No.. 688426  
P-TW File No : 0710 087

Dear Ms Armstrong

Enclosed please find the original and one copy of Defendant Church Creek's Answer to the Complaint for filing by your office. Once the Answer has been filed, I would appreciate your returning a clocked copy to our office in the enclosed envelope provided for that purpose.

Thank you for your assistance and please let me know if you have any questions.

Yours very truly,



Thomas H. Hesse

THH/mls

Enclosure

c. Joseph E. DaPore, Esquire (w/enc)  
Nancy Scott (w/enc)(via email)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FOR THE NINTH JUDICIAL CIRCUIT

MONTCLAIR POA, INC., ET AL,

Plaintiffs,

VS.

CASE NO.: 2012-CP-10-8447

CHURCH CREEK CONSTRUCTION, LLC,

Defendant.

 COPY

Hearing before the

Honorable Mikell R. Scarborough, reported by Bernadette A.  
Cali, CSR and Notary Public, at 9:30 a.m. on July 24,  
2013 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff: Joseph E. Dapore, Esq.  
Young Clement & Rivers, LLP  
PO Box 993  
Charleston, S.C. 29402

For the Defendant: Thomas H. Hesse, Esq.  
Daniel S. McQueeney, Jr., Esq.  
Pratt-Thomas/Walker, PA  
PO Box 22247  
Charleston, S.C. 29413-2247

Bernadette A. Cali, CSR  
Notary Public

# INDEX TO EXAMINATIONS

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## E X H I B I T S

(All Exhibits premarked by agreement and in evidence. All exhibits retained by Plaintiff's counsel and not available for preparation of transcript.)

(See Prepared Exhibit descriptions and final index for transcript references.)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MONTCLAIR PROPERTY OWNERS  
ASSOCIATION, INC. AND  
MONTCLAIR PROPERTY OWNERS  
ASSOCIATION BOARD OF  
DIRECTORS FOR AND ON BEHALF  
OF ALL OWNERS OF THE  
MONTCLAIR HORIZONTAL  
PROPERTY REGIME, AS ASSIGNEES  
OF MONTCLAIR ASSOCIATES  
LIMITED PARTNERSHIP, CREMO,  
LLC AND MONTCLAIR HOMES, LLC

PLAINTIFFS,

vs.

CHURCH CREEK CONSTRUCTION,  
LLC,

DEFENDANT,

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-10-8447

TRIAL EXHIBIT LIST  
PLAINTIFF

| Exhibit No. | Document Description                                                                       | Party               | Admitted into Evidence |
|-------------|--------------------------------------------------------------------------------------------|---------------------|------------------------|
| 5           | Report of Architectural Inspection and Disclosure by Robert Epps dated 8/27/03 (0001-0012) | Plaintiff/Defendant |                        |
| 8           | 11/18/02 American Consulting, Inc. Inspection Report (MALP/CREMCO 223-251)                 | Defendant           |                        |
| 10          | 4/24/03 ACE Assessment Report (Plaintiff 000165-183)                                       | Defendant           |                        |
| 32          | 10/10/03 Church Creek Proposal                                                             | Plaintiff           |                        |
| 33          | 11/10/03 Church Creek Proposal                                                             | Plaintiff/Defendant |                        |
| 34          | Exterior and Common Area Repairs spreadsheet                                               | Defendant           |                        |
| 36          | Notebook of Roger Lockey Invoices                                                          | Plaintiff           |                        |
| 36A         | 4/22/04 Lockey Invoice for 1879B (CCC                                                      | Plaintiff           |                        |
| 36B         | 9/17/04 Lockey Invoice for Unit 1730 (CCC 00797)                                           | Plaintiff           |                        |
| 36D         | 5/7/04 Lockey Invoice for Unit 1764 (CCC 000072)                                           | Plaintiff           |                        |
| 36E         | 2/19/04 Lockey Invoice for Unit 1819 (CCC 000024)                                          | Plaintiff           |                        |
| 36F         | 7/30/04 Lockey Invoice for Unit 1874A (CCC 000812)                                         | Plaintiff           |                        |

|      |                                                                                                                                                                                                                                                                           |                     |  |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--|
| 45   | 2/6/04 Church Creek Firewall proposal                                                                                                                                                                                                                                     | Plaintiff           |  |
| 46   | 2/19/04 Mark Ackerman invoice                                                                                                                                                                                                                                             | Plaintiff           |  |
| 50   | CL-100 for 1848D                                                                                                                                                                                                                                                          | Defendant           |  |
| 53   | 1/30/2004 email from David Heitzman to Bruce Kinney                                                                                                                                                                                                                       | Plaintiff           |  |
| 55   | 10/8/04 Email from Bruce Kinney to David Heitzman re: Montclair                                                                                                                                                                                                           | Plaintiff           |  |
| 76   | 11/6/03 ACE letter given at closing                                                                                                                                                                                                                                       | Defendant           |  |
| 81   | 6/8/10 Hodgin Outline Scope of Repairs                                                                                                                                                                                                                                    | Plaintiff           |  |
| 83   | Church Creek Construction Summary of Repairs by Unit                                                                                                                                                                                                                      | Plaintiff/Defendant |  |
| 91   | 9/14/06 Precision 20/20 Full Reserve Study for Montclair Property Owners Association                                                                                                                                                                                      | Defendant           |  |
| 99   | Church Creek Repairs by Unit Binder                                                                                                                                                                                                                                       | Defendant           |  |
| 102B | Photos Destructive Test # 4 Unit 1879B                                                                                                                                                                                                                                    | Plaintiff           |  |
| 103C | 2/9/09 Calibogue Construction Inspection Photo Unit 1863                                                                                                                                                                                                                  | Plaintiff           |  |
| 103E | Photos Destructive Test #8 Unit 1730                                                                                                                                                                                                                                      | Plaintiff           |  |
| 120  | 9/22/05 Email to Terrie Bergdorf from Bruce Kinney re: Developer doesn't owe anything more to the HOA; 9/27/05 email from Bruce Kinney to Mike Parades; 10/3/05 email to Mike Parades from Bruce Kinney re: Exterior Work Spreadsheet                                     | Plaintiff           |  |
| 123  | Destructive Testing Comparison Chart                                                                                                                                                                                                                                      | Plaintiff           |  |
| 136  | 2/16/04 Church Creek Construction Invoice re: fire walls                                                                                                                                                                                                                  | Plaintiff           |  |
| 240  | Town of Mt. Pleasant Building Permits                                                                                                                                                                                                                                     | Plaintiff           |  |
| 258  | CREMCO General Ledger Jan-Dec-2004 (MALP/CREMCO 1366)                                                                                                                                                                                                                     | Plaintiff           |  |
| 260  | 1/2/02 Crawford Inspection Photo Unit 1863                                                                                                                                                                                                                                | Plaintiff           |  |
| 262  | 9/18/12 Calibogue Construction Remediation & Restoration Revised Cost Estimate                                                                                                                                                                                            | Plaintiff           |  |
| 265  | Hodgin Photos Unit 1730 Destructive Test # 8                                                                                                                                                                                                                              | Plaintiff           |  |
| 266  | Hodgin Photos Unit 1764 Destructive Test # 18                                                                                                                                                                                                                             | Plaintiff           |  |
| 281  | Rotted pieces of exterior siding from building 1847A                                                                                                                                                                                                                      | Plaintiff           |  |
| 281A | Rotted Pieces of exterior siding from Unit 1725                                                                                                                                                                                                                           | Plaintiff           |  |
| 281B | Bag of pieces of wood                                                                                                                                                                                                                                                     | Plaintiff           |  |
| 281C | Bag of sheathing                                                                                                                                                                                                                                                          | Plaintiff           |  |
| 282  | Derek Hodgin, PE photos taken September 27, 2012 (removal of wood samples photos)                                                                                                                                                                                         | Plaintiff           |  |
| 283  | Third Amended Complaint from underlying action <u>Montclair Property Owners Association, Inc., et al. v. Montclair Homes, LLC, et al.</u> , Charleston County Case No 2008-CP-10-6897                                                                                     | Plaintiff           |  |
| 284  | Defendant Bruce Kinney, individually and as a member of Montclair Homes, LLC; Montclair Homes, LLC and Montclair Property Owners Association (control period) Settlement Agreement and Release, Assignment of Claims and Addendum to Settlement Agreement and Release and | Plaintiff           |  |

|     |                                                                                                                                                                                                                                                              |           |  |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|--|
|     | Assignment of Claims in the underlying case                                                                                                                                                                                                                  |           |  |
| 285 | Defendants CREMCO, LLC and Montclair Associates Limited Partnership, an Illinois Limited Partnership Settlement Agreement and Release, Assignment of Claims and Addendum to Settlement Agreement and Release and Assignment of Claims in the underlying case | Plaintiff |  |
| 286 | 5/31/13 CBR Invoice/Draw Request for Exterior Repair Work for Bldg 1835-1839                                                                                                                                                                                 | Plaintiff |  |
| 287 | 1/21/13 CBR Photos of Exterior Repair Work for Bldg 1835-1839                                                                                                                                                                                                | Plaintiff |  |
| 288 | 3/18/04 Roger Lockey invoice for repairs to Unit 1847A and 3/28/04 Church Creek Construction invoice to Bruce Kinney invoicing work for 1847A                                                                                                                | Plaintiff |  |
| 289 | 12/23/04 Lockey Invoice for repairs to Unit 1725                                                                                                                                                                                                             | Plaintiff |  |
| 290 | Hodgin Photos 16A and 20A of Unit 1872 firewalls                                                                                                                                                                                                             | Plaintiff |  |
| 291 | Hodgin Photos 19A and 20B of Unit 1848C firewalls                                                                                                                                                                                                            | Plaintiff |  |
| 292 | Defendant's Answer to Plaintiff's Complaint                                                                                                                                                                                                                  | Plaintiff |  |
| 293 | Photos of Derek Hodgin's Destructive Test 16                                                                                                                                                                                                                 | Plaintiff |  |
| 294 | Photos of Derek Hodgin's Destructive Test 17                                                                                                                                                                                                                 | Plaintiff |  |
| 295 | Photos of 1874A - Inadequately attached siding that is displaced from its intended location                                                                                                                                                                  | Plaintiff |  |

79 Hodgens Report Q5.12, 2004

1 (Hearing commenced.)

2 THE COURT: All right. Gentlemen, we've got this  
3 morning the case of the Montclair Property Owners'  
4 Association, Inc. and others as Plaintiffs versus  
5 Church Creek Construction, LLC. The case is  
6 2012-CP-10-8447.

7 I note appearances for the Plaintiff, Mr. Joe  
8 Dapore, Ed Buckley from Young Clement & Rivers.  
9 Mr. Tom Hesse, Mr. Chip McQueeney from  
10 Pratt-Thomas/Walker.

11 Gentlemen, I want to thank you-all for providing  
12 me with pretrial briefs. As you can see I have a bevy  
13 of law clerks here. They've been working to educate me  
14 on what the contribution act is all about. I think  
15 that's what this case is about.

16 So I'm happy to have you-all make a little five  
17 minute introduction just to sort of focus me in on  
18 where we're going to go. I know we've got some proof  
19 issues that have to be done and met, and then we've got  
20 the question of the applicability and how to apply the  
21 statute, seems to be what the question for the Court  
22 is.

23 Any matters we need to take up ahead of time?

24 MR. DAPORE: No, I don't think so.

25 THE COURT: Again, I want to thank you-all. I

1 understand we've got -- according to Mr. Jeff McDaniel  
2 this is the largest number of exhibits ever to appear  
3 in this courtroom. So I want to commend you on that.  
4 I don't know if that's good or bad. Ms. Cali, my court  
5 reporter, tells me everything has been premarked. I  
6 don't think -- there may be some items that are  
7 objectionable or is everything pretty much --

8 MR. DAPORE: Your Honor, I think it's pretty much  
9 admitted.

10 MR. HESSE: Right.

11 THE COURT: I'm going to presume when we start  
12 talking about an exhibit that it is in evidence unless  
13 I hear an objection otherwise.

14 MR. DAPORE: That's good.

15 THE COURT: Just laying the ground rules out here  
16 for us. Our understanding is this comes out of some  
17 prior litigation. So that's some of what you-all --  
18 you should be familiar, then, with the documents and  
19 what's involved here.

20 What else, housekeeping-wise? We started a little  
21 bit late. I know someone had to be in another  
22 courtroom this morning. That was fine. I've got no  
23 problem with that. I typically work to about 12:30,  
24 1 o'clock; take a lunch break, come back at 2. We do  
25 have this case scheduled all day today. I do have you

1 scheduled for Friday morning if we need to come back.  
2 I inquired about Thursday because my Thursday freed up,  
3 but somebody had a conflict with that. We'll work  
4 today. I've got to be somewhere at 5:30, so we'll work  
5 until 5 today. We'll just stop where we are. If we're  
6 done, we're done. If we're not done we'll come back  
7 Friday morning.

8 MR. DAPORE: Sounds good.

9 THE COURT: I'll plan to start 9:30 on Friday.  
10 Any other matters to take up before we get rolling?

11 All right. Mr. Dapore?

12 MR. DAPORE: Your Honor, what I'll try to do very  
13 briefly is kind of give you an overview of what this  
14 thing is about. You'll probably hear a lot of this in  
15 the case about the grouping and who the Defendants were  
16 in the underlying case.

17 I want to put this the chart up, because I think  
18 it will help us.

19 THE COURT: Okay.

20 MR. DAPORE: This is a smaller version of the same  
21 thing.

22 (Hands up document.)

23 THE COURT: All right, sir.

24 MR. DAPORE: The players, except for the  
25 Plaintiffs, in the underlying case. This is a condo

1 conversion. The underlying case was a condo conversion  
2 case in which a pretty savvy business guy, Bruce  
3 Kinney, who has been a converter on many projects  
4 really all over the midwest and I think this might have  
5 been the first one in South Carolina, but he put  
6 together a project called Montclair Homes, LLC; a  
7 formed in South Carolina, LLC. He bought property from  
8 this group, the MALP group, that's abbreviated  
9 Montclair Associates Limited Partnership, which was a  
10 fellow named Jack Kennedy in Chicago. Bruce Kinney was  
11 also from Chicago. They didn't really do work together  
12 in Chicago, but they knew each other.

13 Kennedy had a large portfolio of apartment  
14 complexes all over the United States. In fact, he had  
15 it on the New York stock exchange real estate  
16 investment trust with 40-some apartment complexes that  
17 people would invest in. He was a pretty big wheeler  
18 and dealer. He really wasn't a condo converter but  
19 owned a lot of real estate and apartment complexes.

20 THE COURT: That's back when the condo market was  
21 real hot. I remember those days.

22 MR. DAPORE: Yes. He had bought interestingly,  
23 just history, he bought this property from Traveler's  
24 Insurance. The original property was built around '85,  
25 '90 timeframe; 36 buildings out there. I think you



1 know where it is, across from Town Center on 17 in Mt.  
2 Pleasant. His group, MALP, as a single purpose  
3 partnership bought that property from Traveler's and  
4 then with the intent to keep it for roughly eight or  
5 ten years, then they would flip it and make some money.

6 They did that. Right about 2002, 2003 that  
7 property was becoming ripe to sell and he was looking  
8 for somebody to buy it. He had run into Bruce Kinney  
9 at a cocktail party in Chicago, probably. Kinney who  
10 was a very experienced condo converter talked to  
11 Kennedy; said one of your best uses is not to sell it  
12 but to condo it. Turn it into condos, not to just sell  
13 it to somebody as an apartment complex but to turn it  
14 into condos. Kinney was kind of semi-retired and  
15 really wasn't looking for a project, but between the  
16 two of them Kennedy finally talked Kinney into coming  
17 to Charleston.

18 He actually then fell in love with Charleston,  
19 moved here and he looked at several properties and one  
20 of which was this Montclair property which Kennedy  
21 eventually talked Bruce Kinney into doing one last  
22 conversion even though Kinney was kind of semi-retired.

23 So they worked a deal. It's very sophisticated,  
24 which won't come up in this case, but it's an option  
25 agreement where Bruce Kinney can do his due diligence

1 for a period of time, look at the property and decide  
2 whether to buy it or not from the MALP group. He  
3 decided he was going to exercise the option and did  
4 exercise the option and bought the property in November  
5 of '03.

6 He knew, and MALP knew, it was going to go through  
7 before November of '03, so about August, September,  
8 October timeframe they were so certain that the deal  
9 was going to go through that Bruce Kinney was actually  
10 at that time contacting contractors to do some of the  
11 work needed to be done on the property, to fix it up to  
12 an extent that he can sell it.

13 He looked at Church Creek which was a local  
14 construction company. Kevin Molony is the proprietor  
15 of Church Creek, and Kevin also owns a company called  
16 Keating Roofing here in Charleston.

17 Lawrence Laddaga is seated back here, president of  
18 the board. He has the position for life. Is that  
19 right?

20 (Laughter)

21 MR. DAPORE: But he's been there for a long time.

22 VOICE: Or death, whichever comes first.

23 MR. DAPORE: He is the president of the board.

24 THE COURT: All right.

25 MR. DAPORE: So Montclair Homes, LLC buys it on

1 November 6 of '03 from MALP. On November 7th of '03,  
2 next day they record the Master Deed and turn it into  
3 condos. Prior to that time, as part of the turning it  
4 into condos they have to comply with the law which is  
5 you have to do that physical disclosure report from an  
6 architect and they hire a fellow named Epps. The Epps  
7 Report is somewhat pertinent here. We'll refer to it.

8 There is really just a couple of lines here and  
9 there that are pertinent to it, but it is a report that  
10 was given to the purchasers by MC Homes to say here's  
11 the condition of your property you're buying, your  
12 unit, and this is what's wrong with it, this is what's  
13 not wrong with it.

14 THE COURT: Epps is an architect?

15 MR. DAPORE: The architect was Epps. A guy named  
16 Robert Epps, I think it is.

17 Anyway, they gave the Epps Report out. MALP  
18 actually had an engineering firm, totally separate from  
19 anything Bruce Kinney was doing, because they had,  
20 again, had owned the property for eight years or so.  
21 So whenever they needed a property assessment on their  
22 property, like every other year, they would contact  
23 this company called ACE, A-C-E, American Consulting  
24 Engineers, a large group out of Indianapolis, to take a  
25 look at the property, write up a report, do a property

1 condition assessment.

2 That report, they did at the time they were going  
3 to sell it to Kinney to try to get their idea of what  
4 their selling, and that report from ACE, one of which  
5 Kinney got -- he didn't get one but that's not  
6 pertinent to what we're doing here. But the one he did  
7 get, the one that's pertinent here is a report which  
8 indicated that there was firewall issues in all the  
9 attics. They had a life safety issue that needed to be  
10 corrected. They estimated it would be 140,000 or  
11 something like that to do the fix. Basically put some  
12 sheetrock up there. That was passed on to Bruce  
13 Kinney.

14 As I mentioned, this was a very -- two savvy  
15 business guys doing a lot of due diligence and  
16 brokering back and forth and they basically, in this  
17 option agreement, Bruce Kinney said, look, I'm going to  
18 buy your property for a whole lot of money. You guys  
19 are going to fix the firewalls.

20 So you've got MALP agreeing to fix the firewall  
21 issues. You've got Bruce Kinney agreeing to do pretty  
22 much everything else, but he has a cap on it of about a  
23 hundred thousand dollars where he says he knows he's  
24 not going to have to spend more than a hundred thousand  
25 dollars of his own money to do any exterior common

1 element repairs.

2 MALP can live with that because they want to sell  
3 this place and they are getting pretty good dollars.  
4 They sold it to Mr. Kinney, to his group, MC Homes for  
5 \$20 million.

6 Mr. Kinney then turned around and in less than two  
7 years -- he sold his last unit in May of '05. Actually  
8 sold the last two units. He sold them to himself. He  
9 formed another LLC so he could get rid of them and  
10 close the books. That was in May of '05.

11 So Church Creek during late fall of '03, when they  
12 kind of knew the deal was going to be put together,  
13 November-December timeframe, started doing some work  
14 and then they pretty much finished up. We'll give the  
15 Court an invoice which indicates their last work done  
16 on the property was in April of '05. Then Kinney sold  
17 his last two units in May of '05.

18 That's it. Now, with this -- sub groups within  
19 these groups are important, more so I guess on Church  
20 Creek's side than they are on MC Homes and MALP's side  
21 but as sub-defendants in the underlying action you had  
22 the partnership itself, Jack Kennedy and CREMCO.  
23 CREMCO was really nothing more, there was a guy named  
24 Jack Heitzman. CREMCO was owned by Kennedy and they  
25 were nothing more than the managing agent during the

1 rental period when these were apartments. They would  
2 handle the rental. That was CREMCO.

3 Church Creek, you have the company itself, which  
4 is -- does business as Church Creek Construction  
5 Company, LLC. They hire -- Kevin Molony partnered up  
6 with a guy named Larry Elsey of ECI. He did business  
7 sometimes as ECI, Elsey Construction, Inc., I guess.  
8 He was not incorporated, though. But he was a 50-50  
9 partner in Church Creek.

10 If you read the deposition testimony, which  
11 we'll -- basically will indicate that Kevin was the  
12 numbers-books guy, kind of kept track of it from the  
13 book and the business end. Larry was the day-to-day  
14 out there supervising the crews, pounding nails or  
15 watching the crews out there in the field.

16 Elsey hired this fellow here who actually kept  
17 fairly good records. We learned an awful lot from  
18 his -- this is the closest thing we have in this case  
19 to a construction log. A daily construction log was  
20 kept by Roger Lockey. And Lockey was the guy that  
21 Elsey and -- he was working as a subcontractor,  
22 according to the testimony of Church Creek, for Church  
23 Creek, paid by Church Creek and supervised by Larry  
24 Elsey who was a partner in Church Creek.

25 He did all the exterior siding repair, roofing

1 repairs and then Church Creek got another fellow who is  
2 not on here and was not a Defendant. His name was  
3 Ackerman. Just paid Ackerman some money to go up and  
4 do the firewall repairs that were identified by MALP's  
5 engineering company, ACE.

6 Then the MC group, what you have here is we sued  
7 the LLC, which was the grantor on the master deed on  
8 behalf of all the owners and the board. We sued Bruce  
9 Kinney as the managing member of the LLC individually  
10 and as incorporator. And then we also sued the POA  
11 board which was, during the developer period, before  
12 that last sale of his last unit he controls the board  
13 according to the governing documents. So we sued his  
14 board prior to him turning over control in May of --

15 THE COURT: The declarant board basically?

16 MR. DAPORE: Right.

17 THE COURT: Okay.

18 MR. DAPORE: So those are the players in the  
19 group. I'm going to sit down and see if Mr. Hesse  
20 wants to say anything. We will explain to you what  
21 we're doing here as basically -- we got, from these  
22 people in April of last -- 2012, we received a  
23 settlement proposal and accepted it as to from Elsey --  
24 Larry Elsey and from Roger Lockey for \$525,000. That  
25 was pretty much a straight up settlement. There wasn't

1 any contributions not -- mentioned in those releases.  
2 We've attached those releases to your pretrial and  
3 they'll be put into evidence here.

4 Then we mediated the case I think a couple of  
5 times; were unable to get a contribution from Church  
6 Creek. Then at trial, literally at trial we settled  
7 with the MC Homes group and the MALP group. These  
8 three and their carriers, same here, put in up here --  
9 MC Homes put in a total of a million six. MALP put in  
10 a million four and the case was settled.

11 Now, one and two, totaling three million dollars,  
12 what we did we said, look, we'll settle with you, we  
13 won't go to trial, you buy your piece. But we would  
14 like for you to buy Church Creek's piece as well  
15 because they are not playing ball, which they did, and  
16 got a full release and their liability was  
17 extinguished. At that point we had no claims against  
18 them. But in the releases and then subsequent to their  
19 releases we took what's an assignment of their  
20 contribution claim, because their position, of course,  
21 is that they paid for Church Creek's extinguishing  
22 liability and release. And they're entitled, MC Homes  
23 and MALP, to a fair share of that back under principles  
24 of equity, because Church Creek was up to the their  
25 neck, which we'll show the Court, and they want some of



1       that money back. Then they assigned that cause of  
2       action to us. That's why we're here today.

3               THE COURT: So you've got a release and an  
4       assignment of rights that specifically mention the  
5       contribution claims?

6               MR. DAPORE: Specifically. The language we made  
7       sure to put in the release was -- intent of this clause  
8       is to release Church Creek, extinguish their liability  
9       and then allow us to go -- assign those Plaintiffs  
10      allowing the Plaintiffs to go after -- which we did.

11              THE COURT: So your-all's position is that there  
12      is liability from all three of these groups, that it's  
13      common liability, everyone shares in that liability.

14              And then tell me about, you've got a three  
15      million dollar total settlement with the contribution  
16      issues. You've got the 525 from Church Creek. What is  
17      your position on how to deal with the 525? Is that a  
18      set-off? I might be jumping ahead.

19              MR. DAPORE: I'll be perfectly candid with the  
20      Court. I looked at this thing every which way for a  
21      long time; read a bunch of cases and treatises, so  
22      forth. It is confusing. Very confusing. What it  
23      boils down to I think in the case law and the statute  
24      is trying -- for this Court under principles of equity,  
25      to determine what is the common liability that was

1 extinguished.

2 Now, what we'll try and show this Court, and I  
3 think Lawrence will drive this point home, we've got  
4 three million 525. They've got 36 buildings out there.  
5 Carlson's estimate was about 12 million five hundred or  
6 something like that to fix all the buildings. They've  
7 done one or two buildings. They can do it for less  
8 than twelve five. Probably considerably less than  
9 twelve five, but it's going to cost a whole lot more  
10 than three five, what they got; a lot more. So what we  
11 gave up in saying, okay, guys, we'll settle with you,  
12 you take a release for Church Creek because they are  
13 not playing ball, you assign the right for us to go  
14 after them in contribution. When we took that  
15 settlement we basically knew we still had this claim.  
16 We knew we were releasing Church Creek's common  
17 liability -- they were releasing Church Creek's common  
18 liability and at that point, on construction claims,  
19 because we had causes of action I think as to Church  
20 Creek, the Ninth cause of action in our Third Amended  
21 Complaint. As to these guys it's the Second cause of  
22 action in that Complaint, but they are all construction  
23 causes of action. And we made clear in that Complaint  
24 that -- and I'll -- it's going to be put into evidence,  
25 that we allege that all of them were working together,

1 both MALP and MC Homes were working with Church Creek.  
2 It was really a team effort. It was a combined effort  
3 to try to fix the exteriors. Which as they began work  
4 became -- it became a lot worse than what they thought  
5 as far as the physical condition.

6 THE COURT: All right. Not unusual in the  
7 construction business.

8 MR. DAPORE: No.

9 THE COURT: Okay. So back to my second question,  
10 which was, how do you treat the 525?

11 MR. DAPORE: The 525 that Elsey and Lockey paid,  
12 we believe that gets thrown into the mix. We believe  
13 the maximum common liability for purposes of this  
14 contribution case is not, of course, 12.5 but three  
15 million 525. Church Creek got off the hook for what  
16 could have been a joint verdict for 12 million bucks.  
17 Okay? Now, they didn't assign any common liability.  
18 What Church Creek would get, according to the  
19 contribution action the way I read it, is they get a  
20 complete set off. Okay? They get a complete set off.  
21 So the statute says they get a set off if it's plead,  
22 which we'll bring up to the Court in a while. But they  
23 also -- it gets put in the mix because it's part of  
24 their group. If you add the total amount of three  
25 million 525 divided by three it comes up to, like, a

1 million 175. We give them 525 credit and it still  
2 comes up to 650 or 675. Something like that. It gets  
3 thrown into the mix of what is a common liability and  
4 gets kind of taken back out because their group paid  
5 it. That to me is the fairest way to do it. There are  
6 other ways to analyze it, which I'm sure they'll tell  
7 you other ways they want it analyzed, but to me it's a  
8 fair way to do it.

9 THE COURT: I'll let Mr. Hesse describe it.  
10 Mr. Dapore, thank you very much. That helps me a lot.  
11 That's some of the stuff I was reading about last  
12 night. All right.

13 Mr. Hesse?

14 MR. HESSE: Your Honor, first of all we would take  
15 exception to these groupings here. We'll talk about  
16 that more during the trial.

17 At this point I would like to introduce Kevin  
18 Molony, who is a local guy who went to Bishop England,  
19 been in business a long time, mainly with Keating  
20 Roofing with his mother. He's related to the Molonys  
21 in Charleston where all the Molonys are related. I  
22 think Kevin's best answer, he's third cousin to  
23 whatever Molony you bring up.

24 (Laughter)

25 MR. HESSE: Your Honor, as Mr. Dapore indicated

1       there are 240 units at Montclair and 36 buildings.  
2       Church Creek worked on 155 of the 240 units. Church  
3       Creek did 2.5 million in renovations to the interior  
4       living space of the units at Montclair as part of the  
5       renovations. That's not part of this suit. There's  
6       been no allegations about problems with the interior of  
7       the units, and this is really about the work done by  
8       Church Creek on the exterior of the buildings.

9               The amount of work that Church Creek -- I know we  
10       have evidence that they did 317,000, whether it was 317  
11       or maybe as much as 350, it's in that range, is the  
12       amount of work that Church Creek was paid for the  
13       exterior repairs, not renovations.

14              Your Honor, it needs to be brought out that the  
15       allegations of the Third Amended Complaint in the  
16       underlying action included causes of action that were  
17       not asserted against Church Creek. These included --  
18       against these other Defendants, and I believe that they  
19       were all part of these causes of action -- if I'm  
20       mistaken might be one was included but one was not. In  
21       certain causes of action I'll let the pleadings speak  
22       for themselves.

23              There were allegations of negligent and grossly  
24       negligent misrepresentations; a cause of action for  
25       breach of fiduciary duty, failure to adequately

1       reserve, breach of expressed warranties and/or  
2       advertisements; failure to comply with the South  
3       Carolina Condominiums Disclosure of Physical Conditions  
4       of Buildings. And also a cause of action for  
5       disbursement from a dissolved LLC. None of those  
6       causes of action involved Church Creek.

7               Your Honor, I know you've had -- you've looked at  
8       the statute and you've had law clerks -- we've studied  
9       it. As the statute indicates, the right of  
10       contribution exists only in favor of a tortfeasor who  
11       has paid more than his pro rata share of the common  
12       liability. That's one of the questions here is what is  
13       that common liability, because there were causes of  
14       action asserted against these Defendants that were  
15       never asserted against Church Creek.

16              Again, the burden is on the Plaintiffs in the case  
17       to prove that they paid more than their pro rata share  
18       of the common liability.

19              Now, there are damages that were asserted or  
20       alleged against the Defendants in the other case that  
21       weren't asserted, that weren't claimed against Church  
22       Creek. One of those includes the amount of the reserve  
23       study that was done. I believe it was in the 2006  
24       timeframe, which indicated that the Defendants, I --  
25       probably the new owners of the buildings, before they

1 sold them to the new owners, that they had -- or  
2 when -- before they turned it over they had under  
3 reserved the amount that needed to be done to correct  
4 problems down the line. That will come, I believe,  
5 into evidence -- I'll call it the Salgado report, the  
6 reserve study that shows that there were -- that future  
7 expenditures, as outlined in that study, were over 13  
8 million dollars.

9 Mr. Dapone referred to the estimate prepared by  
10 Tom Carlson of Calibogue Construction. That estimate  
11 was for \$12 million. That estimate includes work that  
12 didn't involve Church Creek.

13 For example, it includes replacement of the  
14 windows. That has nothing to do with Church Creek.  
15 That's from original construction. It includes  
16 replacement of the brick cladding. Church Creek did no  
17 brick work. It included repairs to the balconies.  
18 That had nothing to do with Church Creek. It included  
19 replacement of all the siding, which that's been a big  
20 bone of controversy here. Church Creek did isolated  
21 repairs that included two or three boards of siding on  
22 a particular building.

23 There is also the issue of -- on Carlson's  
24 estimate for extensive attic repairs which include not  
25 only the firewalls but included some of the bracing and

1 stuff. That's work -- don't get me wrong. Church  
2 Creek did work on the firewalls and the attics to the  
3 tune of \$10,000 as instructed to by these Defendants.  
4 But the repairs -- I haven't done the analysis with the  
5 Carlson estimate, but it's a lot of the money for  
6 extensive attic repairs.

7 There is also -- claims were made for the  
8 reroofing of all the buildings. Church Creek did not  
9 do -- reroof any of the buildings other than the  
10 storage sheds. Church Creek did do some minor repairs  
11 as a result of -- well, was it a hurricane or a  
12 tropical storm, depending on what you want it to be  
13 during the underlying case. We'll concede it was a  
14 tropical storm. And did some minor repairs for ridge  
15 vents that got knocked off or a couple of shingles that  
16 were replaced, but Church Creek had nothing to do with  
17 reroofing the buildings.

18 As I mentioned, Church Creek worked on 155 of 240  
19 units at Montclair. As far as the firewalls, they  
20 worked in 64 of the '80 townhomes, which I understand  
21 only the townhomes had the attics.

22 Now, during this trial, Your Honor, you'll hear  
23 some -- and Mr. Dapore touched on it. There were  
24 some -- a couple of reports from ACE. One from 2002  
25 that if you read it, indicated that the siding -- this



1 is before Church Creek got involved in it, before the  
2 property was sold to -- I get these parties mixed up --  
3 Montclair Homes, LLC. This is prepared for -- again,  
4 we don't concede these groups but this report was  
5 prepared for these Defendants back in November 2002 in  
6 which the siding was indicated to be immediate and by  
7 their term immediate meaning immediate repairs or  
8 replacement.

9 There is another -- in that -- another report from  
10 ACE there was discussion about the attic repairs that  
11 they were estimating would cost as much as \$150,000,  
12 Mr. Dapore indicated. Church Creek never had the  
13 benefit of that engineer's report from 2002 and 2003.

14 The repairs that were done by Church Creek, this  
15 is how it came up. It was really an after thought for  
16 Church Creek to get involved in the exterior repairs.  
17 They were there to do the interior renovations.

18 Then you'll hear a lot about the Epps Report. The  
19 Epps Report was prepared in August of 2003 to comply  
20 with the Horizontal Regime Property Act. And Mr. Epps'  
21 report, the conclusion was these buildings are in good  
22 to very good condition. There are some minor repairs  
23 that need to be done, and if not given the Epps Report  
24 Church Creek was given the list of units and what those  
25 repairs that were needed based on the Epps Report. So

1 that's how it started with them getting involved in  
2 exterior repairs. They would go out and fix the  
3 problems based on the Epps Report.

4 Then Church Creek's next involvement -- I'm not  
5 sure of the sequence. Probably next sequence would  
6 have been from Hurricane Gaston. We need somebody to  
7 fix the ridge vents, need somebody to put shingles back  
8 on and a few other things.

9 Then Church Creek was asked to take care of any  
10 repairs that were noted by -- on the inspection reports  
11 as they were trying to sell these units. So the  
12 inspectors, like Bug Blasters for example, would  
13 give -- would go out for a homeowner, prospective  
14 homeowner and inspect the condominium they were going  
15 to be buying, find some problems; rot damage, old  
16 termite damage, and those inspection reports were given  
17 to Church creek. They would go out there, they would  
18 do the repair and to comply -- give the CL-100 letter.

19 Church Creek was never asked to give an estimate  
20 on what's it's going to take to do a complete  
21 renovation of the exterior of the buildings. Of  
22 course, they weren't asked to do that because there was  
23 the Epps Report in August of 2003 that says these  
24 buildings are fine, with these minor problems that need  
25 to be corrected.

1           Then you will hear a lot about, well, are there  
2           problems with the repairs done by Church Creek, and  
3           you'll hear the testimony. Are there some spots where  
4           repairs were done that may not have been done properly?  
5           Few and far in between, Your Honor. That's what we  
6           believe the evidence would show.

7           So, let the show begin. Thank you.

8           THE COURT: Let me ask you just a couple of  
9           questions. I think I gather where we're going.  
10          Talk to me about Elsey and Lockey and their  
11          relationship to Church Creek.

12          MR. HESSE: Our understanding, Elsey, ECI -- Larry  
13          Elsey owned ECI and also was a 50% partner in Church  
14          Creek. It is our position that Larry Elsey was a  
15          subcontractor of Church Creek. They were basically  
16          sued as a separate entity, otherwise they shouldn't  
17          have been involved in this at all. But they were sued,  
18          and our position their subcontractor -- and Roger  
19          Lockey is also a subcontractor of Church Creek.

20          THE COURT: All right. So both performed work as  
21          subs?

22          MR. HESSE: That's correct.

23          THE COURT: What in particular did they do? Can  
24          you tell me that?

25          MR. HESSE: Most of the work was done by -- well,

1       you see that the invoices -- Roger Lockey did most of  
2       the exterior work as indicated on the invoices. I'm  
3       not sure how the division was about work done by ECI.  
4       That's in some of the documents, I believe. The  
5       evidence will show what work they did.

6           THE COURT: I'm with you. Okay. Thank you, sir.  
7           All right. You-all want to start with some  
8       testimony?

9           MR. DAPORE: We're ready, Your Honor. We'll call  
10       Lawrence Laddaga to the stand.

11       (Whereupon Lawrence A. Laddaga, 1719 Villa Maison, Mt.  
12       Pleasant, S.C. 29464, duly sworn testifies as follows:)

13       DIRECT EXAMINATION BY MR. DAPORE:

14           Q     Mr. Laddaga, can you give us your full name and  
15       address?

16           A     Lawrence A. Laddaga, 1719 Villa Maison, Mt.  
17       Pleasant, 29464.

18           Q     You live in the Montclair condominiums right now;  
19       is that correct?

20           A     I do.

21           Q     That's your principle residence?

22           A     Yes, it is.

23           Q     It has been your principle residence for how long?

24           A     Since the end of August 2004.

25           Q     And just briefly could you tell the Court what

1 your occupation is?

2 A I'm an attorney with the law firm of Laddaga  
3 Garret, PA.

4 Q And you are a director, you are the president of  
5 the board; is that right?

6 A Yes.

7 Q And when did you first take over that position as  
8 president of the board?

9 A Mr. Kinney, the developer, had the authority under  
10 the governing documents to appoint the first board, and so I  
11 was on the first developer-appointed board, which he did in  
12 March of 2005, with two other residents.

13 Q All right. And when did you purchase your unit?

14 A I signed the contract in the spring of '04, and I  
15 closed and moved in August of '04.

16 Q So you purchased prior to Mr. Kinney leaving?

17 A Yes.

18 Q And did he leave in roughly May of '05?

19 A Yes.

20 Q Leave, I mean sell his last units as developer?

21 A Yes.

22 Q The Master, of course, is well aware of the  
23 facts -- we've done a stipulation of facts. But can you  
24 give him just a capsule of what lead the board filing this  
25 suit? And I know that may take you a minute or two but when

1 did you first start getting ideas of filing the suit and how  
2 did the suit come about? The underlying suit not this  
3 contribution case.

4 A When the board took over Mr. Kinney left the  
5 Association's finances in a pretty terrible state. He was  
6 only setting aside about \$30,000 a year for the reserves,  
7 and he was using that money each year to balance his budget  
8 which was running a deficit.

9 We knew that -- we didn't know how much we  
10 needed to have for reserves but we knew zero was not the  
11 right number. So we commissioned the reserve study with  
12 Mr. Salgado's firm who -- that's all they do nationwide is  
13 do reserves studies for homeowners associations and  
14 condominiums. And when the reserve study came back we were  
15 all pretty shocked to see that.

16 Q When was that the reserve study -- that first one,  
17 owner-controlled board commissioned, when did they get that  
18 back, do you know?

19 A Late 2005, early 2006. So we were both completely  
20 shocked and devastated that almost everything on the  
21 property was beyond its useful life and the enormous amount  
22 of money that we were short in the reserves.

23 Q Do you remember what you discovered as you began  
24 this litigation, from experts that you hired, regarding the  
25 physical plant and the buildings?

1           A    Yes. After we filed suit and the experts came on  
2 site and started doing destructive testing we then became  
3 aware of the construction defects that were on site from the  
4 work that was done during the conversion.

5           Q    When was that that destructive testing took place  
6 and that you started learning from the experts the condition  
7 of the physical plant?

8           A    2009, I believe.

9           Q    What experts had you hired to do that destructive  
10 testing?

11          A    Derek Hodgkin and Tom Carlson.

12          Q    Do you know, from reading and looking at the  
13 underlying testimony in the underlying case, I think you  
14 testified maybe a couple of times in that case, what  
15 Mr. Kinney indicated Church Creek's role was to help him in  
16 the conversion of the apartments to condos?

17          A    Yes. He testified at least once, if not several  
18 times, that his direction to Church Creek and Elsey and  
19 Lockey was to go out and if they found any problems on the  
20 property that his direction to them was to fix those  
21 problems and take care of them; that he relied on them, he  
22 expected them to find what was wrong and take care of it.

23          Q    And when he testified in the underlying case do  
24 you know what he testified was the amount of money that he  
25 paid Church Creek for doing exterior repairs?

1 A Not offhand, no.

2 Q Let me hand you Exhibit 120, which is somewhere.

3 MR. DAPORE: I believe these have been admitted,  
4 Your Honor. We have a copy for the Court.

5 Q I'm going to look over your shoulder so I can look  
6 in as well. I will hand you what we've marked as Exhibit  
7 120 and has been admitted into evidence in this case, and  
8 ask if you've seen that one before?

9 A I have.

10 Q And could you tell the Court what that is?

11 A It is an email from Kinney Associates to Terrie  
12 Bergdorf regarding developer payment and also payment for  
13 exterior termite damage, common area wood rot.

14 Q This was in a period of time that was after he  
15 left as converter; correct?

16 A Yes. This was in September of 2005.

17 Q And does it indicate an amount that he is  
18 claiming, kind of, that he should get credit for as having  
19 already paid for exterior repairs, he should get some credit  
20 against what you were claiming as far as what he should have  
21 reserved?

22 A Yes. He's saying he paid approximately \$250,000  
23 to repair exterior termite damage, active and old.

24 Q Okay.

25 In your participation in the underlying case



1 did you hear testimony from Church Creek Construction in the  
2 underlying case concerning what they understood their  
3 direction was from Mr. Kinney regarding making exterior  
4 repairs, fixing those things that should be on the outside?

5 A Yes. As I understood it they were instructed to  
6 do isolated spots or incidents on the outside or to address  
7 the Epps Report or to do particular things and that they did  
8 those particular things and --

9 Q Then if they saw anything else what was their  
10 testimony about what their direction was?

11 A That they reported back.

12 Q And did they report back to who?

13 A To Montclair Homes, which would either be the  
14 elder Mr. Kinney or Mr. Kinney's son.

15 Q His name was James Kinney?

16 A James Kinney; correct.

17 Q What was your understanding of what MALP was that  
18 we've identified, what entity that was, what their role was  
19 in the conversion from apartments to condos?

20 A They were part of the joint venture. They not  
21 only financed the venture but also participated with Kinney  
22 and Montclair Homes in directing how the conversion was to  
23 be done, what work would be done, wouldn't be done, how the  
24 money was to be spent, how the whole project was to take  
25 place.

1           Q     And do you know what their relationship was, if  
2     any, with Church Creek Construction? What MALP's  
3     relationship in directing Church Creek in any of the  
4     repairs?

5           A     Only through its relationship with Mr. Kinney and  
6     Montclair Homes.

7           Q     Do you have any knowledge about what MALP's  
8     relationship was with Church Creek with regard to the attic  
9     repairs?

10          A     I do believe there might have been a payment from  
11     MALP to Church Creek for an attic repair, even after the  
12     conversion.

13          Q     Do you know if Montclair Associates Limited  
14     Partners, the MALP Group or the MC Homes group who sold  
15     directly to you and to the other owners, made any  
16     representations that the items on the Epps Report, which was  
17     given to some of the owners, were fixed?

18          A     Yes, my understanding from the testimony that the  
19     owners who did get the Epps Report were told that those  
20     items were, in fact, repaired.

21          Q     Did you learn what work Church Creek did on the  
22     exterior of the buildings during the destructive testing of  
23     your experts? What type of repairs they worked on?

24          A     I did. My understanding was that it involved the  
25     removal of some siding, repair of old termite damage, some

1 repair -- structural repair once siding was removed.

2 Q And do you -- did you learn what the extent of  
3 CCC's payment was from Bruce Kinney or MALP during the  
4 underlying case?

5 A I did, but I don't recall the exact number.

6 Q Has the board conducted a prototype repair of one  
7 building so far, or maybe two?

8 A Yes, we've actually now completed two buildings  
9 and have started on the third.

10 Q And on the one building that's totally complete,  
11 the first building that was done, what was the repair cost  
12 on that building?

13 A Approximately \$145,000.

14 Q Did that repair scope of work include putting on  
15 new siding?

16 A Yes, it did.

17 Q Was it your opinion, in consulting with your  
18 contractors, that the siding that was in place simply was  
19 beyond its useful life expectancy?

20 A No question.

21 Q What was the cost of the second building that  
22 you've recently done?

23 A I think the second building came in at and  
24 135,000.

25 Q So you've got two down and what? Thirty --

1 A Thirty-four to go.

2 Q Thirty-four to go.

3 All right. When this case was headed towards  
4 trial, and we had a date certain I think first part of  
5 October of 2012, your understanding, of course, that there  
6 was a lot of negotiations back and forth and that ultimately  
7 I guess, after like a day and a half, the case settled.  
8 Could you explain to the Court what the settlement was at  
9 that point in time?

10 A Yes. We had already received the \$525,000  
11 settlement from Elsey and Locky, and in the process of the  
12 couple of days of mediation, we had had one mediator and  
13 then Brad Waring took over the mediation. We had had a  
14 second mediation, so then actually at trial the remainder of  
15 the Defendants, except for Church Creek, offered the three  
16 million.

17 We quite frankly had, in terms of settlement,  
18 been looking at a four million dollar figure in order to  
19 settle the case, but at trial, because we had received the  
20 three million -- the 525,000.

21 Q That was in an earlier settlement?

22 A At an earlier settlement. We received the three  
23 million, so we ended up settling for a total of three  
24 million 525,000.

25 Q In front of you is the Exhibit Number 283, Exhibit

1 283 which is admitted into evidence. I've got it marked and  
2 then 292 as well. 283 first is the -- that is the Third  
3 Amended Complaint that the board filed?

4 A Yes.

5 Q In the underlying case?

6 A Yes.

7 Q And I'll refer you to the causes of action in  
8 that our Second and Ninth causes of action in that  
9 Complaint. Could you read just the heading of the second  
10 amended -- second cause of action in that Third Amended  
11 Complaint?

12 A Second cause of action, negligent construction and  
13 repairs by the joint enterprise Defendants, Defendant  
14 Kinney, Defendant Montclair Homes, Defendant MALP and  
15 Defendant CREMCO.

16 Q Okay. Then could you go to the Ninth cause of  
17 action in that Third Amended Complaint and read the heading  
18 on what that is?

19 A Negligent construction as to Defendants Church  
20 Creek Construction, LLC, Elsey Construction and Roger  
21 Lockey.

22 Q Then in front of you I think you can go as well to  
23 Exhibit 292 which is Church Creek's Answer in this case, in  
24 this contribution case.

25 A Yes.

1 Q Do you have that in front of you?

2 A Yes, sir.

3 Q Could you go to Affirmative Defenses in that  
4 exhibit? Tell me if there is an affirmative defense for  
5 set-off?

6 A No, sir. I don't see one.

7 Q Okay. Let's go to this chart. In your mind is  
8 there any Defendant that in my opening analysis of trying to  
9 group these Defendants for the purposes of contribution,  
10 have I left anybody, any Defendants out that you know of  
11 that should fit either independently or in some other group?

12 A No.

13 Q Does this account for all of the Defendants that  
14 you know of that existed in the underlying case?

15 A Yes.

16 Q Does it account for all of the Defendants in the  
17 underlying case that paid any money toward any settlement?

18 A Yes.

19 Q Now, as the board settled this case -- finally  
20 settled up in November for the second part of the  
21 settlement, for the three million dollars, you folks  
22 received or you signed releases releasing the Defendants?

23 A Correct.

24 Q One of the Defendants -- actually, then all  
25 released including Church Creek?

1 A Yes.

2 Q Any liability that -- any claim that you have  
3 against Church Creek or really at that point anybody in  
4 their group had been totally extinguished?

5 A Yes.

6 MR. DAPORE: The Court has these. I don't know  
7 that I need to go over them if the Court wants to  
8 review them later. Exhibit 284 and 285 are various  
9 releases and assignments.

10 THE COURT: Okay. Are those submitted as  
11 addendums to the Stipulation of Facts?

12 MR. DAPORE: Yes.

13 THE COURT: I have seen those.

14 MR. DAPORE: Should be exhibits to the Stipulation  
15 of Facts --

16 THE COURT: Right.

17 MR. DAPORE: -- already.

18 Q In the underlying case, I think it's been  
19 mentioned that you hired Tom Carlson; correct?

20 A Yes.

21 Q And Mr. Carlson, according to his task was to do a  
22 cost estimate to repair the various buildings; is that  
23 right?

24 A Yes.

25 Q And that cost estimate was roughly twelve and a

1 half million dollars?

2 A Yes, sir.

3 Q Just for the Court's sake, as you understand it  
4 what was Mr. Carlson's estimate, the scope of that estimate  
5 as far as what work would be done, kind of versus what you  
6 actually have done recently in fixing the buildings one and  
7 two?

8 A Big difference between the two was, as Mr. Hesse  
9 referred to in Mr. Carlson's estimate, did include a total  
10 replacement of the windows. We elected not to do the  
11 windows for two reasons.

12 In our governing documents the windows are  
13 considered a limited common element which means they are the  
14 owner's responsibility. The board has the ability to  
15 undertake that as an HOA expense. However, when the  
16 contractor and the engineer negotiated with the Town of Mt.  
17 Pleasant, if the HOA did it property-wide they wanted the  
18 highest rated storm impact window, which would have added a  
19 cost of \$60,000 per building.

20 Q So you've been looking at an additional five  
21 million dollars over the whole complex basically?

22 A Yes. Just astronomical.

23 Q Whatever it was.

24 A However, if the owners purchased the windows  
25 themselves they would agree to a window that was of



1 substantially better quality than the windows that are there  
2 now, and the contractor agreed that he would install those  
3 windows at no cost to the owner.

4 Q As part of the fix?

5 A As part of the fix. So what we're doing is  
6 offering that to the owners. For example, in my building,  
7 in my unit I have three windows. It's going to cost me  
8 about \$3,000 and the contractor will install that at no  
9 cost.

10 Q That would be your expense, not the HOA?

11 A Right.

12 Q Simply, in effect, to save from the HOA having to  
13 dip into its capital reserves to pay for those windows?

14 A Right. And our capital reserves -- because we had  
15 to pay -- we had to spend almost \$700,000 replacing every  
16 roof on the 36 buildings. Our capital reserves before we  
17 settled the lawsuit had only been built up to the amount of  
18 a couple of hundred thousand dollars. So any money that's  
19 spent is really coming out of all the owners' pockets. So  
20 since we don't have enough money just to do the siding  
21 issue, anywhere we can save money is a benefit to the  
22 owners.

23 Our engineer also determined that the brick  
24 on the garden units does not have to be removed and  
25 replaced. We did find out the brick on the townhouse units

1 does have to be removed but can be replaced with siding. So  
2 that's another difference in the cost.

3 Q You're taking the siding all the way down to the  
4 ground now instead of the brick up part way on some  
5 buildings?

6 A Right. Because we discovered the brick on the  
7 townhouses was not anchored to anything. It just went down  
8 into the dirt. So that was allowing water to get behind the  
9 brick on the townhouse units.

10 Q Do you recall in Mr. Carlson's -- this is for the  
11 Court's benefit, Exhibit 262. If you can look at it in  
12 front of you. Mr. Carlson's estimate of roughly 12.5  
13 million. That's admitted into evidence. Whether that  
14 number includes, not as a breakout figure, but does it  
15 include some money for the repairs that -- well, need to be  
16 done to the attic spaces for the life safety for the  
17 firewall issue?

18 A Yes, I believe it does. I seem to recall his  
19 estimate for the firewall repairs was approximately  
20 \$250,000.

21 Q That was to go into the attic, do the necessary  
22 work that was not done by Church Creek; is that right?

23 A Yes.

24 Q Do you recall testimony from the underlying case  
25 that Church Creek was, in fact, paid some money to go into

1 the attic spaces and fix the firewalls?

2 A Yes.

3 Q Do you recall the amount of money that Church  
4 Creek then subbed that work out to somebody to do the actual  
5 attic repair, firewall repairs, how much money that person  
6 was paid?

7 A I think it was approximately \$2500.

8 Q In this contribution action before the Court  
9 today, what are you asking this Court to do?

10 A We're asking the Court to look at the common fund  
11 as three million and \$525,000 and to take a fair proportion  
12 of that and to award it to us as Church Creek's  
13 contribution.

14 Q And do you believe that Church Creek combined --  
15 their actions combined with the actions of MALP and firewall  
16 issues and MC Homes on the siding and roof issues, to create  
17 your problems that you have -- currently have?

18 A Absolutely.

19 Q All right.

20 MR. DAPORE: That's all I have.

21 MR. BUCKLEY: Joe --

22 (Discussion off the record.)

23 Q Yes. Do you know who paid Mr. Ackerman to do the  
24 firewall repairs in the attics? What entity? Do you know  
25 if Church Creek paid him?

1           A     I don't recall offhand who actually wrote the  
2     check.

3           MR. BUCKLEY: Exhibit 46.

4           Q     Do you know if MALP paid Church Creek to have --  
5     for them to do the firewall repairs?

6           A     Yes.

7           Q     And let me get that into the record.

8                     I'm going to hand you what we've mark as  
9     Exhibit 46 and ask you to take a look at it. Read it into  
10    the record if you can.

11          A     This says statement number 309935 dated  
12    February 19, 2004 to Church Creek Construction, attention --  
13    appears to be Kristen Winston (phonetic) with an address,  
14    Mark Ackerman, 110 Cody Drive, firewall repairs in 64 units,  
15    \$2645. With a handwritten note, paid February 20, 2004.  
16    Paid number 1287.

17          MR. DAPORE: Okay. I think you have that, Your  
18    Honor, in your exhibit numbers.

19          Q     Then let me hand you -- it's all one exhibit, I'm  
20    sorry. Two other pages on Exhibit 46. I'll ask you to take  
21    a look at that. Tell the Court what you understand that to  
22    be.

23          A     It's entitled Montclair Apartments at the top, a  
24    handwritten note says firewall hanging repairs, attic  
25    inspections. It's listing the buildings, and it has notes

1 which appear to be -- I'm reading this as the defects or the  
2 status of the firewall in each building. I would assume  
3 this means what needs to be fixed or repaired in each  
4 firewall for each building.

5 Q Is there a total on that list? The itemized list  
6 at the bottom?

7 A Yes. There is a total \$2645.

8 Q Matches with what's written on the statement?

9 A Yes, it does.

10 Q I hand you what we've marked as Exhibit 258, which  
11 I'll represent to you is a general ledger sheet from MALP.  
12 Could you go and read for the Court about one third of the  
13 way down, entry for a check?

14 A Entry number 6920-00-00.

15 Q Is there a date on that?

16 A Date of February 16, 2004. Under heading  
17 structural, payable to Church Creek, \$10,359, debit for  
18 attic firewall repairs.

19 Q Okay. Just one second here. Let me double check  
20 here.

21 MR. DAPORE: That's it, Your Honor.

22 CROSS EXAMINATION BY MR. HESSE:

23 Q Mr. Laddaga, were you familiar with Exhibit 10  
24 which was the ACE property condition assessment from  
25 April 8th, 9th and 10th, 2003. Have you ever read that

1 report?

2 A Yes, sir.

3 Q That's a report by ACE to CREMCO. You need to  
4 look at the Exhibit?

5 A Yes, sir; I would.

6 Q Okay.

7 A Is it in this book? What number?

8 Q It's Exhibit 10.

9 A Thank you.

10 Q So you agree with the dates of April 8th, 9th and  
11 10th, 2003, and it is a property condition assessment from  
12 American Consulting prepared for CREMCO?

13 A Yes, sir.

14 Q And on page -- looks like it's Bates labeled  
15 Plaintiff 180; do you see that? Towards the back of that  
16 report?

17 A Which page?

18 Q It's -- his pages are not numbered but the Bates  
19 label --

20 A 180; yes, sir.

21 Q If you go up about three columns there is a space  
22 for repair firewalls and attics; do you see that?

23 A Yes.

24 Q How much was the estimate of probable cost for the  
25 repair of the firewalls and the attics?

1 A \$91,200 to \$141,000.

2 Q And the documents that Mr. Dapore showed you  
3 indicate that Church Creek was paid \$10,000 for attic  
4 repairs; is that correct?

5 A Yes, sir.

6 Q You don't know whether Kevin Molony or anyone at  
7 Church Creek ever saw that report from ACE dated 2003, to  
8 you?

9 A No, sir.

10 Q Would you agree that Church Creek would like to do  
11 the attic repairs for whatever that top figure was as  
12 opposed to doing it for the \$10,000?

13 A I wouldn't have any way to know.

14 Q I mean, just makes perfect business sense to do --  
15 to be paid more than less to do attic repairs; you agree  
16 with me?

17 A I don't know what his business model is.

18 Q Okay. Now, you have seen the report of Derek  
19 Hodgkin from Construction Science and Engineering dated  
20 October 12, 2010?

21 A Yes.

22 Q And would you agree with me that Mr. Heitzman's  
23 report talks about problems from original construction that  
24 had nothing to do with the work of Church Creek; would you  
25 agree with that?

1           A     I need to look at what you're referring to in the  
2     report. It's been a long time since I've seen it.

3           Q     So -- well, let me -- I'll show it to you, be  
4     happy to show it to you, but you believe everything in the  
5     Hodgin report relates to work done by Church Creek?

6           A     No, that's not my recollection.

7           Q     Okay. For example, Mr. Hodgin discusses the  
8     windows, any problem with the windows as being from original  
9     construction from 1985. Do you disagree with that?

10          A     No.

11          Q     And you understand that Church Creek never  
12     reroofed any of the buildings. They did reroof some of the  
13     storage sheds, but they never reroofed any of the buildings.  
14     Do you understand that?

15          A     I understand, for example, they did not install  
16     the original masonite siding when the apartments were built.  
17     I understand Church Creek did not build the apartments in  
18     1985. I do understand that.

19          Q     I guess the point is, as far as the Mr. Hodgin's  
20     report from October 12, 2010 discusses a lot of problems,  
21     none of which -- a lot of which relate to original  
22     construction and a lot of problems that don't relate to  
23     Church Creek's work?

24          A     I do understand Church Creek did not build the  
25     units originally.



1 THE COURT: Let me stop and ask you. The Hodgkin  
2 report, is that one of the exhibits?

3 MR. HESSE: I can't remember.

4 MR. DAPORE: I'm not sure. We have no objection  
5 to it going in. I don't know that it was.

6 VOICE: It's not on the list.

7 THE COURT: Tell me what it is.

8 MR. HESSE: I'm sorry, Your Honor. It's a report  
9 prepared by Mr. Hodgkin from October 12, 2010. It's a  
10 report to the Montclair POA care of Joe Dapore.  
11 It's -- there are some photos, but it's really an  
12 eleven page report that discusses problems that  
13 Mr. Hodgkin observed at the --

14 THE COURT: That's Hodgkin H-O-D-G-I-N. Derek.  
15 Very good. All right.

16 MR. HESSE: I would like to make that a copy. I  
17 don't have --

18 MR. DAPORE: What's the number?

19 VOICE: Seventy nine I think.

20 (Discussion off the record.)

21 THE COURT: I made a note.

22 (Whereupon Plaintiff's Exhibit 79 is received in evidence.)

23 Q Mr. Laddaga, you already discussed some of the --  
24 I'll call it the report, the full reserve study from --  
25 dated September of 2006 which is Exhibit 91?

1 A Yes.

2 Q And do you have a copy of that in front of you?

3 MR. HESSE: Your Honor, if you would like to look.

4 THE COURT: Thank you.

5 (Hands up document.)

6 Q If you would turn to the back of the report,  
7 before the photographs. What I'm looking for, it's like  
8 it's a pie chart; looks like this.

9 A Okay.

10 Q All right. And, of course, trying to do -- what  
11 it says is future expenditures, relative cost illustration,  
12 Montclair Property Owners Association and it has different  
13 elements. It includes the -- well, reserve study update  
14 which is a \$4500 expense; pool elements. I'll just round  
15 these off; \$1,200,000. Club house and pool elements,  
16 359,000. Property site elements, \$4,041,000. And exterior  
17 building elements, \$8,075,000. Did I say that correct?

18 A Yes, I see that.

19 Q Would you agree with me, my math is not great  
20 either, but it would be over 13 million dollars in future  
21 expenditures?

22 A Yes, sir. I think that's a good estimate.

23 Q All right. And, of course, it's been -- it will  
24 be -- it's been admitted without objection and it will give  
25 a breakdown on what the various elements that are included

1 in the reserve study, and do you agree with me that if you  
2 peruse it, it looks like it involves the, I guess, the  
3 streets, the fences -- the point being, a lot of stuff in  
4 here in this reserve study has nothing to do with Church  
5 Creek's work; is that fair enough?

6 A Yes.

7 Q Now, Mr. Dapore was asking you about the repairs  
8 on a couple of buildings, those repairs done by Carolina  
9 Builders -- or what's the name?

10 A Yes.

11 Q I see it referred to as CBR; is that correct?

12 A I refer to them as Carolina.

13 Q Carolina, okay. And I believe that's an exhibit  
14 somewhere, but those repairs were done in 2013; is that  
15 correct?

16 A Yes, sir.

17 Q And tell me about -- on those two buildings, that  
18 I think are the subject of that exhibit, which I'll find in  
19 a second or it's in the book there, what has been done to  
20 those -- what was done to those two buildings from the 2004  
21 or 2005 time period as far as maintenance, until the work  
22 was done by Carolina Builders?

23 A To those particular two buildings?

24 Q Right.

25 A I couldn't tell you exactly what's been done to

1 those particular two buildings, other than all the roofs  
2 have been reshingled and repaired on every building. Over  
3 the course of the nine years we've had so many problems with  
4 leaks and drainage issues. I couldn't tell you off the top  
5 of my head which buildings have had those problems and had  
6 repairs and which ones haven't.

7 Q Specifically, do you know whether those two  
8 buildings have been painted since 2005 and before the  
9 repairs were done by Carolina?

10 A We did have a contractor paint the trim on all the  
11 buildings, but that's the only painting we've done. Because  
12 we felt that knowing the masonite had to be replaced in its  
13 entirety, it seemed like painting was a waste of money.

14 Q Now, in my opening I made reference to some of the  
15 allegations in the Third Amended Complaint filed in the  
16 underlying action. Are you in agreement whether the  
17 Complaint speaks for itself, but there were causes of action  
18 against these Defendants listed here, besides Church Creek  
19 that were not alleged against Church Creek; is that correct?

20 A I do think the Complaint speaks for itself.

21 Q Okay. For example, Church Creek had nothing to do  
22 with the inadequate reserve fund; do you agree with that?

23 A I agree they don't have anything to do with the  
24 inadequate reserve funding.

25 MR. HESSE: I think that's all I have. Thank you.

1           MR. DAPORE: Just a couple of follow-up, Your  
2           Honor.

3           THE COURT: All right.

4           REDIRECT EXAMINATION BY MR. DAPORE:

5           Q     To your knowledge, did Church Creek have the  
6           benefit of pre-conversion reports from ACE?

7           A     I would have no way of knowing that.

8           Q     Do you know, from the time you purchased and from  
9           what you've learned in this lawsuit, whether they, in fact,  
10          did go in and take siding off and make substantial  
11          structural repairs; had the benefit of knowing the condition  
12          on many of the buildings, if not all of them?

13          A     Yes.

14          Q     That was from the fact that they were actually  
15          doing work repairing siding?

16          A     Yes.

17          Q     Do you know whether Church Creek took off the old  
18          siding in some places and then reinstalled new siding which  
19          is masonite?

20          A     Yes.

21          Q     Actually a Georgia Pacific product, I think, was  
22          put back on; is that correct?

23          A     Yes.

24          Q     The product that was put back on and the product  
25          that was taken off, did you learn in the underlying case

1 whether those products were the subject of any lawsuits?

2 A Actually, we knew when we purchased that the  
3 masonite was defective and was the subject of a class action  
4 suit, because we were told that when we purchased.

5 Q And have you had owners complain to you, as a  
6 board member, have you gathered complaints about work on the  
7 exterior of the buildings which has caused water intrusion  
8 that was done by Church Creek?

9 A We have had complaints about water intrusion in  
10 the buildings and as recently as a couple of years ago had a  
11 substantial flood claim.

12 Q And that work was done, as far as you're aware, by  
13 Church Creek?

14 A Yes.

15 MR. DAPORE: That's all I have, Your Honor.

16 THE COURT: All right. Mr. Hesse?

17 RECROSS EXAMINATION BY MR. HESSE:

18 Q Mr. Laddaga, you mentioned a flood claim. Tell me  
19 about that flood claim. You just mentioned a flood claim.

20 A Yes.

21 Q Tell me what the circumstances were there.

22 A It was two years ago, maybe three years ago, we  
23 had a flood claim involving six, seven, eight buildings.  
24 But, you know -- water intrusion, leaks, chimneys, storage  
25 sheds, siding through the buildings. You know, we've been

1 fighting that since we started.

2 Q I just want to clarify when you say a flood claim.  
3 Flood claim, I picture water coming like a flood coming up  
4 into the lower level of the house or the building?

5 A Right.

6 Q So was this water coming down the street rushing  
7 into buildings?

8 A Well, flood not only from the street but from the  
9 sides of the buildings as well.

10 Q How high did the water get in these units? I'm  
11 just curious, because I never heard of a flood claim before  
12 at Montclair and, again, maybe we've got a different view on  
13 what a flood claim is. I picture rising water or surface  
14 water getting into the building.

15 A If it comes in through the lower part of the  
16 siding on the exterior of the unit we have to file it as a  
17 flood claim.

18 Q How do you know that that's -- that those  
19 buildings were ones that Church Creek worked on? What  
20 information do you have that indicates that?

21 A Only what we've had in the lawsuit and from the  
22 expert reports.

23 Q But you understand that Church Creek didn't work  
24 on all the units at Montclair? You understand that?

25 A Yes, I do understand they've not worked on all the

1 units.

2 Q So the chance that the flood event you described  
3 and the buildings involved may not have been Church Creek's  
4 buildings Church Creek worked on?

5 A Yes, sir. It could be that none of those  
6 buildings were; yes, sir.

7 MR. HESSE: Thank you.

8 THE COURT: Okay. Mr. Laddaga, can you tell me,  
9 if you know, what work was done by Elsey and ECI on the  
10 subject property? Do you know?

11 A As I understood it Mr. Lockey did most of the  
12 carpentry and exterior work along with Mr. Elsey. They were  
13 on site every day. And they did all the interior work as  
14 well as all the exterior work. They were on site, had crews  
15 working every day. At least from the time period that I  
16 purchased until they left.

17 THE COURT: You knew them? You met them  
18 personally? You saw them out there daily?

19 A Yes, sir.

20 THE COURT: That's both Roger Lockey and Elsey;  
21 right? Okay.

22 That's all the questions I had. If you have  
23 follow-up --

24 MR. DAPORE: Your Honor, I've got three -- we're  
25 done with him, I guess. Whatever you want to do.



1 THE COURT: Mr. Laddaga, you may step down. Thank  
2 you, sir.

3 A Thank you, sir.

4 MR. DAPORE: We've got three portions of  
5 depositions. One of them is fairly short. We can get  
6 it out of the way or whatever you want to do. If you  
7 want to take lunch or keep rolling we're ready to go.

8 THE COURT: You've got any -- it's ten after  
9 twelve so probably -- do you have another live witness?

10 MR. DAPORE: It's going to take -- Derek Hodgins,  
11 the engineer. He's going to take awhile.

12 THE COURT: Okay. Any objection to proceeding  
13 like that?

14 MR. HESSE: That's fine, Your Honor.

15 THE COURT: I can always read it, but you want to  
16 make a record. I don't have a problem with that  
17 either.

18 MR. DAPORE: That would sure shorten it. Yes.

19 THE COURT: I actually know how to read.  
20 Sometimes I comprehend but mostly I read.

21 MR. DAPORE: All of them -- probably Lockey's  
22 might be -- if we read question and answer it would be  
23 maybe 20 minutes. Elsey would probably be 30 minutes  
24 and then Kinney's around 30 minutes. So -- I'm willing  
25 to submit them to the Court or we can read them.

1           Whatever you want to do.

2           MR. HESSE: They've been highlighted, Your Honor.  
3           I think you can read them in a third of the time.

4           THE COURT: Less time than we can present it.  
5           That's what I usually do. Take stuff home at night.  
6           If we go to lunch now I can read some of it on the  
7           lunch break; may have some questions for you.

8           MR. HESSE: Would you have any objection if I just  
9           presented mine now, too? I know it's your case. You  
10          can read them as part of my case. Just -- give it to  
11          you at one time. So I wouldn't forget. Maybe Mr.  
12          McQueeney would remember for me to hand them up but I  
13          may forget.

14          MR. DAPORE: We're going to do that with  
15          deposition testimony. We've got Derek Hodgkin, which my  
16          best guess he's probably an hour and a half, two hours  
17          between direct and cross. Then I don't know what  
18          you've got. He's our last live witness.

19          MR. HESSE: We've just got Mr. Molony.

20          THE COURT: All right. If you want to hand that  
21          stuff up now I'll take it. Why don't we come back at  
22          1:30 today? Let's just do that. We might be able to  
23          get all this stuff done. All right?

24          MR. DAPORE: All right.

25          THE COURT: Thank you.

1 (Luncheon recess.)

2 THE COURT: I got one of them read. All right.  
3 So we are still in the Plaintiff's case. And  
4 Mr. Dapore, next witness?

5 MR. DAPORE: We would call Derek Hodgkin to the  
6 stand.

7 (Derek A. Hodgkin, 420 Shorecrest Drive, Clemson, S.C.,  
8 29631, duly sworn testifies as follows:)

9 DIRECT EXAMINATION BY MR. DAPORE:

10 Q Mr. Hodgkin, on the record can you give us your  
11 name and address again, please?

12 A Derek Arthur Hodgkin, 420 Shorecrest Drive, Clemson  
13 South Carolina, 29631.

14 Q What is your occupation?

15 A I'm an engineer.

16 Q Can you give the Court the benefit of some  
17 background about where you went to engineering school, what  
18 licensing you hold, what organizations you belong to within  
19 engineering?

20 A Yes. I received my Bachelor of Science in civil  
21 engineering from NC State University in 1989. I have  
22 professional engineering licenses, I think, in about 20  
23 different states in the United States. I have quite a bit  
24 of continuing education, including specific credentials  
25 related to building envelope consulting, including

1 registered roof consultant, waterproofing consultant,  
2 exterior wall consultant and building envelope consultant.

3 Q And one of those licenses that you hold is from  
4 South Carolina as a registered professional engineer?

5 A Yes, sir.

6 Q And have you -- do you have a firm in, is it West  
7 Minister?

8 A Yes, sir.

9 Q Tell us the name of that firm.

10 A It's Construction Science and Engineering,  
11 Incorporated.

12 Q How many people work for that company?

13 A There are currently twelve team members.

14 Q And how many are engineers and so forth in that  
15 company?

16 A We have four professional engineers including  
17 myself. We have one licensed architect. We have a few  
18 engineering or architect-type technicians and then the rest  
19 are administrative.

20 Q At our request did you go visit the buildings at  
21 the Montclair condominiums?

22 A Yes, sir.

23 Q Can you tell the Court briefly what history, when  
24 you first went, and how many times your firm has been out  
25 there?

1           A     I looked at the file recently and it looks like  
2     over the course of 2009, 2010 and 2011 we made seven  
3     different visits.

4           Q     Did those visits -- some of those visits consist  
5     of destructive testing?

6           A     Yes, sir.

7           Q     And could you just generally tell the Court what  
8     areas of the buildings your firm conducted either  
9     destructive testing and/or looking in areas where normally  
10    you wouldn't see from the outside?

11          A     Yes, sir. The destructive test areas were all on  
12    the exterior wall areas of the buildings. There's different  
13    building types. Some have brick veneer. Most of the  
14    exterior cladding consists of siding. We did quite a number  
15    of destructive tests in siding areas, both at the base of  
16    walls, around windows, at roof wall intersections, places  
17    where we tend to find problems with water intrusion. We  
18    also looked in the attic spaces of units to look at the  
19    construction in terms of how it complied with life safety  
20    issues, fire resistance..

21          Q     Have you ever been qualified by a South Carolina  
22    state court as an expert in the field of building envelopes  
23    for multiple family buildings such as those located at  
24    Montclair?

25          A     Yes, sir.

1           Q     Have you worked as an engineer in the development  
2     of an implementation of repairs of the type of buildings  
3     that are at Montclair?

4           A     Yes, sir.

5           Q     Could you briefly describe for the Court the type  
6     of construction of the buildings at Montclair?

7           A     Yes. If you start at the ground and work up, the  
8     buildings generally include a reinforced concrete slab on  
9     grade foundation. Above the foundation there would be  
10    conventional wood framing. Those are vertical wall studs.  
11    There would be floor framing for a second floor. Then when  
12    you get to the roof there would be pre-engineered  
13    metal-plate-connected wood trusses that create the roof  
14    areas. Then there would be a plywood roof deck and then  
15    shingles. The exterior walls would include both brick  
16    veneer and different types of siding.

17          Q     Are you familiar with what codes were in effect --  
18    building codes were in effect when these buildings were  
19    constructed and then also in the time period of the 2003,  
20    '04 and '05 time periods?

21          A     Yes, sir. In general the original construction --  
22    I have to look at my notes. It's the standard building code  
23    for sure. What I don't recall is if it was the '82 or '85  
24    version. Depends on when they were actually constructed. I  
25    would think more importantly for my work at the site it was

1 the 2000 International Building Code that was in effect at  
2 the time of the conversion when the repairs were performed.

3 Q Has your firm produced repair drawings and specs  
4 for repairs of exterior elements of the buildings of the  
5 same type as those at Montclair?

6 A Yes.

7 Q All right. And --

8 MR. DAPORE: All right, Your Honor. We would move  
9 to have him qualified as an expert witness --

10 THE COURT: All right.

11 MR. DAPORE: -- in the areas as follows.

12 First, that he is an expert able to assist the  
13 Court in understanding the issues related to good  
14 construction practice for repair of water intrusion  
15 issues in the building such as the type found at  
16 Montclair in the 2003 and '04 timeframe.

17 Secondly, that he is as an expert regarding the  
18 duties of a construction company in South Carolina to  
19 comply with the building codes for residential  
20 construction in effect in Mt. Pleasant, South Carolina  
21 in the 2003 and '04 timeframe when these buildings were  
22 renovated and converted into condominiums.

23 And, thirdly, that he is qualified as an expert  
24 helping the Court understand the needed and probable  
25 scope of repairs which was necessary at the time for

1 the Montclair condos and probable cost for those  
2 repairs for a fix in today's dollars.

3 THE COURT: All right. Very good. Mr. Hesse?  
4 First of all, did you hear that and, two --

5 MR. HESSE: That's -- we know Mr. Hodgins is an  
6 expert, but I wasn't sure about the fields again.

7 MR. DAPORE: I can go over them one more time.

8 THE COURT: Take your time. I heard you. Can you  
9 hear? You're soft spoken, Mr. Dapore.

10 MR. DAPORE: Three areas. I'm sorry. Three areas  
11 we've asked to be qualified by the Court as an expert.

12 Able to assist the Court in good construction  
13 practice for repair of water intrusion issues in  
14 buildings such as the type found at Montclair in the  
15 '03-'04 timeframe. That's the first one.

16 The second one is the -- as an expert regarding  
17 the duties of a construction company in South Carolina  
18 to comply with the building codes for the residential  
19 construction in effect -- codes for residential  
20 construction in effect in Mt. Pleasant, South Carolina  
21 in the '03-'04 timeframe when these buildings were  
22 renovated and converted into condos.

23 And, thirdly, as an expert helping the Court  
24 understand the needed and probable scope of repairs  
25 which was necessary at the time for the Montclair condo



1 conversion and the probable cost for those repairs for  
2 a fix at today's dollars.

3 MR. HESSE: Your Honor, we would have an objection  
4 to the duties of a general contractor to comply with  
5 the building codes. We have no problem with them  
6 testifying as to what the building codes were, and I  
7 guess whether or not they were complied with. But  
8 talking about the duties of a -- what a duty is of the  
9 general contractor is a matter of law for the Court.

10 THE COURT: The proffer was has a duty to comply?

11 MR. DAPORE: Right.

12 THE COURT: I'll find as a matter of law that  
13 somebody has a duty to comply. No problem with that.  
14 Okay.

15 MR. HESSE: All right.

16 THE COURT: As to one and three you got it. As to  
17 two, they've already established that as a matter of  
18 law. Whatever the facts are we'll hear.

19 MR. HESSE: Okay. Thank you, Your Honor.

20 BY MR. DAPORE:.

21 Q In reviewing documents in this case, in the course  
22 of getting ready -- you were deposed in the underlying case;  
23 correct?

24 A Yes, sir.

25 Q I think a couple of days?

1           A     At least one. I don't remember if there was a  
2     second day or not.

3           Q     In reviewing documents in preparation for your  
4     deposition did you review a report known as the Epps Report?

5           A     Yes, sir.

6           Q     Could you tell the Court what your understanding  
7     of the Epps Report is?

8           A     My understanding of the Epps Report is it was a  
9     building by building observation of Mr. Epps identifying  
10    areas -- the condition of each building and the need for  
11    repairs on each building. It provided an assessment of the  
12    useful service site for the buildings.

13          Q     Did Mr. Epps, on behalf of Montclair Homes group,  
14    preparing that report, at the end of the report did he give  
15    a summary where he made -- he opined as to what the  
16    condition of the buildings were over all?

17          A     He did.

18          Q     What was that condition?

19          A     My recollection it was good to very good.

20          Q     Do you know what role, from reviewing your  
21    documents in this case, what role do you understand Church  
22    Creek had in addressing any issues on the Epps Report?

23          A     My review of the documents indicates that  
24    essentially the scope put together by Church Creek is  
25    essentially the Epps Report. If you go line by line for the

1 buildings, whatever the description was in the Epps Report.  
2 that's the description in the Church Creek repair estimate  
3 establishing a dollar value that the developer would spend  
4 on each of the buildings to correct the issues.

5 MR. DAPORE: I think Your Honor is aware of it but  
6 that exhibit has been admitted by agreement as Exhibit  
7 5. That's the Epps Report.

8 THE COURT: All right. Thank you.

9 Q What I would like to ask you to take a look at in  
10 the book there is Exhibit 33, if you could, and 32 as well.  
11 Thirty-two and 33.

12 A Okay.

13 Q Thirty-two and then 33. And do you know what  
14 those -- what's your understanding of those two documents?

15 A I think 32 was a document that I was recalling  
16 during your last question about it's a unit by unit  
17 breakdown of Church Creek and a dollar value assigned to  
18 each of the specific repairs identified from the Epps  
19 Report, is what 32 is.

20 Q Okay. Is 33 pretty much a typed version of that?

21 A Yes. Without going line by line, I don't see the  
22 difference between them. Looks to be essentially the same  
23 document.

24 Q And is it your understanding that that is a  
25 document which Church Creek produced?

1           A    Yes, sir.

2           Q    And do you know who they produced that document  
3   for?

4           A    Bruce Kinney of Montclair Homes, LLC.

5           Q    And is it your understanding from review of  
6   documents in the underlying case that Church Creek then  
7   proceeded to go ahead and try to fix those things?

8           A    Yes, sir.

9           Q    Do you know what else -- where else Church Creek  
10   got some direction from the owner of the property to do a  
11   fix? Do you remember whether there were any other documents  
12   they were given to try to fix -- other than that list, 32  
13   and 33?

14          A    I don't remember specifically other documents, but  
15   I do recall as far as the scope goes of Church Creek, I know  
16   that this estimate based on the Epps Report was basically  
17   the baseline of the repairs that they began to perform for  
18   the developer.

19                   They also would get called whenever a unit  
20   was sold, for the termite inspection. I think it's the  
21   CL-100 report which basically clears a unit for sale. So  
22   they made repairs for that purpose.

23                   And then they also separately were repairing  
24   the attic, the fire-rated wall assemblies for MALP, I  
25   believe.

1           Q     And from review of the documents in the underlying  
2 case do you know how many of the units -- I think there's  
3 230 units out there or 240 units -- how many of the units --  
4 this would be, I guess, buildings housing the units, because  
5 we're not talking about interior work -- how many of the  
6 units of the 240 they did work on the buildings comprising  
7 those units out there?

8           A     Yes, sir. Based on a compilation of all the  
9 Church Creek invoices it appears they performed exterior  
10 work on 218 of the 240 units.

11          Q     So that would be, if my math is correct, roughly  
12 90%?

13          A     Yes, sir.

14          Q     All right. What I would like to do with you now  
15 is to go through some documents and photographs.

16                     I think we've gone through the Epps Report;  
17 123. Turn to 123. It's several pages long. If you can,  
18 kind of, leaf through it, familiarize yourself with it.

19                     And I think, your -- we did not blow this up.  
20 We did not blow it up. Some of the photos we did blow up.

21                     VOICE: Yes.

22          Q     Do you know -- can you tell the Court what 123 is?

23          A     Exhibit 123 is a summary of work performed by  
24 Church Creek in areas where Construction Science Engineering  
25 performed destructive tests and compares the conditions that

1 we found -- the photographs show the condition we found  
2 during our destructive testing.

3 Q And 123 is not meant to be a -- compile all the  
4 Church Creek invoices, because you didn't go look at all the  
5 areas where they did work?

6 A That's correct.

7 Q You went to look at a representative sample of it?

8 A Correct.

9 Q And total, about how many destructive testing  
10 tests did you make there?

11 A Beyond what is shown in this exhibit you mean? In  
12 total?

13 Q In total. I'm just asking for a ballpark figure.  
14 Doesn't have to be an exact figure.

15 A I don't remember exactly. I think it was more  
16 than twenty.

17 Q And in addition to these areas here -- I think at  
18 the end of this 123 there are some photographs from the  
19 attic area; is that right?

20 A Yes, sir.

21 Q Since this document was produced you actually went  
22 out and actually have done additional destructive testing;  
23 is that right?

24 A Yes, sir.

25 Q That was done during the underlying case?

1 A That's correct.

2 Q It's not something that was done new for this  
3 case?

4 A Correct.

5 Q Then I think you also went out in just the last  
6 few days and looked at one or two buildings that they've  
7 done recently?

8 A I've not had a chance to do that.

9 Q All right. Let's go through, if we can -- and we  
10 don't have the blow-up so we'll have to look at the diagram.  
11 I may come over there and look at it with you.

12 Those photos are awful small, I know, but  
13 we'll do the best we can. Do we have the photo of the first  
14 one which is 1879, the blow up of it?

15 VOICE: Yes, we do.

16 MR. DAPORE: This might help the Court.

17 Q All right. I'm going to ask you to come down  
18 here, Derek, and I'll let you kind of use my book for 123.

19 A Can we back this up?

20 MR. DAPORE: Leave it so the Court can know what  
21 photo you're talking about.

22 A I don't want to stand in anybody's way.

23 MR. DAPORE: Let's start with the top photo.

24 Q First one on 123. We won't go through all of  
25 these but a few of them.

1       A     The top photo shows what's referred to as the  
2 right elevation of building 1879. That's as we walk up to  
3 it for our first look before destructive testing is  
4 performed.

5               The other photographs show as we start  
6 removing siding from the base of the wall. The conditions  
7 that we found were elevated moisture and termite damages at  
8 the base of the wall.

9               One thing I didn't describe when I described  
10 the construction of the buildings, at the time these were  
11 built in the '80's you were allowed to use a product called  
12 asphalt saturated fiberboard. Contractors refer to it as  
13 black cat or black board. It's a fiberboard that you could  
14 use in the middle of the walls, but then on the corners you  
15 have to have a structural rated panel. So what you see is  
16 dissimilar material. This corner piece is actually plywood  
17 that's water damaged at the base of the wall. So you can  
18 switch from fiberboard to plywood at the corner.

19       Q     Let me make sure the Court and we are on the same  
20 page. On 123, very first page on 123, over at the very  
21 upper left-hand corner it has a date of Lockey invoice  
22 21904. I'm not sure -- that might be what you're holding  
23 there.

24               All right. How did you know to look at that  
25 area that's depicted in the photograph?



1           A     I don't believe that we did. I can see that there  
2     is a repair made near the middle of the wall. But I don't  
3     think there is any knowledge on our part when we went to the  
4     buildings during our site visits that we were actually  
5     targeting areas we knew had been repaired specifically.  
6     Even if the repairs in the middle -- you see the different  
7     color paint. Our destructive test didn't include or was not  
8     specific for that area. It was the base of the wall that we  
9     looked at. In fact --

10          Q     Why did you look at the base of the wall?

11          A     Well, we just know that in water intrusion issues  
12     if a wall is going to be damaged, typically you'll have  
13     damages that would concentrate near the base of the wall, at  
14     window intersections; certain areas that I know from the  
15     building envelope perspective to look to see if there might  
16     be damage.

17          Q     What areas in the buildings did you look at where  
18     you had some evidence that Church Creek worked?

19          A     There might be other ones, but the ones I remember  
20     specifically off top of my head were base of wall areas,  
21     roof wall intersections. Particularly there is a certain  
22     type of building -- we'll see here shortly on the front  
23     wall. There will be a roof that intersects a side wall by a  
24     front door and we looked at a number of those areas. We  
25     looked around windows, and we looked around balcony areas;

1 places where we thought that there would be water intrusion  
2 that would likely be damaged.

3 I think at some point it did become obvious  
4 to us as to where the repairs occurred based on the texture  
5 of the siding. There is a difference, minor difference,  
6 between the original masonite siding and the repair siding,  
7 the Georgia Pacific siding that Church Creek used. I could  
8 walk around the property today and could identify where  
9 repairs were performed, but at this time it was fairly  
10 random.

11 Q Explain to the Court, when you say there is a  
12 difference between the types of siding that you found out  
13 there and how you would relate that to Church Creek's work.

14 A The best way I could describe that would be  
15 with -- you've got some exhibits here up front.

16 Q If you can refer to them in the record number?

17 A The first piece of siding I'm going to show you is  
18 Exhibit 281A.

19 Q What is that?

20 A This is a piece of original masonite. I don't  
21 have the benefit of the stamp on the back of the siding, but  
22 I've done enough work with this particular product that I  
23 know and I'm familiar with the faux grain that they emboss  
24 on the outside of the product.

25 Q Who is that manufactured by?

1           A     The company is actually Craft Master. The product  
2 is masonite. It's called X-90.

3           Q     Was that the product, to your knowledge, from the  
4 review of all the documents in this case, that was first  
5 applied as the original siding in these buildings?

6           A     Yes, sir.

7           Q     All right.

8           A     So the grain that you see is meant to mimic cedar,  
9 and it has what we would call a clear grain. You don't see  
10 any knots or any imperfections in the wood. It's a fairly  
11 repetitive pattern that you see. It will come in a double  
12 width. It's not a single plank. There will be two  
13 together, then they have an edge that laps over each  
14 proceeding course.

15          Q     That was the original siding?

16          A     That would be the original siding; yes, sir.

17                     And then Exhibit 281 is a piece of repair  
18 siding that I removed at the site sometime later. What you  
19 see is -- if I can just step closer. You'll see vertical  
20 lines. That's meant to mimic the cross grain of the saw  
21 marks as it's being milled. That's, to me, a sign of  
22 Georgia Pacific Catawba hardboard siding. If you look at  
23 the back -- I got lucky on this one. You won't see it very  
24 often but it actually has a date of January 15, 2004 and  
25 then the manufacture's stamp of GP which is Georgia Pacific.

1 So there is a physical difference that you can identify  
2 between the original siding and the repair siding.

3 Q Did you review invoices which indicated that in  
4 areas -- substantial areas Church Creek was wholesale  
5 replacing siding on sheathing that was plywood sheathing?

6 A When you say wholesale, I don't recall.

7 Q Several pieces of it?

8 A Yes. Through our destructive test we found large  
9 areas where siding was removed. It had to be removed  
10 sufficient to repair underlying damages to the original  
11 plywood sheathing which was rotten or water damaged.

12 Q Can you locate one of those for us?

13 THE COURT: What was the exhibit number for the  
14 Georgia Pacific one?

15 A It's 281.

16 THE COURT: Is that a B or C or --

17 A Just says 281.

18 THE COURT: Thank you.

19 (Discussion off the record.)

20 Q This might help. What you referred to earlier,  
21 which is the old original masonite, X-90, you held it up for  
22 the Court -- or maybe you didn't hold that one up. I'm  
23 sorry. You held the other one up. What's the one I just  
24 handed you? We don't have a sticker.

25 A It has 172S. I don't know if that's --

1 Q 1725?

2 A I'm sorry. That's the unit number. This is a  
3 piece of masonite original siding that was removed from a  
4 roof wall intersection on building 1725.

5 Q Is there a photograph of that in here?

6 A I believe this piece is shown in this middle  
7 column, lowest photograph in Exhibit 2 --

8 Q Do you know if there were Church Creek repairs  
9 done to that area?

10 A There were.

11 Q Do you remember what repairs were done? Obviously  
12 they replaced some siding?

13 A They did, but it was lower down on the building, I  
14 believe.

15 Q Okay. Would they have put on a Georgia Pacific  
16 siding manufactured about that time period?

17 A Yes.

18 Q And over the plywood that you see the  
19 deterioration on Exhibit 282, what causes that damage?

20 A Well, there is a roof wall intersection detail  
21 problem from original construction that allowed water to  
22 penetrate behind the siding, and you may have heard the term  
23 kick-out flashing, with a lot of the east(phonetic)  
24 litigation. What that is is a piece of flashing at the base  
25 of the roof, at the roof wall intersection that would kick

1 the water out to the exterior side of the siding and not let  
2 it get behind the siding, so that wasn't installed in the  
3 original construction. Damage occurred to all the original  
4 siding, and when Church Creek did their repairs they would  
5 simply repair the damage below the detail, but they don't  
6 fix the detail. They don't fix the source of the problem.  
7 They fix the symptom. They would just replace the siding  
8 and then in some cases replace the rotten plywood, but the  
9 water intrusion still occurred.

10 Q And did you find areas where that, in fact,  
11 occurred where there was a replacement by the GP '04 boards  
12 contemporaneous with repairs and yet there was no kick-out  
13 flashing installed?

14 A Yes. And I think there is an exhibit or I've seen  
15 some photographs of that condition.

16 Q All right. Why don't you start with right here  
17 first? Explain what this picture shows. What unit was this  
18 taken at?

19 THE COURT: What number are we on?

20 MR. D'APORE: This is Exhibit 266.

21 THE COURT: All right. Thank you.

22 A So on Exhibit 266 in the lower left corner is a  
23 photograph that shows two different pieces of siding. The  
24 siding that I have removed is a repair piece. So that's a  
25 2004 board installed by Church Creek at a problem area from

1 original construction.

2 Q How do you know that board is a 2004?

3 A I'm sorry. I can see the cross grain on the  
4 surface of the siding which indicates it's a Georgia Pacific  
5 siding. And then this is the Georgia Pacific stamp that has  
6 the 2004 date on it.

7 Q Where was that board manufactured?

8 A I believe at the Georgia Pacific Catawba plant  
9 where they make their hardboard siding.

10 Q All right.

11 A What's important, this is where the repairs  
12 stopped and this is original masonite.

13 Q That was not put on by Church Creek?

14 A Correct. This is original construction. So the  
15 problem with the cause of the water intrusion is the  
16 termination of this, what they call step flashing, which is  
17 the flashing installed between the roof and the wall. So  
18 it's left as originally constructed, and when Church Creek  
19 puts this new piece there, their repair gets damaged the  
20 same way the original construction was damaged for the same  
21 reason.

22 Q Will that area have to be repaired again?

23 A Yes.

24 Q When it is repaired again how would it have to be  
25 repaired?

1           A     I think more siding would need to come off for a  
2     couple of reasons. The proximity of this siding to the  
3     shingles has caused damage to the end of all siding that  
4     runs up the roof, but most importantly to preclude further  
5     damage and to have a durable repair you would need to have a  
6     proper flashing detail at the base of this roof wall  
7     intersection so that you properly protected your new work.

8                     The other issue that's important is that the  
9     plywood wall sheathing is in an unprotected condition. The  
10    code at the time, the 2000 -- required a weather barrier to  
11    be installed over this wall sheathing. There would be a  
12    code issue you would have to deal with; force you to have  
13    your repair expanded.

14          Q     So we're clear, when the repair is made, in your  
15    opinion, there are some deficiencies in flashing on where  
16    this piece was installed, and then there are also  
17    deficiencies in that a weather barrier, Tyvek or whatever,  
18    is required on top of the plywood?

19          A     That's correct.

20          Q     Is this kind of a picture of the same area?

21          A     Yes, sir.

22          Q     That would be after these are taken off this  
23    photograph?

24          A     Right. You can see that the damaged plywood is  
25    actually part of the Church Creek repair because of the



1 pattern on the siding that's at the base of that plywood.

2 So they reveal the absence of the weather system barrier and  
3 they cover the same condition back up with the repair.

4 Q All right. Did you find this type of condition on  
5 multiple buildings?

6 A Yes.

7 Q And this type of repair by Church Creek?

8 A Yes.

9 Q All right. Let's go through, if you can -- you  
10 can take the stand again. Might have to get back up but  
11 let's go through one or two more.

12 Let's turn, Derek, if we could, to the  
13 next page which is destructive testing number nine?

14 A Yes, sir.

15 Q I'm on 123, still. Date of Lockey invoice 91704.  
16 where Lockey says, work performed by Church Creek/ECI  
17 subcontractors mainly termite damage around front door,  
18 adjoining walls, left and right side as well as inside  
19 floor, remove siding, trim, door sheathing and framing  
20 replace new.

21 Now, you did a destructive testing in that  
22 area of unit 1730?

23 A Yes, sir.

24 Q All right. Let's put that up and then you can  
25 come up here..

1                   Is this the Lockey invoice that we just read?  
2   That would be Exhibit 36B.

3           A     Yes, sir; appears to be same language that you've  
4   read.

5           Q     And what did you find at this location? You can  
6   move this thing around for the Court if the you need to.

7           A     To start with, Exhibit 103E -- I'm just going to  
8   hold it in a landscape position for a second just to get you  
9   oriented. The bottom left photograph where the exhibit  
10   sticker is shows just an overview of where the destructive  
11   test is going to be performed. It would be in an area  
12   similar to the one we just looked at. It's a roof that  
13   intersects a wall where there is plywood wall sheathing.

14                   What's interesting is that there is actually  
15   a dissimilar piece of plywood. This is a cleaner, newer  
16   piece of plywood that was part of the repair process. It is  
17   surrounded by an older piece of plywood wall sheathing that  
18   still has damage. It's rotten above the repair and to the  
19   left of the repair at the roof wall intersection. That was  
20   left in place and then the new piece was unprotected, has  
21   water stains and does not include a weather barrier and has  
22   marginal attachment. The yellow flags are where the plywood  
23   that was installed did not hit any stud when they attached  
24   to the wall.

25           Q     When you affix the plywood to the wall studs it

1 has to be to the stud and not just to air?

2 A Right. What the code requires, and we have in all  
3 of our repair specifications is if you have anything less  
4 than a full sheet, a four by eight sheet of plywood, where  
5 you're actually going to replace the original back to the  
6 framing members, you must do what they call block the  
7 joints. So any place that a joint falls you have to install  
8 framing members to attach the edge of the plywood.

9 Q Can you point to the Court, from these  
10 photographs, can you see them well enough, what is old  
11 siding and what's new siding? That's a pretty good picture  
12 as far as the difference.

13 A Yes. The new siding has a much more pronounced  
14 grain texture to it. That's up to the base of the roof wall  
15 intersection. And then above this is the smoother -- just  
16 not as heavy a texture on the original masonite siding.  
17 This is probably a better close up of the Georgia Pacific  
18 texture. You can see where water damage even on the newer  
19 plywood repair.

20 THE COURT: So the one at the top photo to the  
21 left where you were just pointing maybe shows a  
22 different color as you look above it?

23 A Right. Are you talking about the siding?

24 THE COURT: The siding.

25 A The siding -- it shouldn't be different. Might

1 look different, because of the texture but top of the  
2 photograph would be the original masonite. Mid to lower  
3 part of the photograph is all new Georgia Pacific. What I  
4 was talking about on the plywood was the disparity on the  
5 color. The newer is brighter and the older is a little bit  
6 more weathered and has some damage to it.

7 Q The old damage is left. This picture right here  
8 shows old damage?

9 A Right. Some place I have a photograph of the  
10 hole -- actually a hole through the plywood above the roof  
11 at that location.

12 Q Obviously, that was not repaired in that  
13 timeframe?

14 A Yes.

15 Q All right. Let's go, if we can, to the attic  
16 areas, and tell the Court what you looked at and how many  
17 attic areas you surveyed for fire protection.

18 A I don't recall the number of attics. I know there  
19 were many attics. I don't recall a specific number off the  
20 top of my head. I know it was quite a few.

21 What we were looking for is elements related  
22 to life safety issues, which are when the buildings were  
23 originally constructed they required, I believe, draft  
24 stopping walls and attic. When they were converted they  
25 required -- they were required to have tenant separation

1 walls which is an assembly in the attic which divides  
2 between two units.

3 Q Which code required that?

4 A The 2000 IBC.

5 Q And would that have been the code that Church  
6 Creek was working under in attempting to do any firewall  
7 repairs?

8 A Yes, sir.

9 Q That code had been adopted by the town of Mt.  
10 Pleasant and was in effect at that time?

11 A That's correct. During July of 2001 the town  
12 adopted the 2000 International Building Code in all work. I  
13 mean, attic work, exterior work performed by Church Creek  
14 would be required to the comply with that code.

15 Q When you first went up there, before any repairs,  
16 what conditions did you find and then what direction did you  
17 give and, perhaps, any other engineers that were in that  
18 underlying case, Al Swygert (phonetic), what direction did  
19 they give as to what repairs needed to be made?

20 A Well, first I think it would be important -- there  
21 are two primary issues. One is at the vertical wall that  
22 separates the units in the attics has a rated ten separation  
23 wall so it's contiguous. It's complete. It doesn't have  
24 breaches or it's not missing components. Then as part of  
25 the conversion there is additional drywall that was required

1 to be installed that extends four feet away from the  
2 vertical wall in the plane of the roof.

3 Q That would be required by that 2000 code, IBC code  
4 that came in?

5 A Yes, sir.

6 Q Between the time of original construction, before  
7 the conversion?

8 A Correct.

9 Q All right.

10 A So when we looked in the attics -- I don't know  
11 that we looked at any attics where there wasn't some issue.  
12 Either a breach or discontinuity in the vertical wall or an  
13 absence of the gypsum installed in the roof area. In some  
14 cases it may have been installed but was poorly installed,  
15 had fallen to the attic floor and was not effectively serving  
16 its intended purpose..

17 Q Why is it important to have good fire protection  
18 up there?

19 A The intent of the code is to contain a fire that  
20 might breakout in a building to be within that unit only.  
21 So if you have the rated wall, the wall assembly, and that  
22 protection, that the fire would not spread to an adjacent  
23 unit. If you have these breaches, discontinuity, fire can  
24 quickly engulf an entire building and the fire would spread,  
25 so this is an important part of the code.

1 Q Now, what did you and Mr. Swygert -- who was  
2 Mr. Swygert for the Court's -- who did he work for in the  
3 underlying case, all that?

4 A Mr. Swygert is the engineering expert that served  
5 as the MALP defense expert.

6 Q He's an engineer?

7 A Yes, sir.

8 Q He also looked at the firewall issue?

9 A Yes, sir.

10 Q And what did you come up with regarding what the  
11 appropriate scope for the fix would be?

12 A I think we both agreed that you would have to go  
13 to each attic and make the vertical wall assemblies  
14 continuous and complete pursuant to the code, and then the  
15 2006 IBC allows you to take 2-foot wide strips of what they  
16 call type-X gyp, cut those 2-foot wide strips and take a  
17 continuous furring strip and hold that against the roof deck  
18 in between the first two bays. If you have your trusses  
19 based on 24 inches on center, which I believe we do, you  
20 will have two bays that would include new type-X gyp  
21 attached to the underside of the roof deck.

22 Q Did you go back and look at any of the direction  
23 or list of attics that needed to be repaired that were  
24 prepared by Church Creek; that list that we referred to  
25 earlier today as to the quantities and what quantities were

1 in there and whether it was sufficient to do the work?

2 A I haven't looked at a list recently. I looked at  
3 the repair estimate that was a \$10,000 estimate. And I  
4 looked at those quantities.

5 Q What were those quantities in that estimate?

6 A There were two numbers. They're both similar.

7 Q I'll get it for you. It's 32 and 33, I think.

8 A I've looked at a different -- there was a separate  
9 estimate just for the attic work.

10 MR. HESSE: I think it's 45, maybe 46.

11 A Yes.

12 Q Yes. Let's take 45 first. What is that?

13 A Forty-five looks to be an estimate prepared by  
14 Church Creek to Montclair Homes for -- says labor, material  
15 and equipment to complete the following work. And it has  
16 installing -- they call it sheetrock. It would be the same  
17 thing as fire-rated gypsum board, I believe. On firewalls  
18 in attic space and then missing sheetrock tape. So one  
19 number, \$6900 number is the physical gypsum and the \$3400  
20 number is to tape and mud the joints on those boards.

21 Q What is your impression with regard to that total  
22 quantity listed in that \$10,000 estimate?

23 A It appears to be inadequate based on what the  
24 building code required for that repair. And, specifically,  
25 if you just did the math, which is four foot wide on -- just



1 if you just use generic number, like a 20-foot long roof  
2 slope, that would be 80 square feet of gypsum just to do one  
3 slope. You've got to do four feet on each side, so that  
4 would be 160. You've got to do both slopes. That would be  
5 320 square feet of gypsum involved just to do one wall of  
6 one attic. This is less than that for the total scope.

7 Q So it's by a factor of quite a bit. It's not  
8 anywhere enough sheetrock; is that right?

9 A Not to meet the code, no.

10 Q Bear with me just one second.

11 (pause)

12 Q Let's look at Exhibit 120 for a second. From your  
13 review of the documents in the underlying case do you have  
14 an opinion about how much money Mr. Kinney, and I guess that  
15 would be MC Homes, spent on exterior repairs to Church  
16 Creek? And I'll say exclusive of firewalls.

17 A Looks like on, I guess it's all the same exhibit,  
18 page 3 of that exhibit is a number that I recall. I think  
19 it was told to me during the deposition by Mr. Kinney's  
20 attorney. The \$317,000 had been spent on exterior repairs.

21 Q Then the money that was spent on the firewall  
22 repairs actually came not from MC Homes, but it came from  
23 Montclair Associates Limited Partners, and that was \$10,000  
24 to Church Creek?

25 A I believe that's correct; yes.

1 Q Then the documents indicate that the amount  
2 actually Church Creek subbed that work out, was about \$2500  
3 or something?

4 A Yes, sir.

5 Q All right. The condition of the attic space as it  
6 existed after -- best you know from the documents -- from  
7 what you've reviewed up there -- did it still present a life  
8 safety issue to the owners at Montclair after Church Creek  
9 did their work?

10 A Yes.

11 Q Let's talk for a second about the relationships of  
12 these parties and how they interplayed, from the standpoint  
13 of the contractor in the field doing work for a converter  
14 such as Montclair Homes, LLC?

15 A Yes, sir.

16 Q And we've gone over how the testimony indicates  
17 that the Epps Report, a list was compiled from that almost  
18 verbatim which gives Church Creek -- they priced it out and  
19 proceeded to do that work.

20 If they found something in the field which  
21 was a little more than that work, what duty would they have  
22 to make the converter aware that there were other issues  
23 that should be addressed?

24 MR. HESSE: Objection, Your Honor, to -- I think,  
25 duty as a matter of law; not for this witness to

1           testify to.

2           THE COURT: Hold on a second.

3   (Judge reading question from the real time screen.)

4           THE COURT: The question is what duty would the  
5   contractor have to meet the code? Is that the  
6   question?

7           MR. DAPORE: I didn't ask it in terms of code but  
8   I can. That may clear up the problem.

9           THE COURT: Yes. Restate the question. If there  
10   is an objection I'll take it up again. Go ahead.

11          Q   Let's ask this question. If the contractor in the  
12   field, in doing exterior repair work, comes across code  
13   issues which need to be addressed or code issues that need  
14   to be complied with in doing that repair, does that  
15   contractor have a duty to tell the converter what's going to  
16   have to happen?

17          MR. HESSE: Objection, Your Honor.

18          THE COURT: I'll allow that question. I'll allow  
19   it.

20          A   The contractor, if it's --

21          MR. HESSE: Your Honor.

22          THE COURT: You want to state the basis?

23          MR. HESSE: The basis is that the -- he can't  
24   testify as to the duty of a general contractor to spot  
25   code violations, if I understand the question. He can

1 speak to code violations but not to the duty. That's  
2 as a matter of law. I've got a case here, if I can  
3 read Mr. -- I need Mr. McQueeney to read his  
4 handwriting, if you don't mind.

5 MR. MCQUEENY: Your Honor, if I may, this is  
6 Cummings Atlantic, 481 F sup 2nd 531 South Carolina law  
7 in citing to Beyerly (phonetic) versus Connor, a Supreme  
8 Court case, 307 S.C. 441 and 415 SE 2nd 796. Both of  
9 those cases state that there is no duty to inspect and  
10 correct beyond a contractor's own scope of work.

11 The Beyerly case actually involved Santee Cooper  
12 inspecting lake Marion for issues relating to the  
13 structural integrity relating to the permit issued by  
14 DHEC and the Court held that they didn't have a duty to  
15 find an electricity problem that caused the Plaintiff  
16 to be electrocuted.

17 The short story on both of those cases stands for  
18 the proposition there is no duty on part of someone  
19 making repairs to inspect and correct deficient  
20 problems outside their scope of work and done by  
21 another party. And duty, as a matter of law -- so he  
22 can't testify to duty regardless of whether or not  
23 there is a duty.

24 THE COURT: All right. You want to restate it  
25 again?

1 MR. DAPORE: Yes. Let me ask this question.

2 Q What duty does a contractor have when he observes  
3 a code violation existing when he's making these types of  
4 repairs?

5 MR. HESSE: Same objection, Your Honor.

6 MR. DAPORE: When he observes it.

7 THE COURT: So noted. I'll allow the question.  
8 Go ahead.

9 A I believe that if he is performing work and within  
10 his own scope of work, the work that he is performing, not  
11 looking for anything outside of that scope, he comes across  
12 an issue that is not addressed in his current scope but does  
13 represent a code violation if not corrected, then he has a  
14 duty to report that condition to the owner and either expand  
15 the scope of the work or to not do the work. He has a duty  
16 to meet the code.

17 Q And is there evidence in any of these photographs  
18 that code violations were, more likely than not in your  
19 engineering opinion, discovered at the time they were doing  
20 and taking off old boards?

21 A Yes.

22 Q Is there evidence from these photographs as to  
23 whether those were addressed when they did the '04 repairs?

24 A They were not addressed. The work performed by  
25 Church Creek represents its own independent code violation.

1 Q Did you review any diagrams or exhibits that  
2 Mr. Heitzman was looking into code -- Mr. Heitzman from  
3 CREMCO or MALP was looking into how to address the firewall  
4 issue?

5 A I have. I haven't recently. But I do recall  
6 Mr. Heitzman, at least in some email, indicating that they  
7 needed to get their hands around what the extent of the code  
8 issues were in the attics and what repairs needed to be  
9 done. And I think there may have been, separately -- when  
10 you say diagram, I think there may have been a sketch by  
11 somebody from ACE regarding the repair process.

12 Q All right. And did you run across anything in any  
13 of the documents you reviewed in the underlying case which  
14 would indicate that there was this kind of supervision from  
15 a design professional, an engineer, over Church Creek's work  
16 in doing this work in the underlying case, while they were  
17 doing the firewall repairs?

18 A I haven't seen any documents that reflect any type  
19 of a design professional involved.

20 Q So any documents you've seen -- you have not seen  
21 any documents, and is it your understanding they were simply  
22 attempting, as best they could, to address the situation  
23 without a design professional watching over what they were  
24 doing?

25 A That's correct.

1           Q     All right. And how about the exterior repair  
2 work? Is there any testimony that you know in the record  
3 which would indicate how they were addressing, as they would  
4 come across the problem area or a fix, that the scope might  
5 have expanded somewhat, how they were addressing with the  
6 owner in getting permission to do the work?

7           A     The testimony that I'm familiar with was that  
8 Bruce Kinney's son, James Kinney -- I don't believe he's an  
9 engineer or an architect or even a contractor, had  
10 construction experience, was -- I don't want to say  
11 overseeing the work, but I would say directing the extent of  
12 the work of Church Creek.

13          Q     In other words, giving them an okay on how far  
14 they could go?

15          A     Right.

16          Q     All right. Do you recall reading the testimony  
17 from his deposition, James Kinney's deposition, about what  
18 his background was?

19          A     I think he was a drama major.

20          Q     He graduated from college?

21          A     Yes.

22          Q     But had no construction background?

23          A     That's my understanding, yes.

24          Q     In your opinion did the repairs performed by  
25 Church Creek and its affiliates fall below the industry

1 standards for the type of repair work being performed at  
2 Montclair during the 2003, '04 and '05 time period?

3 A I mean, yes, as far as industry standards go. I  
4 would say more importantly it fell below the minimum  
5 requirement which is the building code for the weather  
6 barrier issue, exterior walls providing weather resistance,  
7 the attachment of the sheathing, so there are several  
8 different types of violations that existed with their work.

9 Q And did those violations result in damage that has  
10 occurred since the Church Creek repairs were made?

11 A Yes. My observations showed varying degrees of  
12 damage to the work that Church Creek performed, so you've  
13 got the original damage and you've got damage to the repairs  
14 as well.

15 Q Did you work closely with the contractor that the  
16 Montclair board hired in the underlying case to come up with  
17 a cost estimate to repair the damage on the 36 buildings?

18 A Yes.

19 Q Do you recall what that estimate is? It's Exhibit  
20 262.

21 A I know it's more than 12 million.

22 Q All right. Do you know about how much money --  
23 within that estimate -- I'm not sure it's broken out, but  
24 how much money do you recall in that estimate would be  
25 attributable to work having to be done to fix the firewall



1 issue?

2 A I don't see it broken out. I thought I had seen a  
3 number of, like, 250,000 for that work, but I can't recall  
4 where I saw that.

5 Q Okay. In your opinion did the negligence of  
6 Church Creek combined with the negligence of Montclair  
7 Homes, LLC, MALP, CREMCO cause damage you have observed in  
8 your investigation?

9 A Yes.

10 MR. HESSE: Objection, Your Honor. Getting into  
11 your realm of being decider of fact about negligence.

12 THE COURT: I'll allow that one. Go ahead.

13 MR. DAPORE: I don't have anything further.

14 MR. BUCKLEY: Joe.

15 MR. DAPORE: Hold on.

16 THE COURT: Cocounsel thinks you do.

17 (Discussion off the record.)

18 BY MR. DAPORE:

19 Q Let me ask you one more question. This goes to  
20 the firewall issue.

21 Do you have any -- in a case in which you  
22 were working as an expert where you have firsthand knowledge  
23 during the case, where there is some real world experience  
24 involving issues regarding where fire broke out in a  
25 building?

1           A     Yes, I do.

2           Q     Can you tell us about those?

3           A     I was a Plaintiff's expert for an HOA in Myrtle  
4 Beach on a project called River Oaks I. There were 40  
5 something buildings. They were three-story wood frame  
6 construction. I had written a report that included  
7 fire-rated wall assembly problems. During the course of  
8 litigation a fire broke out in building number 7 and the  
9 building was fully engulfed in 30 minutes. It was a 12-unit  
10 three story structure, and it was totally reconstructed from  
11 the ground up.

12          Q     At that point in time that it burnt down, the  
13 repairs had not -- firewall repairs had not been made; is  
14 that correct?

15          A     That's correct.

16               MR. D'APORE: We don't have anything else, Your  
17 Honor.

18               THE COURT: Already. I'm going to take a break  
19 now. I'm going to presume -- I think I understand the  
20 purpose. The firewall is to keep those fires from  
21 spreading from unit to unit; is that right?

22          A     That's right. To contain the fire.

23               THE COURT: Let's take about a five minute break.  
24 Give you a chance to get some water if you like. Take  
25 a break, then we'll come back for Mr. Hesse's cross.

1 Thank you.

2 A All right.

3 (Recess)

4 CROSS EXAMINATION BY MR. HESSE:

5 THE COURT: All right. Mr. Hesse, are you ready?

6 MR. HESSE: Yes, Your Honor.

7 First of all, Your Honor, we would like to get  
8 Exhibit 79 into evidence, I believe without objection.  
9 That is Mr. Hodgins's report of October 12, 2010.

10 THE COURT: I have it in my hand. No objection?

11 MR. DAPORE: No objection.

12 THE COURT: In evidence. Okay.

13 Q Do you mind if I call you, Derek?

14 A That's fine.

15 Q I think we've been in enough depositions to be on  
16 a first-name basis.

17 Derek, you've got a copy of -- Exhibit 79 is  
18 your report of October 12, 2010; is that correct?

19 A Yes, sir.

20 Q I think you had just a brief opportunity to review  
21 it during the break; is that correct?

22 A That's correct.

23 Q Is there anything that you would change regarding  
24 your report?

25 A Not that I know of.

1 Q So I'm not going to ask any questions about it.  
2 That report speaks for itself?

3 A I believe so, yes.

4 Q Now, you had -- one question by Mr. Dapore was  
5 that your calculations were there were 218 units worked on  
6 by Church Creek. How did you do that calculation?

7 A I think that is based on Exhibit 83, which is a  
8 document that you and I discussed at my deposition. It's  
9 a -- I believe it was initially prepared by Mr. Dapore's  
10 office, but it goes through each of the building numbers and  
11 units and then has identified invoices from Church Creek for  
12 exterior repairs.

13 Q That's going to be an exhibit and I'll let the  
14 document speak for itself, if Your Honor wants to count the  
15 different units, but we had calculated 155. It is what it  
16 is as far as how many units are indicated on that document.  
17 I say that because I represented to the Court that Church  
18 Creek worked on 155 of the 240 units. If somehow I  
19 miscalculated I'll let the document speak for itself.

20 THE COURT: So we have a factual dispute.

21 Defendants say 155. Plaintiffs say 218; 240 total.

22 MR. HESSE: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. HESSE: Thank you. All right.

25 Q Derek, by the way, you were deposed twice in this

1 case?

2 A Okay.

3 Q I'm sorry you forgot about the other one.

4 Would you agree with me that you testified  
5 that Church Creek was not required to go on a witch hunt to  
6 try to find code violations while they were doing repairs?

7 A That would sound accurate, yes. I haven't read my  
8 deposition recently, but I agree with that statement.

9 Q When I say witch hunt, that was actually yours,  
10 not mine.

11 Now, you're familiar with the Steve  
12 Bruns (phonetic) professional engineers letter to David  
13 Heitzman dated November 6, 2003 which is Exhibit 76. Have  
14 you seen that?

15 A I know I have at one time but not recently. Okay.

16 Q All right. Steven Bruns. I know he's with ACE.  
17 Is that your understanding?

18 A Yes, sir.

19 Q Looks like in the time period of November 6, 2003  
20 that that would have been a letter or report, however you  
21 want to -- actually a letter or report you have in front of  
22 you?

23 A Yes, sir; a letter.

24 Q And Steven Bruns is a professional engineer; is  
25 that correct?

1 A Yes, sir.

2 Q In that letter, in talking about the masonite  
3 siding class action, he states that, quote, since the  
4 settlement amount would probably be low it is our opinion  
5 that money may be better spent performing routine  
6 maintenance than isolated repairs. Is that what it says?

7 A I'm looking. Yes, sir.

8 Q Okay. You have Exhibit 8 in front of you?

9 A Yes, sir.

10 Q And that is the report issued by American  
11 Consulting, again referred to as ACE, and that's the report  
12 dated November 6, 2002 at the bottom there?

13 A Yes, sir.

14 Q All right. And if you would turn to the  
15 conclusion? It's page 4 of that report.

16 A Yes, sir.

17 Q If you would read the first paragraph of --  
18 actually, this is a report by Thomas Canella (phonetic), and  
19 he is with ACE, the same outfit that Steven Bruns was with;  
20 correct?

21 A Yes, same firm. Tom Consilla (phonetic), he's an  
22 architect; actually did the inspection.

23 Q All right. Well, again, on Exhibit 8 if you would  
24 read the conclusion on page 4?

25 A The entire conclusion or first paragraph?

1 Q First paragraph, please.

2 A First paragraph of the conclusions say, based on  
3 our evaluation it is our opinion that immediate action is  
4 needed on the exterior siding, concrete sidewalks, patios,  
5 curbing, tennis court, playground equipment, asphalt  
6 walkways at tennis court and playground, and the retaining  
7 wall. Near immediate action is needed on the down spouts  
8 and the tennis court fence posts, painting and wind screen.  
9 Based on current conditions the roofing, asphalt drives,  
10 main entry islands, swimming pool deck and the new walk  
11 bridge will be an ongoing as-necessary basis with a  
12 reinspection scheduled for next year to reevaluate the  
13 situation.

14 Q If you would look at the first page of the report  
15 where there is a definition -- their definition of  
16 immediate, was that -- if you would read that?

17 A Immediate is defined as repair/replacement listed  
18 needs to be done immediately due to the safety concerns  
19 and/or preservation of structure and finishes.

20 Q Thank you.

21 Do you have any information that Church Creek  
22 had received a copy of the ACE report dated November 18,  
23 2002 which is Exhibit 8?

24 A No, sir.

25 Q All right. We've already talked about the Epps

1 Report and, if you would -- that is Exhibit 5. You've  
2 touched on this earlier, but if you could go to the  
3 conclusion of the Epps Report?

4 A Yes, sir. You want me to read it?

5 Q Let me -- if you're at that page -- I want to see  
6 how long it is. I don't want you to --

7 Yes. If you would read that first paragraph  
8 of the conclusion, please?

9 A The conclusions of the Epps Report state, the  
10 conclusion of the field work and inspection is that the  
11 residential units and the development as a whole have been  
12 well maintained. As a result the buildings are in good to  
13 very good condition. The notations are minor in nature with  
14 the exception of the settlement comments of Unit 1838A,  
15 1838C, and can typically be addressed as maintenance issues  
16 and corrected with in-house repair services. Although there  
17 is no standard for such matters, buildings of this type  
18 are -- that are properly maintained should have a life of 75  
19 years to 100 years and beyond.

20 Q If you look at the conclusion of the Epps Report,  
21 which is Exhibit 5, and if you look at the letter of Steven  
22 Bruns to David Heitzman dated November 6, 2003, we have both  
23 a licensed architect and a licensed engineer indicating that  
24 the siding problem is a maintenance issue; is that correct?

25 A I forgot which exhibit the letter was.



1 Q That was 76.

2 A Okay. I agree with the exception of the 2002 ACE  
3 report which had the siding as an immediate need and that  
4 one seemed to have a heightened sense of the condition of  
5 the siding, whereas the Epps Report and the letter  
6 eventually authored by ACE on November 6, seemed to down-  
7 play the condition of the siding.

8 Q In 2002 it's an immediate need to be done now.  
9 Closer to the time in 2003 it kind -- they're down playing  
10 it being a maintenance issue. The point is that the letter  
11 speaks for itself that we have a licensed architect and  
12 report -- licensed architect and licensed engineer saying --  
13 talking about a maintenance issue at this point; is that  
14 correct?

15 A I agree. I was only making that clarification in  
16 that there seems to be a disparity in ACE's own documents.  
17 If I remember right, this is the letter that was written  
18 three to four times and swapped back and forth between the  
19 seller and ACE and revised several times before it came up  
20 with this final version that was given to the owners.

21 Q Going back to your report and your observations,  
22 any problems you noted with the windows at Montclair have to  
23 do with the original construction; is that correct?

24 A I believe so, yes.

25 Q And you cannot testify that there were any

1 improper repairs by Church Creek around the windows; is that  
2 correct?

3 A I believe that's correct; yes.

4 Q Any problems with the balconies is not an issue  
5 with Church Creek; is that correct?

6 A I would say in general that's correct. I would  
7 say it's similar to the roof-wall intersection that we  
8 looked at. In other words, when a contractor is repairing a  
9 problem, I think there is a responsibility to understand what  
10 caused the damage and fix the damage. So if there is a  
11 balcony issue that was contributing to the damage, you don't  
12 just fix the symptom. You would need to investigate what  
13 caused the damage so your work is more long lasting than the  
14 original work.

15 Q Sitting here today you don't have any testimony  
16 about any problems with the balconies that are related to  
17 Church Creek's work?

18 A I believe there is a waterproofing issue at the  
19 intersection of the balcony and the siding that was not  
20 corrected.

21 Q The reason I'm asking this, because when you were  
22 deposed back in November 10 of 2010 the testimony I got from  
23 you was that you didn't have any issues with the balconies  
24 as relates to Church Creek. I would be happy to let you  
25 look at your deposition testimony.

1           A     No. Must be that you asked me about the balconies  
2 specifically and not where the siding intersects with the  
3 balcony and the siding replacement of Church Creek next to  
4 the balcony. The balconies themselves, I don't think Church  
5 Creek made any repairs to the balconies.

6           Q     That would hold true for the columns and the  
7 framing above the balconies? That's not an issue with  
8 Church Creek's work with those?

9           A     I believe so, yes.

10          Q     All right. And, for the record, the -- there is a  
11 difference between -- you already talked about that --  
12 masonite siding, the original siding, and the siding that  
13 was used to do repairs by Church Creek. The original siding  
14 was the subject of the class action; is that correct?

15          A     I think they've both been subject -- the  
16 composition itself is very similar. They've both been in  
17 litigation. But the masonite, I think, was -- is more well  
18 documented and well known in the industry.

19          Q     Help me out there. The masonite -- the product  
20 that was put back on there, Georgia Pacific, that's  
21 masonite; is that correct or not?

22          A     When you use the term masonite, that's kind of  
23 like Kleenex or Drive-it(phonetic) with each litigation.  
24 Because that's just a dominant product in the hardboard  
25 siding industry. People call masonite masonite no matter

1 who the manufacturer is. So GP is not masonite. Masonite  
2 is masonite. And GP, they're both hardboard siding products  
3 with similar composition that is very moisture sensitive and  
4 needs to be protected and installed in a very specific way  
5 so that it lasts a reasonable length of time.

6 Q The Georgia Pacific product was not subject of the  
7 class action, to your knowledge?

8 A I think it has been in litigation, but I don't  
9 know if there is a class action with that particular  
10 product.

11 Q I'm trying to figure out the subject of the class  
12 action at the time -- before the renovations were done or  
13 conversion was done. Do you know?

14 A I don't know.

15 Q Okay. And but you still could buy Georgia Pacific  
16 siding at Lowes, for example?

17 A That's correct, yes.

18 Q Back in the time frame these renovations were  
19 being done, is that correct?

20 A Yes.

21 Q I think we've already talked about the fact that  
22 you did a total -- you may not have known. I think the  
23 total destructive tests you did were 26. Sound right?

24 A I didn't remember when I was asked earlier. I  
25 knew I had seen the number 20. I was comfortable saying

1 there was more than 20.

2 Q And I believe of those 26 destructive tests that  
3 six of those destructive tests involved repairs for work  
4 done after 2003? Bad question.

5 Six of those tests involved areas where  
6 Church Creek did work during its exterior repairs?

7 A I haven't recently reviewed that document, but I  
8 know either at my first deposition or the second there is an  
9 exhibit, I think it's Exhibit 83, that has a summary of all  
10 the work performed by Church Creek. I have imposed the  
11 destructive tests on that exhibit and so if you count those  
12 destructive tests you would be correct.

13 Q All right. Because I'm not sure -- been a lot of  
14 exhibits, as the Judge said, if nothing else we've set a  
15 record in this trial for number of exhibits. Maybe -- might  
16 be in your report, there are 26 destructive tests but just  
17 want to clarify that the documents speak for themselves, but  
18 it may be a half dozen of those destructive tests actually  
19 involved areas, involved work done by Church Creek; is  
20 that --

21 A That's correct. Yes.

22 Q All right. And you would agree with me that  
23 Church Creek did not do any brick repairs?

24 A I don't believe so, no.

25 Q And you would agree with me that Church Creek did

1 not reroof any of buildings?

2 A I believe that's correct; yes.

3 Q Now -- and, again, I'm not sure what documents  
4 have come into evidence regarding the destructive testing  
5 you did. You looked at a structural bracing issue at three  
6 or four corners; is that right?

7 A That's right. Talked about the exterior wall  
8 sheathing not having adequate width at the corner, I  
9 believe.

10 Q And I believe -- you can correct me -- only -- you  
11 looked at that condition in maybe three or four corners and  
12 only one of those corners involved an area where Church  
13 Creek did work at the corner?

14 A I believe that may be correct with the original  
15 report. The more recent field work that Mr. Dapore  
16 referenced, I think, was another corner where Church Creek  
17 did repairs and we found similar conditions on the  
18 sheathing.

19 Q And the issue with that is that the plywood was --  
20 original construction was three feet wide and when Church  
21 Creek did the repair they went back and put a three foot  
22 wide piece of plywood when it should have been four feet; is  
23 that correct? That's part of it?

24 A I think that's part of it. The other issue would  
25 be inadequate protection. The recent destructive test was

1 rotten plywood. So there is water damage that is either not  
2 addressed or has been damaged since the repair. Then the  
3 width would be a structural issue.

4 Q But at most you found that in two corners where  
5 Church Creek did repairs; is that correct?

6 A Again, I haven't looked at that recently. I would  
7 say if that's what the documents show, I would stand by  
8 that.

9 MR. HESSE: I'm trying to speed things up. Some  
10 of these questions he's already answered, Your Honor.

11 THE COURT: That's all right.

12 A If I may, on that issue that you just asked me  
13 about, there is a third code violation which is that the  
14 siding, the sheathing comes approximate to grade within six  
15 inches, and it's not a treated material. They went back  
16 with untreated plywood that's damaged. So that would be a  
17 third issue.

18 Q All right. Am I correct that there has been no  
19 cost estimate been done to -- regarding the -- let me back  
20 up.

21 There has not been a cost estimate prepared  
22 regarding to correct the work done by Church Creek in the  
23 attics; is that correct?

24 A Well, the only thing I can tell you that -- the  
25 best document -- and I'm not exactly sure if it's an exhibit

1 or not, but I think the repair scope that was referenced  
2 earlier that Mr. Swygert, the defense expert and I agreed to  
3 during the course of the prior litigation, was priced at  
4 \$250,000. But I don't recall which document that is.

5 Q. Okay. And if you would turn to your scope of  
6 repairs which is Exhibit 81?

7 A. Yes, sir.

8 Q. I'm going to -- some of this sounds repetitious,  
9 but in your scope of repair you had replacement of the roofs  
10 and we've already established that Church Creek was not  
11 involved in reroofing of the buildings; is that right?

12 A. I believe that's correct; yes.

13 Q. Any reference to scope of repairs regarding brick  
14 cladding would not involve Church Creek?

15 A. I believe that's correct; yes.

16 Q. Talked about the balconies. That's in your scope  
17 of work. And that would have nothing to do with Church  
18 Creek's work; is that correct?

19 A. I believe so; yes.

20 Q. And your scope of repairs for the attics includes  
21 all of the townhomes at Montclair; is that right?

22 A. If it doesn't, there may be -- there was only one  
23 building type that it was not necessary by the code, but I  
24 think if it's not all it's most of the buildings require  
25 this repair; yes.



1 Q So if -- but it's 240 units. Some of these are  
2 townhomes and some are what you call condominiums or how  
3 would you describe them?

4 A Yes. Conventional condominium construction.

5 Q Might be two or three stories, but that's not a  
6 firewall issue with those type units; is that correct?

7 A I believe there is. I was just trying to remember  
8 based on the building types if there is anything excluded.  
9 My best recollection is it applies to all the buildings. I  
10 want to be careful. Might be a few or handful that it  
11 doesn't apply to. I know it's very specifically addressed  
12 with the scope Mr. Swygert put together that I agreed to  
13 during the litigation.

14 Q Sitting here right now you don't recall how many  
15 units in which there is going to be attic repairs done?

16 A No. I would have known that at one time, but I  
17 haven't read the documents recently enough to remember  
18 specifically.

19 Q I believe your scope of repair includes interior  
20 repair -- interior repairs, for what's called consequential  
21 damages. That could be caused by window repairs, wall  
22 sheathing, and would include brick repairs. It's just  
23 anything that causes consequential damages to the interior;  
24 is that correct?

25 A That's right. That's usually limited to the

1 exterior -- the interior side of an exterior wall. When  
2 you're pounding on, taking the siding off and you're  
3 installing new plywood sheathing or siding that you're going  
4 to make some nail pops or have some reason to refinish those  
5 walls.

6 Q Your estimate includes replacing all the siding;  
7 is that correct?

8 A Yes.

9 Q Scope of repairs --

10 A Yes, sir.

11 Q That would include removing and replacing siding  
12 on units that Church Creek did not work on; is that correct?

13 A Well, again, I guess there is a discrepancy with  
14 how many they worked on, but I would say yes. I think there  
15 are some buildings they didn't work on, so to that extent it  
16 would include buildings they didn't work on, yes.

17 Q Scope of repairs includes removing and replacing  
18 the wall sheathing -- specifically what does it say as far  
19 as the wall sheathing?

20 A Remove and replace wall sheathing within four feet  
21 of building corners with plywood to comply with building  
22 code requirements.

23 So just for clarification when you're at the  
24 base of the wall that first sheet needs to be treated  
25 plywood. Above that it's okay to have untreated, but you

1 need to have that to meet the code as far as the structural  
2 bracing.

3 Q That structural bracing, is that going to be done  
4 in all the corners of all the buildings at Church Creek --  
5 Montclair?

6 A During the siding replacement project all those  
7 corners would be exposed. If they were already four feet  
8 wide you wouldn't have to do it. I'm not sure how it was  
9 priced out by Mr. Carlson as far as an allowance. I don't  
10 recall that conversation. But certainly if it's four feet  
11 wide you wouldn't need to replace it with another four foot  
12 piece of plywood.

13 Q Again, I belabor the point but Church Creek only  
14 did repairs on the structural bracing at one corner that you  
15 know of, is that correct? Or may have been two?

16 A Some of these, like the photographs that you see  
17 by the front doors, are within four feet of a building  
18 corner. So the exhibit that's on this easel right now may  
19 require repairs based on the nailing issue.

20 Q What's the next item on your scope of repairs?

21 A We've been kind of jumping around. We already  
22 talked about the roof, the siding, the brick, the balconies,  
23 and attic and interior. So looks like we covered all the  
24 subjects.

25 Q And your scope of repairs also includes the

1 windows; is that correct? I think -- is that 56, is that F  
2 on yours?

3 A Yes. I have remove and reinstall the windows. At  
4 some point I think Mr. Carlson determined either that their  
5 conversation with the building code folks on a zone  
6 indicated the windows -- he wouldn't be able to salvage the  
7 windows and be able to stand behind them. I think his  
8 estimate goes beyond what our original scope required.

9 Q And the next item on yours? On the scope of  
10 repairs?

11 A Underneath the cladding section?

12 Q I've lost my place. I'm relying on you to --

13 A Install flashing in appropriate locations. I'm  
14 still reading underneath the hardboard cladding section.  
15 Talks about flashing.

16 Q Are you at D?

17 A I'm at 2G, because the last question you asked me  
18 about was 2F which was remove and reinstall windows.

19 Q Although self explanatory, as far as what work,  
20 what scope of work you're talking about, installing  
21 flashing, installing new lap siding and so on; is that  
22 correct?

23 A I believe so, yes.

24 Q Now, I believe in your -- somewhere either in  
25 your -- here we go. In your scope of repair, Exhibit 81, on

1 page 204 at the very bottom you indicate that previous  
2 siding repairs have been performed on an emergency basis in  
3 order to address known water intrusion and/or damage. This  
4 repair scope includes removal and replacing of siding in  
5 order to properly integrate an assembly -- excuse me --  
6 integrate wall assembly components such that effective water  
7 management is achieved.

8 A Yes.

9 Q Are those the repairs of Carolina Builders, when  
10 you refer to these other repairs?

11 A I'm not sure of the entity, but I think you might  
12 be right. Those are -- I would consider them all to be  
13 similar to the Church Creek repairs. It's just a patch of  
14 known damage that's being repaired without any regard for  
15 proper water management or building code requirements. The  
16 point is that in order for it to be a long lasting durable  
17 repair a much more comprehensive process will be required to  
18 include flashing and water resistant barrier.

19 Q That work's being paid for by the whom? Or do you  
20 know?

21 A I think if I'm talking about emergency repairs  
22 those would be just repairs paid for by the HOA to address  
23 obvious areas of the most significant damage.

24 Q You have reviewed Tom Carlson's, of Calibogue  
25 Construction's, estimate? Actually, there are two exhibits.

1 One is Exhibit 99 and also Exhibit 262. Exhibit 262 being  
2 the latest estimate and Exhibit 99 has the breakdown on how  
3 that -- the figure was arrived at, although it has changed  
4 slightly?

5 A I don't have 99 in front of me. Only one I've  
6 been able to review recently would be 262.

7 Q I'm not going to ask you too many questions. If  
8 you need to refer to it, please do.

9 (Hands up document.)

10 MR. DAPORE: What one is that, Tom?

11 MR. HESSE: That is 262. I beg your pardon. The  
12 one he's been given is 99. That's the comprehensive  
13 estimate. And 262 is --

14 A Okay.

15 Q If we look at 262 Tom Carlson says it's a revised  
16 estimate and the sole revision on that estimate is the  
17 elimination of the figure for reroofing, because there have  
18 been some of the roofs replaced; is that correct?

19 A I believe that's correct. That's what I see in  
20 the second paragraph on the first page;

21 Q Kind of the same exercise with Tom Carlson's  
22 estimate as we did with your scope of repair, that if there  
23 is -- again, I think in the Exhibit Number 99 --

24 A Yes, sir.

25 Q In that there may be an estimate for reroofing in

1 262. There may not be. To the extent those estimates by  
2 Tom Carlson reference any reroofing to the buildings, that's  
3 not an issue with Church Creek; is that correct?

4 A I believe so; yes.

5 Q Any issue with replacing -- any estimate dollar  
6 amount in Tom Carlson's estimate for replacing exterior  
7 brick cladding, replacing windows and doors is not an issue  
8 with Church Creek; is that correct?

9 A I believe that's correct; yes.

10 Q And would you agree that Church Creek, to the  
11 extent it's responsible at all for any attic repairs, would  
12 be for those attics that they had actually worked in? I say  
13 that because the information indicates that they did not  
14 work in all the attics. That may be in dispute --

15 A I'm just trying remember what their scope was.  
16 How they were instructed -- if they were instructed as to  
17 which attics they performed work in. I guess conceptually I  
18 would agree there are attics that exist that repairs are  
19 necessary, and that is completely outside of their scope,  
20 that that would not be their responsibility.

21 Q Did any of the repairs done by Church Creek lessen  
22 the useful life of the buildings at Montclair?

23 A I would say yes, given that the repairs were  
24 intended to bring them up to a certain standard that would  
25 have a certain life expectancy of the repair. And based on

1 observations that I made they are already in need of repairs  
2 where the Church Creek repairs were made. So if they were  
3 done properly then there would not be a need for repairs in  
4 those same locations. So I would say based on that  
5 information, yes, it shortened the service life.

6 Q They were attempting to repair an already bad  
7 condition; is that correct?

8 A Right. I think -- I mean, the analogy I gave on  
9 my deposition I thought was reasonable. That it was like  
10 there is a flat tire and all Church Creek did was blow the  
11 tire up with air. They didn't fix the tire. So the tire's  
12 flat again and requires the same area to be fixed. It's a  
13 very temporary basis that the repairs were made.

14 MR. HESSE: Hold on a second.

15 (Discussion off the record.)

16 MR. HESSE: Thank you, Derek.

17 A You bet.

18 REDIRECT EXAMINATION BY MR. DAPORE:

19 MR. DAPORE: Just a couple of questions, Your  
20 Honor,

21 THE COURT: Surely.

22 Q Derek, would you turn, in your exhibit notebook,  
23 to 55?

24 A Fifty-five?

25 Q Fifty-five.



1 A Yes, sir.

2 (Discussion off the record.)

3 Q Are you there?

4 A Yes. I remember seeing this before.

5 Q I want to ask you, have you seen that before, 55?

6 A Yes, sir; I have.

7 Q What's your understanding of what that document  
8 is?

9 A It seems to be a general note from the  
10 buyer-developer to the seller of how extensive the damages  
11 have been that have been discovered during the repair  
12 process. And that -- seems to be dissatisfied with the  
13 amount of damage being identified relative to what was  
14 disclosed by ACE, the seller's engineer.

15 Q In a way is it fair to characterize that as a  
16 little bit of I'm not sure what I bought when I bought it?

17 A Yes, I would say so.

18 Q And is it a description of the fellow who is now  
19 trying to convert the condos telling the seller that you  
20 gave me a report from an engineer but what my guys have  
21 found is a lot more damage?

22 A Yes.

23 Q Is the damage that you observed when you started  
24 looking behind Church Creek's work, to a contractor, not to  
25 a lay person or buyer of a unit but to somebody who took off

1 a board and saw no kick-out flashing and a lot of damage,  
2 would that fit what the description is there, that the rot's  
3 a lot more than what we anticipated originally?

4 A Well, I generally agree with that, but I think  
5 it's much worse than that, because he's saying I'm spending  
6 a lot more money than what you represented to me was  
7 necessary but, in fact, the \$300,000 that he spent was not  
8 an adequate repair. If you actually fixed what needed to be  
9 fixed it would have been much more than what he spent.

10 Q Okay. I want to clear up for the Court to make  
11 sure the Court's clear on the 218 of the 240 units. Am I  
12 correct, and you can take your time looking in the exhibits,  
13 that if you add the number of units in Exhibit 46 to those  
14 Exhibit 83, that that total, 218, which is the number of  
15 units that Church Creek did work on, both for exterior  
16 repairs and/or for firewall repairs. So either touching the  
17 buildings or those units, if you look up those two exhibits,  
18 is that where you come up with the 218 of the 240?

19 A That's my understanding; yes.

20 Q All right. And there was some on cross, on  
21 Mr. Hesse's, there was an indication that there was not  
22 wholesale roof replacement but you, in fact, did look in a  
23 number of locations up on the roofs where roof repairs were  
24 done by Church Creek as per their invoices; is that right?

25 A I didn't recall when Mr. Hesse was asking me

1 questions about the roof, about the extent of Church Creek  
2 roof repairs. But I would certainly rely on the documents.  
3 If there were areas that we -- where Church Creek did work I  
4 observed Church Creek repair areas.

5 Q Let's go, again -- this will be the last question,  
6 but Exhibit 123. Then I think it's the third page on  
7 Exhibit 123 where it references your destructive testing, 16  
8 and 17?

9 A Yes, sir.

10 Q Did you, in fact, observe -- do you recall as you  
11 sit here today, observing areas where Church Creek did work  
12 on roofs and you noted, in doing destructive testing,  
13 deficiencies with that work?

14 A Yes.

15 Q Could you point those out for the Court, what they  
16 are? First of all, to read, the invoice is from Mr. Lockey  
17 for Church Creek?

18 A This is the third page of Exhibit 123. Based on  
19 this document the work performed by Church Creek was to  
20 repair storage room roof rot, replace plywood, replace  
21 rafter, reshingle, and flashing, replace siding and trim  
22 around chimney.

23 Q Then your destructive testing 16 and 17, they went  
24 into those areas to see what you could find; is that right?

25 A That's correct.

1 Q What did you find?

2 A Same page on the Exhibit 123 says destructive test  
3 16 was performed at chimney/roof intersection of unit 1819.  
4 The siding and trim were removed on one side of the chimney.  
5 A sealant joint was observed between the MDF siding and the  
6 roof shingles. The asphalt saturated felt weather barrier  
7 was noted to be incomplete. Metal step flashing was noted  
8 to be incomplete at the corners. Water stain was observed  
9 along the bottom edge of the siding.

10 MR. D'APORE: I don't believe I have anything else,  
11 Your Honor.

12 THE COURT: All right. Very good. Anything at  
13 all, Mr. Hesse, on that?

14 RECROSS EXAMINATION BY MR. HESSE:

15 MR. HESSE: One thing, Your Honor.

16 Q Derek, I'm not going to concede the numbers on the  
17 units. Again, the documents speak for themselves. My  
18 understanding of counting up the number on Exhibit 83 the  
19 number of units worked on by Church Creek was a 155. I  
20 understand Exhibit 46, if I'm correct, indicates the number  
21 of attics worked on by Mr. Ackerman. It's either 44 -- is  
22 it --

23 A Forty-six.

24 Q Forty-six. He says 64 attics; is that correct?

25 A Yes, sir.

1           Q     You can see -- I think there is some documentation  
2 of what attics he went into. I haven't gone through the  
3 exercise to see whether or not there is overlap. In other  
4 words, he may have looked at the attics in buildings that  
5 Church Creek did work on a particular unit. You don't  
6 have -- there is no answer for you. Just trying to say we  
7 don't concede the figure of 218.

8           A     I guess for clarification, I have independently  
9 come up with that number. That was work done  
10 collaboratively with a technician at my office and someone  
11 at Young-Clement going through that Exhibit 83 and these  
12 invoices.

13          Q     Thank you.  
14 (Discussion off the record.)

15          Q     Derek, do you know when you did those calculations  
16 of how many units were worked on by Church Creek?

17          A     I think initially it was done during the previous  
18 litigation, and then I think there has been some spot  
19 checking more recently.

20          Q     So the information as to the figures you would  
21 have had as to how many units were worked on by Church Creek  
22 may have been a different figure before the trial in the  
23 underlying case which was -- had started on October of 2012.  
24 There may be some additional figures since then?

25          A     I don't recall what the numbers were. I just know

1 today what I've heard from both Joe's office and my office  
2 is that 218 is the number of units that Church Creek has  
3 worked on.

4 Q Okay.

5 MR. HESSE: Thank you.

6 THE COURT: Okay. I don't have any questions.

7 Mr. Hodgins, thank you very much. You can step down.

8 You want him to stick around?

9 MR. DAPORE: He can go.

10 THE COURT: Okay. Anything further from the  
11 Plaintiffs?

12 MR. DAPORE: Just one thing, Your Honor. On the  
13 deposition transcripts that we handed up, which is fine  
14 with us to save some time, there is some important  
15 testimony in there both from Lockey and Elsey about  
16 what they observed and what concerns they had about the  
17 repairs they were making and whether or not they would  
18 even work. And that kind of goes into what Derek's  
19 saying. I just want to underline that for the Court  
20 and there is some important testimony in those.

21 Other than that we don't have anything else, and  
22 we rest our case.

23 THE COURT: All right, sir. So far, just so you  
24 know, I've reviewed the Lockey deposition. But I  
25 didn't get to Elsey, I think was the longest and Kinney

1 was next. I thought I would get to that one next.

2 Okay. Plaintiff rests.

3 Mr. Hesse? Motion?

4 MR. MCQUEENY: I think any legal motions, if we  
5 could make those after we rest our case, I think we  
6 would defer.

7 THE COURT: That would be fine. I will tell you  
8 this, I did on the break get a chance to read -- I'll  
9 support my ruling I gave you earlier. I got a chance  
10 to read both the Beyerly case and Judge Duffy's  
11 Cummings Atlantic case, and I'm convinced I was proper  
12 in allowing the question and the answer. Based on  
13 that -- my basis for that would be in the Beyerly case.  
14 they are saying they have no duty to warn or inspect of  
15 a duty they did not create nor for which they had no  
16 knowledge.

17 The testimony here was that, one, they were given  
18 a duty to do some work, and when they went in there  
19 they pulled stuff off of there. If you don't take  
20 stuff off the walls it would be a latent defect, but  
21 once you've taken the stuff off the walls it is no  
22 longer latent. It would be exposed. Therefore, they  
23 would know about it. Therefore, I determined that it  
24 was proper to, one, allow the question and, two, the  
25 answer. Now, that doesn't decide whether or not it's a

1 duty. A duty it is still a question of law for the  
2 Court.

3 And under the issue of duty let me cite this. I  
4 think this is from the Beyerly case. This is from  
5 Beyerly. Affirmative legal duty can be created by  
6 statute, contract, relationship, status, property  
7 interest or other special circumstances.

8 So clearly that would come from performing the  
9 duties inherent in a contract. So I find there was a  
10 legal duty to act once they became aware of a problem.  
11 Okay? I'll make that finding now as a matter of law.

12 All right. Are you all ready to proceed with your  
13 case?

14 MR. HESSE: Yes, Your Honor.

15 THE COURT: Very good.

16 MR. HESSE: First of all, we would like to hand up  
17 the deposition excerpts from Al Swygert, Larry Elsey  
18 and Roger Lockey. These are the highlighted copies.  
19 They have been provided to the Plaintiff. Particularly  
20 on Elsey and Lockey there may be some overlap.

21 THE COURT: I was going to ask you how to spell  
22 Swygert. It ain't the easy spelling. I do have those  
23 and I'll review those as well. Okay.

24 MR. HESSE: At this time we would call Kevin  
25 Molony.



1 (Kevin W. Molony, 5874 Old Chisolm Road, John Island, S.C.  
2 29455, duly sworn, testifies as follows:)

3 DIRECT EXAMINATION BY MR. HESSE:

4 Q Kevin, you are -- tell me about your relationship  
5 to Church Creek.

6 A At the present time with the construction I was  
7 with the -- I was 50% owner of the company.

8 Q Who had the other 50%?

9 A Larry Elsey.

10 Q Where were you born?

11 A Charleston, South Carolina.

12 Q How old are you?

13 A I am 48 years old.

14 Q Where did you go to school?

15 A Bishop English.

16 Q Tell me about your -- are you parents from here?

17 A Yes, my father was born and raised in Charleston.  
18 My mother was born in Estill, South Carolina.

19 Q Are your parents still alive?

20 A My father is deceased.

21 Q What does your mother do?

22 A My mother's retired, actually.

23 Q Besides Church Creek you had another company?

24 Keating Roofing, is that another company?

25 A That's correct; yes, sir.

1 Q A couple of years ago you had a daughter that also  
2 went to Bishop England?

3 A Yes, I did.

4 Q She was outstanding in a particular sport. What  
5 was that?

6 A I understand, yes. She was fairly talented at  
7 basketball. I believe she's one of the two jerseys retired  
8 hanging in the gym at Bishop England gym.

9 Q She's at University of South Carolina now?

10 A That's correct.

11 Q Now, tell me how Church Creek got involved with  
12 Montclair initially?

13 A Trademark Property was approached by Bruce Kinney  
14 to do the sales on the project, and Trademark recommended  
15 Church Creek or myself to do the construction over there  
16 being that we've done one in the past with them.

17 Q Initially there -- do the interior renovations?

18 A That's correct.

19 Q Did you have any contract with -- let's back up.  
20 Who were you actually hired by to do the work at Church  
21 Creek -- at Montclair?

22 A Bruce Kinney.

23 Q Did you have a formal contract with Bruce Kinney  
24 or whatever the entity was that he owned?

25 A We had contracts per unit as we went along.

1 Q What did the typical contract look like?

2 A It's very basic. One page contract stating what  
3 we're going to do to each unit, listing the unit address and  
4 the activities that would take place in that unit.

5 Q In another witness' deposition there was  
6 discussion about Exhibits 32 and 33. These were for the  
7 exterior work. Were -- probably got some contracts here for  
8 -- what you call contracts for the interior. Were they kind  
9 of look like Exhibits 32 and 33 but only involved the  
10 exterior renovations? Excuse me, interior renovations?

11 A Let's see. No, I don't --

12 Q Let me hand you these, 32 and 33. Only question  
13 is, would any contracts for interior renovations look the  
14 same as this?

15 A Yes, basically.

16 Q In other words, it's more of a proposal that we'll  
17 do the work for this and if accepted you'll pay?

18 A That's correct.

19 Q Okay. Montclair Homes will pay you or Bruce  
20 Kinney. There wasn't any contract that said henceforth and  
21 to -- with parties of the first part?

22 A No, sir.

23 Q All right. And who were your subcontractors at  
24 the Montclair project?

25 A It was Roger Lockey as well as ECI which was owned

1 by Larry Elsey.

2 Q And does 'ECI' stand for Elsey Construction?

3 A Yes, it does.

4 Q They were your subcontractors?

5 A Yes, they were.

6 Q I say, you, I mean Church Creek.

7 A Yes, sir.

8 Q Now, when you initially came on the scene at  
9 Montclair, Church Creek did, were you expected or did you  
10 bid for any exterior work?

11 A None at all.

12 Q Tell me how it came to pass that Church Creek got  
13 involved in exterior repairs.

14 A As the project progressed a report got brought to  
15 my attention, Epps Report. And it was very minor exterior  
16 work to be done. They brought it to our attention to see if  
17 we would perform the work, and we agreed to.

18 Q And, in fact, Exhibits 32 and 33 appear to be  
19 proposals by Church Creek to do work, exterior work based on  
20 the Epps Report; is that correct?

21 A That's correct.

22 Q The record speaks for itself. We got -- I think  
23 we have -- Exhibit 83 there is a summary of the invoices for  
24 the Montclair by -- for the work done by Church Creek on the  
25 exterior, and I believe I have in my office a bunch of the

1 documents from Church Creek that take up probably half of a  
2 file cabinet. Sounds like how many documents Church Creek  
3 would have had for Montclair?

4 A I'm sure it was.

5 Q That would include both exterior and interior  
6 invoices. Now, after you did -- you would have worked on  
7 the repairs that were on the -- or items on the Epps Report.  
8 What else did Church Creek do as far as the exterior?

9 A There was units when they would sell they would  
10 have a home inspector come out. The home inspector would  
11 find -- occasionally they would find some exterior work that  
12 needed to be done and we would have to do that work to get  
13 the CL-100.

14 Q Going back to the Epps Report, when you got those  
15 Exhibits 32 and 33, made those proposals, or saw the items  
16 on the Epps Report that needed correction, did you go -- did  
17 Church Creek go anywhere else besides what was on the Epps  
18 Report before it got involved with the inspection reports?

19 A No.

20 Q You heard some discussion about the American  
21 Consulting or ACE letters or reports prepared by the  
22 engineers. Were you ever given copies of those reports?

23 A Never saw them.

24 Q Church Creek did not reroof any of buildings and  
25 only reroofed some of the storage sheds; is that correct?

1           A     That is correct. I believe the number is eleven  
2 storage sheds.

3           Q     In your opinion -- let me back up.

4                     You talked about doing the items on the Epps  
5 Report. You then would do the CL-100 letters for the  
6 inspections as far as exterior work. You also -- it's come  
7 up that tropical storm Gaston came through and did Church  
8 Creek do some work as a result of damage from Gaston?

9           A     We did very, very minor repairs to some roofs;  
10 replacing some missing shingles and repairing or replacing  
11 some metal ridge vent.

12          Q     And the other item that Church Creek got involved  
13 in -- this is actually -- it's in the interior but not the  
14 interior living space, is -- were the attics. What can you  
15 tell me about the attics and how that came about?

16          A     Well, it got brought to us by Bruce Kinney that  
17 there were some repairs that need to be made on the  
18 firewalls. It was missing mud, it was missing tape, it was  
19 missing, in areas, some sheetrock repairs.

20          Q     And you gave a proposal for -- I'm trying to speed  
21 up -- \$10,300; is that correct?

22          A     That's correct.

23          Q     Much has been made of the fact that you  
24 subcontracted that work out to Mark Ackerman for \$2500. My  
25 question is, did Church Creek get paid \$10,300 and pay Mark

1 Ackerman \$2500 and pocket the rest?

2 A Unfortunately, our mark-up is not that. Mark  
3 Ackerman, he was a one-man band, so he was one individual.  
4 I probably had four, five other people assisting him to do  
5 that. He was the sheetrock guru. We were assisting him  
6 getting the sheetrock, access hole, helping him hold it. We  
7 don't have margins like that.

8 Q Now, was Church Creek asked by anyone to do a  
9 complete visual inspection of the exterior of the buildings  
10 at Montclair before it started its exterior repair work?

11 A No, we were not.

12 Q Tell me, again, just to be clear, what your work  
13 on the exterior was limited to. We've been through it but I  
14 want to hear it.

15 A We were limited to the Epps Report. Whatever was  
16 on that report we addressed that issue. There was a letter  
17 out there stating that, from an architect, that the  
18 structures outside, exterior was in good shape. I'm not an  
19 architect. We followed their lead. He said everything was  
20 good, so we took it for that.

21 Q You also did the CL-100 letters?

22 A Did the CL-100s when they would have a home  
23 inspection.

24 Q Now, the work that was done by Church Creek, did  
25 that require a structural engineer in your opinion?

1           A     No, it did not.

2           Q     Now, who inspected Church Creek's work?

3           A     As far as on site? At the beginning of the  
4 project Bruce Kinney spent quite a bit of time. They sort  
5 of instructed us what they wanted us to do, and after we did  
6 it they wanted to make sure the work was done. As the  
7 project progressed his son James was on site.

8           Q     Now, either one of the Kinneys would tell you what  
9 work needed to be done. They didn't tell you how to do the  
10 work; did they?

11          A     No, they did not.

12          Q     And how long have you been -- when did you get in  
13 the construction business?

14          A     Oh, goodness. That's a great question. It's been  
15 that long. I got my license, probably, '96.

16          Q     Around this time you had been in the business  
17 seven years?

18          A     Yes.

19          Q     What other -- had you been involved in any other  
20 conversion projects before Montclair?

21          A     Yes, I have.

22          Q     And what kind of condition did the buildings  
23 appear to be in based on your observations when you went out  
24 to Montclair?

25          A     Overall they were in fairly good shape.



1 Q And there's some question how much work was done  
2 by Church Creek on the exteriors and we have Exhibit 83 that  
3 indicates there was about \$317,000 in exterior work done.  
4 Does that sound right?

5 A That's correct; yes, sir.

6 Q Maybe a good ballpark?

7 A Yes.

8 Q As far as the interior work, how much was Church  
9 Creek paid for that?

10 A Approximately 2.5 million.

11 Q And my understanding is that at some point you  
12 found out that it was costing you more to do the work, the  
13 interior renovations, than you had anticipated. Did you  
14 attempt to increase your prices?

15 A Yes, I did.

16 Q Now, was some consideration given to you not to  
17 increase your prices substantially or more than --

18 A They discounted two units.

19 Q So you bought two units on a discount basis and  
20 the consideration was what? That you wouldn't raise your  
21 prices as much?

22 A As much. I still raised my prices.

23 Q By the way, let me get some exhibits out of the  
24 way here. This is Exhibit 34 which is -- I believe it was  
25 actually prepared by -- I'm not sure who prepared this

1 document but that is the -- shows a summary of the invoices  
2 that total 317,000. You don't need to find it. We've  
3 already talked about that.

4 A Repeat that again. That's the one with the 317?

5 Q Right.

6 A Okay, yes.

7 Q I want to just make figures here. Exhibit 45, I  
8 think that's already in evidence. That's the proposal for  
9 the attics that you made to Montclair Homes; is that  
10 correct?

11 A That's correct.

12 Q Forty-six has already been talked about. That's  
13 Mark Ackerman's invoice. Exhibit 83 -- I'm just making sure  
14 these things are in. Is the -- this is actually prepared by  
15 the's Plaintiffs attorney's office that shows all the  
16 invoices for exterior repairs done by Church Creek or its  
17 subcontractors, and we kind of considered this the Bible  
18 during this litigation. That's where the figure came from  
19 that I -- I had somebody add up, that you-all worked on 155  
20 units. And I'll stop testifying here in a minute.

21 This is Exhibit 50. Can you tell me what  
22 Exhibit 50 is?

23 A This is a description of work we need to do to get  
24 a CL-100.

25 Q Exhibit 50 would be a sample inspection report

1 that you would get, and the work would be done and then a  
2 CL-100 letter would be issued?

3 A Correct.

4 Q The CL-100 letter is issued by you; is that  
5 correct?

6 A That is correct.

7 Q All right.

8 MR. HESSE: That's all I have. If you'll answer  
9 any questions Plaintiff's attorney may have.

10 CROSS EXAMINATION BY MR. DAPORE:

11 Q Mr. Molony, you are the license holder for Church  
12 Creek; is that right?

13 A That's correct. At that time..

14 Q Larry Elsey was your 50-50 partner in this?

15 A That is correct.

16 Q And it's a fair statement that -- I'll call you  
17 the book guy or the numbers guy, not the hands-on  
18 supervisor-type guy --

19 A That's correct.

20 Q -- in this?

21 A In that project.

22 Q You weren't there on a day-to-day basis?

23 A I was not there on a day-to-day basis. Larry was.

24 Q Is it fair to say that Mr. -- if an immediate  
25 problem came up in the field by Mr. Lockey it's more likely

1 he would not have called you up, he would have gone and  
2 talked to Mr. Elsey and said what should I do about this?

3 A Correct.

4 Q Is it fair, then, to say that as to concerns in  
5 finding -- that they found with the siding and the repairs  
6 and so forth the testimony of Roger Lockey and Mr. Elsey are  
7 at least as informed as to what the conditions were as what  
8 you would tell us the conditions were?

9 A That's correct.

10 Q Because they were there on a day-to-day basis and  
11 they were the ones doing the work?

12 A That's fair to say.

13 Q Now, just to be clear, I'll say Church Creek  
14 pulled the permits on this. There was a mistake -- I guess  
15 for the purposes of this trial, we'll admit that Church  
16 Creek pulled the permits for this job. Is that right?

17 A For the purpose of this.

18 Q Keating Roofing actually pulled them, but that was  
19 a clerical mistake?

20 A It truly was; yes, sir.

21 Q Keating Roofing and Church Creek offices are in  
22 the same location?

23 A That's correct.

24 Q Somebody from Keating went over there and pulled  
25 them in Keating's name, but they were the permits that you

1 were using to do this work?

2 A That is correct.

3 Q Is it a fair statement that in the underlying  
4 case, which was, of course, a case in which you were being  
5 alleged to be jointly responsible for twelve and a half  
6 million dollars worth of damage, that Church Creek, to your  
7 knowledge, did not have an expert. They had hired no  
8 engineer, no contractor to testify for you?

9 A To my knowledge that's correct.

10 Q You mentioned Trademark was the entity that  
11 referred you to Mr. Kinney; is that right?

12 A That is correct.

13 Q Who is the principle at Trademark who did that?

14 A Richard Davis.

15 Q Richard had talked with Bruce Kinney and that's  
16 where Bruce Kinney got your name?

17 A Basically; yes, sir.

18 Q And had you worked for Trademark in another  
19 project, not that Trademark was the converter but another  
20 condo converted in which Trademark had also referred you to  
21 be used by the converter as the general contractor?

22 A Not at this time.

23 Q Well, at any time?

24 A After this project; yes.

25 Q That was the Concord?

1 A That is correct.

2 Q And on that case Church Creek got sued as well;  
3 didn't they?

4 A Yes, sir.

5 Q For their exterior work?

6 A We did mostly interior work. I believe -- to  
7 answer your question, yes.

8 Q Now, you would agree with me that the general  
9 contractor is responsible for the work of the  
10 subcontractors; is that correct?

11 A I would agree.

12 Q His subcontractors, not somebody else's?

13 A I would agree.

14 Q His subcontractors. You characterize Mr. Elsey as  
15 a kind of a subcontractor, although you admitted he was a  
16 partner as well.

17 A But his company was -- they were a subcontractor.

18 Q ECI was his company or at least he did business as  
19 ECI?

20 A That's correct.

21 Q But he was also a 50-50 partner with you in Church  
22 Creek?

23 A Yes, sir.

24 Q Then you've characterized Mr. Locky, who I don't  
25 think had a company but he was the carpenter exterior guy,

1 and you've characterized him as a subcontractor?

2 A Correct.

3 Q But you would agree with me, as far as you are  
4 pulling the permits and doing the work as Church Creek, that  
5 the work they did as your subcontractor, Church Creek is  
6 responsible for?

7 A Correct.

8 Q Now, on the firewall issue, the invoice that we  
9 pulled out from Mr. Ackerman for 2500 bucks you explained  
10 that that's not all you paid?

11 A Definitely not.

12 Q You paid more than \$2500?

13 A Sure.

14 Q Because you had some labor charges for guys  
15 putting drywall up through the scuttle so they could put it  
16 in the attic?

17 A One man couldn't do it.

18 Q But you still made a profit; correct?

19 A I'm sure we did.

20 Q And the amount you quoted to MALP, Montclair  
21 Association Limited Partners, or I think you testified on  
22 direct, actually, that Mr. Kinney asked you to do the work.  
23 You got the payment from somebody in Chicago through MALP;  
24 didn't you?

25 A Where the payment came from I don't know. I

1 really don't recall.

2 Q You were here during the case where we showed the  
3 letter sheet from MALP where they made the payment of  
4 \$10,000?

5 A Yes.

6 Q The firewall repairs that were done, you will  
7 agree with me that Church Creek is responsible for complying  
8 with the building codes that are in effect at the time they  
9 do renovation work which apply -- where codes apply to  
10 renovation work or repair work?

11 A Yes.

12 Q And you would agree with me that you didn't do any  
13 code research about exactly what needed to be done up there  
14 in the firewalls to fix them?

15 A No, I wouldn't agree to that. I know we looked  
16 into the type of sheetrock that needed to be, the thickness  
17 of the sheetrock that needed to be put up to achieve that.

18 Q Did you get direction from anybody, from  
19 Mr. Kinney or MALP about how you're to do the repairs?

20 A No, I did not.

21 Q So you checked on the type of sheetrock, you went  
22 ahead and did the repairs. As far as you can recall there  
23 was nobody from the owner's standpoint who was checking on  
24 what you were doing with regard to this life safety system  
25 in doing the repairs?



1           A     Besides somebody inspecting making sure the work  
2     was done. Everything we did, they had somebody out there  
3     always making sure the work was complete.

4           Q     So as between you and doing your work and checking  
5     on the type of sheetrock work, together with the owner and  
6     them checking behind you, you were all satisfied together  
7     that the work was done correctly?

8           A     Yes.

9           MR. DAPORE: One second, Your Honor.

10          (pause)

11          Q     The only, if you know -- somebody else let me know  
12     but I'm assuming the person you're referring to that would  
13     check behind you was James Kinney or Mr. Kinney?

14          A     One of the two; correct.

15          Q     You mentioned something earlier which is a little  
16     bit new or a twist. You said early on in the project it was  
17     not just James Kinney but also Bruce Kinney that was out  
18     there checking on things or something?

19          A     At the beginning it was Bruce that checked on  
20     things. Later on James came into the picture.

21          Q     Did either of them represent to you they had any  
22     kind of construction background or expertise or anything?

23          A     The only thing that I knew about Mr. Kinney, that  
24     he has done several conversions.

25          MR. DAPORE: I don't believe we have anything

1           else, Your Honor.

2           THE COURT: All right.

3           MR. HESSE: No questions, Your Honor.

4           THE COURT: Okay. I don't think I have any  
5           questions either. You may step down.

6           A. Thank you.

7           MR. HESSE: Defense rests, Your Honor.

8           THE COURT: Very good. All right. Anything in  
9           reply? Any other matters to take up?

10          MR. DAPORE: I guess, Your Honor, at this point we  
11          would make a motion for directed verdict on the issue  
12          of -- I don't want to say liability but -- I know we're  
13          in the context of a contribution action. But a  
14          directed verdict on the issue of them sharing and being  
15          liable for some contribution toward a repayment to  
16          those two tortfeasors who paid three million dollars  
17          and then we took the assignment.

18          I believe the evidence indicates clearly that  
19          there was joint action. We've tried to demonstrate to  
20          the Court that they took directive both from MALP and  
21          MC Homes. While they didn't work on 100% of the units,  
22          they worked on what I think is 90% of the units.  
23          Again, I'm not in the damages part of this thing, but  
24          basically as far as -- and I realize the Court has to  
25          look -- read the last depositions and so forth. With

1 taking this under advisement, I guess, motion for  
2 directed verdict, we would make that; that there is  
3 sufficient evidence in the record that they should  
4 contribute under the contribution action.

5 THE COURT: All right. So your motion for  
6 directed verdict is as to the issue of liability and in  
7 that instance it would be the issue, really, of -- I  
8 think the statutory term is common liability; correct?

9 MR. DAPORE: Right.

10 THE COURT: All right. Let me hear from you on  
11 that, either Mr. Hesse or Mr. McQueeney?

12 MR. MCQUEENY: Your Honor, I think I'm actually  
13 going to address it.

14 Number one is that Mr. Dapore mentioned there is  
15 an issue of fact as what the common liability is. I  
16 think that's kind of why the parties are here today.

17 I'll address this because I would also make a  
18 directed verdict motion on the common liability. There  
19 is a case from the Court of Appeals, Vermeer Carolinas  
20 versus Wood/Chuck --

21 THE COURT: The Wood/Chuck Chipper case.

22 MR. MCQUEENY: That is correct. Wood/Chuck  
23 Chipper case. The settlement agreement of the common  
24 liability is usually determined by the settlement  
25 agreement when the claims all arise from a common

1 liability.

2 In this case we have a Third Party Complaint that  
3 alleges several causes of action only some of which are  
4 alleged against our parties which relate to the  
5 negligent repair or, I guess, repair or, I guess, they  
6 would argue failure to replace certain elements of the  
7 property on certain buildings of the property.

8 In the Carolina -- in the Vermeer Carolina versus  
9 Woodchipper case the Court recognized that there were  
10 multiple claims pending against multiple parties. The  
11 settlement agreement failed to allocate any amounts to  
12 specific claims. It just said we settle the case,  
13 here's the total amount of the settlement.

14 The Court of Appeals held, as a matter of law,  
15 that under the settlement agreement it's impossible to  
16 determine whether the tortfeasor seeking contribution  
17 is paid more than his prorated share of the common  
18 liability, because there is no allocation within the  
19 settlement agreement, so we don't know what the common  
20 liability is.

21 I think they would argue that they're entitled to  
22 the entire three million dollars, but the reality of  
23 the situation is there are multiple claims and even the  
24 negligent repair work we think there is an issue of  
25 fact as to what we did and did not do. But there's

1 multiple claims, and there is no allocation to the  
2 claims that we're specifically alleged to have  
3 contributed to negligently.

4 As a result there is no way to determine the  
5 common liability, because we have a settlement  
6 agreement that settles all claims. Under those  
7 circumstances there is no way to determine whether or  
8 not the Plaintiffs here, who were standing in the shoes  
9 of the other Defendants in the case, paid \$250,000  
10 towards the common liability, two million dollars  
11 towards it, three million dollars towards it or \$5  
12 towards it.

13 And under that the Vermeer Carolina case the Court  
14 of Appeals says if you can't determine from the  
15 settlement agreement what the allocation among the  
16 claims is, you can't determine whether they paid more  
17 than their prorated share; therefore, there is no right  
18 to contribution.

19 So, number one, I think it's an issue of fact, if  
20 you get into determining what portions of the negligent  
21 construction or the original construction versus the  
22 repair work we're liable for. It's an issue fact as to  
23 what the common liability is. But I think it's an  
24 issue of law the other way. There is no way to  
25 determine what the common liability is, because there

1 is just not any evidence showing how much of the three  
2 million dollars was paid towards our joint liability.  
3 There is no evidence in the record of that. There is  
4 just it was a three million dollar payment; multiple  
5 claims. We alleged they're jointly and severally  
6 liable for some of those claims, but there is no  
7 evidence that would permit anybody to determine how  
8 much of the three million dollars was paid towards our  
9 common liability.

10 So that's our basis of our directed verdict motion  
11 as well as a reason to deny their directed verdict  
12 motion.

13 THE COURT: I'll ask this of both of you. How do  
14 you decide or determine what is, quote, common  
15 liability?

16 MR. MCQUEENY: If the damages -- the statute says  
17 the same injury. So if the parties contribute as  
18 independent -- or independently contribute to one  
19 damage then there's -- then it's a common liability.

20 The problem in this case is determining what of  
21 the vast array of damages alleged against the  
22 Defendants, who aren't in the courtroom, what  
23 percentage of that was paid towards just getting rid of  
24 their individual liability for other claims, failure to  
25 disclose under the conversion act, breaches of

1       fiduciary duty and those types of claims versus how  
2       much was paid towards the negligent or defective repair  
3       work or the failure to discover the repair work,  
4       depending on how you look at it. Obviously, Your Honor  
5       is held to a duty. So there is no way to figure out  
6       how much the three million dollars is allocated and,  
7       therefore, there is no way to tell whether they paid  
8       more than their prorated share.

9       They've talked about the \$12 million Carlson  
10      estimate. If that's the common liability, and I really  
11      don't think it is, then they've paid three million of  
12      it, and they argue there are three groups, so they  
13      haven't paid more -- they are two of the groups, so  
14      they haven't paid more of their prorated share of that;  
15      only three million. But I think it's determined by the  
16      settlement agreement, and here the settlement agreement  
17      doesn't allocate claims and no testimony has been --  
18      there's been no testimony from Mr. Laddaga or otherwise  
19      that we paid a million dollars to settle these types of  
20      claims but paid 2 million to settle these or anything  
21      to that effect.

22      So I think we're entitled to directed verdict and  
23      certainly their directed verdict should be denied on  
24      that basis.

25      THE COURT: All right. Mr. Dapore, let me hear

1 from you on that.

2 MR. DAPORE: Your Honor, I would need to go back  
3 and take a look at the Vermeer case. I don't think it  
4 says that. I think in this case the important thing is  
5 the causes of action that existed at the time the case  
6 was settled. Those causes of action had common causes  
7 of action. We could have elected to basically take the  
8 entire amount, had we gone and gotten a big verdict for  
9 the second cause of action and the ninth cause of  
10 action. Those were both causes of action. The second  
11 was against the MALP and MC Homes group for negligent  
12 construction, and the ninth cause of action was against  
13 Church Creek for negligent construction. So they were  
14 both tort theories. We're talking about a contribution  
15 among tortfeasors, under UCAT and -- we believe that  
16 since the two entities stepped up and extinguished the  
17 liability for themselves and also for Church Creek,  
18 when those second and ninth causes of action still  
19 existed we believe that's sufficient for them to pay  
20 some fair share where we could have elected, had we  
21 gotten a verdict, to proceed under those two causes of  
22 action. So they would have been responsible for -- we  
23 could have elected to dismiss other causes of action,  
24 proceed under those for probably insurance purposes and  
25 collected the judgment based on negligent work,



1. negligent construction.

2. They haven't paid anything. So they've offered no  
3. money and they've basically -- actually a small offer  
4. but there have been no real meaningful offers for them  
5. to pay some money for the negligent construction we  
6. feel we've shown the Court.

7. That's certainly not equitable. The way I read  
8. the law, under the old law pre-July of '05, they are --  
9. if they are 1% responsible -- unfortunately, it has  
10. changed now so that there is an allocation done if  
11. there is work completed after July '05. Pre-July of  
12. '05 if they are in the mix at all they are in the mix  
13. pro-rata.

14. The way I look at it they would be in the mix  
15. pro-rata for three million dollars at least, and they  
16. would be in the mix for one third of that, because they  
17. basically did negligent construction on these buildings  
18. and helped the -- enabled the developer to go ahead and  
19. sell them.

20. If the Court wants, we can certainly do any kind of  
21. briefing on the Vermeer case. My hunch is -- I thought  
22. it was an indemnity case as opposed to a contribution  
23. case. I'm not sure it quite said that.

24. THE COURT: That's how it's always been cited to  
25. me. I looked at it this morning before we got started.

1       What happened in that case -- you've got a distinction  
2       here. Because in that particular case they took a  
3       non-suit against the Defendant, Wood/Chuck Chipper  
4       Company, if I remember, against -- excuse me. Against  
5       Vermeer, whoever it was, took a non-suit. So all of a  
6       sudden there was no liability as a result of that.  
7       Here you've got something totally different. You've  
8       got -- you don't have a non-suit. You've got  
9       settlement of claims and assignment of rights. I think  
10      legally we're in a different position here.

11       There was another case we looked at this morning.  
12      Which one was that? It was different again. So, yes,  
13      the GNP Trucking case. In that case there had been  
14      extinguishment of the debt.

15           MR. DAPORE: They didn't extinguish the liability.

16           THE COURT: I think this is a little different. I  
17      hear what you're saying.

18           Here's what I'm wrestling with. I'm not going to  
19      rule on this today. I'll take it under advisement. I  
20      probably just want proposed orders, but I need this to  
21      be addressed. Here's where my focus needs to be.  
22      You-all made both good legal arguments as to the  
23      directed verdict. You want to submit orders on that  
24      basis alone. I certainly would be glad to hear from you  
25      on that.

1 I'm looking further than that as well. That would  
2 be dispositive, and the case would go away if the  
3 Defendant prevails here. We know that. I'm looking  
4 further down the road. How do I then determine --  
5 assuming we get past that point -- how do I quantify  
6 the damages? Because the strength, I think, of  
7 Mr. McQueeney's argument is we don't have any way of  
8 doing that based on the settlement. That's the  
9 strength of his argument. Clearly at the time of the  
10 settlement there were negligence causes of action  
11 prevailing against both the assignor Defendants, now  
12 Plaintiffs, and the Defendant CCC. Okay? That exists.  
13 That's still here today. That's where I see a  
14 distinction between the Wood/Chuck chipper case and the  
15 GNP case, the Parts Auto case. I see that distinction  
16 pretty clearly. But I don't know how much of the  
17 damages are attributable -- not clear even after  
18 testimony how much of the damages are attributable to  
19 negligent, quote, negligent repairs. That's what I'm  
20 searching for.

21 MR. DAPORE: Can I address that for a second?

22 THE COURT: Sure. Because ultimately you get into  
23 the question of you're able to recover to the extent  
24 that it's -- what was the term they used? Some -- the  
25 reasonableness. Excess -- in excess of what was

1 reasonable. Okay?

2 MR. DAPORE: The hardest thing -- I looked at this  
3 thing for a long time -- get your arms around is what  
4 is the common liability. What number is the common  
5 liability? I've tried to analyze it as either three  
6 million or three million 525. I don't think it's  
7 12 million but it -- if we had gone to trial --

8 THE COURT: Could have been.

9 MR. DAPORE: But I'm not so sure that's the common  
10 liability as referred to in the statute. That's where  
11 I would like a chance to maybe brief that a little bit  
12 more in detail with the Court.

13 THE COURT: It may be that you want to brief it in  
14 lieu of proposed orders. I don't know how you-all want  
15 to do that. You tell me. Therein lies another  
16 distinction, and that other distinction is we talked  
17 about joint liability. This is something different  
18 from joint liability. You've got joint and several  
19 liability. I think this is sort of several liability  
20 but with commonality of purpose or commonality of  
21 damages. That's the, quote, common liability. I don't  
22 know where -- first contribution case I've ever heard.  
23 I think I heard about it in the law school. It would  
24 take Ed Buckley to bring an issue like this to my  
25 courtroom.

1 MR. DAPORE: He did, Your Honor.

2 MR. BUCKLEY: It's my fault.

3 THE COURT: Make me go to work like this. All  
4 right. That having been said, my typical rule of thumb  
5 is to give you-all 30 days to get me proposed orders.  
6 I'm happy to hear or get you to provide me proposed  
7 orders on the directed verdict issue ahead of time so I  
8 can solidify my thoughts about that. I would like to  
9 do that sooner than that. I think the harder case here  
10 is the damages and how to quantify those damages. They  
11 may well be zero. They may be zero because of directed  
12 verdict. They may still be zero from the Defendant's  
13 standpoint because no one's paid in excess of what's  
14 reasonable. You with me? I understand that argument  
15 as well. They may be as much as -- I think we talked  
16 about that this morning -- would be 650 under the  
17 higher scenario divided by the third percent. I think  
18 we're in the same ballpark.

19 When I staffed my law clerks yesterday I wasn't  
20 sure if it was zero to three or three to twelve. I'm  
21 not sure where we were. I think we're in the same  
22 ballpark. When you-all both came up this morning in  
23 your opening statements and said the issue here is what  
24 is the common liability. We at least agree on what the  
25 issue is. Okay? That's a lot better than some cases I

1 try. Okay? At least we got the same issues. How to  
2 get to that point is what I need to work on. Okay.

3 MR. D'APORE: We'll be glad to do two orders.  
4 Obviously, rather prefer one order but we'll do two. I  
5 would ask the Court if I could get 30 days even on the  
6 first order, because I've got vacation plans and  
7 probably some other things.

8 THE COURT: Why don't you all just wrap it up in  
9 one and do it in 30 days? I can always -- what I like  
10 you to do is email, because I may bifurcate it out  
11 myself. If I get an email in Word I can start  
12 manipulating what I want to do. I more than likely  
13 will do that.

14 MR. MCQUEENY: Because there are factual issues it  
15 may be better to do something like briefs within 30  
16 days, because if Your Honor denies both directed  
17 verdicts there is a lot of the percentages that both of  
18 us can argue about and maybe some issues we want to  
19 raise that -- for the Court to consider. If the Court  
20 did award contribution, obviously the Court would want  
21 to direct how that order would be prepared, because  
22 that would be a more complicated order than just a  
23 one-sided order on their side or our side. In which  
24 case the Court could direct whoever the prevailing  
25 party is to prepare the proposed order.

1 THE COURT: Why don't you-all submit to me your  
2 proposed order that you want me to sign? So for  
3 you-all it will be a directed verdict and why it is.  
4 You-all can overcome that and say this is how we're  
5 going to quantify the damage. Again, I can work and I  
6 can manipulate it as to what I need it to look like.

7 I want to stop here right and tell you-all that  
8 you-all have just done an exceptional job. This is a  
9 lot of material. I didn't think -- since we started  
10 late and we're finishing early I'm really impressed by  
11 that. That just shows how much you've worked on this  
12 case.

13 Mr. Molony, I think you should be certainly  
14 pleased with your counsel to get to this point. This  
15 is quick and easy and down and dirty. It's a tough job  
16 and they've done an excellent job here. You-all stand  
17 in the shoes of your-all's clients, but I see your  
18 paralegals have worked very, very hard to get to this  
19 point. Somebody actually knows where all the documents  
20 are. Pretty amazing. I know you've been living with  
21 this case about five years. The best thing I can do is  
22 probably bring it to an end.

23 Again, I want to thank you for your-all's hard  
24 work. I appreciate your patience and your  
25 professionalism. Thank you very much.

1 MR. HESSE: Thank you.

2 MR. DAPORE: Thank you, Your Honor.

3 THE COURT: You-all keep the exhibits. That will  
4 save her a whole lot of trouble. Especially all those  
5 big ones.

6 MR. DAPORE: We'll keep them safe.

7 (Hearing concluded.)

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STATE OF SOUTH CAROLINA )

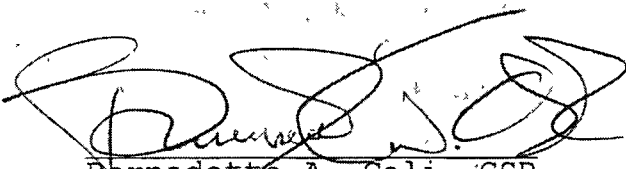
C E R T I F I C A T E

COUNTY OF CHARLESTON )

I, Bernadette A. Cali, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of the said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this August 13, 2013.



Bernadette A. Cali, CSR  
Notary Public  
My Commission Expires  
April 5, 2020

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| Santee [1] 91/13                             | September [3] 9/9 31/18 49/2                  | 78/11 79/3 79/4 79/5 80/3 80/21 82/13 82/13  |
| satisfied [1] 144/8                          | sequence [2] 25/7 25/7                        | 82/15 82/18 82/25 83/1 83/2 101/5 102/6      |
| saturated [2] 71/14 123/8                    | served [1] 86/6                               | 104/1 104/5 104/7 104/9 105/21 106/4 106/5   |
| save [4] 40/14 40/23 125/16 159/6            | service [2] 65/14 119/7                       | 106/14 106/14 106/14 106/15 107/2 107/4      |
| savvy [2] 7/4 11/16                          | services [1] 103/18                           | 107/18 110/16 113/4 113/5 113/8 113/13       |
| saw [8] 32/11 46/9 55/20 74/22 96/6 121/3    | serving [1] 85/17                             | 114/8 114/24 115/23 116/4 116/6 122/23       |
| 132/17 132/25                                | set [6] 16/20 18/22 18/22 18/23 37/7 108/16   | 123/6 123/7 123/11 139/7                     |
| say [33] 10/12 14/22 49/19 54/4 73/13 75/8   | set-off [2] 16/20 37/7                        | sign [2] 74/23 158/4                         |
| 88/18 93/12 94/12 94/13 95/6 99/19 99/23     | setting [1] 29/8                              | signed [2] 28/16 37/24                       |
| 99/23 100/11 102/4 105/8 105/9 110/9 113/16  | settle [6] 15/14 17/13 35/21 147/14 150/21    | significant [1] 116/25                       |
| 113/20 118/14 118/25 119/6 120/19 124/8      | 150/22                                        | similar [7] 81/14 87/8 105/9 106/18 107/5    |
| 131/8 139/1 139/6 139/14 139/15 145/14       | settled [7] 15/8 15/12 35/9 37/21 37/22 40/19 | 109/19 116/15                                |
| 158/6                                        | 151/8                                         | simply [4] 34/20 40/14 77/7 93/23            |
| saying [8] 17/13 31/24 104/14 108/2 121/7    | settlement [26] 14/25 15/2 16/17 17/17 35/10  | since [12] 28/1 40/22 47/4 51/10 54/3 69/23  |
| 125/21 126/16 153/19                         | 35/13 35/19 35/23 35/24 37/19 37/23 101/6     | 95/12 101/5 110/4 125/1 151/18 158/11        |
| says [16] 11/25 18/23 25/25 43/13 44/1 49/13 | 103/16 146/25 147/1 147/13 147/15 147/17      | single [2] 8/4 74/14                         |
| 75/19 80/18 87/16 101/8 117/17 123/4 124/1   | 147/21 148/7 148/17 150/18 150/18 153/11      | sir [72] 6/25 27/8 37/4 37/8 39/4 45/4 45/7  |
| 148/16 149/18 151/6                          | 154/10 154/12                                 | 45/15 45/22 46/7 46/11 49/24 50/18 55/7 55/8 |
| Scarborough [1] 1/9                          | settles [1] 148/8                             | 55/21 56/4 56/5 59/7 59/10 59/24 60/8 60/13  |
| scenario [1] 156/19                          | settling [1] 35/25                            | 61/2 61/6 61/23 65/1 65/7 67/3 67/10 68/10   |
| scene [1] 131/10                             | seven [3] 53/25 60/4 135/19                   | 68/15 69/22 70/1 74/8 74/18 79/23 80/16      |
| scheduled [3] 6/2 6/3 102/14                 | Seventy [1] 48/21                             | 80/25 81/5 84/10 85/7 86/9 86/11 89/6 89/17  |
|                                              | several [10] 8/21 30/19 68/19 75/9 95/9       | 98/21 100/20 100/25 101/3 101/9 101/11       |
|                                              | 104/21 145/1 147/5 155/20 155/21              | 101/15 101/18 103/1 103/6 111/9 113/12       |
|                                              | severally [1] 149/7                           | 118/1 120/3 120/8 122/11 124/2 125/25 129/2  |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                           |                                                                                                                                                                                                            |
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| <b>S</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                           |                                                                                                                                                                                                            |
| sir... [7] 130/24 131/9 136/7 139/22 140/19 141/6 141/25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | sooner [1] 156/11                                                                                         | 89/9 107/17 115/16 127/3 128/21 136/24 142/20 151/20 154/15 156/14                                                                                                                                         |
| sit [2] 14/21 122/13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | sophisticated [1] 8/25                                                                                    | stipulation [3] 28/25 38/13 38/16                                                                                                                                                                          |
| site [11] 30/4 30/5 49/18 55/15 55/16 62/2 65/14 72/6 74/20 135/5 135/9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | sorry [7] 43/22 48/10 63/12 75/25 76/4 78/5 100/5                                                         | stock [1] 7/17                                                                                                                                                                                             |
| Sitting [2] 105/17 112/16                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | sort [3] 4/19 135/6 155/21                                                                                | stop [4] 6/7 48/3 137/22 158/9                                                                                                                                                                             |
| situation [3] 93/24 102/15 147/25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | sound [3] 100/9 107/25 136/6                                                                              | stopped [1] 78/14                                                                                                                                                                                          |
| six [8] 15/11 53/25 108/5 108/7 110/16 123/25 124/1 137/14                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | sounds [3] 6/10 111/10 132/4                                                                              | stopping [1] 84/1                                                                                                                                                                                          |
| sketch [1] 93/12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | source [1] 77/8                                                                                           | storage [6] 23/12 47/15 54/1 122/22 133/2 133/4                                                                                                                                                            |
| slab [1] 61/10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | SOUTH [17] 1/1 1/11 7/7 7/9 21/4 58/15 59/6 60/23 62/20 62/22 63/19 63/22 91/8 128/13 128/20 129/11 160/3 | stories [1] 112/7                                                                                                                                                                                          |
| slightly [1] 117/6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | space [5] 20/6 45/23 87/20 89/7 133/16                                                                    | storm [4] 23/14 23/16 39/20 133/9                                                                                                                                                                          |
| slope [2] 88/4 88/5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | spaces [3] 41/18 42/3 60/20                                                                               | story [3] 91/19 97/7 97/12                                                                                                                                                                                 |
| slopes [1] 88/6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | speak [6] 20/23 91/3 99/16 99/21 108/19 123/19                                                            | straight [1] 15/2                                                                                                                                                                                          |
| small [2] 70/14 152/5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | speaks [5] 51/19 51/22 99/4 104/13 131/24                                                                 | street [3] 1/11 54/8 54/10                                                                                                                                                                                 |
| smaller [1] 6/22                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | special [1] 127/9                                                                                         | streets [1] 50/5                                                                                                                                                                                           |
| smoother [1] 82/17                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | specific [6] 59/1 66/20 72/10 83/21 107/6 147/14                                                          | strength [2] 154/8 154/11                                                                                                                                                                                  |
| so [140] 4/18 5/1 5/5 5/19 6/6 8/25 9/9 9/10 10/2 10/22 10/23 11/22 12/11 12/13 12/21 14/15 14/20 16/5 16/13 16/23 17/12 18/11 18/23 25/2 25/13 26/9 26/22 28/12 28/18 29/13 29/21 31/7 34/9 35/2 35/16 35/25 39/22 40/7 40/20 40/21 41/3 41/10 45/12 47/5 51/5 54/8 55/4 56/11 57/1 57/13 58/5 59/16 67/23 68/13 70/12 70/22 71/7 71/19 74/10 75/3 77/4 77/24 78/1 78/16 78/19 79/9 79/16 80/4 82/9 82/22 84/25 85/12 85/23 86/2 87/20 88/5 88/9 91/23 92/9 93/22 95/9 95/14 99/3 99/5 99/22 105/1 105/12 105/15 106/11 107/3 107/7 108/13 109/1 110/3 110/18 111/21 112/3 113/17 113/25 114/20 114/25 115/23 115/25 118/6 119/4 119/6 119/13 120/19 121/18 124/22 125/25 125/25 127/10 127/11 134/5 134/22 136/21 139/8 142/17 143/23 144/6 146/2 146/7 147/21 148/21 149/12 149/19 150/7 150/14 150/15 150/24 151/15 151/24 152/4 152/12 153/7 153/14 155/11 156/9 158/4 | specifically [12] 16/6 16/8 51/9 67/16 72/7 72/22 88/1 106/4 112/13 112/20 113/20 148/4                   | strip [1] 86/19                                                                                                                                                                                            |
| soft [1] 63/11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | specifications [1] 82/5                                                                                   | strips [2] 86/17 86/18                                                                                                                                                                                     |
| sold [9] 12/6 12/9 12/10 12/10 12/18 22/3 24/4 33/16 67/22                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | specs [1] 62/5                                                                                            | structural [11] 34/3 44/19 52/13 71/17 91/15 109/7 110/5 114/3 114/5 114/16 135/2                                                                                                                          |
| sole [1] 117/18                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | speed [2] 110/11 133/22                                                                                   | structure [2] 97/12 102/21                                                                                                                                                                                 |
| solidify [1] 156/10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | spell [1] 127/23                                                                                          | structures [1] 134/20                                                                                                                                                                                      |
| some [101] 4/20 5/8 5/18 5/19 7/18 8/7 9/12 11/13 12/15 14/5 16/2 19/13 23/2 23/12 23/16 23/25 24/1 24/24 25/17 26/5 27/6 27/9 31/21 33/19 34/2 34/2 37/13 41/6 41/17 42/2 47/14 48/13 48/25 51/16 52/20 57/8 57/9 58/18 60/6 60/15 67/12 68/17 68/22 69/20 72/20 73/5 73/17 76/14 77/10 77/17 79/17 83/8 83/11 85/13 85/15 93/8 96/25 98/1 110/11 111/10 112/3 112/4 113/6 113/6 113/17 114/18 115/6 117/20 121/22 124/3 124/20 125/1 125/16 125/16 125/22 126/20 127/22 130/9 132/13 132/22 133/2 133/10 133/11 133/12 133/13 133/19 133/21 136/3 136/13 136/18 136/25 142/16 145/17 147/5 149/8 151/22 152/7 155/1 157/2 157/9 157/20                                                                                                                                                                                                                                    | spend [3] 12/1 40/17 66/5                                                                                 | stuff [9] 19/13 23/3 50/5 57/7 57/23 57/25 126/21 126/22 126/23                                                                                                                                            |
| somebody [17] 6/5 8/10 8/15 25/8 25/9 42/6 64/15 93/13 121/2 137/21 140/1 141/14 142/25 144/3 144/4 144/13 158/21                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | spending [1] 121/7                                                                                        | sub [2] 12/20 12/23                                                                                                                                                                                        |
| somehow [1] 99/20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | spent [9] 33/1 40/21 88/17 88/22 88/23 101/7 121/9 121/11 135/6                                           | sub-defendants [1] 12/23                                                                                                                                                                                   |
| someone [3] 5/23 91/20 124/12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | spoken [1] 63/11                                                                                          | subbed [2] 42/6 89/4                                                                                                                                                                                       |
| something [12] 11/13 17/8 19/4 70/4 89/5 89/22 97/7 144/17 144/20 153/9 155/19 157/17                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | sport [1] 129/6                                                                                           | subcontracted [1] 134/1                                                                                                                                                                                    |
| sometime [1] 74/20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | spot [2] 91/1 124/20                                                                                      | subcontractor [8] 13/23 26/17 26/20 26/21 141/17 141/19 142/3 142/7                                                                                                                                        |
| sometimes [2] 13/9 56/22                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | spots [2] 26/5 32/8                                                                                       | subcontractors [7] 80/19 130/25 131/6 137/19 141/12 141/14 141/16                                                                                                                                          |
| somewhat [2] 10/9 94/7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | spouts [1] 102/9                                                                                          | subject [8] 50/20 53/3 53/5 55/12 106/16 106/17 107/8 107/13                                                                                                                                               |
| somewhere [4] 6/6 31/4 50/16 116/1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | spread [2] 85/24 86/1                                                                                     | subjects [1] 115/1                                                                                                                                                                                         |
| son [3] 32/16 94/10 135/9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | spreading [1] 97/23                                                                                       | submit [3] 57/2 153/25 158/3                                                                                                                                                                               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | spring [1] 28/16                                                                                          | submitted [1] 38/12                                                                                                                                                                                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | square [2] 88/4 88/7                                                                                      | subs [1] 26/23                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | staffed [1] 156/21                                                                                        | subscribed [1] 160/16                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | stain [1] 123/10                                                                                          | subsequent [1] 15/20                                                                                                                                                                                       |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | stains [1] 81/23                                                                                          | substantial [3] 52/12 53/13 75/6                                                                                                                                                                           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | stamp [3] 73/23 75/2 78/7                                                                                 | substantially [2] 40/3 136/19                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | stand [8] 27/12 58/8 70/24 80/12 110/9 115/9 131/4 158/18                                                 | such [6] 60/25 62/17 63/16 89/16 103/19 116/8                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | standard [3] 61/24 103/19 119/1                                                                           | sudden [1] 153/8                                                                                                                                                                                           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | standards [2] 95/3 95/5                                                                                   | sued [7] 14/8 14/10 14/12 14/15 26/18 26/19 141/4                                                                                                                                                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | standing [1] 148/10                                                                                       | sufficient [4] 75/12 87/3 146/5 151/21                                                                                                                                                                     |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | standpoint [3] 89/14 143/25 156/15                                                                        | suit [10] 20/7 29/2 29/3 29/4 29/4 30/3 53/6 153/5 153/7 153/10                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | stands [1] 91/19                                                                                          | summary [5] 65/17 68/25 108/11 131/25 137/3                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | start [10] 5/13 6/11 27/9 29/3 61/9 70/25 71/7 77/18 81/9 157/13                                          | sup [1] 91/8                                                                                                                                                                                               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | started [12] 5/22 12/15 25/3 30/4 30/8 34/11 54/3 120/25 124/25 134/12 153/2 158/11                       | supervised [1] 13/25                                                                                                                                                                                       |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | state [8] 1/1 29/7 58/23 60/24 90/24 91/11 103/11 160/3                                                   | supervising [1] 13/16                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | stated [1] 160/11                                                                                         | supervision [1] 93/16                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | statement [5] 43/13 44/10 100/10 138/18 140/5                                                             | supervisor [1] 138/20                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | statements [1] 156/25                                                                                     | supervisor-type [1] 138/20                                                                                                                                                                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | states [4] 7/16 58/25 58/25 101/5                                                                         | support [1] 126/11                                                                                                                                                                                         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | stating [2] 130/4 134/19                                                                                  | Supreme [1] 91/9                                                                                                                                                                                           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | status [2] 44/4 127/8                                                                                     | sure [31] 16/9 19/8 25/7 27/5 48/6 56/20 61/25 63/8 71/21 71/24 95/25 108/15 109/5 111/2 114/10 116/13 120/18 121/13 132/6 135/8 137/2 137/15 142/15 142/21 144/3 144/5 152/25 154/24 155/11 156/22 156/23 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | statute [8] 4/23 16/25 18/23 21/10 21/11 127/8 149/18 155/12                                              | Surely [1] 119/23                                                                                                                                                                                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | statutory [1] 146/10                                                                                      | surface [2] 54/15 78/6                                                                                                                                                                                     |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | step [6] 56/3 74/21 78/18 123/9 125/9 145/7                                                               |                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | stepped [1] 151/18                                                                                        |                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Steve [1] 100/13                                                                                          |                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Steven [4] 100/18 101/1 101/21 103/23                                                                     |                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | stick [1] 125/10                                                                                          |                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | sticker [2] 76/1 81/12                                                                                    |                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | still [16] 17/17 19/3 58/5 77/11 80/17 81/20                                                              |                                                                                                                                                                                                            |

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140/23 155/1</p> <p>useful [4] 29/23 34/21 65/14 118/24</p> <p>uses [1] 8/13</p> <p>using [2] 29/9 140/3</p> <p>usually [3] 57/7 113/2 147/1</p> <p><b>V</b></p> <p>vacation [1] 157/8</p> <p>value [2] 66/5 66/19</p> <p>various [3] 38/10 38/24 50/2</p> <p>varying [1] 95/13</p> <p>vast [1] 149/23</p> <p>veneer [2] 60/15 61/18</p> <p>vent [1] 133/13</p> <p>vents [2] 23/17 25/9</p> <p>venture [2] 32/22 32/23</p> <p>verbatim [1] 89/20</p> <p>verdict [16] 18/18 145/13 145/16 146/4 146/8 146/20 149/12 149/13 150/24 150/25 151/10 151/23 153/25 156/9 156/14 158/5</p> <p>verdicts [1] 157/19</p> <p>Vermeer [6] 146/21 147/10 148/15 151/5 152/23 153/7</p> <p>version [4] 6/22 62/1 66/22 104/22</p> <p>versus [7] 4/6 39/7 91/9 146/22 147/10 148/23 150/3</p> <p>vertical [6] 61/12 74/21 84/23 85/4 85/14 86/15</p> <p>very [31] 6/14 8/12 8/25 11/16 16/24 19/12 24/24 48/17 63/5 65/21 71/22 71/22 74/25 103/15 106/18 107/5 107/6 112/13 116/3 119/15 123/14 125/9 127/17 130/4 131/17 133/11 133/11 145/10 158/20 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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>W</b>                                                                                                                                                                                                                                                                                                      | 78/13 81/16 82/13 90/17 112/22 114/22 120/9 156/15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 40/3 40/5 40/9 40/15 47/10 47/10 60/18 73/2 104/24 105/3 115/3 115/5 115/8 115/9 115/20 118/9                                                                                                                              |
| wall [50] 59/4 60/14 60/18 61/12 68/1 71/8 71/10 71/19 72/4 72/10 72/12 72/14 72/15 72/22 72/23 72/25 72/25 76/6 76/22 77/2 78/19 79/8 79/11 79/13 81/15 81/15 81/19 81/21 82/1 82/2 82/16 84/23 84/25 85/4 85/14 85/23 85/23 86/15 88/7 97/9 102/9 105/9 109/9 112/23 113/3 113/20 113/21 113/22 114/1 116/8 | whatever [11] 19/25 39/25 46/13 56/2 56/8 57/3 64/20 66/3 79/19 130/1 134/17                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Winston [1] 43/15                                                                                                                                                                                                          |
| walls [10] 60/18 61/17 71/16 80/20 84/1 84/3 95/8 113/7 126/22 126/23                                                                                                                                                                                                                                         | wheeler [1] 7/19                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | wise [1] 5/22                                                                                                                                                                                                              |
| want [43] 4/13 5/2 5/5 6/19 12/4 16/2 19/9 23/14 27/9 54/4 56/2 56/8 56/9 56/17 57/3 57/22 70/24 90/24 92/1 94/12 100/23 103/6 103/7 103/8 108/19 112/12 120/7 121/12 125/10 125/21 134/16 137/9 145/14 153/22 153/25 155/15 155/16 157/14 157/20 157/22 158/4 158/9 158/25                                   | when [72] 5/13 7/22 12/13 13/3 17/16 22/4 28/9 28/15 29/2 29/6 29/16 29/18 29/19 30/7 30/25 35/5 39/17 47/18 53/4 53/6 54/4 59/25 61/13 61/20 62/1 62/4 62/23 63/23 71/11 72/5 73/13 75/8 77/6 78/20 79/1 79/16 81/25 82/2 83/24 84/1 84/17 85/12 92/4 92/5 92/8 92/25 93/11 100/11 105/10 105/23 106/24 108/1 109/22 109/24 113/3 113/25 116/11 120/18 120/25 122/2 124/17 126/20 131/10 132/11 132/16 134/24 135/14 135/25 147/2 151/20 156/21 156/24                                                                                                                                                                   | witch [2] 100/7 100/11                                                                                                                                                                                                     |
| wanted [3] 39/19 135/7 135/8                                                                                                                                                                                                                                                                                  | whenever [2] 10/23 67/21                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | within [12] 12/20 58/20 85/22 92/11 95/25 110/16 113/22 114/19 147/20 157/17 160/8 160/10                                                                                                                                  |
| wants [4] 14/22 38/9 99/16 152/22                                                                                                                                                                                                                                                                             | where [66] 4/20 6/7 8/3 9/2 11/25 19/23 26/5 26/11 58/19 60/11 60/19 65/17 67/11 69/1 69/7 72/19 73/3 73/6 73/10 75/11 77/12 77/13 78/9 78/11 78/13 79/17 80/18 81/11 81/12 81/15 81/24 82/6 82/20 82/23 85/13 96/6 96/24 96/25 97/1 102/17 106/4 108/7 109/14 109/18 110/6 119/4 121/20 121/25 122/5 122/9 122/13 128/12 128/16 137/20 140/18 143/2 143/4 143/5 143/11 151/22 153/23 154/15 155/12 155/24 156/23 158/21                                                                                                                                                                                                  | without [5] 50/1 66/23 93/25 98/10 116/16                                                                                                                                                                                  |
| Warning [1] 35/15                                                                                                                                                                                                                                                                                             | whereas [1] 104/7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | witness [6] 56/11 57/20 58/6 62/11 90/2 160/15                                                                                                                                                                             |
| warn [1] 126/16                                                                                                                                                                                                                                                                                               | WHEREOF [1] 160/15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | witness' [1] 130/7                                                                                                                                                                                                         |
| warranties [1] 21/3                                                                                                                                                                                                                                                                                           | Whereupon [2] 27/13 48/24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | won't [4] 9/1 15/15 71/1 74/25                                                                                                                                                                                             |
| was [375]                                                                                                                                                                                                                                                                                                     | whether [21] 9/4 20/12 41/15 46/8 51/9 51/18 52/11 52/19 53/3 64/9 67/13 87/3 91/24 92/25 124/5 125/19 127/2 147/18 148/9 148/18 150/9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | wood [10] 31/15 61/12 61/15 74/12 97/7 146/22 146/23 146/24 153/5 154/16                                                                                                                                                   |
| wasn't [8] 7/20 8/17 15/2 63/8 77/4 85/13 130/22 156/21                                                                                                                                                                                                                                                       | which [102] 7/4 7/11 8/22 8/22 9/1 9/15 10/6 11/6 11/9 12/17 13/5 13/12 14/9 14/13 15/17 16/2 16/12 16/22 18/5 18/12 18/24 19/8 22/1 22/21 23/1 23/22 24/8 28/13 29/10 31/4 32/15 33/18 36/3 36/25 39/15 39/20 44/3 44/12 45/1 45/19 47/23 47/23 49/2 49/16 50/20 51/7 51/8 52/20 53/9 57/17 63/2 64/2 67/2 67/23 70/16 75/2 75/5 75/13 75/23 78/6 78/18 80/15 83/24 84/3 84/3 84/5 86/21 88/2 89/20 89/22 90/15 93/15 94/5 95/7 96/23 99/9 100/15 102/25 103/23 104/2 104/5 110/15 111/6 111/8 112/17 115/20 118/19 121/16 124/25 125/15 126/17 131/2 137/11 140/6 140/6 140/22 143/11 144/17 147/5 147/16 153/14 157/25 | Wood/Chuck [5] 146/22 146/23 146/24 153/5 154/16                                                                                                                                                                           |
| waste [1] 51/15                                                                                                                                                                                                                                                                                               | whichever [1] 9/24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Woodchipper [1] 147/11                                                                                                                                                                                                     |
| watching [2] 13/17 93/25                                                                                                                                                                                                                                                                                      | while [4] 18/24 93/18 100/8 145/23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Word [1] 157/13                                                                                                                                                                                                            |
| water [29] 41/10 53/9 53/11 54/1 54/5 54/8 54/12 54/15 54/16 60/19 62/16 63/15 71/19 72/13 73/3 75/13 76/23 77/3 77/11 78/17 81/23 82/20 98/1 110/3 116/5 116/8 116/17 116/20 123/10                                                                                                                          | who [34] 6/17 7/5 8/11 13/18 14/1 14/3 19/20 19/20 21/12 29/14 32/14 33/16 33/21 42/25 43/3 67/4 74/2 86/3 86/4 107/3 120/20 121/2 128/10 129/22 130/25 135/4 137/2 140/15 140/15 142/1 143/25 145/18 148/10 149/24                                                                                                                                                                                                                                                                                                                                                                                                       | words [4] 94/15 105/10 124/6 130/18                                                                                                                                                                                        |
| waterproofing [2] 59/3 105/20                                                                                                                                                                                                                                                                                 | whoever [2] 153/7 158/1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | work [170]                                                                                                                                                                                                                 |
| way [27] 16/22 18/21 19/7 19/10 41/5 41/6 44/15 46/15 52/9 56/8 70/24 73/16 78/22 100/2 107/6 120/17 136/25 137/1 148/6 148/9 149/1 149/1 150/7 150/9 152/9 152/16 154/9                                                                                                                                      | whole [6] 11/20 17/11 33/1 39/23 103/13 159/6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | work's [1] 116/21                                                                                                                                                                                                          |
| ways [2] 19/8 19/9                                                                                                                                                                                                                                                                                            | wholesale [3] 75/6 75/8 121/24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | worked [25] 8/25 20/4 23/20 23/22 33/25 54/21 55/2 55/6 61/3 72/20 99/7 99/20 113/16 118/14 123/21 123/23 124/18 124/23 125/5 132/8 137/21 140/20 145/24 158/13 158/20                                                     |
| we [225]                                                                                                                                                                                                                                                                                                      | whom [1] 116/21                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | working [7] 4/15 13/23 18/2 18/3 55/17 84/8 96/24                                                                                                                                                                          |
| we'll [25] 6/5 6/6 6/7 6/8 10/9 12/16 13/13 15/14 16/2 17/4 17/13 18/24 19/17 23/15 27/11 64/20 70/12 70/15 72/24 98/2 130/18 139/17 157/5 157/6 159/8                                                                                                                                                        | why [9] 16/4 57/23 72/12 77/18 85/19 146/18 157/10 158/3 158/5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | world [1] 96/25                                                                                                                                                                                                            |
| we're [27] 4/20 6/7 6/8 6/8 11/8 14/23 16/4 26/11 27/11 40/7 42/12 56/1 56/9 57/16 68/7 79/16 130/5 145/14 148/4 148/24 150/24 151/16 153/12 156/20 156/23 158/6 158/12                                                                                                                                       | wide [8] 39/19 86/17 86/18 88/2 109/22 109/24 114/10 114/13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | worse [2] 18/6 121/7                                                                                                                                                                                                       |
| we've [35] 4/4 4/20 4/21 5/3 15/4 17/5 21/10 28/25 31/8 32/20 34/10 43/10 44/12 51/5 51/13 54/2 54/14 54/23 56/6 57/17 57/21 63/13 68/18 89/18 98/17 103/2 107/23 108/16 111/12 114/23 129/18 134/15 137/4 145/21 152/8                                                                                       | width [3] 74/14 109/10 110/5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | worth [1] 140/8                                                                                                                                                                                                            |
| weather [7] 79/12 79/19 80/4 81/23 95/7 95/8 123/8                                                                                                                                                                                                                                                            | will [25] 6/20 13/13 14/22 17/5 22/6 26/3 27/7 31/8 40/10 49/25 50/1 72/25 74/13 74/14 78/24 86/22 102/13 116/19 122/7 126/9 130/21 143/8 157/15 158/5 159/5                                                                                                                                                                                                                                                                                                                                                                                                                                                              | would [211]                                                                                                                                                                                                                |
| weathered [1] 83/8                                                                                                                                                                                                                                                                                            | willing [1] 57/1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | wouldn't [9] 32/25 46/15 57/13 60/12 114/10 114/13 115/8 136/22 143/17                                                                                                                                                     |
| well [38] 15/16 23/13 26/3 27/2 28/24 31/8 36/4 36/24 41/17 47/5 49/15 54/10 54/11 55/16 66/12 72/13 76/22 80/20 82/12 84/22 95/16 101/25 103/14 106/19 106/20 111/1 113/15 121/6 127/25 131/2 133/18 140/25 141/4 141/18 149/13 154/3 156/13 156/17                                                          | wind [1] 102/10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | wrap [1] 157/10                                                                                                                                                                                                            |
| went [19] 19/20 41/9 58/19 60/1 69/9 69/23 70/7 72/5 84/17 109/23 110/17 122/25 124/4 126/20 129/4 130/2 135/25 140/1 143/23                                                                                                                                                                                  | window [4] 39/20 40/2 72/16 112/23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | wrestling [1] 153/20                                                                                                                                                                                                       |
| were [168]                                                                                                                                                                                                                                                                                                    | windows [21] 22/16 39/12 39/13 39/14 40/1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | write [1] 11/2                                                                                                                                                                                                             |
| weren't [4] 21/23 21/23 25/24 138/24                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | written [3] 44/10 97/8 104/19                                                                                                                                                                                              |
| West [1] 59/8                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | wrong [4] 10/14 10/15 23/3 30/24                                                                                                                                                                                           |
| what [228]                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | wrote [1] 43/3                                                                                                                                                                                                             |
| what's [20] 5/21 10/14 10/14 15/21 25/22 44/10 48/20 50/11 51/2 66/16 71/3 75/25                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>X</b>                                                                                                                                                                                                                   |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | X-90 [2] 74/4 75/23                                                                                                                                                                                                        |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Y</b>                                                                                                                                                                                                                   |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | year [4] 10/24 29/8 29/9 102/14                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | years [13] 8/7 10/22 12/9 51/5 53/12 53/24 53/24 103/21 103/21 128/15 129/3 135/19 158/23                                                                                                                                  |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | yellow [1] 81/24                                                                                                                                                                                                           |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | yes [189]                                                                                                                                                                                                                  |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | yesterday [1] 156/21                                                                                                                                                                                                       |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | yet [1] 77/14                                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | York [1] 7/17                                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | you [601]                                                                                                                                                                                                                  |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | you'll [8] 6/16 23/24 24/20 26/5 72/14 74/21 130/19 138/10                                                                                                                                                                 |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | you're [19] 10/13 41/5 47/3 53/14 63/11 70/23 71/24 82/7 100/13 103/7 113/4 113/4 113/5 113/25 115/22 143/21 144/14 153/19 154/25                                                                                          |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | you've [35] 11/22 11/23 16/5 16/16 16/18 21/9 21/9 21/10 31/10 34/24 35/2 39/22 52/11 56/10 57/20 73/17 81/5 88/5 88/6 89/9 93/22 95/14 95/15 98/19 103/3 126/23 142/1 142/3 153/3 153/9 153/9 153/10 155/20 158/13 158/22 |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | you-all [18] 4/13 4/18 5/2 5/19 27/9 137/21 153/24 155/16 156/7 156/24 157/10 158/3 158/5 158/6 158/9 158/10 158/18 159/5                                                                                                  |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Young [3] 1/15 4/10 124/13                                                                                                                                                                                                 |
|                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Young-Clement [1] 124/13                                                                                                                                                                                                   |





1 STATE OF SOUTH CAROLINA)  
2 : IN THE COURT OF COMMON PLEAS  
3 COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-3447  
4 MONTCLAIR PROPERTY )  
OWNERS ASSOCIATION, et )  
al, )  
5 Plaintiff(s), )  
6 -vs ) Hearing  
7 CHURCH CREEK )  
CONSTRUCTION, LLC, )  
8 Defendant(s), )  
9 -----)

10

11

12 Given before The Honorable Judge Mikell Scarborough in  
13 the Charleston County Courthouse, 100 Broad Street,  
14 Charleston, South Carolina on Thursday, April the 10, 2014,  
15 commencing at 10:30 o'clock a.m.

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## A-P-P-E-A-R-A-N-C-E-S

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INDEX TO EXHIBITS

(None were marked.)

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1           THE COURT: This is the Montclair Property Owner's  
2 Association versus Church Creek Construction, LLC case.  
3 Before the Court is the defendant Church Creek's Motion to  
4 Reconsider filed subsequent to this Court's order entered  
5 November 14, 2013, and the motion was timely filed. The  
6 Court's had a chance to review it as well as the plaintiff's  
7 memorandum in opposition to it.

8           Gentlemen, let me tell you, I found this to be a  
9 difficult case. But I asked this question at the outset  
10 because that's what I was doing back there. I think the  
11 issue for the Court is, is there a common liability. And  
12 two, if so, can it be allocated pro rata. That's sort of my  
13 starting point for the questions that we have today. I'm  
14 going to ask those questions. If you disagree with the  
15 questions I'll be glad to hear from you.

16           Who's arguing for the defendant today, Mr. McQueeney?

17           MR. McQUEENEY: Yes, Your Honor.

18           THE COURT: As I go back through this I think that  
19 was the one thing I kept arguing with in my own mind, how do  
20 we do this.

21           MR. McQUEENEY: And I guess the heart of my motion  
22 is not whether or not there's a common liability. It's how  
23 much of the settlement was allocated to the common liability  
24 versus the other causes of action that were not common  
25 liabilities as to my clients and the developers, including a

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1 breach of fiduciary duty claim alleging that the developers  
2 failed to adequately reserve funds for the common areas of  
3 the property. And the tort claims act says you're not  
4 entitled to contribution for breach of fiduciary duty  
5 claims.

6 But that cause of action was also pending against only  
7 the developers of the property, the prior owner, MALP,  
8 Montclair Associates Limited Partnership, Kremco (ph), which  
9 was the property manager for Montclair Associates Limited  
10 Partnership, and Montclair Homes, LLC, which purchased the  
11 property from MALP and converted it to condominiums.

12 There's case law which I cite in my briefs. It's  
13 concerning Dunes West residents, 349-SC-251 says the  
14 developer -- and it talks about other case law where there's  
15 condominiums, but the developer owes a fiduciary duty to  
16 both insure that the common areas are in good condition at  
17 the time that the property is conveyed to the new  
18 homeowner's association and if not, to reserve sufficient  
19 funds. My client can't be held liable in contribution for  
20 that claim because the contribution act that's 15-38-20(g)  
21 says that there's no contribution for breaches of fiduciary  
22 duty.

23 So the question to me is how much of the \$3 million was  
24 allocated towards the breach of fiduciary duty claim versus  
25 what is alleged to be the common liability, which is the

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1 construction defect claims. And there's nothing in the  
2 settlement breaks that up. And I've cited the Vemere (ph)  
3 vs. Woodchuck case. And there were really two releases.  
4 The Vemere, I think manufactured the wood chipper.  
5 Woodchuck was the retailer or sold it in a used condition to  
6 Mr. Causey. Mr. Causey lost his hand due to a defect in the  
7 wood chipper. And the settlement -- Causey dismissed  
8 Woodchuck with prejudice and then settled with Vemere after  
9 that happened.

10 The settlement agreement between Causey and Vemere  
11 released all claims. It was signed by Mr. Causey's wife for  
12 her potential loss of consortium claim. Vemere sued  
13 Woodchuck for contribution. And I believe summary judgment  
14 was granted for Woodchuck because as to Mr. Causey's, the  
15 settlement with Mr. Causey of his claims, there was no  
16 extinguishment of liability because he'd already been  
17 dismissed with prejudice before the settlement occurred.  
18 There was no dismissal with prejudice of any potential loss  
19 of consortium claim, so the Court addressed that.

20 And that's Section 3 of the opinion, or the legal  
21 analysis of the opinion it's III, Roman Numeral 3, talks  
22 about whether or not they're entitled to contribution for  
23 Mrs. Causey's claim for loss of consortium. And they really  
24 address two grounds. One is that there was no claim in the  
25 complaint or in the action that was released, so she hadn't

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1 brought suit. So there was no common liability.

2 But the second basis was that the release didn't  
3 allocate what portion of the payment, if any, went to, of  
4 Vemere's payment, if any, went to satisfy Mrs. Causey's loss  
5 of consortium claim as opposed to Mr. Causey's direct causes  
6 of action. So there was no way for the Court, and the Court  
7 granted summary judgment, there was no way for the Court to  
8 determine how much was allocated towards the common  
9 liability versus the -- that had already been extinguished  
10 with Mr. Causey versus the other liability with Mrs. Causey,  
11 which I think would also have been a common liability.

12 But that claim wasn't released so because the release  
13 settled that as well they could be entitled to contribution  
14 for Mrs. Causey's claim. But they said because there's no  
15 reasonable basis to determine it from the terms of the  
16 settlement agreement summary judgment is appropriate because  
17 the plaintiff in the contribution action, Vemere, could not  
18 prove that he paid more than it's pro rated share of Mrs.  
19 Causey's potential loss of consortium claim. There's no  
20 allocation in the settlement agreement.

21 Same applies here. The settlement agreement releases  
22 all claims then pending including cause of action five to  
23 the third amended complaint, which is a breach of fiduciary  
24 duty claim related to reserves. But the settlement  
25 agreement doesn't address how much, if any, is apportioned

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1 to the common liability, or the alleged common liability,  
2 what Your Honor has held to be the common liability versus  
3 the breach of fiduciary duty claim. And there are several  
4 other causes of action pending. And Your Honor in the order  
5 says the common liability arises from causes of action  
6 number two and nine, but there were ten total causes of  
7 action.

8 And we don't know how much of the settlement was  
9 allocated towards those other causes of action. There's no  
10 way to determine that. There's no testimony about what the  
11 allocation would have or should have been. And there's  
12 nothing in the release, which I think under Vemere you have  
13 to look at the release to determine it. There's no evidence  
14 of the allocation under the release.

15 And I think it's also important that Mr. Ladana (ph),  
16 who is the representative of the original plaintiffs that  
17 testified in this action, and I've highlighted some of his  
18 testimony. If I may approach. But Mr. Ladana's testimony  
19 is that the developer left the property that's in this trial  
20 in a sorry financial state. And the reserve study came  
21 back, and they were just astonished at the numbers.

22 So I mean, that supports that there was a valid breach  
23 of fiduciary duty claim against the developers. But we  
24 don't have any way of determining how much of the \$3 million  
25 paid for that versus the common liability. Since we can't

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1 determine that they can't prove that they paid more than  
2 their pro rated share and are not entitled to contribution.

3 THE COURT: You're arguing it may have been  
4 speculative; is that right?

5 MR. McQUEENEY: Correct, Your Honor.

6 THE COURT: Mr. Mitchell?

7 MR. DAPORE: Your Honor, back to what your  
8 questions were, the common liability and what can be  
9 allocated. In this case in the order I think the Court hit  
10 the nail on the head. And that is the defendant, Church  
11 Creek for whatever reason decided not to hire an expert.  
12 They relied on some subcontractor testimony concerning what  
13 potential damages they caused versus other people caused.  
14 We did hire an expert, a couple experts. And the experts  
15 basically came to the ballpark figure \$12 million for  
16 construction issues.

17 So the potential common liability between all of the  
18 seven defendants at the time of the settlement was a lot  
19 higher than what was actually settled. And then I think the  
20 Court active reflected in the order that \$3 million went to  
21 benefit CCC on construction issues because that was far less  
22 than what the potential common liability could have been.

23 And they have found in paragraph eight, I think it is  
24 -- excuse me. Paragraph five of the order specifically  
25 states the Court finds that the work of CCC was negligent

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1 and caused consequential damage to the plaintiff's property  
2 other than to the work itself in that the negligent  
3 construction work combined and concurred with the negligence  
4 of the other two defendant groups and contributed to the  
5 plaintiff's invisible damages. The plaintiff established by  
6 expert testimony that CCC's work in many areas of the  
7 exterior onlook and also in the repair of the firewalls was  
8 deficient and violated the building codes in effect for the  
9 time period when CCC performed the repairs.

10 This Court went on then to say that \$3 million was the  
11 common liability, which we agree is exactly right, that was  
12 extinguished. It was extinguished, and it's fairly easily  
13 mathematically to separate into three groups. Theirs was  
14 the construction group. Montclair Homes was the, I think we  
15 used the phrase seller to the public or converter. And then  
16 there was the middle group Mount Kremco who was the  
17 apartment owner that sold to the MC Homes group. Each one  
18 would be a million dollars because of the way the statutes  
19 pre 2005 would read as it is a pro rata sharing of the  
20 liability.

21 One of the two, I think it was Mount paid 1,400,000.  
22 Montclair Homes paid 1,600,000. So one of them paid 600,000  
23 more than their pro rata one-third share. One of them paid  
24 400,000 more. So CCC was not contributing to the extent of  
25 \$1 million. And it's fairly easy for the Court then to say

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1 their pro rata share is \$1 million.

2 Then the Court correctly gave credit to the  
3 subcontractor settlement. Their actual subcontractors paid  
4 more in this case than, even with the judgment than Church  
5 Creek did. And deducing the 525 from their million dollar  
6 construction group their net would be 475.

7 I read the Vemere case that Mr. McQueeney talked about  
8 considerably different. Mrs. Causey had not even brought  
9 suit yet. And it was one of the reasons that the Court  
10 dismissed it. And then imagine that you couldn't, they  
11 couldn't figure out by just looking at the settlement  
12 documents how much to allocate out just for construction  
13 claims.

14 This case is entirely different. In this case also the  
15 primary -- both the G&P Trucking and the Vemere case the  
16 liability was clearly not extinguished by the settlement.  
17 In our case we took great pains to make sure the liability  
18 was extinguished by the settlement itself.

19 Now, the only thing that -- and if you read the full  
20 Form 4 Order the judge entered that day, we went on the  
21 record and we basically -- I guess the Court can take  
22 judicial notice of the Form 4 Order, but the Form 4 Order  
23 basically says that all claims go away. But it says  
24 specifically in item seven, plaintiff's direct claims  
25 against Church Creek Construction Company are dismissed with

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1 prejudice. Nothing contained in this judgment shall be  
2 deemed to release, limit, or discharge the contribution of  
3 claims to be assigned to the plaintiffs hereunder.

4 Now, it's pretty obvious that what the intent was of  
5 the parties who participated and contributed in this  
6 settlement is reflected in what we read into the record that  
7 day. And that was that we fully intended, since they didn't  
8 offer any money in the settlement to go after them, to file  
9 by the assignments. Take the assignments, which we did.  
10 Later file a contribution case.

11 And we tried it before this Court for a whole day. And  
12 Tom and I actually put a lot of work in before that day  
13 getting the stipulation faxed and exhibits. And quite  
14 frankly, it was miraculous that it was tried in one day.  
15 But it was, and it was a trial on construction issues. It  
16 was a trial which we put into evidence, testimony concerning  
17 how Mount and how Montclair Homes both directed what Church  
18 Creek was supposed to do, i.e. construction breach of  
19 fiduciary problems, and how the thing got messed up, and how  
20 much the damage was.

21 That's totally different from what took place in the  
22 Vemere case in my mind. And I think the order is a good  
23 order. I think it clearly establishes by preponderance of  
24 the evidence that we proved our case. And I fully expect  
25 they will, if the Court would deny the motion the Court of

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1 Appeals we'll be reading about this probably a year from  
2 now. But in our opinion it's a good, solid order.

3 THE COURT: Let me ask you a couple questions,  
4 because some of the issues I wrestled with in coming to the  
5 conclusion I came to. Your argument is that by the payment  
6 of the funds over a million dollars by the two contributing  
7 defendants that constitutes the determination of the common  
8 liability or a methodology by which to determine the  
9 commonality.

10 MR. DAPORE: Correct.

11 THE COURT: Because I think it's important,  
12 whatever court reviews this it's important that they have  
13 some mathematical equation by which they get to that. And  
14 therein lies the dilemma that I had in the case, how you get  
15 to that point. So I think the parties seem to be agreeing,  
16 and Mr. McQueeney, I'm not trying to put words in your  
17 mouth, that there is common liability. But the question is  
18 how do you quantify that common liability.

19 MR. DAPORE: I think you take the total \$3  
20 million, and that's what the case went away for, all causes  
21 of action went away for, including construction causes of  
22 action. The \$3 million, one of those two defendants who  
23 made contribution paid 400,000 more and the other paid  
24 \$600,000 more, a million dollars. And so because we divide  
25 it in a third, which I think is the fairest and equitable

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1 way.

2 And again, the way I read this pre 2005 law it's really  
3 a court of equity. And basically it's a little different  
4 now where the jury would come back with allocations and so  
5 forth the way the law is written now.

6 THE COURT: And that was kind of where I was going  
7 with this. I think under present law there would have to be  
8 some determination in a jury of what the actual amount was  
9 per claim per defendant or whatever, correct?

10 MR. DAPORE: That's the way it is. Yeah. The way  
11 the law is currently written after the verdict comes back  
12 then there's a submission to the jury. As I understand it  
13 they do actual percentage breakdowns. I think the Court,  
14 sitting as a court of equity here did the fairest thing. We  
15 wrestled, I remember at the end of the hearing with whether  
16 or not we throw in the 525. I think the right thing was  
17 done, which it's not thrown in because that was not a part  
18 of any contribution extinguishment or common liability  
19 extinguishment. The only settlement that extinguished  
20 common liability was the \$3 million.

21 And then I think the Court's has to give credit by  
22 statute, even though that wasn't raised in the pleadings. I  
23 think the Court asked it right that reasonable operation of  
24 law by the statute has to be applied, in which case  
25 ironically you've got the general contractor even with the

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1 475, if it sticks paying less than their subcontractors  
2 paid.

3 I wrestled with this thing for a long time. When I  
4 first started writing the order and getting into it thinking  
5 it would be a piece of cake, man, it was a mess. And the  
6 more you think about it it's a real mind game. I think it  
7 was a good order.

8 MR. McQUEENEY: And Your Honor, I think the  
9 question is not whether they paid towards a common  
10 liability, it's how much of the \$3 million was paid to  
11 extinguish a common liability versus the other causes of  
12 action that were pending against, very real causes of action  
13 against -- as Mr. Ladana points out in his testimony that  
14 only they could have been liable for and for which they are  
15 entitled to contribution. There's no way for us to figure  
16 out whether \$1.4 million was paid towards construction  
17 defects and 1.6 million towards breach of fiduciary duty, or  
18 1 million was paid towards construction defects and 2  
19 million was paid towards breach of fiduciary duty. There's  
20 just no, you'd have to pick a number out of thin air in  
21 order to figure out what was paid to which causes of action.

22 THE COURT: And clearly under the post 2005  
23 statute if we were operating under that they would clearly  
24 not have established that. How do we do that pre 2005,  
25 which is the ruling I made? And I may be wrong, but I'm

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1 telling you.

2 MR. McQUEENEY: Well, Vemere was actually cited in  
3 1999. But the change to the contribution act that occurred  
4 in 2005 was apportionment of fault not allocation of  
5 damages. Apportionment of fault is the idea that even  
6 though there is a common liability and we can't, it's not  
7 divisible, we're going to figure out among the liable  
8 parties what percentage negligent each one is. And  
9 depending on the circumstances, you know, one of the  
10 defendants may not be liable jointly and severally because  
11 he's under 50 percent compared to the remaining percentages  
12 of fault. But that's apportionment of fault, not allocation  
13 of damages.

14 Even before 2005 as reflected in Vemere you still have  
15 to allocate what causes of action were covered, what part of  
16 any settlement was paid to extinguish a common liability  
17 versus what part was paid to extinguish a completely  
18 separate liability that the other joint court fees he's not  
19 liable for, or that the plaintiff is not entitled to seek  
20 contribution for, such as the breach of fiduciary duty act.

21 All that was the same. Vemere was decided in '99.  
22 2005 they just say to increase the equity that you can also  
23 apportion fault with the understanding there's still no way  
24 to -- you still have to show a common liability, but once  
25 you do that and once you show the payment of the common

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1 liability you would also go the further step of apportioning  
2 how much each party was liable. And depending on how that  
3 comes out they may not be jointly and severally liable.  
4 There may be comparative negligence issue and those kind of  
5 things. But it really doesn't change the allocation  
6 methods.

7 THE COURT: This is the other thing I wrestled  
8 with. When Church Creek doesn't pay anything into the  
9 settlement, there's a settlement of claims as to the  
10 plaintiff's damages, and zero is paid, and some  
11 co-defendants reserve the right to seek contribution for all  
12 that, how does that defendant get away with zero, if that's  
13 the argument?

14 MR. McQUEENEY: Well, Your Honor, and I cite G&P  
15 Trucking really just for the proposition that under the  
16 common law there's no right to contribution, period. These  
17 parties wouldn't be entitled to anything. And for the  
18 second proposition that the contribution statute has to be  
19 strictly construed against, or in favor of the common law.  
20 So if you don't strictly comply with the statute and you  
21 can't show what you need to show under the statute common  
22 law applies. There's no break in contribution among the  
23 joint tort feisor. And they don't have any rate of  
24 contribution.

25 So there's no sort of unjust enrichment type action,

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1 you know. Absent contribution and strict compliance with  
2 the strict contribution act there's no right to contribution  
3 period amount joint tort feaseor, such as in the breech of  
4 fiduciary duty case.

5 If both had breeched a fiduciary duty and there was a  
6 common liability neither party would be entitled to  
7 contribution because of the exception to the statute. Here  
8 there's only one allegation of breech of fiduciary duty,  
9 which we would not be held liable for under any  
10 circumstances. But even if their breech added to the common  
11 liability we're still not, they're not entitled to  
12 contribution for that portion of the common liability. And  
13 again, there's no way to determine that either.

14 THE COURT: Wasn't there some testimony in the  
15 record about, Mr. Ladana's testimony, wasn't there some  
16 figure as to what they thought was an adequate safety  
17 cushion as to what they needed? He knew zero wasn't the  
18 right number, but there was some number that should have  
19 been left in a common fund.

20 MR. McQUEENEY: The only calculation I saw, there  
21 was the reserve study, which is Exhibit 91. And you know,  
22 he's commenting about the reserve study that there's  
23 insufficient money in the reserve study. But there's a  
24 reserve study in Exhibit 91 that basically shows what needs  
25 to be done over the next 30 years. But it is in the

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1 millions of dollars from what I recall.

2       It goes through 2036, but the expenditures that need to  
3 be made. And 2007 was almost \$300,000. 2008 was \$500,000.  
4 2009 was 550,000. 2010 is roughly 500, you know. All of  
5 those amounts are roughly \$500,000 through at least until  
6 2014. So that's seven years at \$500,000 that they have to  
7 add to the reserves because it was under funded. So it's a  
8 significant liability. And Mr. Ladana says it's a  
9 significant liability.

10               THE COURT: All right. Thank you.

11               (Whereupon an off the record discussion took  
12 place.)

13               THE COURT: Here's what I'm going to do. I'm  
14 going to take it under advisement. I'm going to re-read  
15 these cases that y'all have brought to my attention. And I  
16 know that there were some other ones in there. And I'll get  
17 y'all an answer within the next three weeks. Thank you.

18               (Hearing concluded at 11:00 o'clock a.m.)  
19  
20  
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22  
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25

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1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF DORCHESTER)

4 I, Stacey L. Scoggan, Court Reporter and Notary Public,  
5 certify that I did have The Honorable Judge Mikell  
6 Scarborough to appear before me at 10:30 o'clock a.m. on  
7 Thursday, April 10, 2014, at the Charleston County  
8 Courthouse, 100 Broad Street, Charleston, South Carolina;  
9 that the witness was sworn and cautioned to tell the truth,  
10 the pages constitute a true and accurate transcript of the  
11 testimony given at that time and place.

12 I further certify that I am not of counsel or kin to  
13 any of the parties to this cause of action, nor am I  
14 interested in any manner in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand and  
16 seal this the 1st day of July, 2014.

17

18

19

20

  
Stacey L. Scoggan

21

Notary Public for South Carolina

22

My Commission Expires: February 23, 2021

23

24

25

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A REPORT OF  
ARCHITECTURAL  
INSPECTION  
AND  
DISCLOSURE

**MONTCLAIR  
AT TOWNE CENTRE**  
HIGHWAY 17 NORTH  
MOUNT PLEASANT  
SOUTH CAROLINA

PREPARED FOR  
MONTCLAIR HOMES, LLC  
BY  
EPPS EDWARDS ARCHITECTS  
1 PINCKNEY STREET  
CHARLESTON  
SOUTH CAROLINA 29401  
( 843 ) - 577- 2080

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INTRODUCTION TO THE INSPECTION

## THE PROJECT

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Montclair at Towne Centre, located at Highway 17 North, Mount Pleasant, South Carolina, is a planned residential community constructed in 1985. The development consists of 240 residential units, 160 garden (one level floor plans in 2-story buildings) and 80 2-level townhouse units. Included is clubhouse facility with swimming pool, a second swimming pool and a tennis court.

The construction is conventional wood frame construction with concrete slab, on grade at first (ground) levels, wood stud framing, and wood truss roofs. Exterior walls are clad with a combination of brick veneer and pressed wood board, horizontal siding. The first level exterior walls of the townhouse residences are brick veneer, with horizontal pressed wood siding at the second level. The garden units are predominantly horizontal siding with limited brick veneer accents. The buildings are trimmed in rustic, rough sawn wood trim. Rain gutters and downspouts are installed throughout the project. Some of the second story of the garden unit buildings have a concrete topping on the wood framed floor construction. The windows are double hung aluminum, with insulated glass, with aluminum screens. The entrance doors are metal. The sliding doors at the rear of the units are aluminum and have aluminum sliding screens. Exterior storage room doors are both metal and wood types. The roofing is a traditional three tab fiberglass shingle. The interior is conventionally finished with sheet rock walls and ceilings. Ceramic tile is installed in bathroom areas as well as entry foyers. Vinyl flooring is installed in kitchen floors. Carpeting is used on the other flooring. The exteriors of the residences were painted in 1994-1995. New roofing shingles were installed in 1994.

## INTRODUCTION TO THE INSPECTION

---

The inspection, which includes the interior inspection, interior measurements, and exterior inspections were conducted by a registered, professional architect over a period of nine weeks beginning in June 2003 and ending in August 2003. Interior measurements were taken to document the legal boundary of each unit. The interior and exterior inspections were conducted for the purpose of making a disclosure of the physical condition of each residential unit/ unit building group for prospective buyers. The focus of the inspection was to determine the structural stability of each unit and review the general condition of the materials as they contributed to performance of their intended purpose and to the life expectancy of the buildings. In the case of structural stability, the inspection required visual verification to determine that no evidence of settlement existed, and no signs of structural movement, (i.e., cracks in interior or exterior walls) existed. In addition, signs of separation of materials (that might permit water infiltration) were sought. The roof was visually inspected from the ground (with and without binoculars).

The focus of the interior inspection, in addition to looking for signs of structural failure was to investigate for signs of water damage that might have resulted from severe plumbing leaks or roof leaks.

There was also a visual review for general building code compliance in terms of window sizes (for emergency exit compliance), general exit requirements (stair and hallway widths). The Standard Building Code was the governing reference in effect at the time of construction. The current governing building code is the 2000 International Building Code. However, building code evolution is by nature incremental (no major changes). Compliance to code changes is not retroactive. No observations were made of any visible code violations.

This disclosure inspection should not be confused with the recently popularized type of inspection provided by home inspections companies for the purpose of reviewing all electrical, HVAC, and plumbing systems, appliances, and cosmetic matters regarding materials and finishes. This inspection does not, for example, comment on the expected remaining life of a air-conditioning compressor. The inspector has no means of such analysis or prediction. The prospective buyer should refer to the "Home Warranty Protection Plan" offered through the seller.

The inspection comments may make periodic references to cosmetic issues as a courtesy to prospective buyers. These comments, unless specifically stated, do not affect the structural integrity of the residential units and are not the focal point of this report. Such items are addressed in the seller's offering of "Standard Upgrade Features". For example, while numerous units may have damaged window screens and sliding door screens, such information is not included in this report. While numerous doors may have small dents, these are deemed acceptable as conventional wear and not recorded.

Where the inspection report notes "no comments" it means that the residential units were inspected but no negative conditions were observed.

## GENERAL OBSERVATIONS

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Minimum "wear and tear" damage to the interiors was observed. This suggests that the management company has done a good job in screening residents and providing general maintenance for the development and residences.

The residential buildings were painted during the period of 1994-1995. With the exception of a few random observations of spot peeling, the paint finish appears to be performing well.

The existing roofing was installed in 1994 and appears to be in good condition. Such roofing generally has a productive life of 15-20 years. A number of the roof gutters appear to be filled with leaves. Without periodic removal of the leaves, this condition could potentially allow rain water to creep into the shingles. Gutters vulnerable to falling leaves should be cleaned as a part of continued maintenance.

Operable elements such as sliding "patio doors" and the associated vertical blinds were sometimes difficult to operate. In some cases the sliding screen door elements are damaged or missing. Interior bi-folding doors, on occasion, were found to not operate easily and should require repair. While such items require repair, they are not noted herein as they are considered maintenance issues rather than construction issues.

Numerous exterior storage rooms have mildew. This may have resulted from infrequency of use and/or insufficient ventilation, or from the fact that this has been a period of continued high humidity. Again, such items as this are considered minor and not an exception to the overall good condition of the residences.

## INSPECTION NOTES

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### TOWNHOUSE UNITS

#### Building - Units 1712 / 1714 / 1716

1716 : First level gutter slope in the wrong direction.

#### Building - Units 1718 / 1720 / 1722 / 1724 / 1726

1720 : Minor deterioration above bay window. Grade " washed out " at terrace slab.  
Minor deterioration of siding at bottom of rear elevation.

1724 : Trim band above bay window shows early signs of minor deterioration.

1726 : Water damage to storage room ceiling.

#### Building - Units 1719 / 1721 / 1723 / 1725 / 1727

1723 : Missing dryer vent cover.

1725 : A 4' length of soffit panel is dislodged. Piece of siding dislodged at rear elevation.  
Moisture damage at storage room ceiling.

#### Building - Units 1728 / 1730 / 1732 / 1734

1728 : Minor wood deterioration at jamb of front door.

1730 : Minor deterioration at exterior storage door. Minor wood deterioration at entrance sill.

1734 : A small section of soffit panel above " C " is dislocated.

#### Building - Units 1729 / 1731 / 1733

No comments.

#### Building - Units 1736 / 1738 / 1740

1736 : Small piece of roofing shingle at bay window dislodged.



Building - Units 1746 / 1748 / 1750

- 1746 : Minor wood deterioration at bottom of front door jamb. Wood siding and trim deterioration at chimney.  
1748 : Minor wood deterioration at bottom of front door jamb.

Building - Units 1752 / 1754 / 1756 / 1758 / 1760

- 1758 : Trim above front door loose.  
1760 : Minor wood deterioration at front door sill area.

Building - Units 1762 / 1764 / 1766

- 1764 : Minor wood deterioration at front door jamb.  
1766 : Small rust area at storage door.

Building - Units 1768 / 1770 / 1772 / 1774

- 1772 : Minor bottom siding damage at rear next to electric meter.  
1774 : Minor siding damage at right side of sliding door

Building - Units 1776 / 1778 / 1780 / 1782

- 1780 : Minor wood deterioration at front door jamb.  
1782 : Minor damage to siding at rear elevation near grade.

Building - Units 1784 / 1786 / 1788 / 1790

- 1790 : Minor wood deterioration at bottom of front door jamb.

Building - Units 1801 / 1803 / 1805 / 1807 / 1809

- 1801 : Minor wood deterioration at front door jamb. Damaged gutter at bay window.  
1803 : Minor wood deterioration at front door jamb / sill  
1805 : Small hole at termination of storage roof at rear elevation. Minor wood deterioration at sill of front door sidelight.  
1807 : Flashing above front door is turned - up. Peeling paint above bay window.  
1809 : Piece of siding is off the rear elevation ( laying on the ground ).

Building - Units 1802 / 1804 / 1806

- 1802, 1804, 1806 : Short section of front / first level gutter at sloping in the wrong direction

- 1802 : Dryer vent cover missing.  
1804 : Hole in brick resulting from missing dryer vent cover. Repair work to 2nd floor plumbing ongoing.  
1806 : Minor wood deterioration at storage door trim.

Building - Units 1808 / 1810 / 1812

- Small area of damaged siding at bottom of right side exterior building elevation.  
1808 : Minor wood deterioration at bottom of trim at sliding door.  
1810 : Minor wood deterioration at bottom of trim at sliding door.

Building - Units 1811 / 1813 / 1815

- 1811 : Minor wood deteriorations at entrance door jamb and sill. Tall window at front of building has deterioration in plywood transom panel.  
1815 : Minor wood deteriorations at entrance door jamb. Loose soffit panel at rear elevation.

Building - Units 1814 / 1816 / 1818 / 1820

- 1814 : Minor wood deterioration at front door sill area.  
1816 : Minor wood deterioration at front door sill area.  
1818 : Minor wood deterioration at front door sill area. Gutter next to front door sloping in the wrong direction.  
1820 : Wood deterioration at front door jamb / sill area. Wood deterioration at trim next to terrace sliding door.

Building - Units 1817 / 1819 / 1821 / 1823 / 1825 / 1827

- 1817 : Small crack / opening in soffit at terrace overhang. Damaged downspout at side of building.  
1819 : Minor peeling paint at exterior storage door jamb.  
1821 : Minor peeling paint at exterior storage door jamb. Minor wood deterioration at front door jamb.  
1823 : Loose trim at head of front door.  
1827 : Minor wood deterioration at sidelight of front door.

Building - Units 1822 / 1824 / 1826 / 1828 / 1830

- Minor blistered paint at gable trim of left side exterior elevation.  
1822 : Soil washed out at rear terrace concrete slab.  
1824 : Wood deterioration at bottom of front door sidelight. Storage door deteriorated at bottom.  
1828 : Minor wood deterioration at front door frame.  
1830 : Wood deterioration at bottom of front door jamb and at front window above left. Grade washed out at terrace slab.

Building - Units 1832 / 1834 / 1836 / 1838 / 1840

- 1836: Water damage and minor "movement" of finishes at shower. Wood deterioration at front door jamb.  
1838: Wood deterioration at front door jamb. Small hole in rear soffit.  
1840: Wood deterioration at front door jamb. Paint blistered over sliding door.

**GARDEN UNITS**Building - Units 1829 / 1831 / 1833

- 1831: cracked soffit trim.

Building - Units 1834 / 1836 / 1838

- 1834- C: Small crack in terrace slab.  
1836- D: Opening at missing dryer vent cover.  
1838- A: Settlement in the kitchen and adjacent laundry room / bathroom.  
1838- C: Settlement in the kitchen and adjacent laundry room / bathroom.  
1838- D: A small opening exists where beam of balcony terminates at brick.

Building - Units 1835 / 1837 / 1839

- 1835: Tall window unit at B / D should be caulked. Front bedroom windows should be caulked.  
1837: Tall window unit at A / C and adjacent window at "A" should be caulked.  
1839: Tall window unit at A / C should be caulked. Small opening in trim at balcony end of "C".  
Front bedroom windows at units A/C should be caulked.

Building - Units 1846 / 1848 / 1850

- 1846: At "D" balcony where outside beam terminates at brick there is a small opening

Building - Units 1847 / 1849

- 1847: Minor paint peeling at left exterior elevation gable trim.  
1849: Pine tree leaning against building.  
1849- A: No finish ceiling at balcony ceiling - exposed joists.

Building - Units 1851 / 1853 / 1855

- 1851: Appears to have peeling paint at the front gable and at rear terrace area.  
1855-D Has minor wood decay at the terrace beam.

Building - Units 1852 / 1854

No comments.

Building - Units 1856 / 1858 / 1860

1858 : Several of the units have A/C pads that have settled, causing the compressors to rest on the grade. Raise the pads.

1858- C : Minor wood deterioration at terrace trim.

1860- A : Requires caulking at the front of residence A where the window abuts the brick.

1860- D : Minor decay at the terrace corners.

Building - Units 1857 / 1859

At left exterior elevation of building vertical joints in horizontal siding require minor caulking.

Building - Units 1863 / 1865

1865 : Minor "bowing" in exterior siding at the right side of unit . This is not a structural issue and is probably a simple issue of expansion/contraction resulting from high humidity.

Building - Units 1866 / 1868

HVAC units are sitting on grade. Concrete slabs should be raised to protect units.

1866 - A/B : ADA UNITS

1868 - A/B : ADA UNITS

Building - Units 1867 / 1869

1867 : Minor "openings" in vertical joints of siding at the exterior right side elevation. Steel stair has minor dents. Minor deflection in rear balcony at floor beam but no structural separation is evident. This may have been a trim detail matter.

Building - Units 1870 / 1872 / 1874

1870: Damage to rear gutter.

1872: Small opening at tall front window of units 1872 B & D.

1872- B/C : Screened balcony

Building - Units 1871 / 1873 / 1875

1871 / 1873 : Beams across second level. Balcony appears to have minor "sagging." However, no "structural separation" is evident and this apparently is the result trim detail.

Building - Units 1876 / 1878

1878 - Left side of unit shows vertical joint separation in clapboard siding.

1878- C : Indicates a small opening at the termination of the terrace to the brick.

Building - Units 1877 / 1879

1877- A : Has an approximately 6" diameter hole in the front wall that has been patched.

1879 : Right side of unit shows vertical joint separation in clapboard siding. Requires caulking.

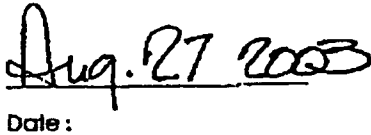
## CONCLUSION

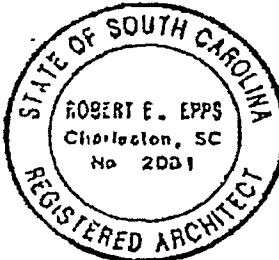
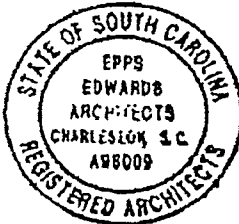
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The conclusion of the field work and inspection is that the residential units and the development as a whole have been well maintained. As a result the buildings are in good to very good conditions. The notations are minor in nature, with the exception of the settlement comments of unit 1838- A, 1838- C and can typically be addressed as maintenance issues and corrected with in-house repair services. Although there is no standard for such matters, buildings of this type that are properly maintained should have a life of 75 years to 100 years and beyond.

Home buyers should review the comments herein along with the STANDARD FEATURES provided by the seller and the HOME WARRANTY PROTECTION PLAN offered through the seller.

  
Robert Epps / Registered Architect / S.C. No. 2081

  
Date:



Bruce E. Kinney  
page 2  
May 18 2003

building. In effect, this is considerably less expensive than drawing the exterior of the building types. This reproduction photography would add \$500 to the above fee.

In summary, The fees for Part One are :

|                                                                        |             |
|------------------------------------------------------------------------|-------------|
| Field documentation, drawings, and charting :                          | \$ 24, 512. |
| Miscellaneous composition time, review with attorneys, etc. :12 hours. | 960,        |
| 6 sets of prints                                                       | 150.        |

**Total / Part One : \$ 25, 622.**

Regarding Part T2 and the " Disclosure " of the physical condition of the building ( Statute / Section 27-31-430 ) we will inspect and prepare a report as to the following :

Exterior wood rot.  
Missing roofing tiles / Indication of roof leaks at interior ceilings.  
Visible deflection in walls which may indicate structural failure  
Major failure / deterioration of exterior materials  
Visible building code violations

This work would not be conducted as an extensive " home inspection ". The intent is to meet the requirements of the above statute to insure that there are no major structural failures or major material failures. Furthermore, this inspection would not include attic inspections. We will provide statements regarding the remaining useful life of the buildings.

This inspection service will require an average of 30 minutes per unit plus the clubhouse for a total of 120.5 hours. It will require 32 hours to write the report. We will provide 8 bound copies of the report.

*The fee for this will be: 152.5 hours @ \$80./ hour = \$12,200.*

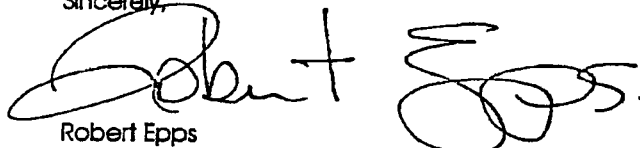
**In summary, the fee for Part Two is : \$ 12,200.**

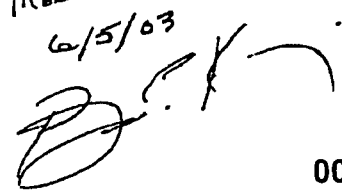
The time required to perform the above work would be ten weeks. We could start on exterior work while waiting for notification of the tenants for access to the interiors.

We would invoice you at 1/3 increments of completion. We would begin upon notification from you and receipt of an initial payment of \$ 2500. I am available to further discuss this proposal with you and your attorney for this project.

Thank you for considering our Epps Edwards Architects to assist you in this project.

Sincerely,

  
Robert Epps

Accepted by  
Montclair Homes, LLC  
6/5/03  


0035



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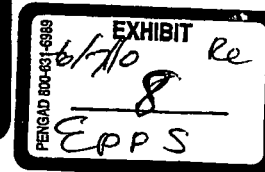
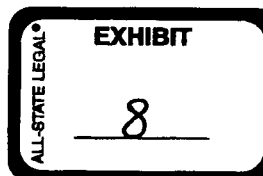
*Architects  
Consultants  
Engineers*

## MONTCLAIR APARTMENTS

Mount Pleasant, South Carolina  
1861 Montclair Drive, Hwy 17  
ACE Job # IN20020291

Prepared for:

Ms. Virginia Skeries  
Ms. Sheryl Thomas  
ChrisKen Realty  
345 N. Canal Street, Suite 201  
Chicago, Illinois 60606



INSPECTION DATE: November 6, 2002

MALP/CREMCO\_223

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ARCHITECTURE STRUCTURAL CIVIL ENVIRONMENTAL TRANSPORTATION PLANNING SURVEYING FORENSIC ENGINEERING

ROA\_0336





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SOUTH BEND, IN

# AMERICAN CONSULTING, INC.

Architects  
Consultants  
Engineers

November 18, 2002

Ms. Virginia Skeries  
Ms. Sheryl Thomas  
ChrisKen Realty  
345 N. Canal Street, Ste 201  
Chicago, Illinois 60606

Re: Montclair Apartments  
1861 Montclair Drive - Hwy 17  
Mt. Pleasant, South Carolina 29464

ACE Job No. IN20020291

Dear Ms. Skeries and Ms. Thomas:

On Wednesday, November 6, 2002, American Consulting, Inc. (ACE) completed an on-site visit and evaluation at the above-referenced property in Mt. Pleasant, South Carolina. The purpose of our visit was to inspect and evaluate the items requested on the Summary Task List

For reference purposes, we have developed the following priority categories for use in this report. This will most likely need to be further defined, as this does not really address the expenditures that are "wish list" type items. We can discuss this after you have had a chance to review the following. The categories are as follows:

- **Immediate:** Repair/replacement listed needs to be done immediately due to safety concerns and/or preservation of structure and finishes.
- **Near Immediate:** It is anticipated that this could pose a safety concern in the future, and the repairs should probably be implemented within one to two years.
- **As Necessary:** These are items on the capital request sheet that are not an immediate safety concern and may be aesthetic or "wish list" type items.

We have attached photographs of specific issues observed during our visit for your review. These numbered photographs have been designated with each item listed below for reference.

Based on the list of Summary Task List items, the following is a summary of the major items we evaluated during our site visit. We have noted our priority assessment for each item listed.

1. **Exterior Siding** - We visually inspected the existing exterior siding at the complex and noted warping at numerous locations of the vertical joints of the siding. This was discussed with Ms. Skeries and Ms. Thomas, and they stated the complex was built in 1985. We had the maintenance person show us a piece of the siding they have for replacements and found that it is a "Masonite X-90" series, which should be included

**AMERICAN CONSULTING, INC.**

Ms Virginia Skeries  
Ms Sheryl Thomas  
November 18, 2002  
Page 2

in the class action suit, similar to Madison Hill Apartments. We acquired a 6" x 6" sample and sent for the claim form to start the submittal process. (See Photos 1-9)

It is our opinion the exterior siding is part of the class action suite against Masonite, and we will prepare a claim form to submit this claim for the apartment complex. **Priority – Immediate**

2. **Roofing-** We visually inspected the current roof condition of all buildings at the apartment complex and found that they are generally in satisfactory condition. (See Photos 10-11)

It is our opinion that the roofing shingles should be monitored and reinspected next year in order to reevaluate the situation. **Priority – As Necessary**

3. **Asphalt Drives –** We visually inspected the asphalt drives at the apartment complex and generally found them to be in satisfactory condition.

It is our opinion that the asphalt drives should be monitored and reinspected next year in order to reevaluate the situation **Priority – As Necessary**

4. **Typical Downspout Locations On Buildings -** We visually inspected the downspout drain lines from the roof gutters of the apartment buildings and found several locations where they were discharging directly onto splash blocks and not extended away from the buildings. (See Photos 12-13)

It is our opinion that all downspout drain lines from the roof gutters should be extended away from the building underground to provide positive drainage. **Priority – Near Immediate**

5. **Main Entry Islands -** We visually inspected the main entry landscaped islands and noted that there is no curbing around these landscape areas. Ms. Skeries and Ms. Thomas discussed the need for a concrete curb to be placed around this area so the entering and exiting cars would not continue to run over the landscape. (See Photos 14-15 and Site Map)

It is our opinion that the main entry's landscape islands should have a standard 6" concrete curb installed to protect the landscape areas. **Priority – As Necessary**

6. **Concrete Sidewalks, Patios and Curbing -** We visually inspected the complex and noted numerous locations where the concrete sidewalks, patios, and curbing are cracking due to settlement. A few of the sidewalks are pedestrian hazards and some of the patios have settled, sloping back toward the patio doors. The concrete curbing noted has broken apart in sections and needs to be replaced. (See Photos 16-21, Site Map and Attachments)

It is our opinion that, where cracked due to settlement, the concrete sidewalks, patios, and curbing should be replaced with new sidewalk sections, patios, and curbing. **Priority – Immediate**

7. **Tennis Court -** We visually inspected the existing tennis court and, from our discussions with Ms. Skeries and Ms. Thomas, they were last resurfaced in 1998. It is our understanding the cracks have become visible over the last few years. The cracks will continue to get larger and repairing or resurfacing of the court is necessary. In discussion with Ms. Skeries and Ms. Thomas, we are also considering the 'Swiss Flex' product, which is an interlocking matting that is installed over the existing courts and has a

**AMERICAN CONSULTING, INC.**

Ms Virginia Skeries  
Ms Sheryl Thomas  
November 18, 2002  
Page 3

10-year guarantee Also discussed was the peeling paint on the fencing post and the windscreen netting that had pulled off the fencing due to high winds. (See Photos 22-23)

It is our opinion that the tennis court should be repaired or resurfaced with a new surface alternate of 'Swiss Flex', or equal, before going through another season. **Priority – Immediate**

It is also our opinion that the painting of the tennis court fencing post and replacement of the windscreen netting would be appropriate if the budget allows for these expenditures.

**Priority – Near Immediate**

8. **Swimming Pool & Clubhouse-** We visually inspected the swimming pool and clubhouse areas and, except for some minor cracking in the concrete pool decking, they are in satisfactory condition. (See Photos 24-29)

It is our opinion that the concrete pool deck cracks should be caulked and monitored this season with a reinspection scheduled for next year to reevaluate the situation **Priority – As Necessary**

9. **Playground Equipment –** We visually inspected the existing playground and discovered, from our discussions with Ms. Skeries and Ms. Thomas, that this equipment is 17 years old and is not repairable. We found that most of the playground equipment has been removed, leaving only the supporting structures. (See Photo 30)

It is our opinion that the playground wood structures should be removed for safety concerns and should be replaced with new playground equipment that meets the new codes.

**Priority – Immediate**

10. **Asphalt Walkways at Tennis Court & Playground -** We visually inspected the existing asphalt walkways leading to the tennis court and around the existing playground and noted these walks have settled, cracked, and deteriorated over the years. The tennis court walkway is approximately 3 feet wide and 210 feet in length. The playground walkway is approximately 6 feet wide and 340 feet in length. (See Photos 31-33 & Site Map)

It is our opinion that these walkways be removed and replaced with new asphalt or concrete walks  
**Priority – Immediate**

11. **Retaining Wall –** We visually inspected the existing wood timber retaining wall and noted that the timbers have become deteriorated over time and are not able to provide proper retainage (See Photo-34)

It is our opinion that this timber retaining wall should be removed and replaced with the standard concrete paver retaining wall system. **Priority – Immediate**

12. **New Walk Bridge –** Ms Skeries and Ms. Thomas discussed the need for a new walk bridge located closer to the lake than the existing bridge, which was noted by visual inspection in need of repair. (See Photos 35-37)

It is our opinion that the new walk bridge should be located closer to the lake, which would provide an aesthetically pleasing and visual marketing item. However, the budgeting of the new bridge would be a marketing decision to be determined by management

**Priority – As Necessary**

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Ms Virginia Skeries  
Ms Sheryl Thomas  
November 18, 2002  
Page 4

13. **ADA Compliance** – Title III of the Americans with Disabilities Act divides covered facilities into two categories: "Public Accommodations" and "Commercial Facilities." Residential apartment units that were completed prior to the adoption of ADA are not subject to ADA guidelines or the Fair Housing Act (FHA) requirements for accessibility. It is our opinion, however, that the public areas of residential communities are subject to provisions of the ADA and should therefore be made as accessible as possible within reason. Public areas would include the office/clubhouse facilities, recreational areas (pool, etc.), and parking/access for these amenities. (See Photos 38-39)

Based on our evaluation, it is our opinion that this complex is in substantial compliance; however, there should be a handicapped-parking stall located at the leasing office with the required signage.

**Conclusions**

Based on our evaluation, it is our opinion that immediate action is needed on the exterior siding, concrete sidewalks, patios, curbing, tennis court, playground equipment, asphalt walkways at tennis court and playground, and the retaining wall. Near immediate action is needed on the downspouts and the tennis court fence post painting and windscreen. Based on current conditions, the roofing, asphalt drives, main entry islands, swimming pool deck, and the new walk bridge will be on an ongoing as necessary basis, with a reinspection scheduled for next year to reevaluate the situation

All the above items will be added to the Summary Task List for monitoring and tracking

The information contained in this report and the conclusions presented are based on information available at the time this report was prepared. If additional information is discovered, it should be forwarded to our office for review and comment. American Consulting, Inc., reserves the right to amend and/or modify this report if any new and/or significant data that could impact this investigation become available.

If you have any questions about the information contained in this report, please feel free to call. Our services were performed using the degree of skill normally exercised by practicing consulting engineers in this and other locales. No other warranty is either expressed or implied. Our report is based on visual inspection only.

Very truly yours,  
American Consulting, Inc.

Thomas W. Cancilla, AIA  
Project Manager, Investigative Services

TWC:kms

cc: Fred Marshall, ChrisKen  
Jack Kennedy, ChrisKen  
David Heitzman, ChrisKen  
Steven R. Bruns, ACE

MALP/CREMCO\_227

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AMERICAN CONSULTING, INC.

## PHOTOGRAPHS

MALP/CREMCO\_928

**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**



**Photo 1 - Exterior siding**

MALP/CREMCO\_229

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**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**

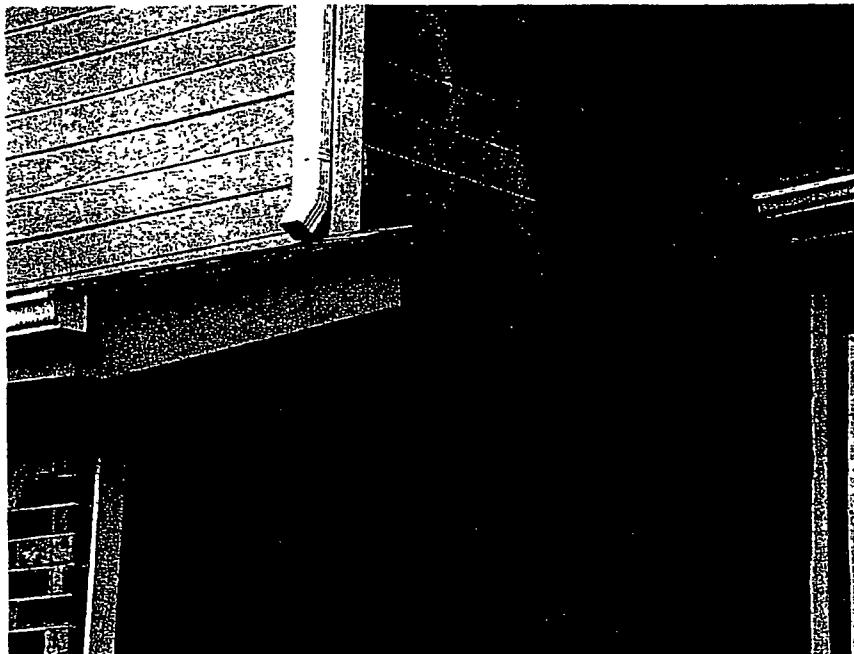


**Photo 2 - Exterior siding**

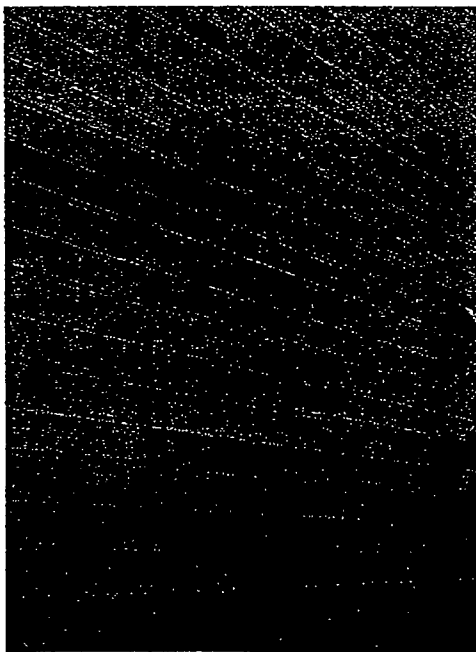


**Photo 3 - Exterior siding**

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**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**

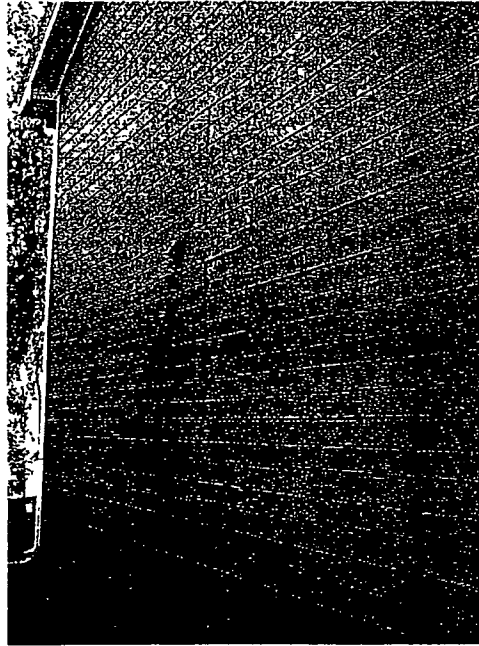


**Photo 4 - Exterior siding**

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**MONTCLAIR APARTMENTS - MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**

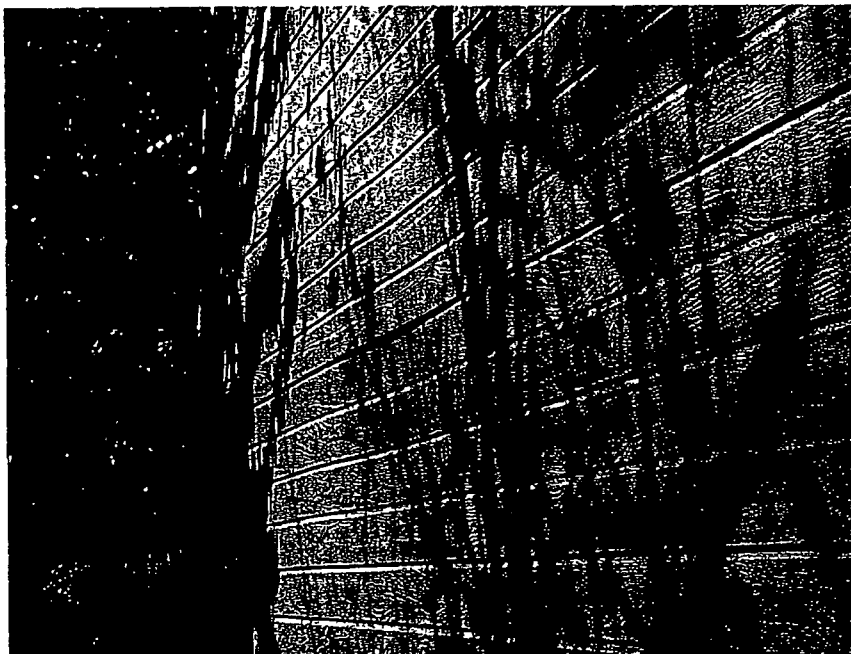


**Photo 5 - Exterior siding**



**Photos 6 - Exterior siding**

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**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**

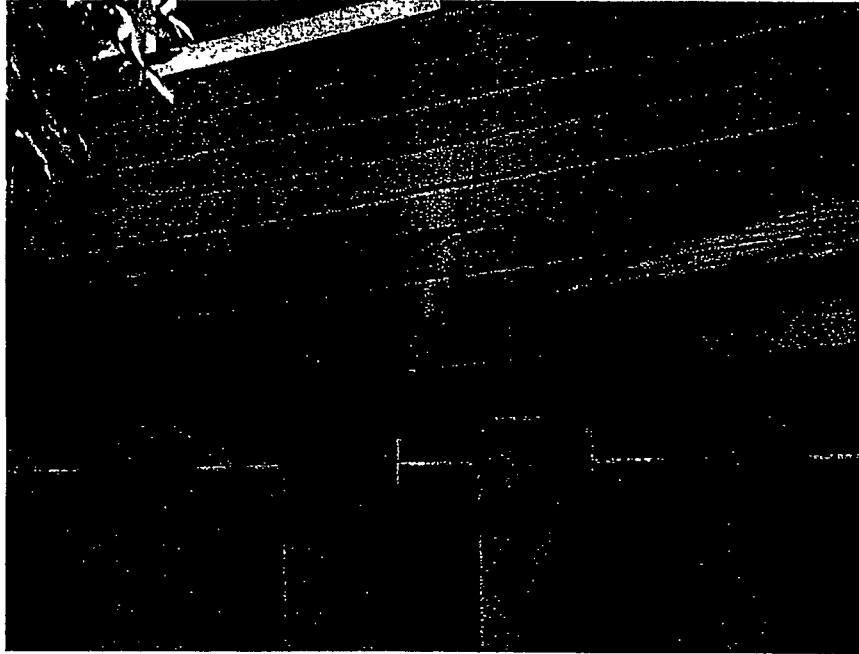


**Photo 7 - Exterior siding**

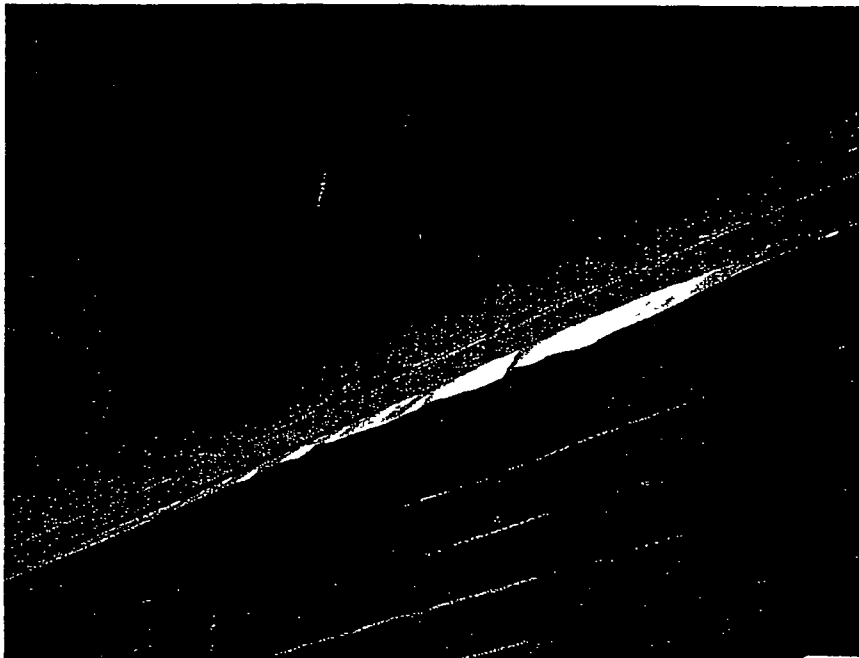


**Photo 8 - Exterior siding**

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**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
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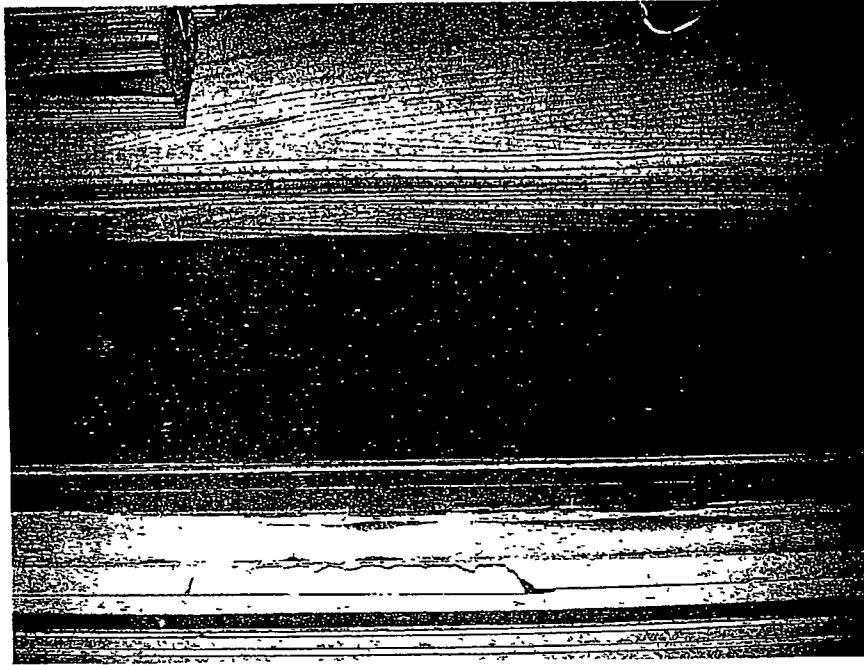


**Photo 9 - Exterior siding Masonite mark**



**Photo 10 - Exterior roofing**

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**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**



**Photo 11 - Exterior roofing**



**Photo 12 - Typical downspout**

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**MONTCLAIR APARTMENTS - MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
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**Photo 13 - Typical downspout**



**Photo 14 - Main entry islands**

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**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
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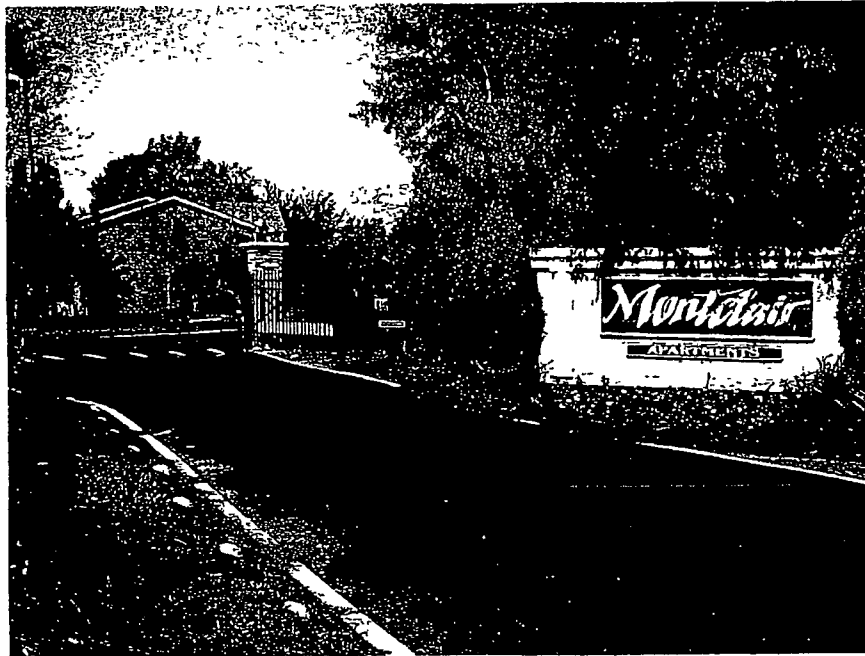


**Photo 15 - Main entry islands**

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ACE Job No. IN20020291

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**NOTE: CONCRETE REPAIR AREAS  
SHOWN IN RED 11-06-2002**

# MONTCLAIR APARTMENTS

## SITE MAP

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**MONTCLAIR APARTMENTS - MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**

**MONTCLAIR APARTMENTS**

1861 Montclair Drive  
Mt. Pleasant, S C 29464

**Sidewalk repairs/replacements**

Building 1874 17 x 7  
Building 1876 21 x 4  
Building 1878 24 x 4  
Building 1879 11 x 5  
Building 1869 38 x 4  
Building 1860 20 x 4  
Building 1850 39 x 5 1/2  
Building 1816 5 x 4  
Building 1810 45 x 4  
Building 1804 25 x 4  
Building 1776 - 1778 - 1782 168 x 4  
Building 1766 27 x 4  
Building 1723 20 x 4  
Building 1722 5 x 4  
Building 1712 6 x 4  
Building 1716 4 x 4

Pool walkway by office 52x 6 Includes warn path to the laundry room  
Pool walkway by townhome pool 57 x 6

Curbing - in front of 1877 and 1879 buildings  
Curbing both sides in front of 1847 Building and at the end on Montclair Drive

Asphalt path for tennis court remove and replace 210 x 3  
Asphalt path around the playground remove and replace 340 x 6



**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**

**MONTCLAIR APARTMENTS**

1861 Montclair Drive  
Mt. Pleasant, S C. 29464

843-881-3033

**Townhome Patio's**

1820 crack in the middle of patio  
1814 crack in the middle of patio  
1776 crack in the middle of patio  
1778 patio – lower than the surrounding ground  
1780 patio – lower than the surrounding ground  
1782 patio – lower than the surrounding ground  
1752 tree roots under patio – starting to slant toward the apartment  
1740 right front corner of patio is broken  
1734 patio slants out from building  
1726 patio slants in toward the apartment

**MONTCLAIR APARTMENTS - MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**



**Photo 16 - Concrete sidewalks**

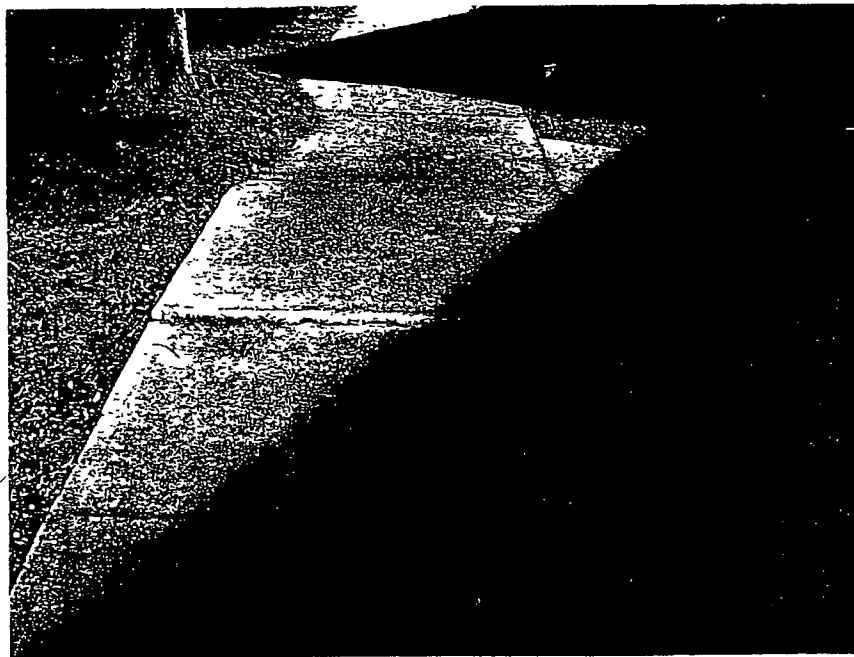


**Photo 17 - Concrete sidewalks**

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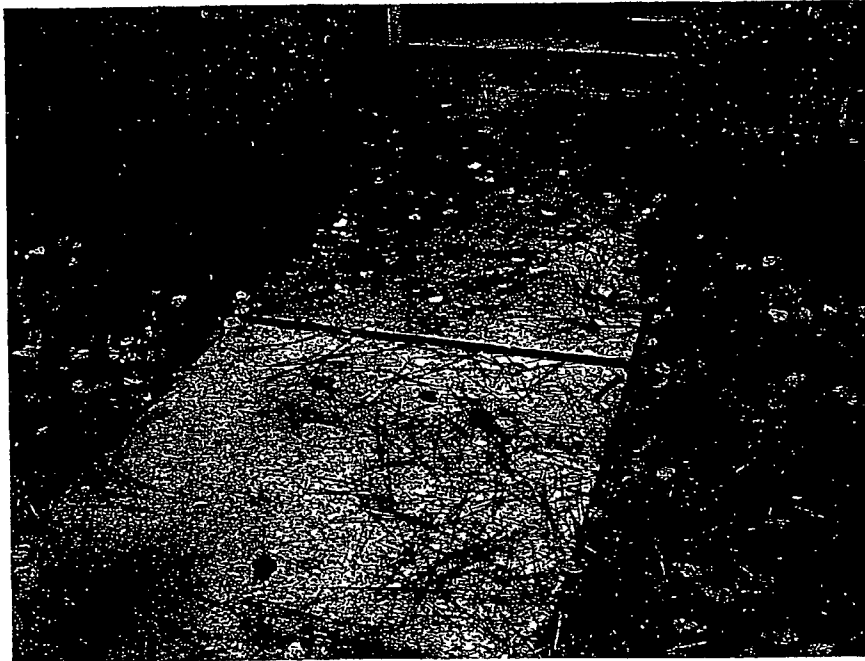


**Photo 18 - Concrete sidewalks**



**Photo 19 - Concrete sidewalks**

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**MONTCLAIR APARTMENTS - MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
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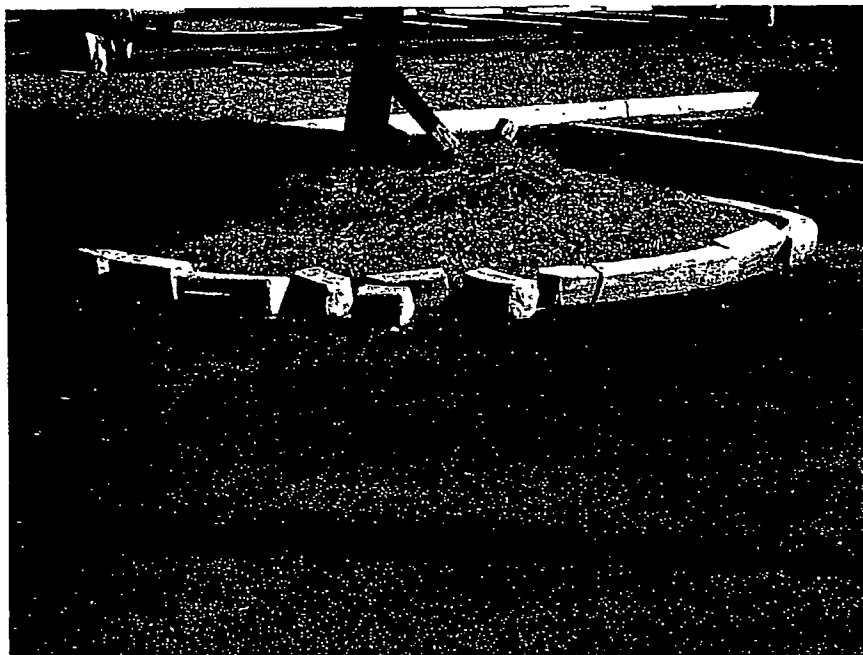


**Photo 20 - Concrete curbing**

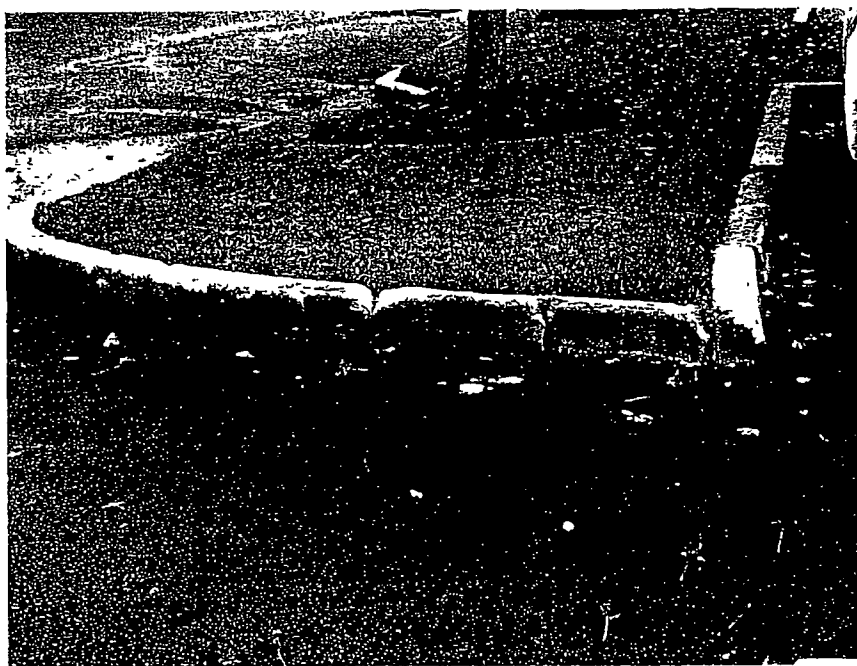


**Photo 21 - Concrete curbing**

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**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
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**ACE Job No. IN20020291**

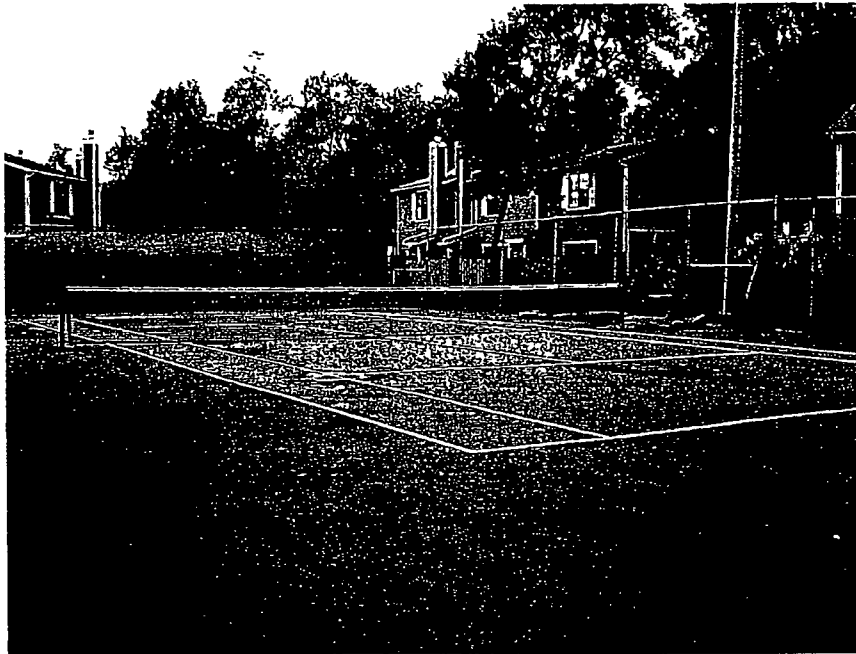


**Photo 22 - Tennis court**

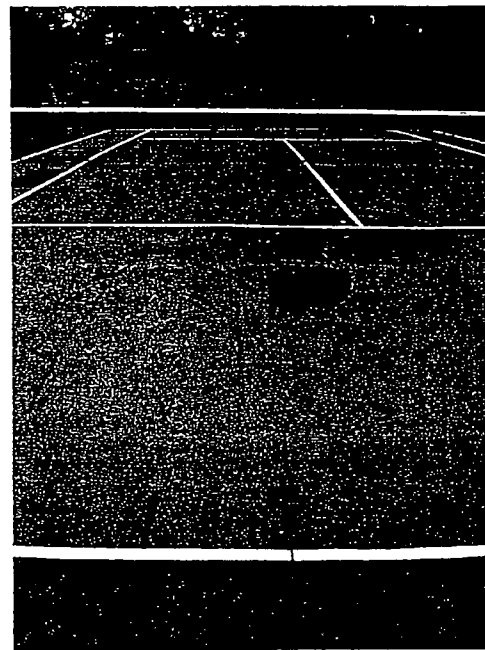
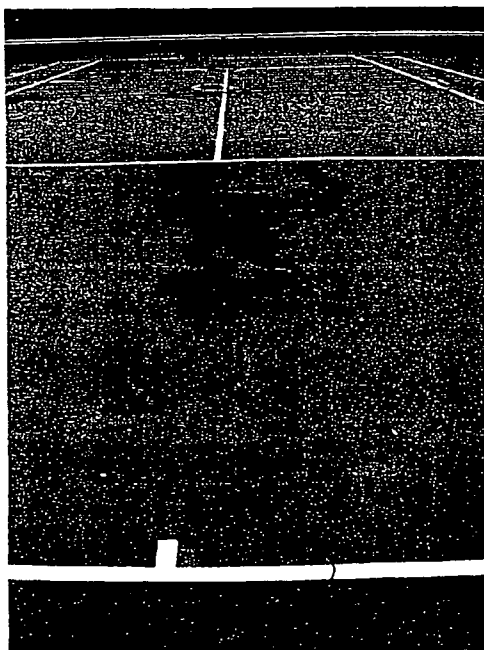


**Photo 23 - Tennis court**

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**MONTCLAIR APARTMENTS - MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**

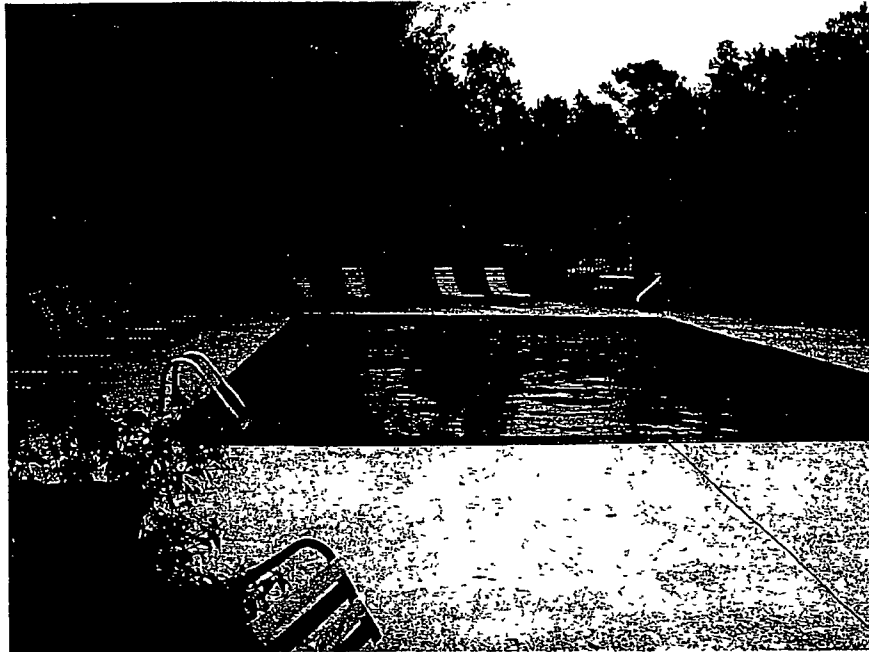


**Photo 24 - Swimming pool deck at clubhouse**



**Photo 25 - Swimming pool deck at clubhouse**

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**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
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**ACE Job No. IN20020291**

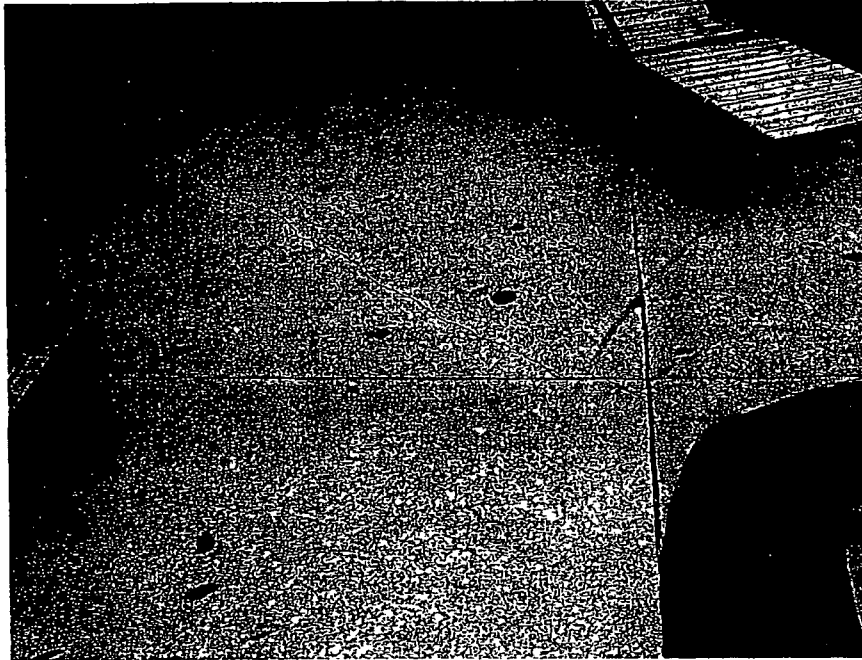


**Photo 26 - Swimming pool deck at clubhouse**



**Photo 27 - Swimming pool deck at clubhouse**

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**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
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**ACE Job No. IN20020291**



**Photo 28 - Swimming pool deck at clubhouse**

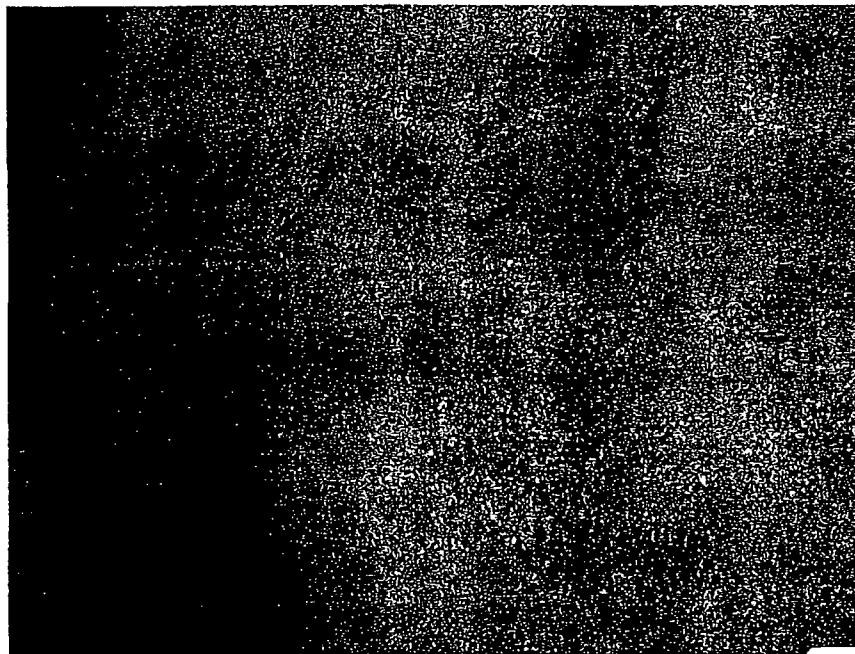


**Photo 29 - Swimming pool deck at clubhouse**

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**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**



**Photo 30 - Playground equipment**



**Photo 31 - Asphalt walkways at tennis court**

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**MONTCLAIR APARTMENTS - MT. PLEASANT, SOUTH CAROLINA**  
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**ACE Job No. IN20020291**

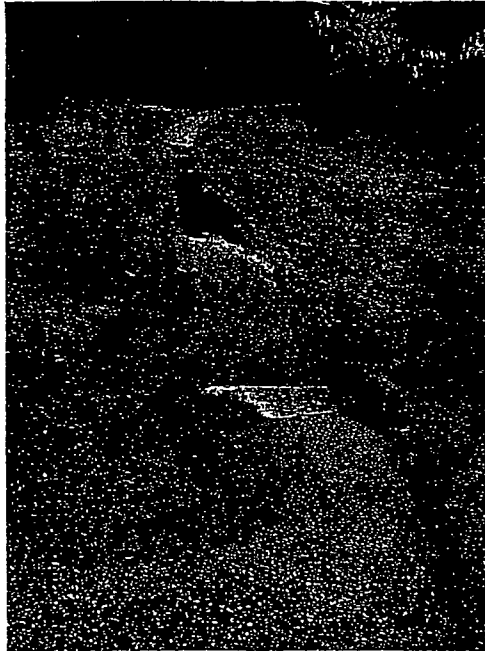


**Photo 32 - Asphalt walkways at tennis court**



**Photo 33 - Asphalt walkways at playground**

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**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**



**Photo 34 - Timber retaining wall**



**Photo 35 - Existing walk bridge**

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**Inspection Dates: November 6, 2002**  
**ACE Job No. IN20020291**

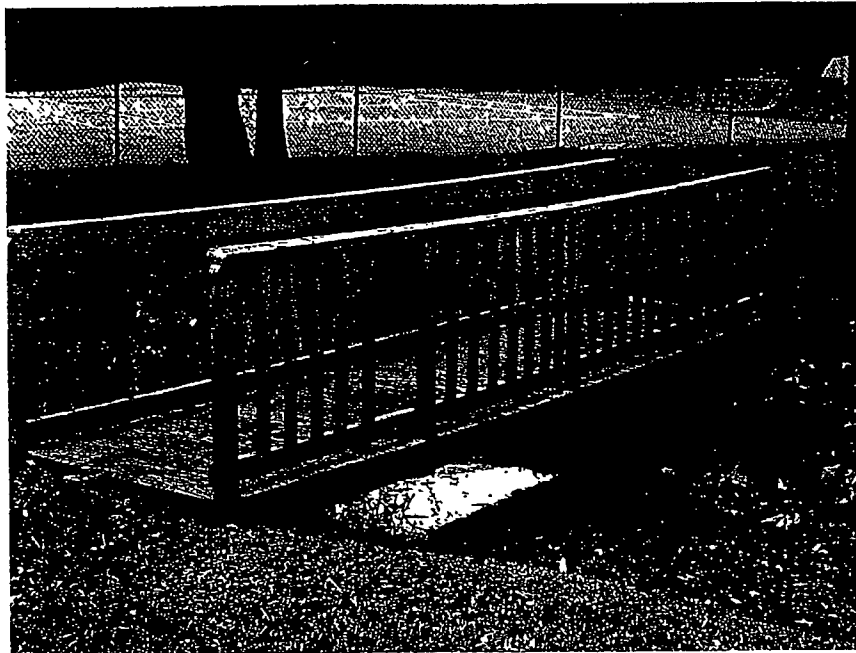


**Photo 36 - Existing walk bridge**

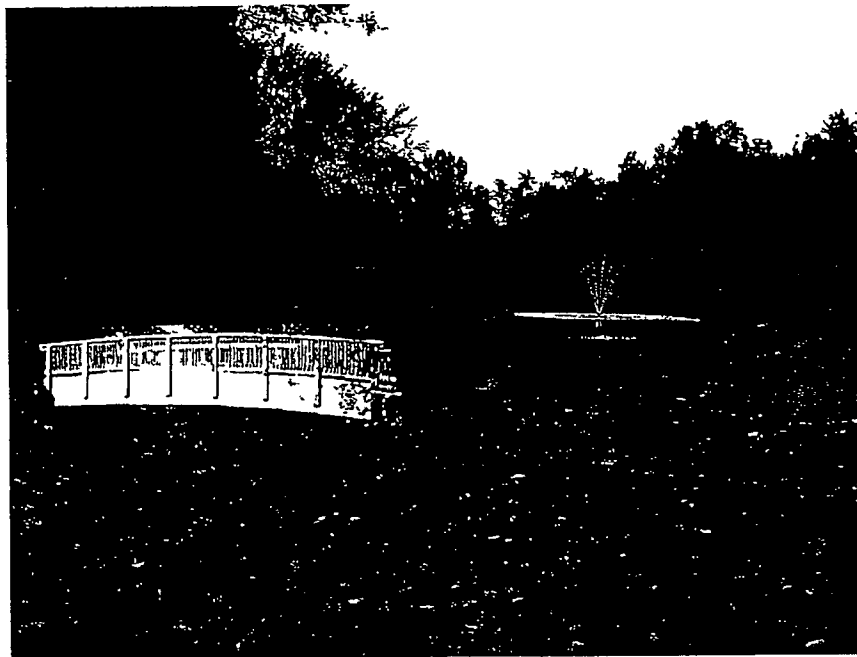


**Photo 37 - New walk bridge location closer to lake**

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**MONTCLAIR APARTMENTS – MT. PLEASANT, SOUTH CAROLINA**  
**Inspection Dates: November 6, 2002**  
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**Photo 38 - ADA at Clubhouse**



**Photo 39 - ADA at Clubhouse**

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# AMERICAN CONSULTING, INC.

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MOLAPO R. M. KGABO, PE  
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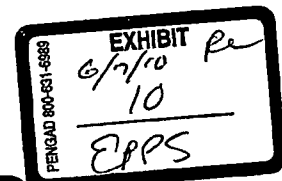
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## Property Condition Assessment

Montclair Apartments  
Mt. Pleasant, South Carolina

Prepared for:  
CREMCO, L.L.C.  
its Successors and/or Assigns  
345 North Canal, Street, Suite 201  
Chicago, Illinois 60606

-Investigation Date: April 8, 9, and 10, 2003



Plaintiff 000165  
(2008-1514)

ARCHITECTURE STRUCTURAL CIVIL ENVIRONMENTAL TRANSPORTATION PLANNING SURVEYING FORENSIC ENGINEERING

## AMERICAN CONSULTING, INC.

### Executive Summary

The summary results of our investigation are as follows:

#### Parking and Paving

- We noted some areas of deterioration primarily along the center swales.

#### Drainage

- We noted some ponding water along the south and east side of building 1870 Montclair Drive. (See Photos No. 1, 2, 3, and 4)

#### Buildings Façade

- At the time of this inspection and from previous inspections, we noted that the exterior siding is Masonite X-90, which is included in a class action lawsuit. (See Photo 5)

#### Roofs

- Fungal growth was evident on the sloped gypsum board located on the sloped side of the chimney chase in several of the storage rooms. This occurrence was evident in 6 out of 16 town homes inspected. (See Photos 6 and 7)

Six random attics were observed over vacant units and the common issues noted were as follows:

- Insulation was displaced during a previous roofing replacement and not redistributed. (See Photo 8)
- The gypsum board on the firewalls has damaged tape joints, bowed and/or detached from the original installation location, and improperly taped/caulked penetrations. A portion of the firewall at building 1859 Montclair Drive was removed and not replaced. (See Photos 9 and 10)
- Vent piping located at building 1760 Park Vue was not extended through the roof. The hole in the roof was roofed over and vent pipe cut flush with the roof decking. (See Photo 11)
- Ridge vent installations were not properly constructed at the following locations:
  1. Building 1871 Montclair Drive – ridge vent was roofed over. (See Photo 12)
  2. Building 1859 Montclair Drive – improper attachment of the ridge vent has allowed water infiltration into the bathroom ceiling below. (See Photo 13)
  3. Building 1828 Belle Chez – water infiltration through the chimney flue has entered the bedroom ceiling below. (See Photos 14 and 15)

Plaintiff 000166  
(2008-1514)

**AMERICAN CONSULTING, INC.**

**Mechanical, Electrical and Plumbing Systems**

- Based on the current age and expected life of the system components, we would anticipate approximately 60% replacement of condensers and 10% replacement of Carrier heat pumps will be required within the next five years.
- Based on the current age and expected life of these units, we would anticipate approximately 50% replacement of disposals and 20% replacement of the remaining original water heaters will be required within the next five years.
- Per my discussion with Ms. Thomas, on the evening of April 3, 2003 the resident in 1802 Belle Chez called and informed the staff of water leaking under the wall in the front entry. The staff investigated the vacant 1804 Belle Chez and found a hairline leak from the master bedroom toilet bowl that was leaking down through the adjoining walls and into the kitchen below. (See Photos 16, 17, 18, and 19)

**Kitchen and Laundry Appliances/Cabinets/Baths**

- Based on the current age and expected life of these units, we would anticipate approximately 5% replacement of dishwashers will be required within the next five years.

**ADA/FHA/Accessibility**

- Men's and women's lavatories in the clubhouse do not have insulation kits over the pipes below to protect disabled patrons as required.

Plaintiff 000167  
(2008-1514)





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# AMERICAN CONSULTING, INC.

Architects  
Consultants  
Engineers

April 24, 2003

CREMCO, L.L.C.  
its Successors and/or Assigns  
345 North Canal Street - Suite 201  
Chicago, Illinois 60606

Re: Property Condition Assessment Report  
Montclair Apartments  
Mt. Pleasant, South Carolina 29464

Dear Sirs:

As per the request of CREMCO, L. L. C., Jack Kennedy and David Heitzman, we have completed the site, building assessments and report on the above-referenced property. The investigation included the specific observations of twenty-six vacant units with six attics. Based on our evaluation, we recommend that the following items be addressed as a part of normal maintenance. An estimate of the costs associated with our recommended repairs, upgrades and normal maintenance are attached as Appendix A and B to this report.

The following sections provide a more detailed description of our observations and the overall condition of the property.

## I. SURVEY OBJECTIVES

The purpose of our physical survey of the Montclair Apartments was to assess the structural condition of the buildings, survey the general condition of the buildings and systems, and verify items listed in the Property Engineering Report provided by CREMCO, L. L. C. (attached) This report is based upon field observations and conversations/interviews with management and maintenance personnel.

## II. INTERVIEWS/RECORDS REVIEW

During our site visit, we interviewed Ms. Sheryl Thomas, community manager of the property. Ms. Thomas has been the property manager since 1992, approximately one year after the property was purchased from Travelers Insurance Co. It was originally developed in 1995-1996. During our interview with Ms. Thomas, we reviewed and discussed the following maintenance records and logs:

- HVAC and Water Heater Repair/Replacement Log
- Appliance Repair/Replacement Log

Plaintiff 000168  
(2008-1514)

ARCHITECTURE STRUCTURAL CIVIL ENVIRONMENTAL TRANSPORTATION PLANNING SURVEYING FORENSIC ENGINEERING

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- Refrigerant Condenser Replacement Log
- Pool Inspection Reports (South Carolina Department of Health and Environmental Control)
- Annual Fire Department Inspection Reports (Mt. Pleasant Fire Department)

In addition to evaluation and discussion of the above, we discussed the proposed concrete repairs, ongoing asphalt repairs and maintenance to be completed this spring. We also discussed frequency of regularly scheduled maintenance and how repairs and replacements are handled by the maintenance staff. It is our understanding that a large percentage of the repairs and replacements required at the complex are completed by the maintenance staff personnel.

It is our opinion the maintenance program for the property is very good, and that Ms. Thomas is knowledgeable about preventative maintenance and repairs and has a very good understanding of the maintenance requirements for this type of property.

Based on our survey of the facilities and review of fire department and other governing agency inspection reports, it is our opinion the complex is in compliance with city and state codes and ordinances except as noted herein.

**III. PROJECT DATA**

Occupancy Type:

- Apartments: Residential Occupancy
- Clubhouse: Small Assembly Occupancy

Construction Type: Type V-1 Hour, Non-sprinkled

No. Of Units: 240

No. Of Buildings: 36 (including clubhouse/office areas)

Square Footages:

|                      |   |          |
|----------------------|---|----------|
| 2 bedroom/2 bath     | = | 1010 sft |
| 3 bedroom/2 bath     | = | 1169 sft |
| 2 bedroom/2-1/2 bath | = | 1205 sft |
| 3 bedroom/2-1/2 bath | = | 1440 sft |

Unit mix:

|                      |   |           |
|----------------------|---|-----------|
| 2 bedroom/2 bath     | = | 116 units |
| 3 bedroom/2 bath     | = | 44 units  |
| 2 bedroom/2-1/2 bath | = | 60 units  |
| 3 bedroom/2-1/2 bath | = | 20 units  |

Occupancy: 90% ±

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**IV. GENERAL DESCRIPTION OF PROJECT**

**A. Site**

The Montclair Apartment complex is located on approximately 26.9 acres of slightly rolling terrain north of the Charleston area in Mt. Pleasant, South Carolina. The site is located on the west side of Hwy 17, approximately one mile north of Interstate 526. Nearby properties include retail, light commercial, and multi-family housing.

The property is accessed via three gated egress drives from Hwy 17 on the east side. On-site amenities for the residents' use include a tennis court, playground equipment, pond, exercise room and two in-ground pools with whirlpools.

**B. Parking and Paving**

The parking and aisle areas are of bituminous-asphalt construction and were found to be in average structural condition overall. We noted some areas of deterioration primarily along the center swales. These repairs are an on-going maintenance project. Other than these areas, we saw no other asphalt paving problems that need immediate attention at this time. Based on the age and current condition of the asphalt paving in place, we do believe that a complete resurfacing program will be required in the next five years.

Total available parking is approximately 462 spaces. Although we did not get an exact count, we believe that approximately 9 spaces are designated for the disabled. It appears that the parking provided is adequate for the complex. We did note that one parking space at the clubhouse/office has been designated accessible parking since our last visit.

Lighting for the perimeter building, parking, and drive areas are provided by pole-mounted street lamps. We did observe the site after dark, and believe the property to be sufficiently lighted to maintain minimal foot-candle levels for safety and security.

All curbing within the complex, including the main entrance to the site, are 6-inch cast-in-place concrete. Curbs and concrete walks were found to be in good condition overall; however, we noted a few areas that are damaged. The complex has a contract signed to repair these items in the next few months. Other than the issues noted above, we anticipate only normal concrete repairs and replacements will be required over the next five years.

**C. Landscaping**

Landscaping on site is very attractive, consisting of grass areas or planting beds with deciduous and evergreen trees and shrubs located in landscape islands and around the buildings and perimeter of the property. There is one large pond located toward the rear of the property.

We did observe at the time of this visit that the landscaper was installing pine straw in all of the planting beds, and did not observe any problems with landscaping in place during our site visit.

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The grass areas and plantings are healthy and well maintained. We anticipate only normal landscaping repairs and replacements will be required over the next five years.

**D. Drainage**

On-site stormwater drainage is accomplished via surface water run-off collected by catch basins in the paved areas where it is piped to the retention pond toward the rear of the property. Gutters and downspouts for each of the buildings deposit rainwater at grade for infiltration into the soil.

Based on our observations and the heavy rains that occurred during our visit, it is our opinion that the paved and landscaped areas have sufficient slope for adequate drainage. No apparent drainage problems affecting landscaping or building serviceability were noted during our site visit. We noted some ponding water along the south and east side of Building 1870 Montclair Drive. We have notified Ms. Sheryl Thomas of these areas and she is planning on correcting them. (see Appendix A). Other than the issue noted above, we anticipate only normal drainage maintenance will be required over the next five years. (See Photos No. 1, 2, 3 and 4)

**E. Buildings**

**1. Structural**

All the buildings in the complex are of residential type wood-framed construction. The buildings are all basically the same style, but vary in size. All apartment buildings are two stories, and the clubhouse facility is a single-story building.

Foundations and concrete slab-on-grade construction consists of a typical concrete formed system. The roof structures are framed with prefabricated wood trusses at 24 inches on center supporting wood plywood decking and two layers of asphalt shingles. The floor/ceiling structures in the apartment buildings are assemblies consisting of prefabricated wood joists/trusses supporting plywood decking. Exterior stairs are painted steel with concrete treads, and interior stairs are of wood-framed construction.

We did not observe any evidence of structural distress or failure during our site investigation, and we believe all buildings are structurally sound. We do not anticipate any major structural repairs will be required over the next five years.

**2. Façade**

The exteriors of all buildings are basically the same, consisting of painted composite siding and wood trim with some sections of brick veneer that is typical in appearance for all apartments and the clubhouse/office building.

Exterior façades appear to be in good condition overall, and the building skin, windows, and entrances are believed to be performing adequately as designed. It is

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also our opinion that sealants and details intended to keep the interior areas weatherproof are in efficient operating condition.

At the time of this inspection and from previous inspections we did note that the exterior siding is Masonite X-90, which is included in a class action law suit. There are numerous areas on the painted siding that are buckling or warping at the butt joints and several areas where the siding is deteriorated and should be replaced. We have previously submitted the original claim form, which has resulted in the Independent Claims Administrator inspection of the clubhouse/office. The remaining thirty-seven (37) claim forms and checks are being held at our office awaiting investigation of the Madison Hill Apartments claim forms. Repainting of all exterior composite and wood surfaces is not included in this report until the Masonite issue is settled (See Photo 5)

**3. Glazing Systems/Doors**

Apartment and clubhouse windows are dark bronze anodized aluminum-framed, single-hung units with insulated glazing and screens and appear to be of good quality. Exterior entrance doors are insulated steel (6-panel) units, and sliding patio doors are dark bronze anodized aluminum-framed units with insulated glazing and screens that are both of good quality. All apartment windows and patio sliding doors are furnished with mini-blinds and vertical blinds, respectively.

No major problems were observed with the window and door systems at the property. We did note one window panel over an entry door with a cracked panel of glass that will need to be replaced. In speaking with Ms. Thomas, it is our understanding that very few of the window units have had to be replaced to date due to broken seals. Other than the issues noted above, we anticipate only normal glazing and door repairs and replacements will be required over the next five years.

**4. Roofs**

All roofs including the clubhouse/office, are moderately sloped and have two layers of shingles, overlaid in July 1992, with standard-weight (believed to be 20-year) 3-tab composition shingles. The roofing materials appear to be of good quality, and roofs in generally good condition. Fungal growth was evident on the sloped gypsum board located on the sloped side of the chimney chase in several of the storage rooms. It is our opinion that the fungal growth is from water infiltration over the years through the chimney flashing on the roofs. This occurrence was evident in six out of sixteen townhomes inspected (See Photos 6 and 7)

With an approximate in-place age of nine years, we believe that with proper maintenance and under normal weather conditions these roof systems should not need to be replaced for approximately 5 to 8 years

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Gutters, downspouts and vented soffits are aluminum and are also in good condition. The attic spaces for all buildings are vented by roof ridge and soffit vents. Attic spaces appear to be well ventilated, and roof decking in the attic spaces observed was in good condition. We also noted that the attic spaces we observed have approximately ten inches of blown-in fiberglass insulation in place.

Six random attics were observed and the common items noted as follows:

1. Insulation was displaced during a previous roofing replacement and not redistributed. (See Photo 8)
2. The gypsum board on the firewalls has damaged tape joints, bowed and/or detached from the original installation location, and improperly taped/caulked penetrations. A portion of the firewall at Building 1859 Montclair Drive was removed and not replaced. (See Photos 9 and 10)
3. Vent piping located at building 1760 Park Vue was not extended through the roof. The hole in roof was roofed over and vent pipe cut flush with the roof decking. (See Photo 11).
4. Ridge vent installations were not properly constructed at the following locations:
  - Building 1871 Montclair Drive – ridge vent was roofed over. (See Photo 12)
  - Building 1859 Montclair Drive – improper attachment of the ridge vent has allowed water infiltration into the bathroom ceiling below. (See Photo 13)
  - Building 1828 Belle Chez – water infiltration through the chimney flue has entered the bedroom ceiling below. (See Photos 14 and 15)

Other than the issue noted above, no other problem areas or conditions were noted with these systems that need attention at this time.

#### 5. Building Access

Access to the apartment buildings is from open breezeways that serve private entrances, including concrete walks on the ground level and landings on the upper level. Access to the townhomes buildings is from a concrete sidewalk. The clubhouse has a main entrance door on the east elevation and secondary exits from the main gathering and exercise rooms as required. It is our opinion that sufficient egress is provided to and from the buildings on site as required by code.

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**6. Mechanical, Electrical and Plumbing Systems**

Heating and air conditioning equipment is provided by individual Carrier heat pumps and cooling via remote electric condenser units. Heat pumps and water heaters are located in the hallway closet in the townhomes. In the apartments, heat pumps are located in the hallway closet and water heaters are located in the outside storage room. The apartment cooling systems range from of 2 to 2½ tons depending on the size of the unit. These systems appear to be in good operating condition.

Based on the current age and expected life of the system components, we would anticipate approximately 60% replacement of condensers and 10% replacement of Carrier heat pumps will be required within the next five years (see Appendix B).

The clubhouse and office areas are served by two Carrier heat pump furnaces for heating located in the utility closet of the areas they serve and are tied to remote condensers for cooling.

Plumbing fixtures consist of ceramic tubs and porcelain lavatories and water closets that were found to be in good condition. Electric garbage disposals are provided for each apartment unit, and water heaters observed were electric State/Ruud 40 gallon units.

We were informed that approximately 26 of the disposals were replaced in 2002 and 219 of the water heater units have had to be replaced since 1992. Due to the current age and expected life of these units, we would anticipate approximately 52% replacement of disposals and 20% replacement of the remaining original water heaters will be required within the next five years (see Appendix B).

On April 8, 2003, during our inspection of unit # 1804 Belle Chez, it was noted that the kitchen ceiling had been removed and fungal growth was evident at numerous locations on the kitchen cabinets, under the sink, laundry room walls, living room breakfast counter wall and dining room wall. After further investigation in the upstairs of the unit it was noted that the carpet in the front bedroom had been pulled up and the plywood flooring was wet and fungal growth was present. The master bedroom also has had its carpet pulled back and the soaked padding was lying in the shower (See Photos 16, 17, 18, and 19)

- Per my discussion with Ms. Thomas, on the evening of April 3, 2003, the resident in 1802 Belle Chez called and informed the staff of water leaking under the wall in the front entry. The staff investigated the vacant 1804 Belle Chez and found a hairline leak from master bedroom toilet bowl that was leaking down through the adjoining walls and into the kitchen below. The staff turned off the water supply, drilled holes in the kitchen bulkhead to relieve the water build-up, removed the kitchen ceiling and pulled back the carpets in the bedrooms.

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- A conference call was made to David Heitzman at CREMC, L.L.C. on April 8, 2003, to inform him of the situation. David instructed me and the staff to immediately start drying out the unit and to begin remediation. We instructed the staff to remove and dispose of all the carpet and padding from the unit, rent two dehumidifiers and place one in the kitchen and one in the front bedroom, remove all the water saturated plywood, and cut and remove all the gypsum board on the walls affected up a minimum of 2'-0". In the kitchen area, the counter and cabinets on the common wall need to be removed to inspect for the possible damage behind. All the gypsum board walls and any others in the area affected should have the gypsum board cut and removed up to a minimum of 2'-0". Albrecht Environmental of Mt. Pleasant, SC, was contacted to perform an air sample testing for the pre-remediation sample.

Light fixtures are attractive (fluorescent in kitchen and incandescent ceiling fan/lighting in dining rooms). No GFI electrical outlets were visible in kitchens or master baths; however, they are located in the secondary or half baths, we presume that the other GFI electrical outlets required outlets are wired through these outlets. Main electric panels, meters, and disconnects are located on the exterior of each building. Each apartment is provided with a 100-amp distribution panel and the clubhouse has a 200-amp distribution panel. Electrical service to the facilities is 120/240 volts. Electrical systems were observed to be in good condition. No problems were noted, and we would anticipate only normal electrical repairs and replacements will be required over the next five years.

**7. Kitchen and Laundry Appliances/Cabinets/Baths**

All appliances are almond finished General Electric fixtures that include refrigerators, electric ranges, dishwashers, and connections for washer/dryer units. These appliances are of good quality and were found to be in good condition. Based on the current age and expected life of these units, we would anticipate approximately 5% replacement of dishwashers required within the next five years.

All kitchen and bath cabinets have plastic laminate tops and fronts with white plastic laminate faces with oak trim. These finishes were found to be in good condition as well. We do not anticipate any major repairs or replacements of cabinetry or counter tops will be required over the next five years.

**8. Apartment Interiors**

Apartment interiors/layouts are typical for projects of this type, with painted walls, textured ceilings, carpeting in rooms, quarry tile flooring at the entry, ceramic tile in the baths and vinyl flooring in kitchens and laundry rooms

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Depending on the floor plan, 80 townhomes units have wood burning fireplaces. First floor units have patios, second floor units have balconies, and both have an exterior storage room off the patio or balcony.

Apartment finishes observed were in very good condition. We anticipate that only normal repainting and replacement of finishes due to wear and tear will be required over the next five years.

**9. Clubhouse/Pool/Offices**

The clubhouse is a freestanding, 1-story building. The interior is attractive and nicely furnished and has a large lounge area with a raised ceiling and business/leasing offices. Accessed from both the lounge and the pool area is an exercise room with detached men's and women's toilet facilities and a community shower. We anticipate only normal repainting and replacement of finishes due to wear and tear will be required in the clubhouse over the next five years.

Outside is a large pool and whirlpool with an attractively landscaped concrete deck. This entire area is quite attractive and well maintained. We were informed that the pool filtration system has only recently had the whirlpool manifold replaced and has a sand filtration system. There are minor cracks in the pool deck, which we noted in our last visit.

There is also a secondary large pool and whirlpool on the south end of the property. We do not anticipate any major repairs or replacements of pool systems or equipment being required over the next five years.

The clubhouse, laundry, whirlpool and fireplace in the lounge area use propane gas.

**V. ACCESSIBILITY/LIFE SAFETY/GENERAL SAFETY ISSUES**

**A. ADA/FHA/Accessibility**

Title III of the Americans With Disabilities Act divides covered buildings into two categories: "Public Accommodations and "Commercial Facilities". The apartment buildings are not required to comply with the guidelines of ADA.

We believe that other than the minor exception noted below, the site, parking, access to the clubhouse facilities, buildings, and the public areas basically meet the requirements as stated above. We did not see any first floor apartment units that had been converted for accessibility. We do believe; however, that most first floor units could be adaptable to meet accessible standards if required.

Some exceptions noted during our survey which do not fully conform with ADA include, but are not necessary limited to the following:

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1. Men's and women's lavatories in the clubhouse do not have insulation kits over the pipes below to protect disabled patrons as required.

**B. Life Safety**

During our survey, it was observed that life safety issues have been adequately addressed. Although we were not able to fully verify, we believe the following have been constructed according to the plans:

1. Each apartment party separation wall and floor/ceiling separations are of 1-hour construction.
2. Attic fire stops are provided as required.
3. Smoke detectors are located in each apartment unit and in the clubhouse facility.
4. The clubhouse facility has sufficient exits, and provided with battery back up powered lighting in place as required.

**VI. PROCEDURES, LIMITATIONS AND ASSUMPTIONS**

On April 8, 9, and 10<sup>th</sup>, 2003, American Consulting, Inc., conducted an on-site evaluation of the subject property to determine the status of conditions and items as outlined above. During our visit, we did not gain access to all areas, operate equipment, or perform any tests. The findings in our report are not based on a comprehensive engineering study, as we did not remove building materials to inspect the underlying structure, systems or assemblies.

All areas were accessible to us during our inspection with the exception of the occupied living units. During our evaluation, we visually inspected the site and grounds, building exteriors, and roof systems. We performed an interior and exterior evaluation of the clubhouse including the offices and pool areas. We spot-checked (6 units) attic areas in the apartment buildings and townhomes, and did a walk-through of approximately 11% (26 units) of the total apartments and townhomes on site to inspect mechanical/electrical/plumbing systems, appliances, finishes, etc., to verify general conditions.

This report does not confirm the absence of asbestos, PCB's, toxic soils, or other hazardous materials. If certification of these items is required, we recommend that specialists in these areas be retained for detailed investigation and testing.

No responsibility is assumed by the inspecting firm for any legal matters. It is assumed that the surveyed facility is controlled by the property representatives interviewed and that information thus gained as to ownership, location, condition, etc., is factual.

All maps and descriptive materials/data furnished to the inspecting firm are assumed to be correct and adequate for inclusion in this report

Plaintiff 000177  
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Estimates and opinions furnished to the inspecting firm by informed persons (if any), are assumed to be correct and reasonable

This report is to be used in its entirety only and is the property of the client. Any further use will not be granted without written permission by the client and inspecting firm.

Estimates of values contained herein for deferred, latent defects, upgrades, etc., are the opinion of the inspecting firm, who assume no liability for errors, facts or judgments.

The inspecting firm does not warrant that their investigation has revealed all items of deferred maintenance, latent defects, etc., that exist within the project. The inspecting firm does state, however, that they made a "best effort" to identify such items as are consistent with their experience in the architectural and engineering business in the available time at the project site.

VII. SUMMARY

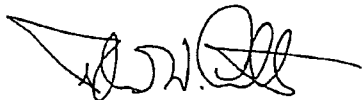
The Montclair Apartment complex is an extremely attractive residential community that is very well managed and maintained. The buildings in this complex were observed to be in very good condition throughout.

The grounds are well kept and very attractive, with only minor attention needed in a few areas. Adequate parking is available, and asphalt paving and concrete surfaces are in good condition overall, however, some current repairs are ongoing. The buildings appear to be properly constructed and structurally sound.

Our estimates of probable cost for items to be repaired or replaced in the next six months have been included in Appendix A. It is our understanding that most of these costs are already included in the maintenance budget for 2003. Our estimates of probable cost for major items to be repaired or replaced over the next five years have been included in Appendix B. A property site plan and apartment floor plan layouts have been included in Appendix C. Specific site and building photographs have been included in Appendix D and general site and building photographs are in a separate book.

If you have any questions regarding this information or if we can be of further service, please do not hesitate to call.

Very truly yours,  
American Consulting, Inc.



Thomas W. Cancilla, AIA

TWC:rst

Plaintiff 000178  
(2008-1514)

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APPENDIX A

Repairs and Deferred Maintenance  
Within the Next Six Months

Plaintiff 000179  
(2008-1514)

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## MONTCLAIR APARTMENTS, MT. PLEASANT, SOUTH CAROLINA

### REPAIRS AND DEFERRED MAINTENANCE REQUIRED

(WITHIN THE NEXT SIX MONTHS)  
(Major Site and Building Components Only)

| Name of Component to be Repaired/Replaced        | Anticipated Timeframe | Unit Measure   | Quantity of Units (Est.) | Unit Cost       | Estimate of Probable Cost      |
|--------------------------------------------------|-----------------------|----------------|--------------------------|-----------------|--------------------------------|
| Asphalt Paving Repairs                           | 1 to 3 Months         | Square Feet    | 2,000                    | \$3 00          | \$6,000                        |
| Concrete Paving Repairs                          | 1 to 3 Months         | Under Contract | Under Contract           | Under Contract  | \$25,519                       |
| Tennis Court Resurfacing                         | 1 to 3 Months         | One            | One                      | One Court       | \$5,000 to \$18,000            |
| New Playground                                   | 1 to 3 Months         | One            | One                      | At Existing     | \$11,000 to \$18,000           |
| Remediation Unit 1804 Belle Chez / Rebuild       | 1 to 3 Months         | One Unit       | One Unit                 | One Unit        | \$6K to \$10K / \$10K to \$15K |
| ADA Upgrades as Noted                            | Within 6 Months       | Lump Sum       |                          |                 | \$200                          |
| Remediate Storage Units / Rebuild                | Within 6 Months       | Each           | 48 Townhomes             | \$800 to \$1000 | \$38K to \$48K                 |
| Replace 10 Concrete Patios.                      | Within 6 Months       | Each           | 10                       | \$420           | \$4,200                        |
| Repair Fire Walls in Attics                      | Within 6 Months       | Each           | 114                      | \$800 to \$1000 | \$91,200 to \$141,000          |
| Repair Drainage Area @ Unit 1870 Montclair Drive | Within 6 Months       | Lump Sum       |                          | \$6K to \$10K   | \$6K to \$10K                  |
| TOTAL                                            |                       |                |                          |                 | \$203,000 to \$296,000         |

This list is based on our visual observations and includes the major maintenance items found that need immediate attention. The estimated costs above are based on estimated rough quantities and outside labor hours, and have not been adjusted for inflation or material or labor increases. Maintenance and upgrade costs estimated above could be considerably less if done by in-house maintenance staff. This list does not include normal minor maintenance repairs/replacements or apartment finish upgrades typically required for a facility of this type.

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APPENDIX B

Capital Needs (Replacement Reserve)  
Over the Next Five Years

Plaintiff 000181  
(2008-1514)

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## MONTCLAIR APARTMENTS, MT. PLEASANT, SOUTH CARLONIA

### CAPITAL NEEDS (REPLACEMENT RESERVE)

(OVER THE NEXT FIVE YEARS)  
(Major Site and Building Components Only)

| Name of Component to be Repaired/Replaced | Anticipated Timeframe | Unit Measure  | Quantity of Units (Est.) | Unit Cost | Estimate of Probable Cost |
|-------------------------------------------|-----------------------|---------------|--------------------------|-----------|---------------------------|
| Asphalt Seal-Coating & Striping           | Years 1 & 2           | 18,000 sy +/- | Lump Sum                 |           | \$15,000                  |
| Asphalt Resurfacing                       | Years 3 & 5           | 18,000 sy +/- | Lump Sum                 |           | \$80,000                  |
| Replace Exterior Entry Doors              | Years 1 & 5           | Each          | 25                       | \$466     | \$11,650                  |
| Replace Condensers as Needed              | Years 1 & 5           | Each          | 30                       | \$391     | \$58,650                  |
| Replace Water Heaters as Needed           | Years 1 & 5           | Each          | 75                       | \$165     | \$12,375                  |
| Replace Dishwashers as Needed             | Years 1 & 5           | Each          | 20                       | \$219     | \$4380                    |
| Replace Refrigerators as Needed           | Years 1 & 5           | Each          | 60                       | \$800     | \$48,000                  |
| Replace Microwaves as Needed              | Years 1 & 5           | Each          | 30                       | \$350     | \$10,500                  |
| Replace Carpet & Vinyl as Needed          | Years 1 & 5           | Each          | 180                      | \$1306    | \$235,080                 |
| Replace Ceramic Tile in Bathroom          | Years 1 & 5           | Each          | 5                        | \$1400    | \$7000                    |
| Replace Apartment Bath Windows            | Years 1 & 5           | Each          | 75                       | \$110     | \$8250                    |
| Replace Window Over Entry's               | Years 1 & 5           | Each          | 20                       | \$412.50  | \$8250                    |
| Patio Slider Door                         | Years 1 & 5           | Each          | 70                       | \$222.50  | \$15,785                  |
| Bedroom and Kitchen Windows               | Years 1 & 5           | Each          | 200                      | \$192.24  | \$38,448                  |
| Countertop Re-glazing                     | Years 1 & 5           | Each          | 175                      | \$175     | \$30,625                  |

Plaintiff 000182  
(2008-1514)

IN2002 0291.JN010 RPT IV.0002 R0 DOC

**AMERICAN CONSULTING, INC.**

|                  |             |      |     |      |                  |
|------------------|-------------|------|-----|------|------------------|
| Bathroom Mirrors | Years 1 & 5 | Each | 150 | \$90 | \$13,500         |
| Louvered Doors   | Years 1 & 5 | Each | 275 | \$54 | \$14,850         |
| <b>TOTAL</b>     |             |      |     |      | <b>\$612,343</b> |

This list is based on our visual observations and includes the major replacements anticipated during the term of the loan. The estimated costs above are based on estimated rough quantities and outside labor hours, and have not been adjusted for inflation or material or labor increases. Maintenance and upgrade costs estimated above could be considerably less if done by in-house maintenance staff. This list does not include normal minor maintenance repairs/replacements or apartment finish upgrades typically required for a facility of this type.

Plaintiff 000183  
(2008-1514)

IN2002 0291.IN010 RPT IV 0002 R0 DOC



**Church Creek Construction, LLC**  
**867 Robert E. Lee Boulevard**  
**Charleston, SC 29412**  
**(843) 452-5241**

October 10, 2003

Mr. Bruce Kinney  
 Montclair Homes, LLC  
 1839 A Villa Maison  
 Mt. Pleasant, SC 29464

RE: Inspection Report  
 Montclair Luxury Condominiums  
 Mt. Pleasant, SC

Dear Bruce: ~~For information~~

We propose to furnish all labor, material and equipment to complete the maintenance items as noted in the inspection report dated August 28, 2003 written by Epps Edwards Architects.

**TOWNHOUSE UNITS:**

**Building - Units 1712/ 1714/ 1716**  
~~Minor deterioration above bay window.~~

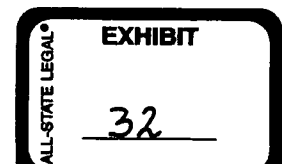
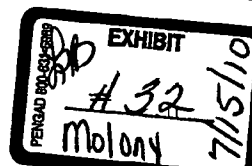
**Building - Units 1718/ 1720/ 1722/ 1724/ 1726**

|                                                                         |           |
|-------------------------------------------------------------------------|-----------|
| 1720: Minor deterioration above bay window.                             | \$ 30.00  |
| Grade "washed out" at terrace slab.                                     | \$ 30.00  |
| Minor deterioration of siding at bottom of rear elevation.              | Not Found |
| 1724: Trim band above bay window shows early signs minor deterioration. | \$ 80.00  |
| 1726: Water damage to storage room ceiling.                             | \$150.00  |

**Building - Units 1719/ 1721/ 1723/ 1725/ 1727**  
~~Minor deterioration above bay window.~~

|                                                                               |          |
|-------------------------------------------------------------------------------|----------|
| 1725: A 4' length of soffit panel is dislodged.                               | \$ 40.00 |
| Piece of siding dislodged at rear elevation.                                  | \$ 40.00 |
| Moisture damage at storage room ceiling. (Included in storage room estimate). |          |

Church Creek Const. 000001  
 (2008-1514)



Page Two  
Mr. Bruce Kinney  
October 10, 2003

Building - Units 1728/ 1730/ 1732/ 1734

- 1728: Minor wood deterioration at jamb of front door. \$225.00
- 1730: Minor deterioration at exterior storage door. \$125.00  
Minor wood deterioration at entrance sill. \$225.00
- 1734: A small section of soffit panel above "C" is dislocated. \$ 40.00

Building - Units 1729/ 1731/ 1733

No repairs,

Building - Units 1736/ 1738/ 1740

~~1736: Minor wood deterioration at jamb of front door. \$225.00~~

Building - Units 1746/ 1748/ 1750

- 1746: Minor wood deterioration at bottom of front door jamb. \$225.00  
~~1746: Minor wood deterioration at bottom of front door jamb. \$225.00~~
- 1748: Minor wood deterioration at bottom of front door jamb. \$225.00

Building - Units 1752/ 1754/ 1756/ 1758/ 1760

- ~~1752: Minor wood deterioration at front door sill area. \$225.00~~
- 1760: Minor wood deterioration at front door sill area. \$225.00

Building - Units 1762/ 1764/ 1766

- 1764: Minor wood deterioration at front door jamb. \$225.00
- 1766: Small rust area at storage door. \$ 70.00

Building - Units 1768/ 1770/ 1772/ 1774

- 1772: Minor bottom siding damage at rear next to electric meter. \$ 80.00
- 1774: Minor siding damage at right side of sliding door. \$ 80.00

Building - Units 1776/ 1778/ 1780/ 1782

- 1780: Minor wood deterioration at front door jamb. \$225.00
- 1782: Minor damage to siding at rear elevation near grade. \$ 80.00

Building - Units 1784/ 1786/ 1788/ 1790

- 1790: Minor wood deterioration at bottom of front door jamb. \$225.00

Church Creek Const. 000002  
(2008-1514)

Page Three  
Mr. Bruce Kinney  
October 10, 2003

**Building - Units 1801/ 1803/ 1805/ 1807/ 1809**

- 1801: Minor wood deterioration at front door jamb. \$225.00  
Damaged gutter at bay window. Not Found
- 1803: Minor wood deterioration at front door jamb/sill. \$225.00  
Damaged gutter. \$ 50.00
- 1805: Small hole at termination of storage roof at rear elevation. \$ 30.00  
Minor wood deterioration at sill of front door sidelight. \$ 60.00
- 1807: Flashing above front door is turned up. \$ 50.00  
Peeling paint above bay window. \$ 80.00
- 1809: Piece of siding is off the rear elevation (lying on ground). \$ 30.00

**Building - Units 1802/ 1804/ 1806**

- ~~1802: Minor wood deterioration at front door jamb.~~
- ~~1804: Minor wood deterioration at front door jamb/sill.~~
- ~~1806: Minor wood deterioration at front door jamb.~~
- 1806: Minor wood deterioration at storage door trim. \$ 40.00

**Building - Units 1808/ 1810/ 1812**

- Small area of damaged siding at bottom of right side exterior building elevation. \$ 60.00
- 1808: Minor wood deterioration at bottom of trim at sliding door. \$ 40.00
- 1810: Minor wood deterioration at bottom of trim at sliding door. \$ 40.00

**Building - Units 1811/ 1813/ 1815**

- 1811: Minor wood deterioration at entrance door jamb and sill. \$225.00-  
Tall window at front of building has deterioration in plywood transom panel. Not Found
- 1815: Minor wood deterioration at entrance door jamb. \$225.00  
Loose soffit panel at rear elevation. \$ 40.00

**Building - Units 1814/ 1816/ 1818/ 1820**

- 1814: Minor wood deterioration at front door sill area. \$225.00
- 1816: Minor wood deterioration at front door sill area. \$225.00
- 1818: Minor wood deterioration at front door sill area. \$225.00  
Gutter next to front door sloping in the wrong direction. \$ 40.00
- 1820: Wood deterioration at front door jamb/sill area. \$225.00  
Wood deterioration at trim next to terrace sliding door. \$ 50.00

already  
Billed  
✓

Page Four  
Mr. Bruce Kinney  
October 10, 2003

**Building - Units 1817/ 1819/ 1821/ 1823/ 1825/ 1827**

|                                                               |                     |
|---------------------------------------------------------------|---------------------|
| 1817: Small crack/opening in soffit at terrace overhang.      | \$ 50.00            |
| Damaged downspout at side of building.                        | \$ 50.00            |
| 1819: Minor peeling paint at exterior storage door jamb.      | \$ 30.00            |
| 1821: Minor peeling paint at exterior storage door jamb.      | \$ 30.00            |
| Minor wood deterioration at front door jamb.                  | \$225.00            |
| <del>1823: Minor wood deterioration at front door jamb.</del> | <del>\$225.00</del> |
| 1827: Minor wood deterioration at sidelight of front door.    | \$225.00            |

**Building - Units 1822/ 1804/ 1826/ 1828/ 1830**

Minor blistered paint at gable trim of left side exterior elevation.

|                                                                            |          |
|----------------------------------------------------------------------------|----------|
| 1822: Soil washed out at rear terrace concrete slab.                       | \$ 50.00 |
| 1824: Wood deterioration at bottom of front door sidelight.                | \$225.00 |
| Storage door deteriorated at bottom.                                       | \$ 60.00 |
| 1828: Minor wood deterioration at front door frame.                        | \$225.00 |
| 1830: Wood deterioration at bottom of front door jamb and at front window. | \$225.00 |
| Grade washed out at terrace slab.                                          | \$ 50.00 |

**Building - Units 1832/ 1834/ 1836/ 1838/ 1840**

|                                                               |                     |
|---------------------------------------------------------------|---------------------|
| <del>1832: Minor wood deterioration at front door jamb.</del> | <del>\$225.00</del> |
| Wood deterioration at front door jamb.                        | \$225.00            |
| 1838: Wood deterioration at front door jamb.                  | \$225.00            |
| Small hole in rear soffit.                                    | \$ 30.00            |
| 1840: Wood deterioration at front door jamb.                  | \$225.00            |
| Paint blistered over sliding door.                            | \$ 30.00            |

**GARDEN UNITS****Building - Units 1829/ 1831/ 1833**

|                            |          |
|----------------------------|----------|
| 1831: Cracked soffit trim. | \$100.00 |
|----------------------------|----------|

**Building - Units 1834/ 1836/ 1838/**

|                                                                    |                     |
|--------------------------------------------------------------------|---------------------|
| 1834 C: Small crack in terrace slab.                               | N/A                 |
| <del>1836 D: Opening at missing downspout at rear.</del>           | <del>\$ 50.00</del> |
| 1838 A: *Settlement in kitchen and adjacent laundry room/bathroom. |                     |
| 1838 C: *Settlement in kitchen and adjacent laundry room/bathroom. |                     |

\*Need to see engineers report.

Church Creek Const. 000004  
(2008-1514)

Page Five  
Mr. Bruce Kinney  
October 10, 2003

**Building - Units 1835/ 1837/ 1839**

- 1835: Tall window unit at B/D should be caulked. \$ 30.00
- Front bedroom windows should be caulked. \$ 30.00
- 1837: Tall window unit at A/C & adjacent window at A should be caulked. \$ 30.00
- 1839: Tall window unit at A/C should be caulked. \$ 30.00
- Small opening in trim at balcony end of C. \$ 40.00
- Front bedroom windows at units A/C should be caulked. \$ 30.00

**Building - Units 1846/ 1848/ 1850**

~~1846: Minor paint peeling at left exterior elevation gable trim. \$ 60.00~~

**Building - Units 1847/ 1849**

- 1847: Minor paint peeling at left exterior elevation gable trim. \$ 60.00
- ~~1849: Minor paint peeling at left exterior elevation gable trim. \$ 60.00~~
- 1849 A: No finish ceiling at balcony ceiling - exposed joists. \$230.00

**Building - Units 1851/ 1853/ 1855**

- 1851: Appears to have peeling paint at front gable and at rear terrace area. \$200.00
- 1855 D: Has minor wood decay at the terrace beam. \$200.00

**Building - Units 1852/ 1854**

No comments

**Building - Units 1856/ 1858/ 1860**

- 1858: Several units have A/C pads that have settled, causing compressors to rest on the grade. Raise the pads. \$ 60.00
- 1858 C: Minor wood deterioration at terrace trim. \$ 70.00
- 1860 A: Requires caulking at the front of residence A where window butts brick. \$ 30.00
- 1860 D: Minor decay at the terrace corners. \$ 50.00

**Building - Units 1857/ 1859**

- At left exterior elevation of building vertical joints in horizontal siding require minor caulking. \$ 40.00

**Building - Units 1863/ 1865**

- 1865: Minor "bowing" in exterior siding at the right side of unit. This is not a structural issue and is probably a simple issue of expansion/contraction resulting from high humidity. N/A

T160

Church Creek Const. 000005  
(2008-1514)

Page Six  
Mr. Bruce Kinney  
October 10, 2001

Building - Units 1866/ 1868

HVAC units sitting on grade. Concrete slabs should be raised to protect units. \$ 60.00

- 1866 A/B: ADA Units
- 1868 A/B: ADA Units

Building - Units 1867/ 1869

- 1867: Minor "openings" in vertical joints of siding at exterior right side elevation. \$ 40.00  
Steel stair has minor dents. - Need direction from owner.  
Minor deflection in rear balcony at floor beam but no structural separation N/A  
is evident. This may have been a trim detail matter.

Building - Units 1870/ 1872/ 1874

- 1870: Damage to rear gutter. \$ 80.00
- 1872: Small opening at tall front window of units 1872 B & D. \$ 40.00
- 1872 B/C: Screened balcony. N/A

Building - Units 1871/ 1873/ 1875

1871/1873: Beams across second level. Balcony appears to have minor sagging. N/A

Building - Units 1876/ 1878

- 1878: Left side of unit shows vertical joint separation in clapboard siding. \$120.00

Building - Units 1877/ 1879

- 1877 A: Has approximately 6" diameter hole in front wall that has been patched. To repair with brick \$100.00
- 1879: Right side of unit show vertical joint separation in clapboard siding. \$ 80.00

Please phone with questions or concerns.

Sincerely,

*Kevin W. Molony*  
Kevin W. Molony

Church Creek Const. 000006  
(2008-1514)

#33

**Church Creek Construction, LLC**  
**867 Robert E. Lee Boulevard**  
**Charleston, SC 29412**  
**(843) 452-5241**

November 10, 2003

Mr. Bruce Kinney  
 Montclair Homes, LLC  
 1839 A Villa Maison  
 Mt. Pleasant, SC 29464

Estimate

RE: Inspection Report  
 Montclair Luxury Condominiums  
 Mt. Pleasant, SC

Dear Bruce:

We propose to furnish all labor, material and equipment to complete the maintenance items as noted in the inspection report dated August 28, 2003 written by Epps Edwards Architects.

**TOWNHOUSE UNITS:**

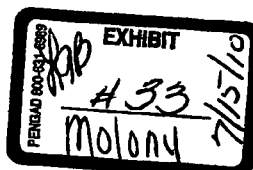
**Building - Units 1712/ 1714/ 1716**

**Building - Units 1718/ 1720/ 1722/ 1724/ 1726**

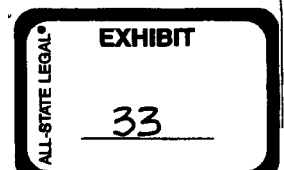
|                                                                         |           |
|-------------------------------------------------------------------------|-----------|
| 1720: Minor deterioration above bay window.                             | \$ 30.00  |
| Grade "washed out" at terrace slab.                                     | \$ 30.00  |
| Minor deterioration of siding at bottom of rear elevation.              | Not Found |
| 1724: Trim band above bay window shows early signs minor deterioration. | \$ 80.00  |
| 1726: Water damage to storage room ceiling.                             | \$150.00  |

**Building - Units 1719/ 1721/ 1723/ 1725/ 1727**

|                                                                               |          |
|-------------------------------------------------------------------------------|----------|
| 1725: A 4' length of soffit panel is dislodged.                               | \$ 40.00 |
| Piece of siding dislodged at rear elevation.                                  | \$ 40.00 |
| Moisture damage at storage room ceiling. (Included in storage room estimate). |          |



Church Creek Const. 000007  
 (2008-1514)



Page Two  
Mr. Bruce Kinney  
November 10, 2003

**Building - Units 1728/ 1730/ 1732/ 1734**

|                                                                |          |
|----------------------------------------------------------------|----------|
| 1728: Minor wood deterioration at jamb of front door.          | \$225.00 |
| 1730: Minor deterioration at exterior storage door.            | \$125.00 |
| Minor wood deterioration at entrance sill.                     | \$225.00 |
| 1734: A small section of soffit panel above "C" is dislocated. | \$ 40.00 |

**Building - Units 1729/ 1731/ 1733**

No repairs.

**Building - Units 1736/ 1738/ 1740****Building - Units 1746/ 1748/ 1750**

|                                                              |          |
|--------------------------------------------------------------|----------|
| 1746: Minor wood deterioration at bottom of front door jamb. | \$225.00 |
| 1748: Minor wood deterioration at bottom of front door jamb. | \$225.00 |

**Building - Units 1752/ 1754/ 1756/ 1758/ 1760**

|                                                         |          |
|---------------------------------------------------------|----------|
| 1760: Minor wood deterioration at front door sill area. | \$225.00 |
|---------------------------------------------------------|----------|

**Building - Units 1762/ 1764/ 1766**

|                                                    |          |
|----------------------------------------------------|----------|
| 1764: Minor wood deterioration at front door jamb. | \$225.00 |
| 1766: Small rust area at storage door.             | \$ 70.00 |

**Building - Units 1768/ 1770/ 1772/ 1774**

|                                                                  |          |
|------------------------------------------------------------------|----------|
| 1772: Minor bottom siding damage at rear next to electric meter. | \$ 80.00 |
| 1774: Minor siding damage at right side of sliding door.         | \$ 80.00 |

**Building - Units 1776/ 1778/ 1780/ 1782**

|                                                            |          |
|------------------------------------------------------------|----------|
| 1780: Minor wood deterioration at front door jamb.         | \$225.00 |
| 1782: Minor damage to siding at rear elevation near grade. | \$ 80.00 |

**Building - Units 1784/ 1786/ 1788/ 1790**

|                                                              |          |
|--------------------------------------------------------------|----------|
| 1790: Minor wood deterioration at bottom of front door jamb. | \$225.00 |
|--------------------------------------------------------------|----------|

**Building - Units 1801/ 1803/ 1805/ 1807/ 1809**

|                                                         |           |
|---------------------------------------------------------|-----------|
| 1801: Minor wood deterioration at front door jamb.      | \$225.00  |
| Damaged gutter at bay window.                           | Not Found |
| 1803: Minor wood deterioration at front door jamb/sill. | \$225.00  |
| Damaged gutter.                                         | \$ 50.00  |

Church Creek Const. 000008  
(2008-1514)



Page Three  
Mr. Bruce Kinney  
November 11, 2003

|                                                                    |          |
|--------------------------------------------------------------------|----------|
| 1805: Small hole at termination of storage roof at rear elevation. | \$ 30.00 |
| Minor wood deterioration at sill of front door sidelight.          | \$ 60.00 |
| Minor wood deterioration at sill of front door sidelight.          | \$ 60.00 |
| 1807: Flashing above front door is turned up.                      | \$ 50.00 |
| Peeling paint above bay window.                                    | \$ 80.00 |
| 1809: Piece of siding is off the rear elevation (lying on ground). | \$ 30.00 |

**Building - Units 1802/ 1804/ 1806**

|                                                      |          |
|------------------------------------------------------|----------|
| 1806: Minor wood deterioration at storage door trim. | \$ 40.00 |
|------------------------------------------------------|----------|

**Building - Units 1808/ 1810/ 1812**

|                                                                                   |          |
|-----------------------------------------------------------------------------------|----------|
| Small area of damaged siding at bottom of right side exterior building elevation. | \$ 60.00 |
| 1808: Minor wood deterioration at bottom of trim at sliding door.                 | \$ 40.00 |
| 1810: Minor wood deterioration at bottom of trim at sliding door.                 | \$ 40.00 |

**Building - Units 1811/ 1813/ 1815**

|                                                                             |           |
|-----------------------------------------------------------------------------|-----------|
| 1811: Minor wood deterioration at entrance door jamb and sill.              | \$225.00  |
| Tall window at front of building has deterioration in plywood transom panel | Not Found |
| 1815: Minor wood deterioration at entrance door jamb.                       | \$225.00  |
| Loose soffit panel at rear elevation.                                       | \$ 40.00  |

**Building - Units 1814/ 1816/ 1818/ 1820**

|                                                           |          |
|-----------------------------------------------------------|----------|
| 1814: Minor wood deterioration at front door sill area.   | \$225.00 |
| 1816: Minor wood deterioration at front door sill area.   | \$225.00 |
| 1818: Minor wood deterioration at front door sill area.   | \$225.00 |
| Gutter next to front door sloping in the wrong direction. | \$ 40.00 |
| 1820: Wood deterioration at front door jamb/sill area.    | \$225.00 |
| Wood deterioration at trim next to terrace sliding door.  | \$ 50.00 |

**Building - Units 1817/ 1819/ 1821/ 1823/ 1825/ 1827**

|                                                            |          |
|------------------------------------------------------------|----------|
| 1817: Small crack/opening in soffit at terrace overhang.   | \$ 50.00 |
| Damaged downspout at side of building.                     | \$ 50.00 |
| 1819: Minor peeling paint at exterior storage door jamb.   | \$ 30.00 |
| 1821: Minor peeling paint at exterior storage door jamb.   | \$ 30.00 |
| Minor wood deterioration at front door jamb.               | \$225.00 |
| 1827: Minor wood deterioration at sidelight of front door. | \$225.00 |

Church Creek Const. 000009  
(2008-1514)

Page Four  
Mr. Bruce Kinney  
November 10, 2003

**Building - Units 1822/ 1804/ 1826/ 1828/ 1830**

|                                                                            |          |
|----------------------------------------------------------------------------|----------|
| Minor blistered paint at gable trim of left side exterior elevation.       |          |
| 1822: Soil washed out at rear terrace concrete slab.                       | \$ 50.00 |
| 1824: Wood deterioration at bottom of front door sidelight.                | \$225.00 |
| Storage door deteriorated at bottom.                                       | \$ 60.00 |
| 1828: Minor wood deterioration at front door frame.                        | \$225.00 |
| 1830: Wood deterioration at bottom of front door jamb and at front window. | \$225.00 |
| Grade washed out at terrace slab.                                          | \$ 50.00 |

**Building - Units 1832/ 1834/ 1836/ 1838/ 1840**

|                                              |          |
|----------------------------------------------|----------|
| 1836: Wood deterioration at front door jamb. | \$225.00 |
| 1838: Wood deterioration at front door jamb. | \$225.00 |
| Small hole in rear soffit.                   | \$ 30.00 |
| 1840: Wood deterioration at front door jamb. | \$225.00 |
| Paint blistered over sliding door.           | \$ 30.00 |

**GARDEN UNITS****Building - Units 1829/ 1831/ 1833**

|                            |          |
|----------------------------|----------|
| 1831: Cracked soffit trim. | \$100.00 |
|----------------------------|----------|

**Building - Units 1834/ 1836/ 1838/**

|                                                                    |     |
|--------------------------------------------------------------------|-----|
| 1834 C: Small crack in terrace slab.                               | N/A |
| 1838 A: *Settlement in kitchen and adjacent laundry room/bathroom. |     |
| 1838 C: *Settlement in kitchen and adjacent laundry room/bathroom. |     |

\*Need to see engineers report.

**Building - Units 1835/ 1837/ 1839**

|                                                                         |          |
|-------------------------------------------------------------------------|----------|
| 1835: Tall window unit at B/D should be caulked.                        | \$ 30.00 |
| Front bedroom windows should be caulked.                                | \$ 30.00 |
| 1837: Tall window unit at A/C & adjacent window at A should be caulked. | \$ 30.00 |
| 1839: Tall window unit at A/C should be caulked.                        | \$ 30.00 |
| Small opening in trim at balcony end of C.                              | \$ 40.00 |
| Front bedroom windows at units A/C should be caulked.                   | \$ 30.00 |

**Building - Units 1846/ 1848/ 1850**

Church Creek Const. 000010  
(2008-1514)

Page Five  
Mr. Bruce Kinney  
November 10, 2003

**Building - Units 1847/ 1849**

1847: Minor paint peeling at left exterior elevation gable trim. \$ 60.00  
1849 A: No finish ceiling at balcony ceiling - exposed joists. \$230.00

**Building - Units 1851/ 1853/ 1855**

1851: Appears to have peeling paint at front gable and at rear terrace area. \$200.00  
1855 D: Has minor wood decay at the terrace beam. \$200.00

**Building - Units 1852/ 1854**

No comments

**Building - Units 1856/ 1858/ 1860**

1858: Several units have A/C pads that have settled, causing compressors to rest on the grade. Raise the pads. \$ 60.00  
1858 C: Minor wood deterioration at terrace trim. \$ 70.00  
1860 A: Requires caulking at the front of residence A where window butts brick. \$ 30.00  
1860 D: Minor decay at the terrace corners. \$ 50.00

**Building - Units 1857/ 1859**

At left exterior elevation of building vertical joints in horizontal siding require minor caulking. \$ 40.00

**Building - Units 1863/ 1865**

1865: Minor "bowing" in exterior siding at the right side of unit. This is not a structural issue and is probably a simple issue of expansion/contraction resulting from high humidity. N/A

**Building - Units 1866/ 1868**

HVAC units sitting on grade. Concrete slabs should be raised to protect units. \$ 60.00  
1866 A/B: ADA Units  
1868 A/B: ADA Units

**Building - Units 1867/ 1869**

1867: Minor "openings" in vertical joints of siding at exterior right side elevation. \$ 40.00  
Steel stair has minor dents. - Need direction from owner.  
Minor deflection in rear balcony at floor beam but no structural separation N/A is evident. This may have been a trim detail matter.

Church Creek Const. 000011  
(2008-1514)

Page Six  
Mr. Bruce Kinney  
November 10, 2003

**Building - Units 1870/ 1872/ 1874**

|                                                               |          |
|---------------------------------------------------------------|----------|
| 1870: Damage to rear gutter.                                  | \$ 80.00 |
| 1872: Small opening at tall front window of units 1872 B & D. | \$ 40.00 |
| 1872 B/C: Screened balcony.                                   | N/A      |

**Building - Units 1871/ 1873/ 1875**

1871/1873: Beams across second level. Balcony appears to have minor sagging. N/A

**Building - Units 1876/ 1878**

1878: Left side of unit shows vertical joint separation in clapboard siding. \$120.00

**Building - Units 1877/ 1879**

|                                                                                 |                      |          |
|---------------------------------------------------------------------------------|----------------------|----------|
| 1877 A: Has approximately 6" diameter hole in front wall that has been patched. | To repair with brick | \$100.00 |
| 1879: Right side of unit show vertical joint separation in clapboard siding.    |                      | \$ 80.00 |

Please phone with questions or concerns.

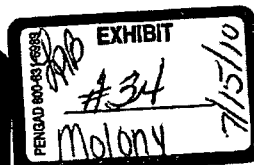
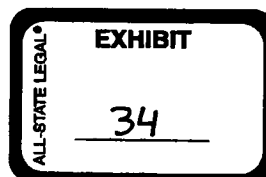
Sincerely,

Kevin W. Molony

\_\_\_\_\_  
Accepted By:

Church Creek Const. 000012  
(2008-1514)

| Date Paid | Unit | Invoice Number/s     | Work                                                                                                                                                                                                                                                                                      | Total Cost per Unit |
|-----------|------|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
|           | 1712 | 696                  | Repair ridge vent \$115                                                                                                                                                                                                                                                                   | \$115               |
|           | 1714 |                      |                                                                                                                                                                                                                                                                                           |                     |
|           | 1716 | 671                  | Termite damage to rear around sliding glass door \$1500                                                                                                                                                                                                                                   | \$1,500             |
|           | 1718 | 606                  | Remove shingles and flashing over kitchen window \$600, Water damaged ceiling joist \$500, Repair termite damage around bay window \$500                                                                                                                                                  | \$1,600             |
|           | 1719 | 647                  | Outside storage repair to wall \$185, Major door repair and termite damage \$1100, Repair rear storage \$125, repair to roof on back of chimney \$500                                                                                                                                     | \$1,910             |
|           | 1720 | 679, 579             | Termite and water damage around rear sliding door \$1700, Deterioration above bay window \$60                                                                                                                                                                                             | \$1,760             |
|           | 1721 | 506                  | Termite damage around front siding \$600                                                                                                                                                                                                                                                  | \$600               |
|           | 1722 | 515                  | Remove and replace front door termite damage \$900, Wood rot top and bottom sides install new door \$725, Replace gutters and damaged shingles \$120                                                                                                                                      | \$1,745             |
|           | 1723 | 527                  | Termite Damage to front door \$600                                                                                                                                                                                                                                                        | \$600               |
|           | 1724 | 655, 579             | Major door repair to front door bottom threshold \$650, Trim above bay \$80                                                                                                                                                                                                               | \$730               |
|           | 1725 | 679, 753<br>724, 579 | Remove tree limbs \$125, Far left upper wall remove rotten siding \$845, remove and replace doorway \$1850, Termite damage around front door \$625, Repair soffit \$80                                                                                                                    | \$3,525             |
|           | 1726 | 513                  | Remove shingle and siding \$600, Termite damage front right side wall major repair \$575                                                                                                                                                                                                  | \$1,175             |
|           | 1727 |                      |                                                                                                                                                                                                                                                                                           |                     |
|           | 1728 | 579                  | Minor wood deterioration at front door \$225                                                                                                                                                                                                                                              | \$225               |
|           | 1729 | 717                  | Water proof bay window \$300, Replace rotten door jambs \$625, Major termite damage around rear sliding door \$1800                                                                                                                                                                       | \$2,725             |
|           | 1730 | 590, 579             | Remove and replace front door termite damage \$900, Wood rot top and bottom sides install new door \$725, Replace gutters and damaged shingles \$120, Exterior repairs to storage door trim \$400, Major termite damage around front adjoining walls \$2145, Minor deterioration exterior | \$3,740             |
|           | 1731 | 716                  | Water proof bay window \$300, Replace rotten siding trim near sliding door \$625, Termite damage both sides of front door \$575, Water proof chimney cap \$325, Repair siding over rear sliding door \$300, Replace rotten wood behind gutters \$525, Remove and replace trim on          | \$1,925             |
|           | 1732 | 633                  | Termite damage to rear living room wall \$1500, Termite water damage around front door \$1800, Finish exterior trim work around bay window \$400                                                                                                                                          | \$3,800             |
|           | 1733 | 504                  | Repair trim on chimney \$300,                                                                                                                                                                                                                                                             | \$300               |
|           | 1734 | 579                  | Repair soffit \$40                                                                                                                                                                                                                                                                        | \$40                |
|           | 1736 | 710                  | Water proof bay window \$300, Termite damage around rear siding \$750, Replace exterior storage room door and siding \$535, Replace rotten siding and trim at bottom wall \$475                                                                                                           | \$2,060             |



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| 1738 | 597           | Termite damage inside kitchen window \$600, Remove and replace rear storage doors trim \$300                                                                                                                                                                                             | \$900   |
| 1740 | 725           | Water proof bay window \$300                                                                                                                                                                                                                                                             | \$300   |
| 1746 | 711, 531, 579 | Seal upper roof of storage room \$125, Repair termite damage both sides of slider \$800, Termite damage left side of front door \$600, remove siding around chimney \$375 Minor wood deterioration at door jamb \$225                                                                    | \$2,125 |
| 1748 | 546, 579      | Replace rotten wood on bay window \$275, Wood deterioration at door jamb \$225                                                                                                                                                                                                           | \$500   |
| 1750 | 528           | Remove decaying wood and install new doors \$2600                                                                                                                                                                                                                                        | \$2,600 |
| 1752 | 574           | Major door repairs and bay window repairs \$350, Remove shingles plywood and felt front \$550                                                                                                                                                                                            | \$900   |
| 1754 | 589           | Major termite damage to floor and walls \$2050                                                                                                                                                                                                                                           | \$2,050 |
| 1756 | 713           | Major termite damage around rear sliding glass door \$1500, Major termite damage around front door and walls \$1345, Termite damage to foyer \$225, Repair rear trim \$185, water proof bay window \$300, Major water damage to rear walls and storage room \$1250, Major termite damage | \$4,905 |
| 1758 | 611           | Remove exterior siding from around bay window \$750, Install new front door and replace wood rot \$1150                                                                                                                                                                                  | \$1,900 |
| 1760 | 685, 579      | Water proof bay window \$300, Remove front door and trim \$1150, Major termite damage around front door and adjoining wall \$1750, Minor wood deterioration \$225                                                                                                                        | \$3,425 |
| 1762 | 612           | Repair to door bottom left and gutters above bay \$700, Storage wall repaired \$80, Repair front door \$125                                                                                                                                                                              | \$905   |
| 1764 | 579           | Minor wood deterioration at front door \$225                                                                                                                                                                                                                                             | \$225   |
| 1766 | 707           | Water proof the bay window \$300, Termite and water damage to front left hand side of door \$1050, rotten trim and siding of rear sliding door \$425                                                                                                                                     | \$1,775 |
| 1768 |               |                                                                                                                                                                                                                                                                                          |         |
| 1770 | 714           | Water proof bay window \$300, Termite damage rear right side of storage closet \$765, Termite damage to left side of front door \$715, Repair rotten siding trim rear sliding door \$200                                                                                                 | \$1,980 |
| 1772 | 679, 579      | Repair rot at front door \$125 Minor siding damage at rear near electric meter \$80                                                                                                                                                                                                      | \$205   |
| 1774 | 686           | Water proof bay window \$300                                                                                                                                                                                                                                                             | \$300   |
| 1776 |               |                                                                                                                                                                                                                                                                                          |         |
| 1778 | 661           | Termite damage right side of front door \$500, Water proof bay window \$300, Water proof rear porch \$800                                                                                                                                                                                | \$1,600 |
| 1780 | 532           | Repair roof near chimney \$250, Rotten wood under front door and rotten siding \$550, Storage room removed \$220, rear wall replaced siding/trim/sheathing and fence \$795, Repair wood around front door/chimney/bay window \$1350                                                      | \$3,165 |
| 1782 | 600           | Major repair to front door \$800, Water proof bay window \$600                                                                                                                                                                                                                           | \$1,400 |
| 1784 | 726           | Termite damage around front door \$1150, Termite damage in wall behind brick wall in living room \$725, Waterproof bay window \$300                                                                                                                                                      | \$2,175 |

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| 1786 | 727                | Water proof rear walls \$350, repair front door jambs \$415, water proof bay window \$300                                                                                                                                                                         | \$1,065 |
| 1788 | 711, 639           | Repair to roof back reflash \$500, Repair front door and replace water damage \$1150                                                                                                                                                                              | \$1,650 |
| 1790 | 708                | Replace front door jambs and trim - repair rot around sliding door \$525, Water proof bay window \$300, Remove and replace siding trim in rear \$250                                                                                                              | \$1,075 |
| 1801 | 529                | Termite damage sides of front door \$1700, Remove existing siding at rear due to water damage and termites \$780                                                                                                                                                  | \$2,480 |
| 1802 | 734                | Major termite damage around front door \$1175                                                                                                                                                                                                                     | \$1,175 |
| 1803 | 698                | Storage room repair \$350, Major termite damage around rear sliding and front door \$1550, Exterior repair to bliging siding from wall below double window \$915                                                                                                  | \$2,815 |
| 1804 | 737, 709           | Termite damage in roof leak and soffit \$1150, remove and replace trim \$325, Major termite damage around front door \$1100, Major termite damage around rear slider \$1385, Install sheathing around window and water proof \$300                                | \$4,260 |
| 1805 | 738, 722           | Rotten and termite damaged framing \$300, waterproof bay window \$300, replace rotten wood above sliding door \$200, Termite damage around both front doors \$1325                                                                                                | \$2,125 |
| 1808 | 737, 741, 743      | Major termite damage and live termites in rear around sliding door \$1940, Major termite damage around front door and in floor \$2600, Termite damage to rear outside storage room wall and bottom trim \$1400 Repair rotten wood around top of chimney cap \$525 | \$6,465 |
| 1807 | 684                | Water proof bay window \$300, Repair rotten door jambs \$500                                                                                                                                                                                                      | \$800   |
| 1808 | 680, 696, 607, 604 | rework gutter \$400, reflash wall left side on roof \$600, replace rear storage door trim \$300, Remove and replace front door siding \$750, Replace trim of sliding door threshold \$350                                                                         | \$2,400 |
| 1809 | 623                | Major repair to door and rotten wood trim \$350                                                                                                                                                                                                                   | \$350   |
| 1810 | 620                | Major repair to front door termite damage \$1250                                                                                                                                                                                                                  | \$1,250 |
| 1811 | 749                | Major repair to front door and rotten jambs \$700, Remove rotten shingles and flashing from rear storage roof \$1535, Install cox at bottom of window and water proof \$350                                                                                       | \$2,585 |
| 1812 | 742, 623           | Major termite damage around rear slider \$1635, Major door repair to jambs and trim \$700, Replace rotten wood and bondo at front door \$500                                                                                                                      | \$2,835 |
| 1813 | 530                | Repair front door termite damage \$600, Repair leak in roof \$250                                                                                                                                                                                                 | \$850   |
| 1814 | 758, 742           | Water proof bay window \$300, Termite damage around rear slider \$1935, Rotten siding bottom of left hand side wall \$1420, Remove and replace siding and sheathing on left side of front door \$600                                                              | \$4,255 |
| 1815 | 724                | Remove storm door and repair rotten jambs \$275                                                                                                                                                                                                                   | \$275   |
| 1816 | 698                | Water proof bay window \$300, Major termite damage around front door and adjoining walls \$3150, Termite damage bottom front of storage closet \$675                                                                                                              | \$4,125 |
| 1817 | 607                | Door repair to front door termite damage \$750                                                                                                                                                                                                                    | \$750   |
| 1818 | 745, 741           | Water proof bay window \$300, Termite damage around front door \$1500, Termite damage around rear storage closet extending upward \$2300, Major termite damage round rear sliding door \$2150                                                                     | \$6,250 |
| 1819 | 607                | Major termite damage left hand wall \$1200                                                                                                                                                                                                                        | \$1,200 |

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| 1820  | 576, 740      | Remove all siding at front entrance \$5260, Door repair \$425, Termite damage to left side of storage room \$1700, Remove siding at back by sliding door \$515           | \$7,900 |
| 1821  | 753           | Major repair to front door remove siding \$1250, Remove two layers of shingles from rear storage and rotten wood \$950,                                                  | \$2,200 |
| 1822  | 746, 724, 743 | Water proof bay window \$300, Termite damage to left side of front door \$1500, Roof repair \$200, Remove siding trim from chimney upper roof \$615                      | \$2,615 |
| 1823  |               |                                                                                                                                                                          |         |
| 1824  | 750, 743      | Water proof bay window \$300, Major termite damage around front door both sides \$2150, Replace trim around both rear doors and bottom siding \$430                      | \$2,880 |
| 1825  | 505           | Termite damage left side of front door termite damage rear \$1200, Major door repair and ridge vent repair \$300, Remove shingles and plywood to fix leak in roof \$1000 | \$2,500 |
| 1826  | 599           | Major termite damage to front door \$1100                                                                                                                                | \$1,100 |
| 1827  |               |                                                                                                                                                                          |         |
| 1828  | 739           | Termite damage to bottom of entire bay window \$625, Replace all trim but side of window water proof \$500                                                               | \$1,125 |
| 1830  | 728           | Water proof bay window \$300,                                                                                                                                            | \$300   |
| 1832  | 511           | Repair damaged wood front door sides \$500                                                                                                                               | \$500   |
| 1834  | 481           | Replace rotten siding \$150, Repair roof \$250, Fix damaged shingles \$400, Termite damage left hand side \$2200, Water damage bottom of window \$450                    | \$3,450 |
| 1836  |               |                                                                                                                                                                          |         |
| 1838  | 715           | Repair bottom trim of front door \$325                                                                                                                                   | \$325   |
| 1840  | 737,          | Repair front door and repair termite damage rear right side \$700, Major termite damage water damage to rear storage roof \$2000                                         | \$2,700 |
| 1829A | 711,          | Termite damage to face of wall \$500, termite damage to corner of building \$1400, Termite and water damage to rear porch \$1900                                         | \$3,800 |
| 1829B | 595           | Replace siding and trim around window \$350                                                                                                                              | \$350   |
| 1829C |               |                                                                                                                                                                          |         |
| 1829D | 646           | Repair to roof ridge vent \$450, reflash upper wall over bedroom \$625                                                                                                   | \$1,075 |
| 1831A | 753           | Major termite repair to far left hand wall from roof \$1800                                                                                                              | \$1,800 |
| 1831B | 650           | Termite damage to face of wall and adjoining wall damage \$1000                                                                                                          | \$1,000 |
| 1831C | 688           | Repair rotten fascia and soffit in breezeway \$450                                                                                                                       | \$450   |

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|  | 1831D | 493      | Repair rotten siding on building \$200, Replace ridge vent and water proof dead valley \$400                                                                                                                             | \$600   |
|  | 1833A | 499      | Minor damage left hand wall \$200, Master bedroom window finish \$200, Termite damage to far left hand wall \$550                                                                                                        | \$950   |
|  | 1833B | 650      | Termite damage to face of wall and adjoining wall \$500                                                                                                                                                                  | \$500   |
|  | 1833C |          |                                                                                                                                                                                                                          |         |
|  | 1833D |          |                                                                                                                                                                                                                          |         |
|  | 1834A | 701      | Termite damage around front bedroom window \$1625                                                                                                                                                                        | \$1,625 |
|  | 1834B |          |                                                                                                                                                                                                                          |         |
|  | 1834C | 689      | N/A                                                                                                                                                                                                                      |         |
|  | 1834D | 670      | N/A                                                                                                                                                                                                                      |         |
|  | 1835A | 497      | Minor rot face of wall left of stairwell \$500                                                                                                                                                                           | \$500   |
|  | 1835B | 650      | Termite damage face of wall right of stair well \$800, Termite damage around rear bedroom window \$800                                                                                                                   | \$1,200 |
|  | 1835C | 706      | Remove two layers of shingles and plywood \$700                                                                                                                                                                          | \$700   |
|  | 1835D |          |                                                                                                                                                                                                                          |         |
|  | 1836A | 519      | Termite damage far left hand bedroom wall remove siding \$700, Install new porch post \$250                                                                                                                              | \$950   |
|  | 1836B | 690, 650 | Major termite damage around rear sliding door \$1425, Major termite damage to rear porch \$1600, Termite damage to right and left hand side bottom wall of stairwell \$500, Termite damage to right side of window \$400 | \$3,925 |
|  | 1836C |          |                                                                                                                                                                                                                          |         |
|  | 1836D |          |                                                                                                                                                                                                                          |         |
|  | 1837A | 625      | Rotten trim on both sides of front windows \$250, Major water/termite damage around kitchen \$1800,                                                                                                                      | \$2,050 |
|  | 1837B | 626      | Rotten trim on face of wall \$700                                                                                                                                                                                        | \$700   |
|  | 1837C | 520      | Water proof rear upper porch around perimeter \$325                                                                                                                                                                      | \$325   |
|  | 1837D |          |                                                                                                                                                                                                                          |         |
|  | 1838A | 650      | Siding rotten bottom rear as well as trim behind AC \$400, Replace siding warped and buckled from foundation \$300                                                                                                       | \$700   |

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|  | 1838B | 691, 650 | Termite damage to face wall and left bottom wall \$500, Termite damage rear wall around kitchen window \$1000                                                                                                                                                                      | \$1,500 |
|  | 1838C | 702      | N/A                                                                                                                                                                                                                                                                                |         |
|  | 1838D | 692      | N/A                                                                                                                                                                                                                                                                                |         |
|  | 1839A | 482      | Termite damage to face of wall \$800                                                                                                                                                                                                                                               | \$800   |
|  | 1839B | 650      | Termite damage to face of wall right side of stairwell \$725                                                                                                                                                                                                                       | \$725   |
|  | 1839C | 697      | Repair rotten sheathing on dormer roof \$830                                                                                                                                                                                                                                       | \$830   |
|  | 1839D |          |                                                                                                                                                                                                                                                                                    |         |
|  | 1846A | 550      | Major termite damage around rear kitchen window \$1250                                                                                                                                                                                                                             | \$1,250 |
|  | 1846B | 522      | Termite damage outside stair well wall \$800                                                                                                                                                                                                                                       | \$800   |
|  | 1846C | 696      | Repair wind damaged gutter \$115                                                                                                                                                                                                                                                   | \$115   |
|  | 1846D | 518      |                                                                                                                                                                                                                                                                                    |         |
|  | 1847A | 624, 623 | Termite water damage to bathroom wall \$1270, Termite damage to face of left wall \$500, Remove bedroom termite damage and framing to outer wall \$700, Buckled siding left side wall and termite damage to framing \$800, Termite damage to rear kitchen wall and adjoining walls | \$2,600 |
|  | 1847B | 523      | Termite damage right bedroom window and adjoining wall \$850, Remove right side window termite damage \$700, Major termite damage to rear porch \$1625                                                                                                                             | \$3,175 |
|  | 1847C |          |                                                                                                                                                                                                                                                                                    |         |
|  | 1847D |          |                                                                                                                                                                                                                                                                                    |         |
|  | 1848A | 607      | Replace siding trim \$500                                                                                                                                                                                                                                                          | \$500   |
|  | 1848B |          |                                                                                                                                                                                                                                                                                    |         |
|  | 1848C | 679      | Replace missing ridge vents \$200                                                                                                                                                                                                                                                  | \$200   |
|  | 1848D | 591      | Water proof dead valley \$150, Roof repair leak above bathroom \$2200                                                                                                                                                                                                              | \$2,350 |
|  | 1849A | 623      | Front vertical trim by stairwell remove and replace \$500, Remove left hand bedroom window termite damage \$600                                                                                                                                                                    | \$1,100 |
|  | 1849B |          |                                                                                                                                                                                                                                                                                    |         |
|  | 1849C | 658      | Roof repair \$200                                                                                                                                                                                                                                                                  | \$200   |

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|  | 1849D |               |                                                                                                                                                                |         |
|  | 1850A | 675, 639      | Termite damage to rear left hand wall \$750                                                                                                                    | \$750   |
|  | 1850B | 648           | Termite damage to face of walls \$850                                                                                                                          | \$850   |
|  | 1850C |               |                                                                                                                                                                |         |
|  | 1850D | 533           | Repairs to roof and ridge vent \$150                                                                                                                           | \$150   |
|  | 1851A | 534           | Termite damage to wall right side of window \$1600                                                                                                             | \$1,600 |
|  | 1851B | 567           | Major termite damage around window \$1200,                                                                                                                     | \$1,200 |
|  | 1851C |               |                                                                                                                                                                |         |
|  | 1851D |               |                                                                                                                                                                |         |
|  | 1852A | 638           | Termite damage around window \$700, Termite damage to bottom of left side bedroom \$450, Major termite damage to rear porch wall \$2200                        | \$3,350 |
|  | 1852B | 650           | Termite damage to face of wall and right side adjoining wall \$900                                                                                             | \$900   |
|  | 1852C | 643           | Water Proof rear porch \$250                                                                                                                                   | \$250   |
|  | 1852D |               |                                                                                                                                                                |         |
|  | 1853A | 495, 639      | Major termite damage on side bedroom window \$1780, Termite damage around window \$1800                                                                        | \$3,580 |
|  | 1853B | 637           | Termite damage to outer bathroom wall \$500,                                                                                                                   | \$500   |
|  | 1853C | 680, 644, 604 | repair gutter \$125, repair shingles \$200, repair window damaged shingles \$150                                                                               | \$475   |
|  | 1853D |               |                                                                                                                                                                |         |
|  | 1854A | 650           | Rotten trim on corners and rear \$200                                                                                                                          | \$200   |
|  | 1854B | 632           | Rotten siding and trim outside corner \$600                                                                                                                    | \$600   |
|  | 1854C |               |                                                                                                                                                                |         |
|  | 1854D |               |                                                                                                                                                                |         |
|  | 1855A | 556           | Remove both kitchen windows and replace rotten framing \$2500, Major termite damage to outside bedroom \$2000, Repair siding and trim to right side wall \$550 | \$5,050 |

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|  | 1855B | 693, 623      | Remove kitchen window replace termite damaged framing \$1200                                                                                                                                                                                                                              | \$1,200 |
|  | 1855C | 604           | Remove damaged ridge vents \$275                                                                                                                                                                                                                                                          | \$275   |
|  | 1855D |               |                                                                                                                                                                                                                                                                                           |         |
|  | 1856A | 650           | Window far left of stairwell termite damage \$700, Remove siding trim and insulation of left window \$1200, Termite damage bottom siding behind gutter \$450                                                                                                                              | \$2,350 |
|  | 1856B | 663, 650      | Minor termite damage to face of wall right hand side \$300, Termite damage to porch ceiling and kitchen window \$1600                                                                                                                                                                     | \$1,900 |
|  | 1856C | 660           | Remove tree limbs and repair damaged roof shingles \$425, Plywood rotten/soffit/shingles/roof around valley and porch \$1650, Replace damaged shingles from tree limbs on both sides of steep dormer \$345                                                                                | \$2,420 |
|  | 1856D | 682           | Water proof rear porch \$300                                                                                                                                                                                                                                                              | \$300   |
|  | 1857A | 498           | Major termite damage to rear porch \$3600, Termite damage to rear beam above \$1600                                                                                                                                                                                                       | \$5,200 |
|  | 1857B | 623           | Termite damage left hand side of bedroom window \$900                                                                                                                                                                                                                                     | \$900   |
|  | 1857C | N/A           |                                                                                                                                                                                                                                                                                           |         |
|  | 1857D |               |                                                                                                                                                                                                                                                                                           |         |
|  | 1858A | 662, 623      | Bedroom window termite damage and sheathing \$1700, Termite damage around kitchen window \$1600                                                                                                                                                                                           | \$3,300 |
|  | 1858B | 681, 623, 650 | Remove bedroom window and replace rotten framing \$1500, Far right hand bedroom window termite damage \$700                                                                                                                                                                               | \$2,200 |
|  | 1858C |               |                                                                                                                                                                                                                                                                                           |         |
|  | 1858D | 525           | Termite damage to terrace \$1120, Remove gutter fascia board and shingles \$800                                                                                                                                                                                                           | \$1,920 |
|  | 1859A |               |                                                                                                                                                                                                                                                                                           |         |
|  | 1859B | 694, 639, 623 | Termite damage outside guest bath wall remove and replace \$500, Major termite damage to rear porch beam \$1750, Termite damage in bathroom window \$700, Termite damage around window and left outside corner wall \$800, Termite damage to face of wall and side wall to rear corner of | \$5,000 |
|  | 1859C |               |                                                                                                                                                                                                                                                                                           |         |
|  | 1859D |               |                                                                                                                                                                                                                                                                                           |         |
|  | 1860A | 623           | Remove and replace rotten trim bottom of right hand window \$1100                                                                                                                                                                                                                         | \$1,100 |
|  | 1860B | 616           | Termite damage right side wall \$1000                                                                                                                                                                                                                                                     | \$1,000 |
|  | 1860C |               |                                                                                                                                                                                                                                                                                           |         |

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|  | 1860D |          |                                                                                                                                                                                                                                  |          |
|  | 1863A | 623      | Termite damage around left side bedroom window \$1500, Termite damage to face of wall next to stairwell \$600                                                                                                                    | \$2,100  |
|  | 1863B | 558      | minor termite damage rear wall \$800, major termite damage to rear porch \$1325,                                                                                                                                                 | \$2,125  |
|  | 1863C |          |                                                                                                                                                                                                                                  |          |
|  | 1863D | 731      | Major termite damage to upper porch beam \$1625                                                                                                                                                                                  | \$1,625  |
|  | 1865A |          |                                                                                                                                                                                                                                  |          |
|  | 1865B | 509      | Termite damage right side of outside wall \$600                                                                                                                                                                                  | \$600    |
|  | 1865C |          |                                                                                                                                                                                                                                  |          |
|  | 1865D | 639      | Remove shingles and flashing from wall repair rotten plywood \$1000                                                                                                                                                              | \$1,000  |
|  | 1866A | 665, 650 | Replace extensive wood rot at header \$475, Replace rotten trim around bedroom window \$200                                                                                                                                      | \$675    |
|  | 1866B | 668, 650 | Termite damage bottom of window \$275, Termite damage to face of wall and adjoining side wall \$600                                                                                                                              | \$875    |
|  | 1866C |          |                                                                                                                                                                                                                                  |          |
|  | 1866D | 500, 607 | Extensive termite damage to rear walls of building \$10,875                                                                                                                                                                      | \$10,875 |
|  | 1867A | 652, 623 | Termite Damage and water damage around rear \$750, Major termite damage to wall left side of stairwell \$1400, Termite damage to face of wall next to stairwell \$600, termite damage rear wall behind ac and front corner \$800 | \$3,550  |
|  | 1867B | 623      | Termite damage right side of window \$750                                                                                                                                                                                        | \$750    |
|  | 1867C |          |                                                                                                                                                                                                                                  |          |
|  | 1867D |          |                                                                                                                                                                                                                                  |          |
|  | 1868A | 496      | Major termite damage in rear kitchen \$1200                                                                                                                                                                                      | \$1,200  |
|  | 1868B | 666, 639 | Termite damage to face of wall and stairwell \$500                                                                                                                                                                               | \$500    |
|  | 1868C |          |                                                                                                                                                                                                                                  |          |
|  | 1868D | 650      | Replace missing ridge vent and shingles \$250                                                                                                                                                                                    | \$250    |
|  | 1869A | 623      | Termite damage to face of wall left hand side of stairs \$1500                                                                                                                                                                   | \$1,500  |

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|  |       |          |                                                                                                                                                                                 |         |
|--|-------|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
|  | 1869B | 623      | Remove bedroom window and replace rotten framing \$800                                                                                                                          | \$800   |
|  | 1869C | 617      | Remove debris and tree limbs away from roof and replace shingles \$500                                                                                                          | \$500   |
|  | 1869D |          |                                                                                                                                                                                 |         |
|  | 1870A | 605      | water damage left side front window \$900, Termite damage to bottom of far left hand bedroom window \$600, Remove trim both sides of window and adjoining right hand side \$300 | \$1,800 |
|  | 1870B | 602      | Major termite damage around rear kitchen \$1000, Termite damage to bottom of both sides of window \$700                                                                         | \$1,700 |
|  | 1870C |          |                                                                                                                                                                                 |         |
|  | 1870D |          |                                                                                                                                                                                 |         |
|  | 1871A | 517      | Wood rot below window and left corner \$450, Replace siding around water spigot \$100                                                                                           | \$550   |
|  | 1871B |          |                                                                                                                                                                                 |         |
|  | 1871C | 502      |                                                                                                                                                                                 |         |
|  | 1871D |          |                                                                                                                                                                                 |         |
|  | 1872A | 639      | Termite damage to face of wall \$750, Termite damage to face of wall and far left bedroom window \$800                                                                          | \$1,550 |
|  | 1872B | 618      | Termite damage to right hand bedroom window \$850                                                                                                                               | \$850   |
|  | 1872C |          |                                                                                                                                                                                 |         |
|  | 1872D | 510      | Repair to roof \$215                                                                                                                                                            | \$215   |
|  | 1873A | 737, 650 | Termite damage to laundry room wall \$580 Termite damage to rear wall under kitchen window \$750                                                                                | \$1,330 |
|  | 1873B | 704, 650 | Decayed siding bottom left hand side of porch \$400                                                                                                                             | \$400   |
|  | 1873C |          |                                                                                                                                                                                 |         |
|  | 1873D |          |                                                                                                                                                                                 |         |
|  | 1874A | 680,     | Termite damage and water damage to rear wall \$1400                                                                                                                             | \$1,400 |
|  | 1874B |          |                                                                                                                                                                                 |         |
|  | 1874C | 687      | N/A                                                                                                                                                                             |         |

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|  |                    |          |                                                                                |                 |
|--|--------------------|----------|--------------------------------------------------------------------------------|-----------------|
|  | 1874D              |          |                                                                                |                 |
|  | 1875A              | 584      | Rotten base boards \$80, Major termite damage rear bedroom \$1000              | \$1,080         |
|  | 1875B              |          |                                                                                |                 |
|  | 1875C              |          |                                                                                |                 |
|  | 1875D              |          |                                                                                |                 |
|  | 1876A              | 623      | Termite damage left hand wall \$850                                            | \$850           |
|  | 1876B              | 700      | Major termite damage and water damage to rear porch beams \$1525               | \$1,525         |
|  | 1876C              |          |                                                                                |                 |
|  | 1876D              | 607      | Termite damage right side \$750                                                | \$750           |
|  | 1877A              | 601, 623 | Termite damage to rear wall \$900, Termite damage to wall and stairwell \$1700 | \$2,600         |
|  | 1877B              | 677      | N/A                                                                            |                 |
|  | 1877C              | 753      | Water proof porch \$300                                                        | \$300           |
|  | 1877D              |          |                                                                                |                 |
|  | 1878A              | 561      | Termite damage left side of window \$850                                       |                 |
|  | 1878B              | 639      | Termite damage around nght bedroom \$500                                       | \$500           |
|  | 1878C              |          |                                                                                |                 |
|  | 1878D              |          |                                                                                |                 |
|  | 1879A              | 752      | Repair damaged wood around kitchen window \$500                                | \$500           |
|  | 1879B              | 619      | replace rotten siding \$100 Minor termite damage and rotten bottom \$700       | \$800           |
|  | 1879C              |          |                                                                                |                 |
|  | 1879D              |          |                                                                                |                 |
|  | Engineering Report | 579      |                                                                                | \$6,205 \$6,205 |

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|  |              |     |                                                 |                  |
|--|--------------|-----|-------------------------------------------------|------------------|
|  | Misc 1       | 607 | Paint for exterior \$1000                       | \$1,000          |
|  | Misc 2       | 671 | Paint for exterior \$3000                       | \$3,000          |
|  | Misc 3       | 639 | Paint for exterior \$9020                       | \$9,020          |
|  | Misc 4       | 623 | Paint for exterior \$10316                      | \$10,316         |
|  | Misc 5       | 650 | Paint for exterior \$2408                       | \$2,408          |
|  | Roof repairs | 721 | Shingle and gutter repairs \$7715               | \$7,715          |
|  |              |     | <b>Total Exterior and Common Area Repairs =</b> | <b>\$317,174</b> |

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