

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

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SC Court of Appeals

Trial Case No.'s 2009-CP-08-1068, 2009-CP-08-3916,
2009-CP-08-1413, 2008-CP-08-2714
Appellate Case No. 2014-002390

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC.,
JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIOVAROU,
JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN
A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, NANCY K.
JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM
JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, GEORGE S.
POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO
AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, CAROLYN M.
JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III,
RICHARD B. PEKRUHN, PAULINE PEKRUHN, MATTHEW J.
SEVERANCE, and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

Respondents,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, and CARRIAGE HILL
ASSOCIATES OF CHARLESTON, LLC,

Appellants.

RECORD ON APPEAL
Vol. II of VI

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been otherwise avoided by reasonable and prompt action on the part of the Cross-Claimant Muhler.

FURTHER RESPONDING AND
AS A TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Conformity with Industry Standards)

56. The work and services provided by this Defendant (if any) was, at all time applicable to the subject contract (if any), in conformity with industry standards at that time.

FURTHER RESPONDING AND
AS A TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Patent Defect)

57. That any defect found in the Plaintiffs' property, which is strictly denied, was revealed and accepted at purchase and, therefore, the subsequent purchaser/Plaintiff are precluded from bringing any cause of action relating to the known defect.

FURTHER RESPONDING AND
AS A TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(No Breach of Contract)

58. This Defendant did not breach any alleged contract with Cross-Claimant Muhler.

FURTHER RESPONDING AND
AS A TWENTY-NINTH AFFIRMATIVE DEFENSE
(Negligence of Others)

59. Any alleged injury Cross-Claimant Muhler sustained may have been due to and proximately caused by the sole and intervening negligence, recklessness, willfulness and/or wantonness of some persons or entities other than this Defendant over which this Defendant had no control and which occurred prior or subsequent to any acts or omissions by this Defendant, if any (which is expressly denied), and, therefore, the sole and intervening acts of other third-parties may be the real and proximate cause of any alleged injuries to the Cross-Claimant Muhler, therefore, Cross-Claimant Muhler may not recover from this Defendant.

FURTHER RESPONDING AND
AS A THIRTIETH AFFIRMATIVE DEFENSE
(Unreasonable Delay/Laches)

60. Cross-Claimant Muhler neglected for an unreasonable and unexplained length of time to provide notice of such alleged deficiencies to this Defendant who has been prejudiced by the delay and such unreasonable delay and resulting prejudice constitute a complete defense to the claims of the Cross-Claimant Muhler.

FURTHER RESPONDING AND
AS A THIRTY-FIRST AFFIRMATIVE DEFENSE
(Warranty of Merchantability Not Applicable - No Merchant)

61. The thrust of this Defendant's work, if any, on the project was for services, not goods and this Defendant is not a merchant as defined by S.C. Code Ann. § 36-2-104(1) and such constitutes a complete defense to all claims of Cross-Claimant Muhler regarding breach of warranty of merchantability.

FURTHER RESPONDING AND
AS A THIRTY-SECOND AFFIRMATIVE DEFENSE
(UCC Does Not Apply - Contract Not For Goods)

62. The predominant factor, thrust, or purpose of the alleged subcontract agreement, if any, was one for the delivery of services accompanied by the acquisition and furnishing of the necessary materials, and it is therefore not a contract for the purchase and sale of goods in which the warranties or merchantability and fitness for a particular purpose may be implied; and such constitutes a complete defense to any claims of Cross-Claimant Muhler for breach of implied warranty.

FURTHER RESPONDING AND
AS A THIRTY-THIRD AFFIRMATIVE DEFENSE
(Warranty of Fitness Not Applicable - No Reliance)

63. Cross-Claimant Muhler placed no reliance upon this Defendant's skill or

judgment in selecting and furnishing the materials which were incorporated in the construction, but rather, relied upon the judgment, skill and approval of others, and themselves, as to the selection and suitability of such materials; and such constitutes a complete defense to claims for breach of warranty of fitness for use.

FURTHER RESPONDING AND
AS A THIRTY-FOURTH AFFIRMATIVE DEFENSE
(Statute of Frauds)

64. Cross-Claimant Muhler's claims are or may be barred by the statute of frauds.

FURTHER RESPONDING AND
AS A THIRTY-FIFTH AFFIRMATIVE DEFENSE
(South Carolina Code Ann. §27-1-15 (1976))

65. South Carolina Code Ann. §27-1-15 (1976) makes no provision for an award of attorney's fees and interest to prevailing plaintiffs and/or cross-claimants and, therefore, constitutes an unconstitutional denial or equal protection of the laws pursuant to the provisions of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution.

FURTHER RESPONDING AND
AS A THIRTY-SIXTH AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

66. All issues between the parties hereto may have been previously resolved by agreement that a Defendant would pay and the Plaintiffs would accept a specific sum in full settlement of all claims and a Defendant thereafter made full payment and satisfaction of the agreed amount; and such constitutes a complete defense to the claims of the Cross-Claimant Muhler.

FURTHER RESPONDING AND
AS A THIRTY-SEVENTH AFFIRMATIVE DEFENSE
(Estoppel)

67. Cross-Claimant Muhler by their actions, conduct, words or silence which amounts to a representation or other concealment of material facts, may have caused this Defendant to alter its position to its prejudice or injury and Cross-Claimant Muhler should, therefore, be stopped from bringing the within claims by their own conduct; and such constitutes a complete defense to the claims of the Cross-Claimant Muhler.

FURTHER RESPONDING AND
AS A THIRTY-EIGHTH AFFIRMATIVE DEFENSE
(Final Payment as Waiver or Release)

68. That the owner of the project has previously made final payment to this contractor for all work performed pursuant to the agreement, if any, between the parties and such final payment constitutes a waiver and release of all claims of the nature set forth in Muhler's Cross-Claims and, therefore, such final payment constitutes a defense to the claims of Cross-Claimant Muhler.

FURTHER RESPONDING AND
AS A THIRTY-NINTH AFFIRMATIVE DEFENSE
(Parole Evidence)

69. That the alleged contract made by the parties (if any) was intended to be a final embodiment of their agreement and cannot be modified by evidence that adds to, varies, or contradicts the writing.

FURTHER RESPONDING AND
AS A FORTIETH AFFIRMATIVE DEFENSE
(Best Evidence)

70. That to prove the contents of a contract (if any) a party must produce the original writing.

FURTHER RESPONDING AND
AS A FORTY-FIRST AFFIRMATIVE DEFENSE
(No Notice)

71. Cross-Claimant Muhler may have failed to give any reasonable and meaningful notice to the Defendant as to the existence of the alleged breach and failed to give the Defendant a reasonable opportunity to correct such alleged defects, (the existence of which is denied) and such failure to give notice constitutes a complete defense to the claims of the Cross-Claimant Muhler for breach of warranty of workmanship.

FURTHER RESPONDING AND
AS A FORTY-SECOND AFFIRMATIVE DEFENSE
(Rule 8(c) SCRCP)

72. To the extent applicable, this Defendant raises all affirmative defenses required by Rule 8(c) SCRCP.

FURTHER RESPONDING AND
AS A FORTY-THIRD AFFIRMATIVE DEFENSE
(Right to Amend)

73. This Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Cross-Claimant Muhler's allegations. This Defendant intends to act as best it can to inform itself of the pertinent facts and prevailing circumstances surrounding any alleged injury or damage to Cross-Claimant Muhler as alleged in Muhler's Cross-Claims and gives notice of its intent to assert any further affirmative defenses that its investigation gathering process may indicate as supported by fact and law. This Defendant reserves the right to amend this Answer and assert such additional defenses.

FURTHER RESPONDING AND AS
A FORTY-FOURTH AFFIRMATIVE DEFENSE
(Incorporation of Defenses Raised By Other Defendants Prior Pleadings)

74. CHNY incorporates the defenses of any other defendants as they may be

applicable to this Defendant and incorporates those defenses which it has raised in its prior pleadings as if restated herein.

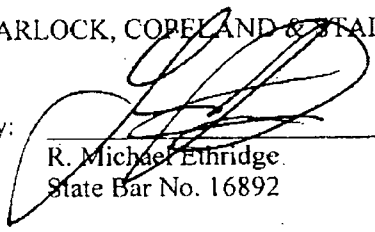
**FURTHER RESPONDING AND AS
A FORTY-FIFTH AFFIRMATIVE DEFENSE**

75. CHNY demands a trial by jury as to all issues in this matter.

Wherefore, having fully answered the Cross-Claims of Muhler, CHNY prays the Cross-Claims be dismissed with prejudice and all costs charged against Cross-Claimant Muhler, and for such other relief the Court may deem just and proper.

Respectfully submitted,

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By: 

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC., and CARRIAGE
HILL ASSOCIATES OF CHARLESTON,
LLC.,

Plaintiffs,

vs.

WEATHER SHIELD
MANUFACTURING, INC., THE
MUHLER CO., INC., and A.C.
CONSTRUCTION, INC.,

Defendants.

A.C. CONSTRUCTION, INC.,

Plaintiffs

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC., and TRAVELERS
CASUALTY AND SURETY COMPANY
OF AMERICA,

Defendants.

GEOFFREY C. CIPKALA and SAMUEL
C. AGEE, as tenants in common of the
common elements of the Oaks at River's
Edge Horizontal Property Regime and on
behalf of themselves and all other tenants
in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-08-1068

CERTIFICATE OF SERVICE

2012 AUG -3 AM 11:29
CLERK OF COUNTY, SC
BERKELEY COUNTY, SC

DEVELOPERS, LLC., CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, L.L.C.,)
CARRIAGE HILL ASSOCIATES, INC.,)

Defendants.)

THE OAKS AT RIVERS EDGE)
PROPERTY OWNERS ASSOCIATION,)
INC., JOHN E. ATKINSON, JOAN D.)
STRANDQUIST, JOSEPH E.)
CHIOVAROU, JR., PEYTON H. COOK,)
JR., BRENDA COOK, JOHN W.)
EDELLEN, KAREN A. NELSON,)
ROBERT J. GRAHAM, MAUREEN S.)
GRAHAM, KEVIN O. HUX, NANCY K.)
JOHNSON as trustee for the Nancy K.)
Johnson Revocable Trust, WILLIAM)
JUNG, CHARLES MARAZITI,)
PATRICIA MARAZITI, DONNA DEE)
MORAN, GEORGE S. POLLARD,)
ELEANOR J. POLLARD, ROBERT)
REECE, GERARD M. RUVO AND SUE)
S. RUVO as trustees for the Ruvo 2006)
Living Trust, ROBERT FARINA, MARY)
ANN FARINA, CAROLYN M.)
JENNINGS, THOMAS EDWARD)
KEANE, EDWARD WALLACE BARR,)
III, RICHARD B. PEKRUHN, PAULINE)
PEKRUHN, GREGORY B. NATHAN,)
RICHARD JENNINGS, MATTHEW J.)
SEVERANCE, AND ELIZABETH)
ASHLEY PHILLIPS SEVERANCE,)

Plaintiffs,)

vs.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC., CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, L.L.C.,)
CARRIAGE HILL ASSOCIATES, INC.,)
WEATHER SHIELD)
MANUFACTURING, INC., THE)
MUHLER CO., INC., A.C.)
CONSTRUCTION, INC., COASTAL)

ROOFING CO., INC., COASTAL)
CAULKING, INC., MIKE PHILLIPS)
d/b/a MIKE PHILLIPS MASONRY,)
GERALD RUMPLICK, EDWARD J.)
D'ORAZIO, and RICH BEHRINGER,)

Defendants.)

THE MUHLER COMPANY, INC.,)

Third-Party Plaintiff,)

vs.)

CASTLE SIDING, INC.)

Third-Party Defendant.)

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

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This 2nd day of August, 2012.

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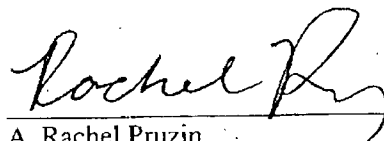
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REPLY TO CHARLESTON
OFFICE

August 2, 2012

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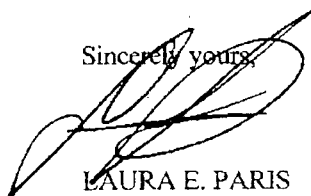
Re: The Oaks at Rivers Edge HOA, et al v. Carriage Hill Associates, Inc., et al
CCS File No.: 3564-45204
CA# 2009-CP-08-1068

Dear Madam Clerk:

Please find enclosed for filing an original and one copy of Carriage Hill Associates, Inc.'s Answer to the Muhler Co. Inc.'s Amended Answer to Plaintiffs' Fourth Amended Complaint and Cross-Claims Against Weathershield Manufacturing, Inc., Daniel Island Riverside Developers, Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc. and Third-Party Complaint Against Castle Siding, Inc., and Caoba Doors in the above referenced matter. Please file the original Answer and return a "clocked" copy of the same to my office in the self-addressed, stamped envelope I have enclosed for your convenience. Should you have any questions or concerns, please do not hesitate to call me.

With kind regards, I am,

Sincerely yours,



LAURA E. PARIS

LEP/kjw
Enclosure
cc: All Counsel of Record

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC AND CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,
THE MUHLER COMPANY, INC., AND AC
CONSTRUCTION, INC.,

AC CONSTRUCTION,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, AND TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

GEOFFREY C. CIPKALA, and SAMUEL C. AGEE,
as tenants in common of the common
elements of The Oaks at River's Edge
Horizontal Property Regime and on behalf of
themselves and all other tenants in common,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, and CARRIAGE HILL
ASSOCIATES, INC.,

THE OAKS AT RIVERS EDGE PROPERTY
OWNERS ASSOCIATION, INC., JOHN E.

IN THE COURT OF COMMON PLEAS

C.A. No. 2009-CP-08-1068

**THIRD-PARTY DEFENDANT CAOBA
DOORS' ANSWER TO THE MUHLER
COMPANY, INC.'S AMENDED THIRD-
PARTY COMPLAINT**

 **FILE COPY**

ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, KEVIN O. HUX, NANCY K. JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, DONNA DEE MORAN, GOERGE S. POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, ROBERT FARINA, MARY ANN FARINA, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, GREGORY B. NATHAN, RICHARD JENNINGS, MATTHEW J. SEVERANCE and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

Plaintiffs,
vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC, CARRIGAE HILL ASSOCIATES, INC., WEATHER SHIELD MANUFACTURING, INC., THE MUHLER CO., INC., A.C. CONSTRUCTION, INC., COASTAL ROOFING CO., INC., COASTAL CAULKING, INC., MIKE PHILLIPS D/B/A MIKE PHILLIS MASONRY, GERALD RUMPLICK, EDWARD J. D'ORAZIO and RICH BEHRINGER,

THE MUHLER COMPANY, INC.,

Third-Party Plaintiff,

vs.

CASTLE SIDING, INC. and CAOBA DOORS

Third-Party Defendant.

Third-Party Defendant Caoba Doors (hereinafter "Caoba), answering the Muhler Company's Amended Third-Party Amended Complaint (hereinafter the "ATPC") in the above-captioned case, does allege the following:

FOR A FIRST DEFENSE

1. Caoba denies each and every allegation of the ATPC that is not specifically and unconditionally admitted hereinafter.

FOR A SECOND DEFENSE

2. Paragraphs 1 through 196 of the ATPC do not pertain to Caoba and, as such, no response is required. To the extent any allegation in paragraphs 2 through 189 of the ATPC could possibly be construed as making any allegations toward Caoba, those allegations are denied.

**FOR A FIRST DEFENSE TO THE FIFTY-FIFTH DEFENSE
AND THE THIRD-PARTY CLAIM AGAINST CAOBA**

3. In response to Paragraph 197, Caoba hereby repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

4. Caoba admits the allegations of Paragraph 198 of the ATPC upon information and belief.

5. Caoba admits so much of Paragraph 199 of the ATPC as alleges that Caoba is a company organized and existing under the laws of a state other than South Carolina. Caoba denies that it is presently "conducting business in Berkeley County, South Carolina." Further, subject matter and personal jurisdiction as well as venue are matters of law for the Court and cannot be conferred by parties.

6. Caoba admits the allegations of Paragraph 200 of the ATPC upon information and belief.

7. Caoba denies the allegations of Paragraph 201 of the ATPC as stated and would crave reference to any agreements between it and Muhler.

8. Caoba admits the allegations of Paragraph 202 of the ATPC only to the extent it reflects the allegations of the Plaintiffs. Caoba lacks sufficient information to form an opinion or belief as to the truth of the Plaintiffs' allegations as set forth in Paragraph 202 and, as such, they are denied to that extent.

9. Caoba admits the allegations of Paragraph 203 of the ATPC.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION AGAINST CAOBA

10. In response to Paragraph 204, Caoba hereby repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

11. Caoba denies the allegations of Paragraph 205 of the ATPC as stated and would crave reference to any agreements between it and Muhler.

12. Caoba denies the allegations of Paragraphs 206, 207, and 208 of the ATPC.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION AGAINST CAOBA

13. In response to Paragraph 209, Caoba hereby repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

14. Caoba denies the allegations of Paragraphs 210 and 211 of the ATPC.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION AGAINST CAOBA

15. In response to Paragraph 212, Caoba hereby repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

16. Caoba denies the allegations of Paragraphs 213 and 214 of the ATPC. Further, Caoba denies that it had any contractual duty to indemnify Muhler whatsoever.

FOR A SECOND DEFENSE

17. Further answering, Caoba would show that the claims asserted against it by Muhler are barred by the applicable statute of limitations.

FOR A THIRD DEFENSE

18. Further answering, Caoba would show that any potential recovery by Muhler should be barred due to Muhler's conscious and willful failure to mitigate its damages, the existence of which Caoba strictly denies.

FOR A FOURTH DEFENSE

19. Further answering, Caoba would show that at all times material to this case, any services and/or work of Caoba conformed to the standards of the industry and profession at the time their work was done and by reason of which they are not liable for the matters asserted against it in the ATPC.

FOR AN FIFTH DEFENSE

20. Further answering, Caoba would show that any injuries or damages sustained by Muhler were due to and caused by the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Muhler, combining, concurring and contributing with the negligence of Caoba, such negligence being strictly denied, without which contributory negligence, Muhler's alleged injuries and damages would not have been incurred or sustained.

21. Should the negligence of Muhler be determined to be greater than that of Caoba, such negligence being strictly denied, Muhler is entitled to no recovery.

22. Should the negligence of Muhler be determined to be not greater than that of Caoba, such negligence being strictly denied, Muhler's recovery is to be reduced by the percentage of Muhler's fault.

FOR A SIXTH DEFENSE

23. Further answering, Caoba would show that any injuries and damages sustained by Muhler, if any, were due to and caused by the sole and negligent acts or omissions of Muhler. As such, Caoba pleads the sole negligence of Muhler as a complete bar to this action.

FOR A SEVENTH DEFENSE

24. Further answering, Caoba would show that any injuries or damages sustained by Muhler were due to and caused by the intervening and/or superseding negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of some other party or parties over whom Caoba had no authority or control. Therefore, Caoba is not liable to Muhler in any amount.

FOR AN EIGHTH DEFENSE

25. Further answering, Caoba would show that any recovery by Muhler should be completely barred due to its assumption of the risk.

26. In the alternative, any recovery by Muhler should be appropriately reduced by the percentage of its fault that can be attributed to its assumption of the risk.

FOR A NINTH DEFENSE

27. Further answering, Caoba would show that Muhler' claims are barred by the doctrines of laches, waiver, estoppel, and unclean hands.

FOR A TENTH DEFENSE

28. Further answering, Caoba would show that should Muhler be entitled to recovery against it, such entitlement being strictly denied, Caoba respectfully requests and moves that such liability be assessed in accordance with S.C. Code Ann. § 15-38-15, which allows for the apportionment of liability among all parties and nonparties.

FOR AN ELEVENTH DEFENSE

29. Further answering, Caoba would show that an award of punitive damages in this case would violate the 5th, 6th, and 14th Amendments to the United States Constitution and Article One, Section 3 of the South Carolina Constitution in that:

(a) The judiciary's ability to correct a punitive damage award at the appellate level only upon a finding of passion, prejudice, or caprice is inconsistent with the due process guarantees;

(b) Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) To the extent an award of punitive damages is excessive, such award violates due process guarantees;

(d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

(f) Muhler's claim for punitive damages violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of Caoba.

FOR A TWELFTH DEFENSE

30. Further answering, Caoba would show that it is entitled to a set-off at trial of any settlement amount reached between Muhler and any of the other Third-Party Defendants.

FOR A THIRTEENTH DEFENSE

31. Further answering, Caoba would show that if Muhler is not the sole tortfeasor whose conduct proximately caused damages of the plaintiff, Muhler is at least a joint tortfeasor; that under South Carolina law there can be no indemnity among joint

tortfeasors; and since Muhler owed a duty of care to the plaintiff which they breached, they have no right of indemnification against Caoba because Muhler was at the very least a joint tortfeasor.

FOR A FOURTEENTH DEFENSE

32. Further answering, Caoba would show that Muhler failed to give reasonable notice of any claimed deficiencies in any plans and/or services allegedly furnished by this defendant, and by reason of which Muhler is barred from recovering from this defendant.

FOR AN EIGHTEENTH DEFENSE

33. Further answering, Caoba would show that Muhler's claims are barred by any other matter constituting an avoidance or affirmative defense and Caoba specifically reserves the right to amend its Answer to assert any such defense that may become available or appear during discovery proceedings or otherwise in this case.

FOR A NINETEENTH DEFENSE

34. Punitive damages are inappropriate in this case because Caoba did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

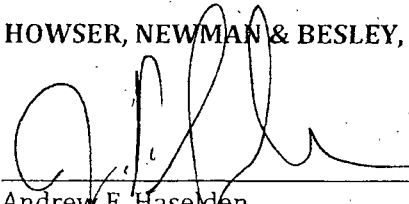
FOR A TWENTIETH DEFENSE

35. Mulher's claims against Caoba are barred to the extent they seek to recover a tort for purely economic loss.

WHEREFORE, having fully answered the ATPC herein, Caoba respectfully requests that the ATPC against it be dismissed, with costs, and that it have such other and further relief as this Court deems just and proper.

[signature block on following page]

HOWSER, NEWMAN & BESLEY, L.L.C.



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Attorneys for Third-Party Defendant

Caoba Doors

August 6, 2012

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC and CARRIAGE HILL
ASSOCIATES OF CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING,
INC., THE MUHLER COMPANY, INC., and
AC CONSTRUCTION, INC.

Defendants.

AC CONSTRUCTION,

Plaintiff,

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC, and TRAVELERS
CASUALTY AND SURETY COMPANY OF
AMERICA,

Defendants.

GEOFFREY C. CIPKALA, and SAMUEL C.
AGEE, as tenants in common of the common
elements of The Oaks at River's Edge
Horizontal Property Regime and on behalf of
themselves and all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC, CARRIAGE HILL
ASSOCIATES OF CHARLESTON, LLC,
and CARRIAGE HILL ASSOCIATES, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.2009-CP-08-1068

CASTLE SIDING, INC.'S MOTION TO
DISMISS

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC., JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, KEVIN L. HUX, NANCY K. JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAMJUNG, CHARLES MARAZITI, PATRICIA MARAZITI, DONNA DEE MORAN, GOERGE S. POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, ROBERT FARINA, MARY ANN FARINA, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, GREGORY B. NATHAN, RICHARD JENNINGS, MATTHEW J. SEVERANCE and ELIZABETH ASHLEY PHILLIPS SEVERANCE, :

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, INC., WEATHER SHIELD MANUFACTURING, INC., THE MUHLER CO., INC., A.C. CONSTRUCTION, INC., COASTAL ROOFING CO., INC., COASTAL CAULKING, INC., MIKE PHILLIPS d/b/a MIKE PHILLIPS MASONRY, GERALD RUMPLICK, EDWARD J. D'ORAZIO and RICH BEHRINGER,

Defendants.

THE MUHLER COMPANY, INC.

Third-Party Plaintiff,

vs.

CASTLE SIDING, INC., and CAOBA DOORS,

Third-Party Defendants.

TO: ATTORNEYS FOR PARTIES ABOVE-NAMED:

Third-Party Defendant, Castle Siding, Inc. (hereinafter "Castle Siding"), will move before the Court of Common Pleas Berkeley County on the tenth (10th) day after service hereof or as soon thereafter as the Castle Siding may be heard for an order dismissing the breach of contract and negligence causes of action alleged in The Muhler Company, Inc.'s Third-Party Complaint on the grounds as follows:

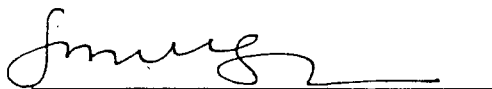
The Third-Party Complaint fails to state facts sufficient to constitute a breach of contract or negligence cause of action against Castle Siding, and accordingly, these causes of action should be dismissed as to Castle Siding pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

This motion is made pursuant to the law of the state of South Carolina and upon the Statutes and Cases of the State of South Carolina.

The motion will be supported by any cases or statutes as is warranted at the hearing.

GRIFFITH, SADLER & SHARP, P.A.

By:



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ATTORNEYS FOR CASTLE SIDING, INC.

Beaufort, South Carolina

August 9, 2012

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

Civil Action Nos. 2009-CP-08-1068

2009-CP-08-1413

2008-CP-08-2714

2008-CP-08-3916

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC AND CARRIAGE
HILL ASSOCIATES OF CHARLESTON,
LLC,

Plaintiffs,

vs.

WEATHER SHIELD
MANUFACTURING, INC., THE
MUHLER COMPANY, INC., AND AC
CONSTRUCTION, INC.,

Defendants.

THE MUHLER COMPANY, INC.'S
ANSWER TO WEATHER SHIELD
MANUFACTURING, INC.'S CROSS-
CLAIMS SET FORTH IN ITS
ANSWER TO THE FOURTH
AMENDED COMPLAINT
(Jury Trial Demanded)

AC CONSTRUCTION,

Plaintiff,

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC, AND TRAVELERS
CASUALTY AND SURETY COMPANY
OF AMERICA,

Defendants.

GEOFFREY C. CIPKALA, and SAMUEL
C. AGEE, as tenants in common of the
common elements of The Oaks at River's
Edge Horizontal Property Regime and on
behalf of themselves and all other tenants in
common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC, CARRIAGE HILL
ASSOCIATES OF CHARLESTON, LLC,

and CARRIAGE HILL ASSOCIATES,
INC.,

Defendants.

THE OAKS AT RIVERS EDGE
PROPERTY OWNERS ASSOCIATION,
INC., JOHN E. ATKINSON, JOAN D.
STRANDQUIST, JOSEPH E.
CHIVAROU, JR., PEYTON H. COOK,
JR., BRENDA COOK, JOHN W.
EDELLEN, KAREN A. NELSON, ROBERT
J. GRAHAM, MAUREEN S. GRAHAM,
KEVIN O. HUX, NANCY K. JOHNSON
as trustee for the Nancy K. Johnson
Revocable Trust, WILLIAM JUNG,
CHARLES MARAZITI, PATRICIA
MARAZITI, DONNA DEE MORAN,
GOERGE S. POLLARD, ELEANOR J.
POLLARD, ROBERT REECE, GERARD
M. RUVO AND SUE S. RUVO as trustees
for the Ruvo 2006 Living Trust, ROBERT
FARINA, MARY ANN FARINA,
CAROLYN M. JENNINGS, THOMAS
EDWARD KEANE, EDWARD
WALLACE BARR, III, RICHARD B.
PEKRUHN, PAULINE PEKRUHN,
GREGORY B. NATHAN, RICHARD
JENNINGS, MATTHEW J. SEVERANCE
and ELIZABETH ASHLEY PHILLIPS
SEVERANCE,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC, CARRIAGE HILL
ASSOCIATES OF CHARLESTON, LLC,
CARRIGAE HILL ASSOCIATES, INC.,
WEATHER SHIELD
MANUFACTURING, INC., THE
MUHLER CO., INC., A.C.
CONSTRUCTION, INC., COASTAL
ROOFING CO., INC., COASTAL
CAULKING, INC., MIKE PHILLIPS
D/B/A MIKE PHILLIS MASONRY,
GERALD RUMPLICK, EDWARD J.

D'ORAZIO and RICH BEHRINGER,)

)
Defendants.

Defendant, The Muhler Company, Inc. ("this Defendant" or "Muhler"), by and through its undersigned counsel, answers the Cross Claims set forth in Weather Shield Manufacturing, Inc.'s Answer and Motion to Dismiss Plaintiffs Fourth Amended Complaint and Cross Claims against The Muhler Company, Inc. (hereinafter "Weather Shield Cross Claim") as follows:

1. This Defendant denies each and every allegation of Weather Shield's Counter-Claim that is not specifically and unconditionally admitted herein after.

2. The allegations of paragraphs 1 – 90 of Weather Shield's Cross Claim relate to its Answer to the Fourth Amended Complaint and no response is required.

ANSWERING THE CROSS CLAIM AGAINST THE MUHLER COMPAY, INC.

3. This Defendant admits the allegations of Paragraphs 91 of Weather Shield's Cross Claim.

4. This Defendant admits to allegations of Paragraph 92 of Weather Shield's Cross Claim.

5. This Defendant denies the allegations of Paragraph 93 of Weather Shield's Cross Claim.

6. The allegations of Paragraph 94 of Weather Shield's Cross Claim state conclusions of law to which no response is required.

ANSWERING THE FIRST CAUSE OF ACTION

7. This Defendant admits to allegations in Paragraph 95 of Weather Shield's Cross Claim.

8. This Defendant admits to allegations in Paragraph 96 of Weather Shield's Cross Claim.

9. In response to Paragraph 97 and 98 this Defendant craves reference to the Credit Application and denies any allegation inconsistent therewith.

10. In response to Paragraphs 99, 100, 101, 102, 103 and 104, this Defendant craves reference to Project File of Muhler and Weather Shield for a complete and accurate record of the dealings between Muhler and Weather Shield in regards to the Oaks at Riverside, and denies each and every allegation that is inconsistent therewith.

11. This Defendant denies the allegations of Paragraphs 105, 106, 107, 108, 109, 110, 111 and 112 of Weather Shield's Cross Claim.

ANSWERING THE SECOND CAUSE OF ACTION

12. In response to Paragraph 114, Muhler repeats and realleges all the preceding paragraphs of this Answer as set forth fully herein.

13. This Defendant admits the allegations of Paragraph 115.

14. This Defendant denies the allegations of Paragraphs 116, 117 and 118 being all the remaining allegations of Weather Shield's Cross Claim.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE **(Breach of Contract)**

15. Weather Shields claims for breach of contract and quantum merit must fail because Weather Shield breached its contract with Muhler.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

16. Weather Shield claims for breach of contract, quantum merit must fail because the course of dealings between the parties resulted in agreement that all outstanding balances due to

Weather Shield were deemed to be satisfied. Thus, Weather Shield claims for breach of contract and quantum merit must fail under the doctrine of Accord and Satisfaction.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

17. Weather Shield's claims for breach of contract and quantum merit must fail because Weather Shield breached provisions of its agreement with Muhler and such provisions were conditions precedent to Muhler's obligations.

WHEREFORE, having fully answered Weather Shield's Cross Claims, Defendant Muhler respectfully requests that Weather Shield's Cross Claims be dismissed with costs and fees awarded to Muhler along with any other remedies that the Court finds just and proper.

MCANGUS GOUDELOCK & COURIE, LLC



Peter Gunnar Nistad

Post Office Box 650007

735 Johnnie Dodds, Blvd., Suite 200 (29464)

Mount Pleasant, South Carolina 29465

(843) 576-2900

ATTORNEYS FOR DEFENDANT, THE
MUHLER COMPANY, INC.

August 15, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have, this 15th day of August, 2012, served a copy of *The Muhler Company, Inc.'s Reply to Weather Shield Manufacturing, Inc.'s Cross Claims as Set Forth in Its Answer the Fourth Amended Complaint* by mailing copies of same, electronically and/or postage prepaid, in the United States mail, with sufficient postage affixed as follows:

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AND

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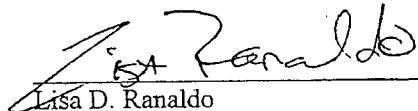
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Attorney for Castle Siding

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Attorney for Coastal Caulking



Lisa D. Ranaldo
Legal Assistant to Peter Gunnar Nistad

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC and CARRIAGE HILL
ASSOCIATES OF CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING,
INC., THE MUHLER COMPANY, INC., and
AC CONSTRUCTION, INC.

Defendants.

AC CONSTRUCTION,

Plaintiff,

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC, and TRAVELERS
CASUALTY AND SURETY COMPANY OF
AMERICA,

Defendants.

GEOFFREY C. CIPKALA, and SAMUEL C.
AGEE, as tenants in common of the common
elements of The Oaks at River's Edge
Horizontal Property Regime and on behalf of
themselves and all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC, CARRIAGE HILL
ASSOCIATES OF CHARLESTON, LLC,
and CARRIAGE HILL ASSOCIATES, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.2009-CP-08-1068

CASTLE SIDING, INC.'S ANSWER TO
THE MUHLER COMPANY, INC.'S
THIRD-PARTY COMPLAINT

(Jury Trial Demanded)

FILE COPY

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC., JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, KEVIN L. HUX, NANCY K. JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAMJUNG, CHARLES MARAZITI, PATRICIA MARAZITI, DONNA DEE MORAN, GOERGE S. POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, ROBERT FARINA, MARY ANN FARINA, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, GREGORY B. NATHAN, RICHARD JENNINGS, MATTHEW J. SEVERANCE and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

Plaintiffs;

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, INC., WEATHER SHIELD MANUFACTURING, INC., THE MUHLER CO., INC., A.C. CONSTRUCTION, INC., COASTAL ROOFING CO., INC., COASTAL CAULKING, INC., MIKE PHILLIPS d/b/a MIKE PHILLIPS MASONRY, GERALD RUMPLICK, EDWARD J. D'ORAZIO and RICH BEHRINGER,

Defendants.

THE MUHLER COMPANY, INC.

Third-Party Plaintiff,

vs.

CASTLE SIDING, INC., and CAOBA DOORS,

Third-Party Defendants.

TO: PETER GUNNAR NISTAD, ATTORNEY THE MUHLER COMPANY, INC.:

Third-Party Defendant, Castle Siding, Inc. (hereinafter "the Defendant"), answering the
The Muhler Company, Inc.'s Third-Party Complaint would allege and show as follows:

1. The Defendant denies each and every allegation not specifically admitted hereinafter and demands strict proof thereof.

2. Paragraphs 1 through 171 of the Answer to Third Amended Complaint and Cross-claim contain no allegations against the Defendant and therefore no answer is required. To the extent an allegation of fact is alleged, the Defendant denies the same and demands strict proof thereof.

FOR A FIRST DEFENSE TO THE THIRD-PARTY CLAIM AGAINST CASTLE SIDING, INC.

Motion to Dismiss Breach of Contract and Negligence Causes of Action
(Rule 12(b)(6))

3. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

4. The Third-Party Complaint fails to state facts sufficient to constitute a breach of contract or negligence cause of action against this Defendant, and accordingly, these causes of action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE TO THE THIR-PARTY CLAIM AGAINST CASTLE SIDING, INC.

5. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

6. Paragraph 172 of the Third-Party Complaint contains no allegations against the Defendant and therefore no answer is required. To the extent an allegation of fact is alleged, the Defendant denies the same and demands strict proof thereof.

7. The Defendant admits the allegations contained in Paragraphs 173 and 174 of the Third-Party Complaint.

8. Upon information and belief, the Defendant admits the allegations contained in Paragraph 175 of the Third-Party Complaint.

9. The Defendant admits the allegations contained in Paragraph 176 of Third-Party Complaint.

10. The Defendant denies the allegations contained in Paragraph 177 of Third-Party Complaint and demands strict proof thereof.

11. The Defendant admits the allegations contained in Paragraph 178 of Third-Party Complaint.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

12. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

13. Paragraph 179 of Third-Party Complaint contains no allegations against the Defendant and therefore no answer is required. To the extent an allegation of fact is alleged, the Defendant denies the same.

14. Paragraph 180 of the Third-Party Complaint states a conclusion of law and, accordingly, an answer is not required; to the extent an allegation of fact is made, the Defendant denies it and demands strict proof thereof.

15. The Defendant denies the allegations contained in Paragraphs 181, 182, and 183 of Third-Party Complaint and demands strict proof thereof..

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Negligence)

16. The allegations previously set forth herein are re-alleged and adopted as part of

this Defense as if repeated verbatim.

17. Paragraph 184 of Third-Party Complaint contains no allegations against the Defendant and therefore no answer is required. To the extent an allegation of fact is alleged, the Defendant denies the same.

18. The Defendant denies the allegations contained in Paragraph 185 and 186 of Third-Party Complaint and demands strict proof thereof..

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Indemnity)

19. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

20. Paragraph 187 of Third-Party Complaint contains no allegations against the Defendant and therefore no answer is required. To the extent an allegation of fact is alleged, the Defendant denies the same.

21. The Defendant denies the allegations contained in Paragraphs 188 and 189 of Third-Party Complaint and demands strict proof thereof.

22. Paragraphs 190 through 207 of Third-Party Complaint contain no allegations against the Defendant and therefore no answer is required. To the extent an allegation of fact is alleged, the Defendant denies the same and demands strict proof thereof.

FOR A THIRD DEFENSE
(Intervening/Superseding Cause)

23. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

24. The Plaintiff's claims against Defendant are barred, because even if the Defendant was negligent as alleged by the Plaintiffs, which is specifically denied, the intervening and/or superseding negligence of others was the direct and proximate cause of the damages, if any,

suffered by the Plaintiff.

FOR A FOURTH DEFENSE

(Sole Negligence of Others)

25. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

26. The direct and proximate cause of the Plaintiff's damages, if any, was due to the negligence, gross negligence, wanton and reckless conduct of some other person, or corporation and they were the sole cause of the Plaintiff's damages and, accordingly, this Defendant is not liable to the Plaintiffs.

FOR A FIFTH DEFENSE

(Comparative Negligence)

27. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

28. The Plaintiff's damages, if any, must be reduced because even if this Defendant were negligent as alleged by the Plaintiffs, which is specifically denied, the alleged negligence of this Defendant must be measured against the negligence of the Plaintiff and/or their agents in failing or refusing to exercise reasonable care in the maintenance, repair, restoration, and upkeep of the property in question.

FOR A SIXTH DEFENSE

(Waiver)

29. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

30. The Plaintiff's claims are barred in whole, or in part, by Plaintiff's waiver.

FOR A SEVENTH DEFENSE

(Estoppel)

31. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

32. The Plaintiff's claims are barred in whole, or in part, by the doctrine of estoppel.

FOR A EIGHTH DEFENSE
(Unclean Hands)

33. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

34. The Plaintiff's claims are barred in whole, or in part, by the doctrine of unclean hands.

FOR AN NINTH DEFENSE
(Laches)

35. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

36. The Plaintiff's claims are barred in whole, or in part, by the doctrine of laches.

FOR A TENTH DEFENSE
(Statute of Limitations/Repose)

37. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

38. The Plaintiff's claims are barred in whole, or in part, by the applicable statutes of limitation or statutes of repose.

FOR AN ELEVENTH DEFENSE
(Failure to Mitigate)

39. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

40. The Plaintiff's causes of action against Defendant are barred, or the damages are limited, by the Plaintiff's failure to mitigate damages.

FOR A TWELFTH DEFENSE
(Statute of Frauds)

41. The allegations previously set forth herein are re-alleged and adopted as part of

this Defense as if repeated verbatim.

42. The Plaintiff's claims against Defendant based upon alleged express warranties are barred in whole, or in part, by the statute of frauds.

FOR A THIRTEENTH DEFENSE
(Right to Cure)

43. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

44. The Plaintiff's causes of action against the Defendant are barred because the Plaintiffs failed to provide the Defendant with notice and a right to cure the problems alleged at the residences pursuant SC Code Ann. §40-59-810 *et seq.*

FOR A FOURTEENTH DEFENSE
(Open and Obvious Condition)

45. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

46. The Plaintiff's causes of action against the Defendant are barred because if any defects existed at the Plaintiff's residence, which is specifically denied herein, any such defects constituted open and obvious conditions about which the Plaintiffs knew or should have known at the time of purchase.

FOR A FIFTEENTH DEFENSE
(Failure to State a Claim)

47. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

48. The Plaintiff's Complaint fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), SCRC.P.

FOR A SIXTEENTH DEFENSE
(Economic Loss Doctrine)

49. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

50. The Plaintiff's causes of action against the Defendant are barred by the economic loss doctrine.

FOR A SEVENTEENTH DEFENSE
(Exclusion/Modification/Limitation of Warranties)

51. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

52. The Plaintiff's causes of action against the Defendant are barred in whole or in part because to the extent any warranties existed, the Plaintiff's own actions have resulted in the exclusion, modification, or limitation of any such warranties.

FOR AN EIGHTEENTH DEFENSE
(Disclaimer of Warranties)

53. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

54. The Plaintiff's causes of action against the Defendant are barred in whole or in part because of the disclaimer of warranties.

FOR A NINETEENTH DEFENSE
(Expiration of Warranties)

55. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

56. The Plaintiff's causes of action against the Defendant are barred in whole or in part because to the extent any warranties existed, all such warranties have expired.

FOR A TWENTIETH DEFENSE
(Failure to Make a Claim within Applicable Warranty Period)

57. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

58. The Plaintiff's causes of action against the Defendant are barred in whole or in part because to the extent any warranties existed, the Plaintiffs failed to file a claim within the applicable warranty period.

FOR A TWENTIETH DEFENSE
(Exclusion/Modification/Limitation of Remedies)

59. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

60. The Plaintiff's causes of action against the Defendant are barred in whole or in part because of the exclusion, modification, or limitation of remedies.

FOR A TWENTY-FIRST DEFENSE
(Disclaimer of Remedies)

61. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

62. The Plaintiff's causes of action against the Defendant are barred in whole or in part because of the disclaimer of remedies.

FOR A TWENTY-SECOND DEFENSE
(Compliance with Industry Customs, Practices, and Standards)

63. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

64. The Plaintiff's causes of action against the Defendant are barred in whole or in part because the Defendant's work on the residence at issue complied with the industry customs, practices, and standards given the state of the art in the construction industry at the time of construction.

FOR A TWENTY-THIRD DEFENSE
(Lack of Privity)

65. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

66. The Plaintiff's causes of action against the Defendant are barred in whole or in part because the Plaintiffs lack privity with the Defendants.

FOR A TWENTY-FOURTH DEFENSE
(Purchase with Notice)

67. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

68. The Plaintiff's causes of action against the Defendant are barred because to the extent any construction defects existed, which is expressly denied herein, the Plaintiffs purchased the property with notice of such defects.

FOR A TWENTY-FIFTH DEFENSE
(Reservation and Non-Waiver of Contribution/Indemnity Claim)

69. The Defendant repeats each and every answer to the allegations contained in the Complaint against it as if set forth verbatim herein.

70. The Defendant reserves the right and does not waive it's right to raise a claim for indemnity and/or contribution as to any co-defendant third-Party Defendant pursuant to S.C. Code Ann. §15-38-10, *et seq.*

FOR A TWENTY-SIXTH DEFENSE
(Spoilation of Evidence)

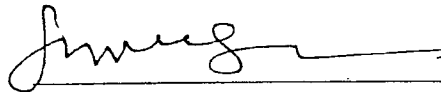
71. The allegations previously set forth herein are re-alleged and adopted as part of this Defense as if repeated verbatim.

72. The Defendant is informed and believes that the Plaintiffs' claims for damages are barred based upon the spoilation of evidence.

WHEREFORE, the Defendant having fully answered the The Muhler Company, Inc.'s Third-Party Complaint prays that this action be dismissed with costs to the Third-Party Plaintiff.

GRIFFITH, SADLER & SHARP, P.A.

By:



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ATTORNEYS FOR CASTLE SIDING, INC.

Beaufort, South Carolina

August 9, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC, and CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, LLC)
Plaintiffs,)

CASE NO.: 2009-CP-08-1068

v.)

WEATHER SHIELD MANUFACTURING,)
INC., THE MUHLER CO, INC., and A.C.)
CONSTRUCTION, INC.,)
Defendants.)

AMENDED ANSWER TO PLAINTIFF'S
FOURTH AMENDED COMPLAINT
(JURY TRIAL REQUESTED)

A.C. CONSTRUCTION, INC.,)
Plaintiffs,)

CASE NO. 2009-CP-08-1413

v.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC and TRAVELERS)
CASUALTY AND SURETY COMPANY OF)
AMERICA,)
Defendants.)

GEOFFREY C. CIPKALA and SAMUEL C.)
AGEE, as tenants in common of the common)
elements of the Oaks at River's Edge)
Horizontal Property Regime and on behalf of)
themselves and all other tenants in common.)
Plaintiffs,)

CASE NO. 2009-CP-08-2714

v.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC, CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, LLC,)
CARRIAGE HILL ASSOCIATES, INC.,)
Defendants.)

THE OAKS AT RIVERS EDGE PROPERTY)
OWNERS ASSOCIATION, INC., JOHN E.)
ATKINSON, JOAN D. STRANDQUIST,)
JOSEPH E. CHIOVAROU, JR., PEYTON H.)
COOK, JR., BRENDA COOK, JOHN W.)
EDELEN, KAREN A. NELSON, ROBERT J.)
GRAHAM, MAUREEN S. GRAHAM,)
KEVIN O. HUX, NANCY K. JOHNSON as)
trustee for the Nancy K. Johnson Revocable)
Trust, WILLIAM JUNG, CHARLES)
MARAZITI, PATRICIA MARAZITI,)
DONNA DEE MORAN, GEORGE S.)
POLLARD, ELEANOR J. POLLARD,)
ROBERT REECE, GERARD M. RUVO)
AND SUE S. RUVO as trustees for the Ruvo)
2006 Living Trust, ROBERT FARINA,)
MARY ANN FARINA, CAROLYN M.)
JENNINGS, THOMAS EDWARD KEANE,)
EDWARD WALLACE BARR, III,)
RICHARD B. PEKRUHN, PAULINE)
PEKRUHN, GREGORY B. NATHAN,)
RICHARD JENNINGS, MATTHEW J.)
SEVERANCE, and ELIZABETH ASHLEY)
PHILLIPS SEVERANCE)
Plaintiffs,)

v.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC, CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, LLC,)
CARRIAGE HILL ASSOCIATES, INC.,)
WEATHER SHIELD MANUFACTURING,)
INC., THE MUHLER CO., INC., A.C.)
CONSTRUCTION, INC., COASTAL)
ROOFING, CO., INC., COASTAL)
CAULKING, INC., MIKE PHILLIPS d/b/a)
MIKE PHILLIPS MASONRY, GERALD)
RUMPLICK, EDWARD J. D'ORAZIO, and)
RICH BEHRINGER,)
Defendants.)

CASE NO.: 2009-CP-08-3916

The Defendant, Rich Behringer, by and through his undersigned attorneys, hereby answers the Plaintiffs' Fourth Amended Complaint. Except as specifically admitted below, the Defendant expressly denies each and every allegation in the Complaint.

FOR A FIRST DEFENSE

1. Defendant Rich Behringer admits upon information and belief the allegations of paragraphs one through twenty of Plaintiffs' complaint.

2. Paragraph twenty-one only sets forth the manner the Plaintiffs plan to designate certain Defendants in its complaint, which does not require an admission or denial. To the extent a response is required, paragraph twenty-one is denied.

3. Defendant Rich Behringer admits Defendant Daniel Island Riverside Developers is a corporation authorized to do business in this state as set forth in paragraph twenty-two of the complaint, but denies the remaining multiple allegations of paragraph twenty-two.

4. Defendant Rich Behringer admits Defendant Carriage Hill Associates of Charleston, LLC is a corporation authorized to do business in this state as set forth in paragraph twenty-three of the complaint, but denies the remaining multiple allegations of paragraph twenty-three.

5. Defendant Rich Behringer denies the initial allegations of paragraph twenty-four regarding Defendant Carriage Hill Associates of Charleston, LLC.

6. Defendant Rich Behringer denies the allegations of paragraph twenty-five, paragraph twenty-six, paragraph twenty-seven and paragraph twenty-eight.

7. Paragraph twenty-nine only sets forth the manner the Plaintiffs plan to designate certain Defendants in its complaint, which does not require an admission or denial. To the extent a response is required, paragraph twenty-nine is denied.

8. Upon information and belief, Defendant Rich Behringer admits the allegations of paragraphs thirty through thirty-seven assuming the Plaintiffs have set forth correct information.

9. Paragraph thirty-eight only sets forth the manner the Plaintiffs plan to designate certain Defendants in its complaint, which does not require an admission or denial. To the extent a response is required, paragraph thirty-eight is denied.

10. Defendant Rich Behringer denies paragraph thirty-nine.

11. Defendant Rich Behringer understands that "Defendant/Developer/Director" in paragraph forty refers to the Developer's appointee to the HOA Board and as such, this is admitted. The remaining allegations of paragraph forty are denied.

12. Paragraphs forty-one and forty-two are matters of law, which require neither an admission nor a denial.

13. Defendant Rich Behringer reasserts his response to paragraphs one through forty-two in response to paragraph forty-three.

14. Defendant Rich Behringer admits the allegations of paragraph forty-four except the broad description of the buildings' exteriors.

15. Defendant Rich Behringer denies the allegations of paragraphs forty-five through forty-nine.

16. Defendant Rich Behringer does not have sufficient information to admit or deny the allegations set forth in paragraph 50.

17. Defendant Rich Behringer denies the allegations of paragraphs 51 through 63 as they set forth matters of law.
18. Defendant Rich Behringer reasserts his response to paragraphs one through 63 in response to paragraph 64.
19. Defendant Rich Behringer denies the allegation of paragraphs 65 as it sets forth a matter of law.
20. Paragraphs 66 through 86 are not directed to and do not name Defendant Rich Behringer. To the extent that it can be construed that they relate to this Defendant, all the allegations are denied.
21. Defendant Rich Behringer reasserts his response to paragraphs one through 86 in response to paragraph 87.
22. Defendant Rich Behringer denies the allegations of paragraph 88.
23. Defendant Rich Behringer reasserts his response to paragraphs one through 88 in response to paragraph 89.
24. Paragraphs 90 through 96 repeat prior allegations in this complaint and are once again denied.
25. Defendant Rich Behringer reasserts his response to paragraphs one through 96 in response to paragraph 97.
26. Paragraphs 98 through 100 are not directed to and do not name Defendant Rich Behringer. To the extent that it can be construed that they relate to this Defendant, all the allegations are denied.
27. Defendant Rich Behringer reasserts his response to paragraphs one through 100 in response to paragraph 101.

28. Defendant Rich Behringer denies the allegations in paragraphs 102 through 104 as they set forth matters of law.

29. Defendant Rich Behringer reasserts his response to paragraphs one through 104 in response to paragraph 105.

30. Defendant Rich Behringer denies the allegations in paragraphs 106 through 108 as they set forth matters of law.

31. Except as specifically admitted above, the Defendant expressly denies each and every allegation in the Complaint.

FOR A SECOND DEFENSE
(Failure to State a Claim)

32. The Complaint fails to state a cause of action for which relief may be granted as required under 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Laches)

33. The Plaintiffs' claims are barred by the doctrine of laches.

FOR A FOURTH DEFENSE
(Unclean Hands)

34. The Plaintiffs have unclean hands.

FOR A FIFTH DEFENSE
(Comparative Negligence)

35. Any recovery in this case is barred by the greater comparative negligence of the Plaintiffs than Defendant Rich Behringer.

FOR A SIXTH DEFENSE
(Statute of Limitations)

36. The Plaintiffs' claims are barred by the Statute of Limitations.

FOR A SEVENTH DEFENSE
(Statute of Repose)

37. The Plaintiffs' claims are barred by the Statute of Repose.

FOR AN EIGHTH DEFENSE
(Lack of Privity)

38. Plaintiffs' claims are barred because no contract existed between Plaintiffs and Defendant Rich Behringer.

FOR A NINTH DEFENSE
(Waiver and Estoppel)

39. The Plaintiffs' claims are barred by the doctrines of waiver and estoppel.

FOR A TENTH DEFENSE
(Failure to Mitigate)

40. The Plaintiffs' have failed to mitigate their damages as required by law.

FOR AN ELEVENTH DEFENSE
(Intervening Acts of Third-Parties)

41. The Plaintiffs' damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with or under the control of Defendant Rich Behringer.

FOR A TWELTH DEFENSE
(Lack of Notice)

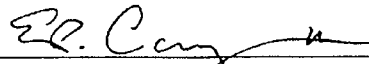
42. Plaintiffs have failed to comply with the notice requirements of the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act (SC Code Ann. §§ 40-59-810, et. al)

FOR A THIRTEENTH DEFENSE
(Incorporation of Defenses Raised by Other Defendants' Prior Pleadings)

43. Defendant Rich Behringer incorporates the defenses of any other Defendants, as they may be applicable to this Defendant and incorporates those defenses which it has raised in prior pleadings as if they have been restated herein.

Having fully responded to the Plaintiffs' Fourth Amended Complaint, the Defendant moves this Court for an order dismissing the case and awarding such cost and damages as it deems fit.

CORRIGAN & CHANDLER LLC



Eugene P. Corrigan, M

P.O. Box 547

Charleston, SC 29402

Phone: 843-577-5450 ; Fax: 843-577-5650

E-Mail: rick@corriganhandler.com

ATTORNEYS FOR DEFENDANT RICH
BEHRINGER

Charleston, South Carolina

2/27, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC and CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC,

Plaintiffs,

v.

WEATHER SHIELD MFG., INC.,
THE MUHLER CO., INC. and AC
CONSTRUCTION, INC.,

Defendants.

A.C. CONSTRUCTION, INC.

Plaintiffs,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Defendants.

GEOFFREY C. CIPKALA and SAMUEL C.
AGBE, as tenants in common of the common
Elements of the Oaks at River's Edge Horizontal
Property Regime and on behalf of themselves and
All other tenants in common,

Plaintiffs,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC.,

Defendants.

CASE NO.: 2009-CP-08-1068

Stipulation of Dismissal With
Prejudice As To Weather
Shield Mfg., Inc., The Muhler
Company, Inc., A.C. Construction,
Inc., Travelers Casualty & Surety
Co. of America, Carriage Hill
Associates, Inc., Coastal Roofing
Co., Inc., Coastal Caulking, Inc.,
Gerald Rumplick, Edward
D'Orazio & Richard Behringer
ONLY

CASE NO.: 2009-CP-08-1413

CASE NO.: 2008-CP-08-2714

2013 JUL 10 AM 10:54
FILED
P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

THE OAKS AT RIVERS EDGE PROPERTY
OWNERS ASSOCIATION, INC., JOHN E.
ATKINSON, JOAN D. STRANDQUIST, JOSEPH
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,
BRENDA COOK, JOHN W. EDELEN, KAREN
A. NELSON, ROBERT J. GRAHAM, MAUREEN
S. GRAHAM, KEVIN O. HUX, NANCY K.
JOHNSON as trustee for the Nancy K. Johnson
Revocable Trust, WILLIAM JUNG, CHARLES
MARAZITI, PATRICIA MARAZITI, DONNA
DEE MORAN, GEORGE S. POLLARD,
ELEANOR J. POLLARD, ROBERT REECE,
GERARD M. RUVO AND SUE S. RUVO as
Trustees for the Ruvo 2006 Living Trust, ROBERT
FARINA, MARY ANN FARINA, CAROLYN M.
JENNINGS, THOMAS EDWARD KEANE,
EDWARD WALLACE BARR, III, RICHARD B.
PEKRUHN, PAULINE PEKRUHN, GREGORY
B. NATHAN, RICHARD JENNINGS,
MATTHEW J. SEVERANCE, and ELIZABETH
ASHLEY PHILLIPS SEVERANCE,

Plaintiffs,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC., WEATHER SHIELD
MFG., INC., THE MUHLER CO., INC., A.C.
CONSTRUCTION, INC., COASTAL
ROOFING CO., INC., COASTAL CAULKING,
INC., MIKE PHILLIPS d/b/a MIKE PHILLIPS
MASONRY, GERALD RUMPLICK,
EDWARD J. D'ORAZIO, and RICH
BEHRINGER,

Defendants.

THE MUHLER COMPANY, INC.,

Third-Party Plaintiff,

CASE NO.: 2008-CP-08-3916

v.)
)
)
 CASTLE SIDING, INC. and CAOBA DOORS,)
)
)
 Third-Party Defendants.)
 _____)

IT APPEARING that the parties to this action have agreed and resolved all issues of dispute concerning Weather Shield Mfg., Inc., The Muhler Company, Inc., A.C. Construction, Inc., Travelers Casualty & Surety Co. of America, Carriage Hill Associates, Inc., Coastal Roofing Co., Inc., Coastal Caulking, Inc., Gerald Rumplick, AIA, Edward D'Orazio, AIA, and Richard Behringer with regard to the above captioned matters.

NOW THEREFORE, the parties, by and through their undersigned counsel, hereby stipulate to the dismissal with prejudice of Weather Shield Mfg., Inc., The Muhler Company, Inc., A.C. Construction, Inc., Travelers Casualty & Surety Co. of America, Carriage Hill Associates, Inc., Coastal Roofing Co., Inc., Coastal Caulking, Inc., Gerald Rumplick, AIA, Edward D'Orazio, AIA, and Richard Behringer ONLY from this matter, to include any and all claims, cross-claims or counterclaims by or against the aforementioned Defendants by any party to this action, pursuant to Rule 41(a)(1)(B) of the South Carolina Rules of Civil Procedure, with each party to bear its own costs, expenses and attorney fees.

AND IT IS SO AGREED AND STIPULATED.

Stipulation of Dismissal
The Oaks v. DIRD

WE SO STIPULATE AND CONSENT:



W.H. Bandy, Jr., Esquire
M. Brent McDonald, Esquire
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bmcDonald@s3blaw.com
Attorneys for Plaintiffs

WE CONSENT:



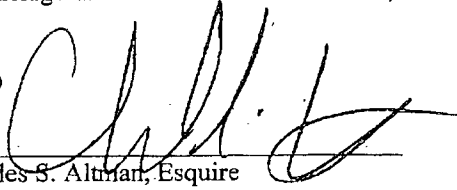
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Attorneys for Weather Shield Mfg., Inc.

Stipulation of Dismissal
The Oaks v. DIRD

WE CONSENT:

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roy@maybanklaw.com
Attorneys for Daniel Island Riverside Developers, Inc.
& Carriage Hill Associates of Charleston, LLC

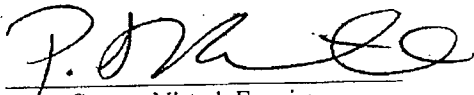
AND



Charles S. Altman, Esquire
Meredith L. Coker, Esquire
Altman & Coker, LLC
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mcoker@altmancoker.com
Attorneys for Daniel Island Riverside Developers, Inc.,
Carriage Hill Associates of Charleston, LLC, and
Travelers Casualty and Surety Company of America

Stipulation of Dismissal
The Oaks v. DIRD

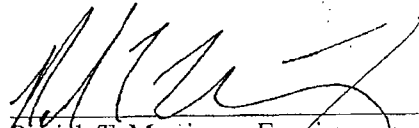
WE CONSENT:

A handwritten signature in black ink, appearing to read 'P. Gunnar Nistad', with a horizontal line underneath.

Peter Gunnar Nistad, Esquire
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735 Johnnie Dodds Blvd. Suite 200
Mount Pleasant, SC 29464
gunnar.nistad@mgclaw.com
Attorney for The Muhler Company, Inc.

Stipulation of Dismissal
The Oaks v. DIRD

WE CONSENT:



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Attorney for AC Construction Co., Inc.

Stipulation of Dismissal
The Oaks v. DIRD

WE CONSENT:

*Previously released as
counsel.*

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McDonald, McKenzie, Rubin, Miller and Lybrand
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mckenzie@mmrml.com
Attorney for Travelers Casualty and Surety Co. of America

Stipulation of Dismissal
The Oaks v. DIRD

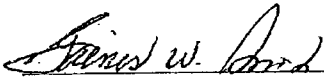
WE CONSENT:



Michael S. Seekings, Esquire
Leath Bouch & Crawford, LLP
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Stipulation of Dismissal
The Oaks v. DIRD

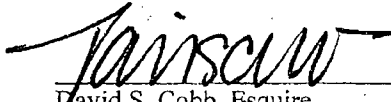
WE CONSENT:

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Stipulation of Dismissal
The Oaks v. DIRD

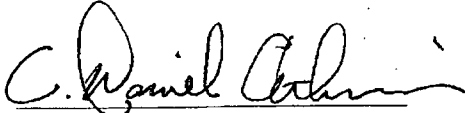
WE CONSENT:

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Stipulation of Dismissal
The Oaks v. DIRD

WE CONSENT:

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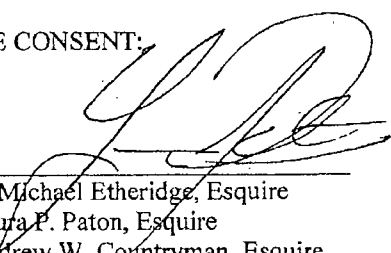
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Stipulation of Dismissal
The Oaks v. DIRD

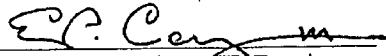
WE CONSENT:



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Stipulation of Dismissal
The Oaks v. DIRD

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY) CASE NO.: 2009-CP-08-3916

THE OAKS AT RIVERS EDGE PROPERTY)
OWNERS ASSOCIATION, INC., JOHN E.)
ATKINSON, JOAN D. STRANDQUIST, JOSEPH)
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,)
BRENDA COOK, JOHN W. EDELEN, KAREN)
A. NELSON, ROBERT J. GRAHAM, MAUREEN)
S. GRAHAM, NANCY K. JOHNSON as trustee)
for the Nancy K. Johnson Revocable Trust,)
WILLIAM JUNG, CHARLES MARAZITI,)
PATRICIA MARAZITA, GEORGE S. POLLARD,)
ELEANOR J. POLLARD, ROBERT REECE,)
GERALD M. RUVO AND SUE S. RUVO as)
trustees for the Ruvo 2006 Living Trust,)
CAROLYN M. JENNINGS, THOMAS EDWARD)
KEANE, EDWARD WALLACE BARR, III,)
RICHARD B. PEKRUHN, PAULINE PEKRUHN,)
MATTHEW J. SEVERANCE and ELIZABETH)
ASHLEY PHILLIPS SEVERANCE,)

PLAINTIFFS,)

VS.)

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC,)
CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,)

DEFENDANTS.)

BENCH TRIAL

VOLUME 1 OF 4

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on April 8, 2013, Commencing at 9:31 a.m.

APPEARANCES OF COUNSEL

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ALSO ATTENDING

Robert Lyles, Esquire
Susan Walls, Esquire
Carl Vansel, Esquire

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Defendants' Exhibit Number 229 / 244
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Court's Exhibit Number 2 185 /
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Court's Exhibit Number 3 185 /
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PROCEEDINGS

1
2 THE COURT: All right. Let me sort of recap
3 what has transpired, what has gone on. This is a
4 Berkeley County case that was set for trial in
5 Berkeley County I believe, what, two weeks ago?

6 MR. ALTMAN: Yes, sir.

7 THE COURT: And we were hearing some motions.
8 And there were some negotiations, and the parties have
9 settled against everybody except as to Daniel Island
10 Riverside Developers and Carriage Associates --
11 Carriage Hill Associates of Charleston.

12 MR. ALTMAN: Correct.

13 THE COURT: And we actually never drew the jury,
14 but the jury was available to be drawn.

15 The case was set today for three days, the
16 Association versus the two remaining defendants, which
17 is Daniel Island Riverside Developers and Carriage
18 Hill Associates of Charleston. And the issues, from
19 what I remember and what I understand, were some
20 common areas that were defective -- or I'm not even
21 sure what the issues were. But, anyhow, it was set
22 for trial today between the parties, with Mr. Maybank
23 and his associate, Mr. Altman, defending the action.

24 Now, I assume the plaintiff will consent to
25 venue being here in Charleston?

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1 MR. BUNDY: Plaintiffs consent, Your Honor.
2 THE COURT: And I understand the defendants will
3 consent to the venue being in Charleston?
4 MR. ALTMAN: That is correct, Your Honor.
5 THE COURT: Is that right, Mr. Altman?
6 MR. ALTMAN: That is correct, Your Honor.
7 THE COURT: In the meantime, I have received a
8 letter from Ms. Susan Wall, who I believe represents
9 the agent in a separate lawsuit, and also a letter
10 from Mr. Lyles, who I believe represents Mount Holly
11 [phonetic] Insurance Company. And I believe there was
12 also a broker involved.
13 And based on those letters, we had a conference
14 call last week and I asked them to be here this
15 morning. The issue raised by Ms. Wall's letter was
16 some type of collusion going on between the plaintiff
17 and the defendant, so I asked them to be present
18 today.
19 Who is here representing the various parties?
20 MR. LYLES: Robert Lyles for Mount Holly, Your
21 Honor.
22 MS. WALL: Susan Wall, on behalf of Bradey and
23 Bradey Agency [phonetic].
24 MR. VANSEL: Paul Vansel for Verns and Wilcox
25 [phonetic], the broker.

1 THE COURT: Now, both of y'all have previously
2 asked for a continuance, which I am not going to
3 grant. I'm going to hear the case for the next three
4 days or four days, or however long it takes to try it.
5 However, I'm not privy to what the settlement was. I
6 haven't seen the memorandum. I asked Mr. McDonald to
7 bring it today in case I wanted to look at it.

8 MR. McDonald, do you have it?

9 MR. MCDONALD: Yes, sir, I believe so. Mike
10 Ethridge is here. He retained custody of it and I've
11 asked him to make sure that he brought it.

12 THE COURT: All right.

13 MR. ETHRIDGE: I have the original, Your Honor,
14 and copies, I believe, if we need it.

15 THE COURT: Well, I don't know if we're going to
16 need copies, but I would sure like to see the
17 original, please, sir, since I have not seen it.

18 MR. ETHRIDGE: Certainly.

19 THE COURT: Now, I'm going to allow y'all -- I
20 don't know what collusion you are alluding to. From
21 your letter, I --

22 If you'll bring it up.

23 From your letter I presume -- there's basically
24 three things I can presume your collusion is in
25 reference to, i.e., some type of assignment by the two

1 corporations to the plaintiff, or the Court is in
2 collusion with them to grant some major great amount
3 of money to prohibit -- I guess to increase their
4 lawsuit. I don't even know what lawsuit y'all have
5 been sued in or what court you've been sued in. Or I
6 guess the third thing is Mr. Altman and Mr. Maybank
7 will go roll over and not defend their clients in this
8 action we are getting ready to start here this
9 morning.

10 What is your collusion that you're worried
11 about?

12 MR. LYLES: Your Honor, Robert Lyles, speaking
13 for this group --

14 THE COURT: Because we're going to get all this
15 aired out today. Okay?

16 MR. LYLES: Yes, sir.

17 THE COURT: If there's some collusion, the Court
18 is not going to put up with it. If there's not any
19 collusion I'm going to probably allow y'all to
20 participate in the trial on cross-examination, for
21 limited purposes only, as to damages.

22 MR. LYLES: Yes, sir.

23 THE COURT: Okay? First of all, tell me who
24 sued who.

25 MR. LYLES: Well, we are here today -- me and

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1 Ms. Wall and Mr. Vansel, we're here today representing
2 clients who have been sued in an action that is
3 entitled Daniel Island Real Estate Developers and
4 Carriage Hill Associates of Charleston. It carries
5 civil action number 2010-CP-08-4318.

6 THE COURT: Has it been filed in Charleston
7 County? Or where?

8 MR. LYLES: It's in Berkeley County.

9 THE COURT: It's in Berkeley County. So it's
10 pending in Berkeley.

11 MR. LYLES: Yes, sir.

12 THE COURT: What is the basis of the lawsuit?

13 MR. LYLES: It is a -- it is a multi-prong
14 lawsuit involving a number of the named plaintiffs and
15 some of the named plaintiffs' entities, but also
16 includes claims against my client, Mount Holly,
17 Clifford --

18 THE COURT: Is it basically a bad-faith claim?

19 MR. LYLES: Well, there is a bad-faith component
20 of it and a DJ component of it seeking a declaration
21 of insurance coverage. There is also claims for
22 negligence against the agent and the broker for
23 failing to procure the proper insurance.

24 THE COURT: Between the agent and the broker?

25 MR. LYLES: Well, not between them, but by the

1 plaintiff entities, that is, the developer and the
2 contractor, against their agent and their broker --

3 THE COURT: Is there a civil conspiracy, also?

4 MR. LYLES: I don't know that --

5 MS. WALL: No.

6 THE COURT: Okay.

7 MR. VANSEL: No civil conspiracy.

8 THE COURT: Ms. Wall, you are welcome to come
9 around. I'm not trying to exclude you. All three of
10 you can come around.

11 MS. WALL: Thank you, Your Honor.

12 THE COURT: I mean, I'll be glad to hear from
13 all three of you.

14 MS. WALL: Thank you.

15 THE COURT: Thank you for being here. I
16 understand on the phone call, not RSVP. But thank you
17 for being here today.

18 All right. Go ahead.

19 MR. LYLES: Yes, sir. Yes, sir.

20 We have been monitoring, obviously, this case,
21 which is the underlying case that's before you today.
22 We actually had somebody in the courtroom two weeks
23 ago who was there to watch the trial, and we
24 understood what the terms of the settlements were
25 between the various parties in that case.

1 I sent that to Mr. Maybank on April the --
2 excuse me. The letter I sent to Mr. Maybank outlined
3 what we understood the terms of the settlement to be
4 on March the 28th, and I sent that to Your Honor.

5 Some of those terms involved a settlement
6 between the Homeowners Association, Mr. Bundy's
7 client, and two of the entities that were -- and
8 people related to the developer and the construction
9 manager, who are Charleston -- excuse me -- Carriage
10 Hill of Charleston and Daniel Island Riverside. Mr.
11 Behringer is in court. He was involved in that
12 settlement. And another entity called Carriage Hill
13 Associates.

14 We understand that there was a settlement
15 between Carriage Hill Associates, Mr. Berringer, and
16 the architect -- who is represented by Mr. Ethridge --
17 with Mr. Bundy's clients. We understood that that
18 involved the payment of a total of 3.7 million
19 dollars. We also understood that it involved an
20 agreement. We've not seen the settlement agreement
21 ourselves, Your Honor, the final settlement agreement.
22 But what we understood is that the owners would pursue
23 their claim against Carriage Hill Associates of
24 Charleston and DIRD, which they are doing today. If
25 that judgment is not satisfied -- and we don't think,

1 based on the information we have, that it can be
2 satisfied, those entities will assign the judgment to
3 Mr. Bundy and his clients and assign their rights
4 against my client, Ms. Wall's client, and Mr. Vansel's
5 client. And then we understand that that agreement
6 provides that essentially Mr. Maybank, Mr. Altman,
7 Mr. Bundy and Mr. McDonald will act as co-counsel in
8 the insurance case and that their clients will divide
9 up and split the proceeds of any recovery in the
10 insurance case. And we have laid out the terms of
11 that agreement, as we understand it, in this letter to
12 Mr. Maybank.

13 The next effect of that, if those indeed are the
14 terms, is that it is in the best interest of Carriage
15 Hill Associates, DIRD and their lawyers, and in the
16 best interest, obviously, of Mr. Bundy and his client,
17 for there to be as large a verdict in this proceeding
18 as possible.

19 THE COURT: Well, I mean, how is that any
20 different than the settlement that's already been
21 reached?

22 MR. LYLES: Well, the difference is --

23 THE COURT: I mean, the difference is it doesn't
24 affect these people. I don't know if they're involved
25 in the settlement at all, because I haven't read the

1 settlement, either, the memorandum of settlement. I
2 glanced at your letter. But go ahead.

3 MR. LYLES: Well, they are involved to the
4 extent that they have agreed that if there is a large
5 verdict in this proceeding --

6 THE COURT: Well, large or verdict, period.

7 MR. LYLES: Yes, sir.

8 THE COURT: I mean, I'm not sure there's even
9 liability. Okay? We've got to get across that issue
10 first. Okay?

11 MR. LYLES: I understand that.

12 THE COURT: Everybody keeps talking about
13 damages. I assume Mr. Bundy can prove liability. But
14 this Court is not aware of that at this point in time.

15 MR. LYLES: I understand.

16 And here's where the rub is. Since they will be
17 joining forces against us in the coverage action, it
18 doesn't do them any good to establish that there's no
19 liability. It doesn't do them any good to try to
20 mitigate the damages. What will happen as a result,
21 in this Court, will be their collective --

22 THE COURT: Well, let me say this. Okay?

23 MR. LYLES: Yes, sir.

24 THE COURT: I don't think Mr. Maybank or
25 Mr. Altman are going to sit there and roll over and

1 admit liability and roll over on the damages. I'm not
2 going to allow that. And they're going to do their
3 job. So you're insinuating that they're not going to
4 do their job in defending their client in this
5 lawsuit. Is that correct or incorrect?

6 MR. LYLES: I'm not insinuating that. I'm
7 saying that their agreement with Mr. Bundy is to
8 jointly pursue --

9 THE COURT: I understand that --

10 MR. LYLES: -- our clients and --

11 THE COURT: I understand that. But how does
12 that mean they're going to get a large verdict against
13 them? I'm going to decide what the damages are; they
14 aren't.

15 MR. LYLES: I understand that.

16 THE COURT: So how does just because they're
17 going to join forces against you in the other lawsuit,
18 why does that mean that they're going to get a large
19 damage claim? I mean, I don't know. It may. I don't
20 know.

21 MR. LYLES: The result of this action, if there
22 is a judgment that is imposed --

23 THE COURT: Right.

24 MR. LYLES: -- that judgment will be included in
25 their damages in their case against us.

1 THE COURT: I understand that.

2 MR. LYLES: So the larger their damages in the
3 case against us, the better off the two of them stand
4 to be in that case.

5 THE COURT: That's true.

6 MR. LYLES: And so they don't have any incentive
7 to help minimize or mitigate the amount of damages in
8 this proceeding.

9 THE COURT: Other than being a lawyer and an
10 officer of the Court and defending their client, you
11 probably are correct. Okay?

12 MR. LYLES: Yes, sir.

13 And they are also in the coverage action -- if
14 the agreement is what we think it is, they are
15 currently co-counsel with Mr. Bundy and Mr. McDonald
16 in the coverage action. So there is an inherent
17 conflict there.

18 THE COURT: Well, I'm not saying they're
19 co-counsel in that lawsuit at this point in time. I
20 don't know. I haven't read it. I guess I'm going to
21 have to read it. Okay?

22 MR. LYLES: Yes, sir.

23 THE COURT: All right. Go ahead.

24 MR. LYLES: And that is the basis upon which we
25 believe that this is a collusive action: that there

1 is no incentive on the part of the defendants in this
2 case to either avoid liability or minimize the
3 damages. And I think some of that is even reflected
4 in the settlement agreement where they don't even have
5 any requirement that there be a setoff for the amounts
6 that are already paid in settlement. They've left
7 that question open to the Court. And I would submit
8 to you, for the same reasons I just said, neither of
9 these parties have any interest in their being a
10 setoff, because the larger the verdict in this case,
11 the bigger the damages that they're going to pursue in
12 my case.

13 THE COURT: All right. Ms. Wall, be glad to
14 hear from you. I believe you represent the agent.
15 The agent was Bradey Agency?

16 MS. WALL: That's right, Your Honor.

17 THE COURT: Be glad to hear from you.

18 MS. WALL: Thank you, Your Honor.

19 I would only make it clear we are not here to
20 intervene, Your Honor. I wanted to bring this matter
21 to the Court's attention based on what we understood.
22 Again, we've never seen the settlement agreement. But
23 we wanted to bring it to the Court's attention based
24 on what we understood. And I understood it through
25 Mr. Lyles. I did not have anyone at the proceeding

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1 two weeks ago when this was supposed to go to trial.
2 Because as an officer of the Court, I thought the
3 Court should know this.

4 However, I do want to make it clear to the
5 Court, we're reserving all of our rights to challenge
6 the ethicacy of whatever the outcome is in this
7 matter. That is between the lawyers and their
8 settlement agreement in the insurance case.

9 We're not asking Your Honor to allow us or
10 to bring us into this case. It would be highly
11 prejudicial to our client. We understand that the
12 underlying case, as I'm sure Your Honor is aware,
13 has been going on since 2008. I understand they
14 have taken over fifty depositions, there are twenty-
15 eight --

16 THE COURT: You're talking about --

17 MS. WALL: -- 280,000 documents.

18 THE COURT: -- this case?

19 MS. WALL: We're not in that case.

20 THE COURT: Are you talking about your case or
21 this case?

22 MS. WALL: No, sir. Your case, the underlying
23 construction case, which we've never been in. We've
24 never been a party to any --

25 THE COURT: Well, the fight between Muhler and

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1 Weather Shield. That was the big --

2 MS. WALL: And another --

3 THE COURT: -- that was the big fight, plus the
4 subs.

5 MS. WALL: Yes. And plus a lot of subs. That's
6 right. And we were never in any of those actions.

7 But we wanted Your Honor to understand or to at
8 least have the information, the little bit of
9 information that we had, with regard to the settlement
10 agreement. And we just want to preserve -- of course,
11 we are preserving our rights to do what we need to do
12 in the insurance litigation.

13 One of my concerns -- I had two. I wanted to be
14 sure, as an officer of the Court, that we brought this
15 to Your Honor's attention.

16 The second thing was I didn't want to hear, from
17 counsel in our insurance case, that if we didn't come
18 forward in Your Honor's Court that somehow we had
19 waived our argument that we thought the settlement was
20 collusive. And so I wanted to be sure that we had
21 preserved the record on that. Once we see the
22 settlement agreement and we make that assessment, we
23 will make all appropriate motions within the insurance
24 company case, Your Honor.

25 And so we don't in any way want to hold up the

1 case that Your Honor is going forward on. But we did
2 want to bring this to the Court's attention. And we
3 are expressly reserving our rights in our insurance
4 case.

5 THE COURT: Both of your letters asked for me
6 continue this case today.

7 Anything else, Ms. Wall?

8 MS. WALL: No, Your Honor.

9 We did ask that. We understand that Your Honor
10 did not wish to continue it, and we respect your
11 decision and we understand that. But we are not
12 intervening. Thank you, Your Honor.

13 THE COURT: All right. Mr. Vansel, glad to hear
14 you. I believe you represent Burns and Wilcox --

15 MR. VANSEL: That's correct.

16 THE COURT: -- the broker?

17 MR. VANSEL: That's correct, Your Honor.

18 Nothing except to say that I join in the
19 arguments of the two previous counsel and would only
20 add that based on what we understand about the
21 settlement agreement, all the parties sitting at these
22 tables have a reason to maximize the judgment in this
23 case.

24 THE COURT: Mr. Maybank?

25 MR. MAYBANK: I'll be brief, Your Honor.

1 From my perspective -- my position in this
2 courtroom, how I'm going to argue today is no
3 different from what those folks heard two-and-a-half
4 years ago and it's no different from the position I
5 took when I talked to Mr. Bundy about it.

6 Mount Holly had a chance to come in three years
7 ago, hire their attorney, put their position as it was
8 to defend this case on the record. Wonderful. They
9 didn't. They denied, they denied, they denied. We
10 were hired to then defend this case. And so we had to
11 take the tack that we did, and that was we're sorry.
12 There were problems out there. We've got water
13 infiltration coming through Weather Shield windows.
14 We've got Muller on sight saying the windows were not
15 put in right, contract with me, let me do it right,
16 and then they did it wrong. We're not here to say
17 that there aren't problems out there. So if that's
18 going to be the problem that the insurance companies
19 are now going to have with the defense, that's been
20 going on for three and a half years, let them sit in
21 and listen to the argument.

22 But our position is not going to change from the
23 day that we sat up in mediation three years ago to the
24 time we informed them that they could be there for
25 that mediation -- and we worked long and hard to get

1 this settlement done. We worked long and hard with
2 Bill, we worked long and hard with Brent, over many
3 days to try to come to a settlement. More than happy
4 to give it to you to read today, Your Honor.

5 One thing that I will ask -- and I don't know if
6 Mr. Bundy or McDonald want to join in on this. But my
7 concern is if they're reserving these rights to
8 challenge then basically the ethicacy of a settlement
9 and how it was come about -- I thought today was that
10 day that you were going to make that determination and
11 then we kind of see where the chips fall from there.
12 I did not know they were going to be able to kind of
13 come in, take some --

14 THE COURT: Well, I haven't decided what part
15 they're going to play in this lawsuit this next three
16 days or four days or however long it takes. Okay?

17 MR. MAYBANK: Okay.

18 THE COURT: I understand now they have withdrawn
19 their request. I mean, I may bring them in for a
20 limited purpose, i.e. Okay?

21 Mr. Altman, anything you would like to add?

22 MR. ALTMAN: Yes, sir, Your Honor.

23 We've spent a tremendous amount of time trying
24 to resolve this matter. Prior to the trial, we spent
25 two full days trying to come up with the settlement

1 agreement that you have before you now. It was not
2 done in any way trying to maximize any damages. It
3 was done to minimize any claims that the homeowners
4 would have. And I think we did a fantastic job of
5 keeping it, at that point, to a very minimum.

6 Mr. Maybank has been practicing for quite a
7 while, I've been practicing for quite a while. That's
8 not the way we practice law. We practice law to
9 protect our client.

10 The insurance company, the agents, they've known
11 every step of the way. We have provided them with
12 every document, given them access to every document,
13 in this case to see what's going on and asked them to
14 help us. They refused. And all of a sudden they want
15 to come in and challenge what Mr. Maybank and I are
16 doing to try to protect our client, when they should
17 have been here to do it. They weren't. So --

18 THE COURT: Thank you, Mr. Altman. Appreciate
19 it.

20 Mr. Bundy, anything you would like to add?

21 MR. BUNDY: Very briefly, Your Honor.

22 First off, I have given to opposing counsel what
23 is the fifth amended summons and complaint. What I've
24 simply done, Your Honor, is taken everyone out of the
25 caption and taken away all of the causes of action

1 that no longer exit. I think it will just make things
2 easier.

3 [Whereupon, Mr. Bundy proffers documents to the
4 Court]

5 MR. BUNDY: Very briefly, Your Honor.

6 The notion that the defendants have no incentive
7 not to protect their client flies in the face of
8 reality. There is no covenant not to execute in this
9 case. I'm going to get a judgment, I hope, Your
10 Honor, and I hope I'm going to get a great big
11 judgment. And that judgment is going to apply to all
12 of the real estate owned by the defendants. I'm going
13 to tie up all of their real estate, okay, with this
14 judgment, until it gets paid. This is merely just one
15 asset, potential asset, this claim against the
16 insurance company, that these defendants have. I
17 don't need their assignment of that claim because if I
18 get a judgment, I'm going to go down to the court and
19 I'm going to take it away from them, because causes of
20 action are sizeable. I can seize a cause of action.
21 And I can do that. We were just trying to make it a
22 little bit easier. They went ahead and acknowledged
23 the fact that if I get an assignment -- or I can sue
24 these people direct. It doesn't really matter --
25 under their policy.

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1 Now, the notion that -- well, I don't know if
2 there's been an allegation that I've been in collusion
3 with anybody. I hope not. But if there is I'll deal
4 with it, when it comes up, in the appropriate fashion.

5 We're going to get a judgment. We're going to
6 go after their real estate. We've set up a mechanism
7 to allow them to own their real estate so they can
8 refinance it. If they refinance it, we'll agree to
9 let them refinance it. But they can't sell off the
10 real estate without my permission. Okay?

11 We want these people to succeed. I don't want
12 to put them out of business. I didn't want their
13 money. They have various assets. They have real
14 estate, which is encumbered with work money, and they
15 have these claims against these clients represented by
16 these lawyers. Those are the assets I intend to
17 execute against.

18 Now, part and parcel of that execution, since
19 these gentlemen have been in that lawsuit, as have we,
20 it didn't seem fair to me -- I try to be fair, if I
21 can -- that these gentlemen have been working hard
22 trying to defend that lawsuit and get a claim against
23 their client for these insurance companies' actions,
24 should be totally pushed out of there. I could have
25 done that to them if I had wanted to. And if Your

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1 Honor finds that's collusive, that's what I'll do,
2 I'll just take the whole fee.

3 None of this has got anything to do with my
4 client. I expect a very aggressive defense and I had
5 better get one, because there's an aggressive offense
6 coming. Thank you, Your Honor.

7 THE COURT: Ms. Wall, I think you were stepping
8 forward. You wanted to say something?

9 MS. WALL: Your Honor --

10 THE COURT: I'll be glad to --

11 Let me just tell you what I'm thinking about,
12 okay, because I don't want to have any misconceptions.
13 I'm probably going to order y'all to stay and
14 participate in a small suit [phonetic], as far as
15 cross-examination concerning your damages. I'm not
16 going to say that waives any rights you have down the
17 road for collusion or anything else. But I'm going to
18 probably order y'all to participate in cross-
19 examination as to the issue of damages, since you
20 think these people are going to roll over. Okay?
21 That's what I'm thinking about doing. I'm going to
22 order you to do that.

23 I'm also going to say that doesn't mean you
24 can't raise the collusion later, you can't raise
25 whatever. You've not waiving anything by

1 participating in this. Do you understand?

2 Now, that's what I'm thinking about doing. I'll
3 be glad to hear from all three of you. Now, y'all can
4 do it three cross-examinations, or just one, or y'all
5 can alternate. I got a pretrial brief this morning.
6 I don't even know how many witnesses he's going to be
7 bringing on the issue of damages. But my inclination
8 at this point in time, because of the allegations,
9 allowing y'all to participate in this trial for the
10 limited purpose of cross-examination concerning the
11 damages. And you don't have a choice if I order that.
12 Okay?

13 MS. WALL: Your Honor, may I respond to that?

14 THE COURT: Yes, ma'am.

15 MS. WALL: I want to make it very clear. My
16 letter, written in conjunction with the other two
17 counsel, to Your Honor never asked to be allowed to
18 participate. We never asked to intervene. We simply
19 asked if we could have time to examine the issue of
20 whether intervention was appropriate. Your Honor, in
21 its discretion, determined, no, there was no extra
22 time to be given.

23 We do not wish to intervene. We cannot. And
24 here's the reason why, Your Honor. We have absolutely
25 no idea who the witnesses are who are going to be

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1 called today. We can't prepare for that. Not only
2 have we had no time, we've not participated in the
3 underlying suit, which has been going on since 2008.

4 But in addition to that, Your Honor --

5 THE COURT: Yes, ma'am. I'm listening. Go
6 ahead.

7 MS. WALL: -- all of these issues, if it's
8 appropriate, we will raise in the insurance case. We
9 simply brought this to Your Honor's attention because
10 we did not want the other side to say, well, you
11 didn't step up and tell the jury anything and
12 therefore you've waived your right. We simply asked
13 in the letter to be given time to investigate, to --
14 whether or not intervention was appropriate because we
15 have no time, we have determined over the three
16 business days that we had, that intervention is not
17 appropriate in your courtroom, Your Honor. And we
18 will simply wait until the insurance case to do what
19 is appropriate in that case with whatever judge is
20 assigned to that case, Your Honor.

21 I also want to make it very clear: my client,
22 Mr. Vansel's client, is not an insurance company;
23 therefore, there's no duty to defend or indemnify.
24 Agencies don't do that. They simply sell a product.

25 THE COURT: Right.

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1 MS. WALL: And so, Your Honor, there's been a
2 lot of discussion about, well, the insurance company
3 had the chance to do this, that, and the other thing.
4 My client isn't an insurance company. No, they didn't
5 have a chance to do any of those things because they
6 don't do those things under the law. They don't
7 defend and they don't indemnify.

8 Your Honor, we have absolutely no idea who
9 witnesses -- what the witnesses are. And it's
10 interesting. Mr. Lyles' letter to counsel, to Mr.
11 Maybank, several days before we wrote to Your Honor --
12 I think it was the day before we wrote to Your Honor
13 on April the 2nd -- asked Mr. Maybank specifically,
14 who are your witnesses going to be, what are you going
15 to do with the trial, what are even the issues left in
16 this trial, since we didn't know what the full
17 settlement was, Your Honor. And there was no
18 response. So we have absolutely no idea what the
19 issues are today and what's going to go on today. So,
20 Your Honor, we do not want to --

21 THE COURT: You're sort of in the same boat I'm
22 in. I don't know. I'm going to sit here and listen
23 to it for three days. Okay?

24 MS. WALL: But, Your Honor, we are not asking to
25 intervene --

1 THE COURT: I understand you're not asking. I
2 may intervene you, sua sponte, okay, for the limited
3 purpose I said. Okay? Y'all have raised a very
4 serious issue. I'm trying to deal with it. You're
5 saying there's collusion as to damages in this issue,
6 so I'm going to leave you in -- bring you in this
7 lawsuit for purposes of cross-examination on the issue
8 of damages only. Okay?

9 MS. WALL: Your Honor, may I ask --

10 THE COURT: Now, if you don't want to
11 participate on it, you may wind up waiving your
12 rights to raise it later.

13 MS. WALL: But, Your Honor --

14 THE COURT: Because I'm going to order you to
15 participate in it.

16 MS. WALL: Your Honor, may I ask this question?

17 THE COURT: Yes, ma'am.

18 MS. WALL: We're forced to participate on
19 witnesses we have no idea who they are. Whether they
20 were deposed in that suit, we have no idea. If we
21 participate, are we then -- is your ruling, in effect,
22 saying that in our case where we should be doing this
23 examination, having already done an examination on
24 witnesses we have no idea who they are, we've never
25 read their depositions, we've not been a party to that

1 suit, are we somehow precluded from doing that in our
2 case, Your Honor?

3 THE COURT: Well, apparently you're not
4 listening to what I said. I said earlier I was going
5 to allow you to participate as to damages. I also
6 said I will order -- in no way does that waive
7 anything you want to do in your lawsuit. Isn't that
8 what I said? Apparently you're not listening to what
9 I said. But to answer your question, no, you will not
10 be waiving anything in your lawsuit. Okay?

11 MS. WALL: I understand, Your Honor.

12 THE COURT: I mean, I'm not asking you to waive
13 it. I'm just saying because your allegation is on the
14 issue of damages, I'm going to bring you in this
15 lawsuit and let y'all ask questions, whatever y'all
16 think is appropriate, on damages.

17 Now, it doesn't mean you can't rehash it all in
18 your lawsuit. Take whatever depositions you want, ask
19 whatever questions you want. Okay? I'm not saying
20 that. I'm just saying because of your allegations,
21 you're going to sit in this courtroom and y'all are
22 going to listen and y'all are going to ask questions
23 on damages you think is appropriate. If you don't
24 think it's appropriate, just stand up and say, Your
25 Honor, I don't have any questions. But that doesn't

1 mean you waive that in your lawsuit. Do you
2 understand?

3 MS. WALL: I understand, Your Honor.

4 THE COURT: Okay.

5 MR. LYLES: Your Honor, if I may --

6 THE COURT: Yes, sir.

7 MR. LYLES: And I appreciated Mr. Bundy's
8 remarks, in particular. And if you go back and you
9 look at my letter, which was actually dated March
10 28th, to Mr. Maybank, I asked a series of eight or
11 nine questions. And I asked for information. Number
12 four in my request --

13 THE COURT: Let me ask y'all this.

14 MR. LYLES: Yes, sir.

15 THE COURT: Apparently y'all's concern -- I mean,
16 when did we have the phone conference? Last
17 Wednesday?

18 MR. LYLES: Wednesday. Yes, sir.

19 THE COURT: So you've had four or five days to
20 at least hash it over in your minds or talk about it.

21 MR. LYLES: Yes, sir.

22 THE COURT: What questions do you think you need
23 -- Mr. Maybank needs to ask in order for y'all to have
24 some semblance of cross-examination on the issue of
25 damages?

1 MR. LYLES: Well, the information we need is not
2 related to information that would help us cross-
3 examine witnesses in a case we're not a party to.
4 These are questions that go to the nature of the
5 agreement and the exposure of these parties.

6 Mr. Bundy mentioned that these folks have real
7 estate assets and he's going to --

8 THE COURT: We're not going into any of that.
9 Okay?

10 MR. LYLES: But -- but --

11 THE COURT: That will be left to your lawsuit.
12 Okay?

13 MR. LYLES: But --

14 THE COURT: I'm not going to rule on that. That
15 will be left to your lawsuit. Okay? And I'm not
16 trying to pass judgment on that.

17 MR. LYLES: But as we talk about the issue of
18 collusion, which is -- as you have said, is a very
19 serious issue, we are simply objecting to this
20 proceeding based on what we know today --

21 THE COURT: I understand. I understand.

22 But your major objection is the amount of
23 damages. I'm going to bring you in this lawsuit, ask
24 whatever you want on damages. And that's all you're
25 going to do.

1 MR. LYLES: That's not our major concern.

2 THE COURT: Well, it's my major concern today --

3 MR. LYLES: Yes, sir. Yes, sir.

4 THE COURT: -- and in this lawsuit.

5 MR. LYLES: Yes, sir.

6 THE COURT: Whatever else you want to bring up
7 in your lawsuit, that's fine. I'm not precluding
8 that. I'm not saying you're waiving it. And I'll put
9 that in a written order that you can prepare. Okay?

10 MR. LYLES: Yes, sir.

11 THE COURT: All right.

12 MR. LYLES: The issue --

13 THE COURT: But I'm not going -- I'm not going
14 to have the collusion issue as to damages raised and
15 not allow you the right to come in and ask whatever
16 questions.

17 And I think you and the other two attorneys are
18 very capable. You can sit here and listen to the
19 examination, you can listen to the cross-examination,
20 and you can add to it, okay --

21 MR. LYLES: No matter what --

22 THE COURT: -- if you so choose. If you don't
23 want to, all you've got to do is say, I don't have any
24 questions, and sit down. But I'm going to give you
25 that opportunity.

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1 MR. LYLES: No matter what questions we ask, if
2 these parties are jointly --

3 THE COURT: Well, that issue --

4 MR. LYLES: -- engaged to develop a --

5 THE COURT: -- is going to have to be decided in
6 your lawsuit. I'm not --

7 MR. LYLES: Exactly.

8 THE COURT: -- deciding that today.

9 MR. LYLES: Exactly. Exactly. We haven't asked
10 the Court to decide that.

11 THE COURT: And I'm not -- I'm going to put in
12 your order that in no way does this waive your rights
13 to raise that issue at a later date. Do you
14 understand?

15 MR. LYLES: I do. And, Your Honor --

16 THE COURT: But I'm not going to sit here and
17 allow y'all, you and the other two attorneys, to raise
18 the issue that Mr. Maybank and Mr. Altman are not
19 going to defend their client as to damages.

20 MR. LYLES: Well, Your Honor, we raised --

21 THE COURT: Because I think that's the
22 insinuation, as far as the collusion. That doesn't
23 address the other collusion issue, I agree. Okay?

24 MR. LYLES: Mr. Bundy indicated in his remarks
25 something that was very helpful to me. He said that

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1 the defendants in this case have real-estate assets
2 that he's going to pursue. In my letter to Mr.
3 Maybank I said to him, please tell me what assets of
4 your clients are actually encroached to a judgment. I
5 got no response to that. That will be a very
6 meaningful thing, a very meaningful fact, to me as I
7 evaluate the settlement agreement.

8 THE COURT: Well, then, sit down on the front
9 row, take your notes, participate, and I'll allow you
10 to ask some questions along those lines. Okay?

11 MR. LYLES: Well, I don't -- I want to ask
12 him --

13 THE COURT: Because you're going to be here for
14 the next three days.

15 MR. LYLES: I don't need to ask him that in this
16 proceeding, because we're going to ask him that in our
17 proceedings.

18 THE COURT: Okay. That's fine.

19 MR. LYLES: I asked him that before --

20 THE COURT: If you want to ask them that in
21 these proceedings, feel free. I'll allow you to do
22 it. Okay?

23 MR. LYLES: My only point was we asked that
24 question before we raised the collusion issue --

25 THE COURT: I understand.

1 MR. LYLES: -- and when we didn't receive a
2 response, we did the only thing we could do.

3 THE COURT: I understand.

4 MR. LYLES: Yes, sir. Yes, sir.

5 THE COURT: Any questions?

6 MR. VANSEL: If I may, Your Honor?

7 THE COURT: Yes, sir.

8 MR. VANSEL: Again, I join in in the comments --

9 THE COURT: Now, let me say this. If all three
10 of you don't want to stay, if y'all want to choose
11 straws and make one person stay, that's fine. I'm not
12 going to -- but one of you are going to stay and
13 participate, or all three of you. It doesn't matter
14 to this Court.

15 MR. VANSEL: Your Honor, if the Court proceeds
16 as it's indicated it will, I have two comments. One,
17 to reiterate that the right to cross-examine into
18 damages is really a right, I submit respectfully,
19 without meaning, since we've had no time to prepare,
20 we don't know who the witnesses are, we haven't seen
21 the depositions. We have nothing on which to base
22 cross-examination on.

23 THE COURT: Well, if you can't sit here and
24 listen to the plaintiffs' case and listen to the
25 experts and listen to the defense's case and arrive at

1 some questions to ask, you shouldn't be a trial
2 lawyer. Okay?

3 MR. VANSEL: Yes, sir.

4 THE COURT: Thank you very much. Y'all have a
5 seat on the front row.

6 MR. VANSEL: Can I make one --

7 THE COURT: Yes, sir.

8 MR. VANSEL: -- more comment for the record,
9 please?

10 I wanted to be clear on the record that we have
11 only sought to request --

12 THE COURT: I understand what y'all sought.

13 MR. MAYBANK: -- a continuance --

14 THE COURT: Y'all want a continuance. And I've
15 denied that and I've told you what I've ordered you to
16 do.

17 MR. VANSEL: We are not seeking to intervene.
18 If we are ordered to participate --

19 THE COURT: I am intervening you, for purpose of
20 cross-examination, on the issue of damages. Okay?

21 MR. VANSEL: And is that now an official order
22 of the Court?

23 THE COURT: Pardon?

24 MR. VANSEL: Is that an official order of the
25 Court now?

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1 THE COURT: Yes, sir.

2 MR. VANSEL: We would note our exception to it.
3 We do not seek to intervene. Thank you.

4 THE COURT: Y'all have a seat on the front row.
5 You're welcome to sit in the jury box, if you'll feel
6 more comfortable over there. Where would you feel
7 more comfortable?

8 MR. LYLES: Back here will be fine, Judge.

9 MS. WALL: This is fine, Your Honor. Thank you.

10 THE COURT: Now, like I said, all three of you
11 don't have to stay. Y'all can choose one of you to
12 handle all this for all three of you, if you want.
13 All three of you can stay. What's your pleasure? Do
14 y'all want to talk about it for a few minutes?

15 MR. VANSEL: Yes, sir.

16 MR. LYLES: Sure

17 MR. VANSEL: Yes, sir.

18 THE COURT: I mean, I'm not trying to make all
19 three of you stay away from your practices today.
20 Y'all can talk about it and let one person represent
21 all three of you in this proceedings that you're going
22 to participate in or all three of you can stay. It
23 doesn't matter with this Court. But one of you is
24 going to stay and participate. Go talk about it.

25 MS. WALL: Thank you, Your Honor.

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1 [Whereupon, Mr. Lyles, Ms. Wall and Mr. Vansel
2 exit the courtroom]

3 THE COURT: Can I see the plaintiffs' attorney
4 and defense attorney up here just a second, please.

5 [Whereupon, an off-the-record bench conference
6 is held]

7 MR. ETHRIDGE: Your Honor, Mike Ethridge here
8 as -- may I approach?

9 THE COURT: Yes, sir.

10 MR. ETHRIDGE: Charlie, can you and Roy come up
11 for a second?

12 [Whereupon, an off-the-record bench conference
13 is held]

14 THE COURT: Ask Mr. Vansel to come in for a just
15 a second, please.

16 [Whereupon, Mr. Lyles, Ms. Wall and Mr. Vansel
17 enter the courtroom]

18 THE COURT: Ms. Wall and Mr. Lyles, come up here
19 for just a second, if you would.

20 [Whereupon, an off-the-record bench conference
21 is held]

22 THE COURT: I told Mr. Vansel, Ms. Wall and
23 Mr. Lyles you were going to give them copies of that
24 settlement so there won't be any argument about what's
25 in it. Do y'all have copies? The original I'm going

1 to mark as a Court's Exhibit and put it under seal,
2 subject to further order of the Court, and whenever
3 it's needed in your lawsuit, it will be available at
4 the clerk's office in a sealed envelope. I'm not
5 sealing it to try to keep it confidential, I'm just
6 going to seal it to make sure when you need it, it's
7 available.

8 MR. ETHRIDGE: Your Honor, for the record, the
9 original we have has all the signature pages on it.
10 Except the signatures for the individual homeowners.
11 And Mr. Bundy I think is still acquiring those. But
12 you have the original document with the original
13 signatures for everybody else.

14 THE COURT: All right. Think y'all very much.

15 MR. ETHRIDGE: Thank you, sir.

16 THE COURT: Is the plaintiff ready to proceed?

17 MR. BUNDY: The plaintiff is ready, Your Honor.

18 THE COURT: Is the defense ready?

19 MR. MAYBANK: Yes, Your Honor.

20 MR. ALTMAN: We are, Your Honor.

21 THE COURT: All right. I would like very
22 briefly for y'all to make an opening statement so I'll
23 sort of know what the allegations are.

24 - - -

25 - - -

OPENING STATEMENT

MR. BUNDY: Thank you, Your Honor. May it please the Court. Bill Bundy, representing the plaintiffs.

Your Honor, I would like to talk a minute about how this -- just to give you a little history, and just sort of make sure we're all on the same sheet of music as we proceed, so Your Honor will understand what this claim is about and its current state.

The homeowners association, which has the duty to repair and maintain the common elements, total claim in this action is \$13,401,690. Now, last week we were able to resolve the issue of the windows and related damages with the defendants that Your Honor is aware of, Weather Shield, the caulker, and Muhler. Now, we collected in that settlement four million -- I'm going to put it over here to the side -- two thousand and five hundred and fifty-two dollars, I think it is.

Is that what it is, Brent? Five fifty-two?

MR. MCDONALD: Yes, sir.

MR. BUNDY: Now, that settlement has yet to be paid, but it's going to be paid. The damages that we would have put in evidence, had we tried the case, relating to those elements for which those defendants

1 paid their -- bought their peace for, was \$4,156,206.
2 We are not putting this number of damage in evidence.
3 It's not going to come before you. We're not going to
4 put in any issue, I'm not putting in any testimony,
5 about windows or anything related to the window
6 damages.

7 Now, the difference between this, the four
8 million zero two fifty fifty-two and the four million
9 one fifty-six two zero six, that difference is enuring
10 to the benefit of these defendants because I am
11 reducing my claim in excess of what I was paid,
12 because those defendants out-negotiated me to the
13 point where I had to give up it looks like about .03
14 percent of my claim.

15 So what that leaves us with in this case is
16 9,245,690. That's the claim that my client, HOA, has
17 and we'll present to you.

18 The defendants in this case -- well, not the
19 defendants in this case. The settling defendant,
20 Carriage Hill Associates, we'll call them Carriage
21 Hill New York, the architect, and Mr. Behringer,
22 bought their peace and they will pay \$3,700,000. I
23 think about a million two of it -- or a million -- I
24 think a million five comes through in the next thirty
25 days and then there's a payment schedule thereafter.

1 The plaintiffs' agree that whatever verdict Your
2 Honor should come to, whatever conclusion Your Honor
3 comes to as it relates to damages, that these
4 defendants will be entitled to a setoff of \$3,700,000
5 as it is paid. As an example, if Your Honor finds
6 that the HOA is, in fact, due the nine -- is due nine
7 million two forty-five six ninety, and as of the day
8 you enter that judgment the one million five, or
9 whatever has already been paid, then Your Honor will
10 enter a judgment for that delta [phonetic].
11 Thereafter, as these payments come in from the
12 Defendant Carriage Hill New York -- the architect's
13 payments would have been made by then, and probably
14 Mr. Behringer's -- we will then file a partial
15 satisfaction of judgment every time they make a
16 payment toward the satisfaction of that judgment.

17 So, Your Honor, the next result, if it's
18 ultimately all paid out, will be six million, five
19 million-some-odd-thousand dollars, assuming all this
20 goes forward. So the claim that my client intends to
21 present today, my client, the HOA, is for nine million
22 two forty-five six ninety. The windows are no longer
23 in this case, the balusters are no longer in this
24 case. Nothing is in this case, because we've already
25 been paid for that and we've simply removed it from

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1 our client. It's not a setoff, it's just not here.
2 Okay? The setoff only applies to this nine million
3 two forty-five ninety.

4 The individual claims are the total claims made
5 by all the individuals. And I don't have that number
6 right in front of me now, but it approaches I think
7 four-and-a-half-million dollars. And that claim will
8 be presented by each and every individual. And those
9 numbers are created or arrived at from lost rent,
10 interior damages and repairs, but, most importantly,
11 the damages that were caused by my clients' either
12 inability to get into the market and sell their unit
13 because of the defects, not because of the falling
14 market -- we're going to present an expert appraiser
15 to explain that to Your Honor as to each and every
16 individual. And those individuals will take the stand
17 and they will testify as to what their damages are.

18 So, Your Honor, we're going to be looking for
19 nine million two forty-five six ninety for the HOA,
20 and the individuals, roughly four-and-a-half-million
21 dollars

22 Now, these individuals have, in fact, received
23 some small settlements, 3500, 2500, whatever it was,
24 in the settlement that occurred with the window
25 people. And, of course, as is only fair, these

1 defendants will be entitled to a setoff for that
2 amount as it relates to each individual should Your
3 Honor find that these individuals are entitled to
4 recover.

5 Your Honor, with regard to liability, I
6 understand the insurance company lawyers think the
7 defendants are going to roll over on damages. But for
8 the life of me, I don't know what their defense is
9 going to be to liability. They represent the
10 developer. DIRD is the developer of this condominium
11 complex. Under the Dunes West case, which was
12 actually my case, our Supreme Court said that when you
13 turn a homeowners association, as the developer, over
14 to the new owner-home controlled developer, the HOA --
15 and they reiterated this in the Magnolia case --
16 you've got to do one of two things. You either --
17 well, three things, I guess. First off, you can
18 actually give them what they paid for, a non-defective
19 condominium. You would think that would be the
20 easiest thing to do, but apparently it is very, very
21 difficult in this state to do that.

22 Since it's so difficult to give people in this
23 state in the condominium-purchasing market what they
24 paid for, our Supreme Court said if you can't do that,
25 you're going to do one or the other of two things and

1 you're going to do it because you owe a fiduciary
2 duty. The highest duty known in law, a fiduciary
3 duty, the punctilio of honor according to learned
4 hand. And that is either, one, give them enough
5 money, put enough money, in the reserve account to fix
6 everything that's wrong with these buildings, whether
7 you know about it or not, or go fix it yourself.

8 Well, when this place got turned over to our
9 clients, there was supposed to have been \$19,000 in
10 reserves turned over to them to cover a 13.4-million-
11 dollar defective set of buildings. Oddly enough, the
12 testimony is going to be they didn't even give us the
13 \$19,000. They haven't spent one dime at turnover to
14 do the right thing. There's no way to defend that.
15 And they admit it.

16 And they've sued people. Oddly enough, this is
17 the first case I've ever been in -- and I've handled a
18 couple of them.-- where the developer didn't cross-
19 claim against the builder and the contractor for all
20 this defective construction. For whatever reason DIRD
21 didn't sue Carriage Hill of Charleston. I really care
22 why. I just find it to be interesting. The first
23 time I've ever seen it.

24 So we also have other causes of action, Your
25 Honor. Of course, we've got negligence. Now,

1 Carriage Hill of Charleston was negligent. In fact,
2 they were grossly negligent. But as part of the
3 settlement agreement that's been discussed, even
4 though they never have read it, part of what these two
5 defendants were able to negotiate with me when I
6 negotiated with the Carriage Hill New York -- I said,
7 look, part of what I'll agree to is I will not proceed
8 against you for punitive damages and I won't proceed
9 against you for unfair trade practice and I won't
10 proceed against you for attorney's fees under the
11 unfair trade practices, but I am going against them --
12 or gross negligence.

13 Carriage Hill of Charleston, Your Honor, was
14 negligent because they did not supervise
15 appropriately, or at all, any of the subcontractors
16 who did all of this defective work. In fact, Carriage
17 Hill of Charleston sends a gentleman down here from
18 New York to take the test to allow them to obtain a
19 general contracting license. And in direct violation
20 of that statute, that gentleman leaves, goes back to
21 New York, and never appears on the job again, as near
22 as we can tell, which automatically revokes their
23 license as a general contractor.

24 This building -- all of these buildings were
25 built by an unlicensed general contractor. And the

1 root cause of all of these things that we specified in
2 negligence is the direct failure, the absolute
3 failure, of the general contractor to supervise the
4 various subcontractors and the negligence of the
5 developer in the manner in which it funded, turned
6 over, and designed this project. Because we're going
7 to show you that one set of plans shows Charleston --
8 Carriage Hill of Charleston as the architect-builder.

9 Carriage Hill of Charleston designed and built
10 and constructed this whole project. So they bought it
11 all, all \$13,401,000, less what I got the window
12 people to pay, which will not be in this lawsuit.
13 We're out \$9,245,690, or will be if I don't get this
14 thing fixed.

15 I talked about breach of fiduciary duty. There
16 is an applied warranty of habitability, Your Honor, as
17 a matter of law, which has not been properly or even
18 close to properly waived or abrogated in this case.
19 This is an absolute breach of the warranty of
20 habitability as a matter of law. Emergency repairs
21 have had to be done. And you'll see photographs. You
22 can't live in this place, couldn't live in this place.
23 There's also been breaches of contract by the
24 developer.

25 The soundproofing, this is going to be an issue

1 in this case and, very briefly, I would like to go
2 over it with you. These things were marketed and
3 sold. You had to win a -- you had to win the lottery.
4 You had to win a lottery in order to get the privilege
5 to buy one of these things, believe it or not. And
6 people actually won the lottery. I don't think
7 anybody out here feels like a winner today. But some
8 of them won that lottery. Okay?

9 The developer collected all the money, got the
10 money in advance, and then they started building.
11 Okay? But in their brochures -- we're going to go
12 through them with you -- luxury condominiums,
13 soundproofed, on and on and on and on. My expert,
14 Dave Willis, told me the other day, which I think was
15 pretty interesting, he said, this is nothing more than
16 putting lipstick on a pig.

17 These are basically very poorly built apartment
18 complexes that have a lot of granite marble and fancy
19 molding. But these buildings have cancer. The
20 soundproofing, Your Honor, in a luxury condominium,
21 the testimony is going to be -- we went around
22 Charleston and we looked to find out how do people
23 typically build luxury condominiums in Charleston
24 County, how is that normally done. And as you would
25 expect, Your Honor, in real luxury condominium like

1 the Bristol, the Tides, or any of the nicer ones in
2 the same price point as these -- because, as you know,
3 in South Carolina, according to the Supreme Court, a
4 sound price deserves a sound product. All of those
5 buildings have four inches of concrete as floors. All
6 of them. And the reason they have that is so that
7 when you pay \$1,000,000 or \$800,000 for a condominium,
8 a luxury condominium in Charleston, you don't hear
9 everything your neighbor does, a lot of which you
10 really don't want to hear.

11 I've got clients who cannot allow their
12 grandchildren to come see them because they run
13 sometimes, as grandchildren are wont to do, and the
14 people believe it makes so much noise to them, they
15 complain. So I've got people, who retired, who were
16 looking forward to spending time with their
17 grandchildren and they can't do it because these
18 floors, unlike even cheap apartment complexes -- and
19 that's the next thing below luxury is an apartment
20 complex. Just a regular, standard apartment complex
21 that charges seven, \$800,000 a month, or whatever it
22 is, those structures are typically built with wood and
23 they put Gyp-Crete on top of that floor. Your Honor
24 knows what Gyp-Crete is: lightweight concrete, maybe
25 an inch, and they pour it out on the floor. And the

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1 reason they do that is so when you pay seven or \$800 a
2 month to live in an apartment complex you don't have
3 to listen to your neighbor walk above. You've got
4 some soundproofing. And those are the standards in
5 Charleston County. And you're going to hear that.
6 That's a standard U.S. Gypsum puts out. It's a
7 standard all of them do.

8 But then we've got The Oaks at Rivers Edge.
9 What kind of flooring do we have there? Well, we
10 don't have four inches of concrete. We do have wooden
11 trusses. But they didn't put any Gyp-Crete down.
12 None. None. And so as a result, these are not only
13 not luxury condominiums, they don't even come to the
14 basic minimal standards of what apartment living would
15 give you. And so it's going to require going back
16 into these apartments, taking up everything, pouring
17 Gyp-Crete, and giving these people a semblance of what
18 they purchased in the first instance.

19 There's testimony, I believe there will be
20 testimony, that there was a meeting in which the
21 architect was asked why they didn't put Gyp-Crete. He
22 said, we've never done any work down here, we didn't
23 need to know that -- we didn't know that needed to be
24 done.

25 So that's where we are for the soundproofing and

1 all the other issues, Your Honor. These clients are
2 going to have to leave -- not just these clients, but
3 everybody living there, thirty-six units, for sixty
4 days everybody has got to move out of their -- out of
5 their condo so this work can be done on the floors.

6 The HOA, since it's responsible for the care and
7 maintenance of the units and has an easement to repair
8 the units, has included in their claim, which is now
9 nine million two forty-five six ninety, the cost to
10 move, store the furniture, put the furniture back in,
11 and put these people up for about sixty days. We're
12 hoping that will take place. That's a damage of the
13 HOA. And we've going to go over all this in detail
14 with you.

15 Now, Your Honor, we also have a claim for breach
16 of warranty of good and workmanlike service. I would
17 suggest to Your Honor that when you hear the testimony
18 and see the photographs they're, again, going to have
19 a hard time providing much of a defense. Now, they'll
20 be able -- they'll have an excuse. Or they'll have an
21 explanation. The explanation is going to be, our
22 subcontractor did it wrong. But none of their
23 subcontractors are here today. And they're
24 responsible for the work of their subcontractors.
25 They're responsible for the building they sold. It's

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1 an explanation, but it's not a legal excuse. What
2 we're here today for is legal excuses or legal
3 defenses. There are none. This is purely a damage
4 case, we believe.

5 Breach of contract: we have a breach of
6 contract action. We had breach of contract
7 accompanied by a fraudulent act but when I agreed to
8 withdraw punitive damages, that breach of contract
9 accompanied by a fraudulent act merely went back down
10 to simple breach of contract.

11 As it relates to the individuals, Your Honor,
12 we're going to start with Mr. Jo Chiovarou, who was
13 the -- who is president of the HOA. Mr. Chiovarou
14 will be testifying in a couple of different
15 capacities, one as the president of the HOA. He's
16 been on the board for quite some time. He will also
17 introduce his individual damages to you. What we
18 propose to do is as each witness comes up, they're
19 going to tell their story and we'll put up on the --
20 on each piece of paper for each witness what their
21 individual damages are. We've got --

22 They're all here. Most of them are here. It's
23 probably going to take a day or so to get through
24 those. We'll try to do it as quickly as we can. I
25 think once you hear the story four or five times,

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1 you're going to realize it's the same story over and
2 over again, the damages are a little different. And
3 there may be a way to speed that along if I can work
4 something out with defense counsel.

5 THE COURT: Is there any way of, after several
6 of them, stipulating to something? But we can deal
7 with that later. Okay?

8 MR. BUNDY: I think if we can just listen to a
9 few of them. Once they've heard a day -- I think a
10 day of it may be enough for you.

11 THE COURT: Mr. McDonald, are those books you're
12 going to give me have that paperwork y'all are going
13 to put on the paper?

14 MR. MCDONALD: It does, Your Honor. And we've
15 broken it out per individual.

16 THE COURT: All right. Thank you very much.

17 MR. BUNDY: And we'll provide you with -- and
18 we'll ask each one how much they've settled for so
19 you'll have the setoff amount and all of that.

20 THE COURT: Anything else?

21 MR. BUNDY: That's it.

22 THE COURT: Thank you.

23 MR. BUNDY: Thank you.

24 THE COURT: Mr. Maybank, Mr. Altman?

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OPENING STATEMENT

MR. MAYBANK: I will try to be brief, Your Honor.

Your Honor, if it please the Court. My name is Roy Maybank and I'm here on behalf of Carriage Hill Associates of Charleston and Daniel Island Riverside Developers. In the courtroom with me today is Mr. Bob Behringer. He is the principal, for lack of a better word, for Carriage Hill Associates and DIRD.

I will try to be brief, Your Honor. I think that we will take exception to the methodology by which Mr. Bundy has apportioned what's been paid against as to whose setoff and who is entitled to what. I think we will address that at a later date. But I think that anything paid on behalf of the subcontractor, as well as DIRD, Carriage Hill, comes out to about 3.7 -- pardon me -- 7.7-million dollars. And it would be our position, after this case unfolds, that we are entitled to an entire setoff of any award, if any, rendered by this Court at the end of the day. And we can get that -- we can get into that later, Your Honor.

I think Mr. Bundy put the nail on the head, and that is these people entered what they thought was a lottery system. And they got into a lottery system.

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1 They got on the Daniel Island, South Carolina -- in
2 2005. And the testimony will be, from some real
3 estate experts, that Daniel Island is a wonderfully
4 speculative environment in which you can come in, put
5 five percent down, two percent down, in the go-go days
6 of 2005, 2006, maybe do a couple years balloon payment
7 at the end of the day, and see if you couldn't flip
8 those units. Mr. Bundy alluded they're 1,000,000-
9 dollar units. Well, I can promise you, the average
10 sale price from my client was right about \$600,000,
11 not a million dollars.

12 THE COURT: Is that the initial purchase or now?

13 MR. MAYBANK: The initial purchase. That was
14 the average initial purpose and --

15 THE COURT: 600,000?

16 MR. MAYBANK: Right about \$610,000 is what I've
17 been told.

18 So that being said, and understanding the
19 environment in which these purchasers purchased --

20 THE COURT: Well, time wise, that six ten, is
21 that after the real estate crunch or before?

22 MR. MAYBANK: Before the real estate -- it was
23 before. It was before the high, high runup and it was
24 after -- and before the crash of the real estate
25 market.

1 THE COURT: Okay. All right.

2 MR. MAYBANK: Your Honor, there are certain
3 things that have been problematic on this development,
4 and I don't think we can take a position contrary to
5 that. You've been the judge on this case for quite
6 some time. We, as Daniel Island Riverside Developers,
7 we were the developer of this condominium complex. We
8 sold these units to the purchasers. Carriage Hill
9 Associates of Charleston acted as the construction
10 manager of the project.

11 And I want to make sure that we understand that
12 -- let me give you a little background and history of
13 this, Your Honor. Carriage Hill Associates of New
14 York was a New York corporation that looked south for
15 other investments. Part of that was to send
16 individuals down, to come down to Charleston, take a
17 look at the area, it was growing, would this be a good
18 environment for us, and the decision was yes. Mr. Bob
19 Behringer sent some employees down here and at some
20 point they formed Carriage Hill Associates of
21 Charleston to do the construction management for the
22 project down here locally. Daniel Island Riverside
23 Developers was a company made up of different members,
24 some local attorneys, some other individuals, to be
25 the developer of that project. Daniel Island

1 Riverside Developers, through Mr. Behringer, entered
2 into numerous contracts with local, reputable,
3 construction builders, whether it was Thomas and
4 Hutton to do engineering work, to lay the foundation,
5 whether it be the Muhler Company, who you can't turn a
6 TV on around here without being advertised about
7 windows and doors. They hired and had qualified
8 construction managers on site at all times.

9 Now, yes, Mr. Bundy hit the nail on the head
10 when he said, well, there was supposed to be a
11 qualifier on site. We had somebody take that test.
12 He ran into health problems. He went back to New
13 York. But before he left, we hired Mr. Michael
14 Vickers, a twenty-eight-year-old veteran of Trammell
15 Crow, because Trammell Crow had built some of the
16 largest developments on Daniel Island. And so we
17 turned to Mr. Vickers, who had a license, who was with
18 an unlimited license, to complete the project. It is
19 true Mr. Vickers -- whose history with Trammell Crow
20 -- then turned around and said, I have worked with the
21 local people here; I know them, Bob; this is who I
22 recommend; let's go get Muhler Company; let's go get
23 this -- stucco folks; let me get the roof people;
24 these are the different people that we -- I recommend
25 that you use. And we entered into those contracts.

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1 THE COURT: Is that place synthetic, the stucco?

2 MR. MAYBANK: Hard-coat stucco. Yes, sir.

3 THE COURT: Okay.

4 MR. MAYBANK: Yes, sir, hard-coat stucco.

5 During the construction process, Richard
6 Behringer, who is Bob's brother, who will testify, he
7 was put on as the developer's representative on the
8 HOA board before it was turned over to these
9 individuals. That was facilitated with Ravenel and
10 Associates. Ravenel and Associates was the day-to-day
11 operator, for the board, who entered into a contract
12 in December of 2005.

13 THE COURT: They were the managers? Project
14 managers?

15 MR. MAYBANK: Yes, sir, they were the --

16 And they were to advise and help Rich, and the
17 companies informing the board, setting up bank
18 accounts, properly setting reserves, as need be.
19 Because I agree with Mr. Bundy. When a development is
20 turned over, my understanding of reading Goddard and
21 Dunes West is is that the development needs to be in
22 good condition. If it is not, and you know about the
23 problems, then you are to either set the reserves or
24 you spend the money to bring it up to where it should
25 be.

1 In this case the evidence will show, through the
2 deposition and the -- pardon me -- the testimony of my
3 partner through the board, I believe through Mr.
4 Chiovarou and others, that, in fact, Carriage Hill of
5 Charleston tried for years to try to accommodate, work
6 with, mitigate the problems that were being presented
7 to the homeowners association after it was turned
8 over. There was no knowledge prior to the turnover
9 that there were any problems. Yes, there were
10 warranty claims for windows that were being
11 facilitated through Muhler and Weather Shield. But
12 until Michael Parker came in through -- in addition to
13 with the homeowners' expert, Theodore Padgett, to find
14 out and investigate the insidious problems with the
15 water intrusion we were having, we didn't know about
16 it. So it was not until after the turnover, maybe
17 even I believe some years afterwards, that we found
18 out about the problems.

19 We tried to address it, whether it was for
20 windows or whether it was for balusterries [phonetic],
21 whether it was for sound attenuation. And the
22 testimony will be we had problems. We found out that
23 there was a roof leak causing water to come into the
24 building. We went out there, we rehired the roofer,
25 we rehired the stucco guy. We, being Carriage Hill,

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1 fixed it all, we paid for it all, we got it in like-
2 new condition. We tried to do the same for the
3 windows. We enlisted Weather Shield and Muhler. And
4 in conjunction, we tried to do and fix the problems
5 until we found out that they were system-wide
6 throughout the project, that they had been
7 manufactured improperly, and that they were defective.
8 And when Weather Shield and Muhler said, we are not
9 going to actively participate with you -- and when our
10 scope of work that we presented to the HOA to try to
11 remedy it did not meet their level of expectation,
12 they politely asked us to leave, at which point we
13 were sued and this lawsuit began.

14 Carriage Hill Associates has never run from this
15 project. Bob Behringer has never run from this
16 project. Nobody working for our companies has ever
17 run from this project. We have tried from the
18 beginning to get it right.

19 Now, there was some question as to the sound
20 attenuation. There was a design on the plans that
21 called for certain design and build-through -- sound
22 attenuation between the units. The testimony you will
23 hear is that it was not built as shown. In response,
24 Bob Behringer and Rich Behringer went out and sought
25 the expertise of one of the most highly-acclaimed

1 acoustical engineers in the United States. We brought
2 him down from Charlotte. His name is Noral Steward
3 and he will be here tomorrow or Wednesday to testify.
4 And the actions taken by Mr. Behringer and his company
5 was to acknowledge that the code requirements were not
6 being met as it relates to the sound attenuation
7 between airborne and impact noise. They are two
8 different animals. In some places it was being met,
9 other places it wasn't. So in conjunction with our
10 architect, Mr. Noral Steward, as the acoustical
11 engineer, and Rich Behringer, as the coordinator for
12 Carriage Hill of Charleston, they came up with a fix
13 that met the applicable code standard to remedy the
14 sound attenuation.

15 Now, you will also hear testimony that there was
16 an investigation done by the homeowners association.
17 They do not believe that what has been done meets
18 their definition of luxury. They don't -- and I'm not
19 aware of a code book that says when you built to this
20 number of dollars, this is our luxury-code section and
21 when you build over here, it's to regular code
22 section. Code is code. And most builders, if not all
23 the time, build to that code.

24 And so once we decided how we were going to
25 fix these units -- and more detail will come out --

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1 we fixed them and had them tested by Dr. Stewart.

2 Dr. Stewart's findings were that all units, of those
3 who were willing to allow us to come in and retrofix
4 them, met code. Now, that's about a 4,000,000-dollar
5 fix. Of that number, that's \$4,000,000 that we spent.
6 And I'm going to get -- I have to get it specifically
7 through my client -- well over half a million dollars
8 out of our own pocket to go in there and now fix the
9 sound attenuation.

10 Did we do it while they were living in there?
11 The evidence will show no. The evidence will show
12 that in order to accommodate each and every homeowner,
13 we went in and tested a unit to see what the sound
14 was. Based on that, we then went and retrofixed a
15 unit. Finding that that fix worked, we then made a
16 scheduled plan with each and every homeowner, who was
17 willing to allow us to do it, to come into their unit.
18 We sent some of them off on vacations. We set them up
19 in hotel rooms around Charleston. Three weeks they
20 were out. We packed up all their belongings, we moved
21 everything out, because that was the most reasonable
22 decision in which to take, as it is good, better, best
23 when it comes to remediating a problem.

24 The alternative was, even though these are all
25 finished units, rip out this entire courtroom, if it

1 were, rip out all the carpet, rip out all the floors.
2 Now, mind you, the homeowners association -- it's
3 already been turned over and the people are already
4 living in there. And their alternative that they're
5 asking this Court to adopt is absolutely unreasonable;
6 that is, to come in there and rip out, to the tune of
7 \$4,000,000, every cabinet, every door opening,
8 everything, rip out all the floor, and redo it. Our
9 position is is that, Your Honor, we came in with a
10 reasonable fix. We hired an expert, known throughout
11 the country, to come in and fix it and it's been
12 fixed.

13 So as to damages, by the time we put up our
14 case, it's my hope that not only does this 7.7-million
15 dollars get taken off of about an 8.9-million-dollar
16 construction claim. There's an additional 4,000,000,
17 which I believe kind of gets up into this number that
18 Mr. Bundy was talking about, and what that will be is
19 that's the attenuation. We believe we have taken care
20 of the attenuation. We believe that the only thing
21 left is about 8.6-million dollars in outstanding
22 construction claims that are not -- that are
23 unaccounted for until you take in this 7.7 million.
24 And we'll go into that a little bit deeper, Your
25 Honor, as the case progresses.

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1 I think overall, Your Honor, that's about all I
2 have at this time. I think that we certainly
3 acknowledge, and have acknowledged, that there are
4 problems. My client has worked with the homeowners
5 association I want to say at least a year and a half
6 to two years after turnover through Michael Parker,
7 through Ted Padgett, their own expert, in trying to
8 solve the problems. Unfortunately, this is where we
9 are today. We have not been able to come to a meeting
10 of the minds, and so hopefully we can get some closure
11 to this case after these proceedings are over.

12 Thank you, Your Honor.

13 THE COURT: Mr. Altman?

14 MR. ALTMAN: I have nothing, Your Honor. Give
15 me one moment with Mr. Maybank.

16 [Whereupon, Mr. Altman and Mr. Maybank confer]

17 MR. MAYBANK: Your Honor, one other issue that's
18 come up through some of the homeowners, and that you
19 get when dealing with these types of claims, is what
20 is often referred to as a stigma upon a building that
21 because it's been in litigation, somehow or another
22 it's a bad building. It's no different than Hurricane
23 Hugo coming through Charleston. And by that I mean
24 damage occurs to different buildings -- and it always
25 has in our coastal environment, whether it's manmade

1 or natural made -- and eventually damages occur,
2 buildings are fixed, and they're put back in the
3 condition and the stigma is gone. In this case I
4 believe the expert testimony will show that if and
5 when these buildings are repaired and fixed, that
6 there will be no stigma to them.

7 There are owners in these units now that are
8 happy with them. Not every unit owner is a plaintiff
9 or has been a plaintiff in this case. And so our
10 position would be that once these units are fixed,
11 once the money is allocated to the damages that exists
12 out there and they're brought back up to the condition
13 that the homeowners association -- and I guess you
14 really are looking at damage-wise -- we believe that
15 they will be as if there was no damage and it's just
16 marketing conditions at that point.

17 THE COURT: Okay. Thank you, Mr. Maybank.

18 Anything else?

19 MR. MAYBANK: Nothing, Your Honor.

20 THE COURT: Mr. Lyles, Ms. Wall, Mr. Vansel,
21 anything y'all would like to say to the Court as far
22 as the damage issue that y'all are going to be
23 participating in?

24 MS. WALL: Nothing, Your Honor.

25 THE COURT: Can I get y'all to sit on the front

1 row so I find you easy, if you don't mind, please.

2 [Whereupon, Ms. Wall, Mr. Lyles and Mr. Vansel
3 comply]

4 THE COURT: Call your first witness.

5 MR. MCDONALD: Your Honor, I would propose that
6 we take a short break. I could get the notebooks up
7 to you and your law clerk and that way y'all might be
8 able to follow along, if you're inclined.

9 THE COURT: That's fine. We'll take about a
10 five -- about a ten-minute break.

11 MR. MCDONALD: Thank you very much, Your Honor.

12 THE COURT: Thank you.

13 [Whereupon, a recess is taken from 11:00 a.m. to
14 11:17 a.m.]

15 THE COURT: Have y'all agreed to certain
16 exhibits, or you have not agreed?

17 MR. MCDONALD: Your Honor, we met last week and
18 went over them. I think as far as authenticity, we're
19 on the same page unless there's, you know, some kind
20 of outlying that I'm not aware of. And with regard to
21 admissibility, I think we're also basically on the
22 same page. There may be some limited exceptions. But
23 for the most part, we've lived with these documents
24 for some time and I think --

25 THE COURT: So we've got 177?

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1 MR. MCDONALD: We won't be using all those, Your
2 Honor.
3 THE COURT: Okay.
4 MR. MAYBANK: And we've got 225, and half of
5 them --
6 THE COURT: You've got 225?
7 MR. MAYBANK: Yes, sir. I've got your --
8 THE COURT: -- in addition to the 177?
9 MR. MAYBANK: Correct, Your Honor. A vigorous
10 defense calls for vigorous exhibits. So what I --
11 [Off the record momentarily]
12 THE COURT: Do y'all have any y'all can share
13 with the other counsel?
14 MR. MAYBANK: Yes, we do, Your Honor. I
15 apologize.
16 THE COURT: Mr. Bundy, do you have any that --
17 MR. MAYBANK: Yes, we do, Your Honor. I
18 apologize.
19 THE COURT: Mr. Bundy, do you have any that you
20 can share with Mr. Lyles, Ms. Wall, and Mr. Vansel?
21 MR. BUNDY: I didn't bring a copy for them but
22 I'll be glad to make them a copy. Who do I send the
23 bill to? Ms. Wall?
24 MS. WALL: No.
25 THE COURT: Do y'all want -- I should I guess

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1 start by asking do you want copies.

2 MR. LYLES: Your Honor, I don't think we want a
3 copy.

4 THE COURT: That's fine. I just wanted to offer
5 it to you.

6 MR. LYLES: Yes, sir.

7 THE COURT: I'm going to keep you involved in
8 this case.

9 MR. LYLES: Yes, sir.

10 THE COURT: I'm not trying to exclude you. If
11 y'all don't want -- if y'all want limited
12 participation, that's fine. But if y'all want copies
13 of them, I'll make them available to you.

14 MR. LYLES: And very briefly, before we call the
15 first witness in the case, can we just make sure and
16 get our objection on the record --

17 THE COURT: Yeah. I think you -- I think you
18 made that very clear when we started. But, yes, sir,
19 I'll be glad to hear anything you want to say.

20 MR. LYLES: And I apologize, Judge.

21 THE COURT: I'm not trying to --

22 MR. LYLES: I'm not trying to belabor --

23 THE COURT: -- preclude you, I'm not trying to
24 prejudice you. I'm just going to have you sit here
25 with me for the next three days and participate in the

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1 trial if you want to.

2 MR. LYLES: Yes, sir. And we appreciate that
3 and we will be here.

4 THE COURT: I'm glad to have you.

5 MR. LYLES: Yes, sir.

6 And for the record, the only thing -- the only
7 formal request that we made was for a continuance,
8 which was denied. We did not make a motion to
9 intervene. You sua sponte ordered us to intervene,
10 and we understand that and we will be here for that
11 purpose. But as Mr. Vansel indicated, we do all
12 object to the required intervention.

13 With respect to the examination of witnesses and
14 legal arguments, none of us are prepared to examine
15 witnesses or make legal arguments in this case. To do
16 so would only prejudice our right to address these
17 issues in the context of the construction -- excuse me
18 -- the insurance litigation that's pending against us.
19 We reserve the right to examine all aspects of the
20 facts in the case and make all of the arguments we
21 want to make with regard to collusion or any other
22 issue in the context of our case after we've had an
23 opportunity to do adequate discovery on that issue.

24 And we just wanted to make sure we put that on
25 the record.

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1 THE COURT: I think that's basically what I had
2 said earlier.

3 MR. LYLES: Yes, sir. I think so. We just want
4 to --

5 THE COURT: That's basically what I said to you
6 earlier.

7 MR. LYLES: Yes, sir.

8 THE COURT: Let me make it real clear. The
9 reason I'm having y'all here -- as I said when we
10 first started this conversation, I appreciate you
11 bringing the collusion to the forefront. My
12 interpretation could have been one of three things.
13 Number one, the defense attorneys were not going to
14 prepare proper defense; number two, the Court was in
15 collusion with the defense to award a large verdict;
16 or the agreement itself was a collusion.

17 Now, I'm going to make y'all stay, for purposes
18 of listening to this trial, so you'll hear what is
19 taking place firsthand so you can advise your clients
20 appropriately. If y'all want to participate in the
21 damage cross-examination portion, I'm going to allow
22 you to do that. Okay?

23 MR. LYLES: Thank you, Judge.

24 THE COURT: Now, that's my reason. Right or
25 wrong, that's my reason. Okay?

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1 MR. LYLES: Yes, sir.

2 THE COURT: Thank you so very much.

3 If you'll call your first witness, please.

4 MR. VANSEL: Burns and Wilcox joins.

5 THE COURT: I take the -- I'll put on the record
6 all three of you have joined in what Mr. Lyles has
7 said. Thank you very much.

8 Call your first witness.

9 MR. MCDONALD: Your Honor, may it please the
10 Court. Brent McDonald, on behalf of the plaintiffs.
11 We call Mr. Joseph Chiovarou.

12 And, Your Honor, at my direction, with your
13 permission, I've asked him to take that blue pen right
14 there and write his name across the top of that piece
15 of paper.

16 Here you go, Judge.

17 [Whereupon, Mr. McDonald proffers documents to
18 the Court]

19 [Off the record momentarily]

20 [Whereupon, Mr. Chiovarou comes forward]

21 THE CLERK OF COURT: Raise your right hand.

22 [Whereupon, Mr. Chiovarou is duly sworn by the
23 clerk of court as follows: do you swear or affirm
24 that your testimony will be the whole truth and
25 nothing but the truth, so help you God]

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1 THE WITNESS: Yes, I do.

2 THE CLERK OF COURT: State your whole name and
3 spell your last name.

4 THE WITNESS: Joseph E. Chiovarou, Jr. Last
5 name is spelled C, as in Charles, H-I-O-V, as in
6 Victor, A-R-O-U..

7 MR. MCDONALD: Mr. Chiovarou, how are you doing
8 today?

9 THE WITNESS: After seven years of waiting,
10 pretty good.

11 - - - - -

12 JOSEPH E. CHIOVAROU,
13 Having Been First Duly Sworn,
14 was Examined and Testified as Follows:

15 DIRECT EXAMINATION

16 BY MR. MCDONALD:

17 Q. Would you please state your current address.

18 A. 140 Fairbanks Oak Alley, Unit 2-A.

19 Q. And how long have you lived in Unit 2-A at 140
20 Fairbanks Oak Alley?

21 A. I began my occupation in July or late June of
22 2006 and have not left.

23 Q. Okay. And is Fairbanks -- is 140 Fairbanks Oaks
24 Alley located in The Oaks at Rivers Edge?

25 A. Yes, sir. LE-5.

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1 Q. So when we talk about The Oaks, that's where you
2 live currently?

3 A. That's where I currently live.

4 Q. Okay. And you said your job brought you here in
5 2006. Can you tell the Court what it is you do?

6 A. It's actually an interesting story. The
7 economic downturn has changed my employment. When I was
8 in the area in 2006 I worked for a company, called UBS
9 Financial Services, in their downtown Charleston office.
10 In 2007 I branched out on my own, created my own brokerage
11 firm.

12 Q. What did you do at UBS?

13 A. At UBS I gained my licenses in NASD and options
14 marketplaces and New York Stock Exchange series 66, series
15 7, series 9 and 10, and a series 31, which are the
16 licenses to be a broker in the exchanges. So what I did
17 at UBS is I sold and managed assets for clients and
18 organizations.

19 Q. And then you went out on your own, you said?

20 A. Yes, sir. In --

21 Q. What did you do --

22 A. -- 2007.

23 Q. What did you do when you went out on your own?

24 A. In 2007 I opened up my own brokerage firm and
25 began to operate on Daniel Island, South Carolina, a

1 company called Carena [phonetic] Wealth Management.
2 Unfortunate timing. I started it on the day --
3 marketplace. October 8th, 2007, was my first date of
4 operating my brokerage firm.

5 Q. Okay. And when you say on Daniel Island, do you
6 have a separate office or do you work out of your home?

7 A. We had a separate office at that point in time.

8 Q. Okay. And do you have a family, Mr. Chiovarou?

9 A. Yes, I do.

10 Q. And you have a little daughter, don't you?

11 A. Yes, I do.

12 Q. Okay. And what's your wife's name?

13 A. Erica.

14 Q. And where are you originally from?

15 A. I grew up in New Jersey.

16 Q. Okay. And how did you wind up in Charleston?

17 A. That's a long story for personal time. But I
18 moved down following the only -- to Charleston, South
19 Carolina, in 1997.

20 Q. And where have you lived throughout Charleston?

21 A. I've lived on Isle of Palm, I've lived on
22 Sullivan's Island, I've lived downtown, and I've lived on
23 Daniel Island.

24 Q. And where are you currently employed, sir?

25 A. I am currently employed with a company out of

1 Florida. I manage sales and marketing and business
2 development for an international software development
3 company who has operations all around the globe, including
4 London, including -- Ukraine, and I manage sales and
5 marketing for that corporation.

6 Q. And part of your job responsibilities --
7 We've spent a lot of time together, haven't we,
8 Joe --

9 A. We have.

10 Q. -- over the years?

11 A. Two months there.

12 Q. And part of that -- part of your
13 responsibilities with that job involves a lot of travel?
14 International travel?

15 A. Yes, sir.

16 Q. It requires you to be away from your family,
17 does it not?

18 A. Yes, sir.

19 Q. And you just mentioned briefly that you're in
20 marketing with that company?

21 A. I manage a team of marketeers, yes.

22 Q. Okay. And what does the team you manage do,
23 briefly?

24 A. Briefly, we create collateral, we do research on
25 market places trying to find corporations around the

1 globe, primarily in Western Europe, pacific rim, and the
2 United States, to deliver services to. So the team does
3 investigative work to understand potential clients,
4 prospects, shall we say. Articulated value weighs into
5 those prospects. And then, of course, once some
6 corporation or entity is qualified, I come in to negotiate
7 the contracts, articulate the value of the equation in
8 person, and negotiate contracts in a global environment.

9 Q. Okay. It sounds pretty complicated.

10 A. Yes, sir.

11 Q. And you, sir, are aware of what brings us here
12 today, are you not?

13 A. Yes, sir.

14 Q. Okay. And that is the issue with The Oaks;
15 correct?

16 A. Yes, sir.

17 Q. So what I would like to do now is I would like
18 you to explain to the judge in your own words and I'll
19 interject where it need be. If you would just start with
20 how you got involved with The Oaks project, okay? And I
21 want to walk through it. So first, what was your first
22 involvement? What's the first time you heard The Oaks on
23 Daniel Island?

24 A. I was dealing with the broker at the Daniel
25 Island Real Estate Company back in 2004. And I have owned

1 and built the house on Daniel Island Park Side in 2002 and
2 2003. And at that point in time I was not married to my
3 wife and I lived on the golf course in a 4,000 square foot
4 house and I was just rattling around.

5 I also, as someone who looks at the economy and
6 looks at the market places, kind of had an indication that
7 we were going to go through some tough times economically.
8 Of course, I never understood the extent of the economic
9 downturn. But so I decided in 2004 to downsize, sell that
10 house on the golf course and purchase a condominium for my
11 primary residence in 2004, which is when I made the --
12 struck a deal with the defendant.

13 Q. And did you look around at other condominiums?

14 A. No. I wanted to stay on Daniel Island. I was a
15 member, and still am a member, of the golf community over
16 there and didn't want to let that go. I play tennis and I
17 play golf. I enjoy the workout facilities, et cetera.

18 Q. Now, you've got a number of exhibits.

19 MR. MCDONALD: May I approach the witness, Your
20 Honor?

21 THE COURT: Yes, sir.

22 Q. [Mr. McDonald] You've got a number of exhibits
23 here in front of you, sir. And I've tried to organize
24 them as best as I know how, but we may go through that
25 order. And they've got stickers on them. And the first

1 one is an exhibit that's got a sticker 143, sir.

2 MR. MAYBANK: Your Honor, can we object at this
3 time? I would like to take a look at what those are
4 that he's handed him. I don't know, within the ones
5 that we identified -- the Chiovarou package?

6 MR. MCDONALD: Yes. This is Exhibit 143.

7 MR. MAYBANK: All right.

8 MR. MCDONALD: -- and we'll go up to Exhibit
9 147.

10 Now, for the Court's reference, his is the
11 original, Your Honor. And that's why we marked it as
12 the exhibit. So while everybody has copies of what's
13 in it, the original is, of course, organized a little
14 differently.

15 MR. MAYBANK: And that is Number 143?

16 THE COURT: Do you have a copy of it?

17 MR. MAYBANK: We do, Your Honor. Yes. We've
18 been presented a copy through plaintiff. I just
19 wasn't sure if there was more than one 143.

20 THE COURT: Apparently it's a floor plan and the
21 prospectus or something. I'm not sure.

22 MR. MCDONALD: And we'll go through it, Your
23 Honor.

24 THE COURT: Do you have any objection to it?

25 MR. MAYBANK: Not at this time, Your Honor, no.

1 Thank you.

2 THE COURT: Y'all don't have a complete exhibit
3 list, do you?

4 MR. MCDONALD: We do, Your Honor.

5 THE COURT: Okay. My law clerk just told me
6 what it was. Excuse me.

7 [Whereupon, the Court reviews documents]

8 THE COURT: Okay. I've got it.

9 MR. MCDONALD: Do you have ours, Your Honor?

10 THE COURT: Do you have one? Give her one.

11 MR. MCDONALD: Here. This is the newest one,
12 organized little box here for notes.

13 THE COURT: Do you have one for the court
14 reporter?

15 MR. MCDONALD: Yes, I believe I've got one for
16 the court reporter.

17 THE COURT: All right. Give her one.

18 [Off the record momentarily]

19 THE COURT: Mr. Maybank, Mr. Altman, do y'all
20 have any objections to 143? It's a marketing package
21 of materials, apparently.

22 MR. ALTMAN: Your Honor, I understand that he
23 said this was what he was presented at the beginning.
24 And I don't think this would be totally what he was
25 presented at the beginning, because you have a

1 contract and some specifications.

2 MR. MCDONALD: And we're going to go through
3 what Exhibit 143, as far as what he got and how he got
4 it.

5 THE COURT: Do y'all have any objection to it?

6 MR. ALTMAN: Not on that basis, Your Honor.

7 MR. MAYBANK: Just reserving anything until the
8 end, Your Honor.

9 THE COURT: All right. Go ahead.

10 MR. MCDONALD: Thank you.

11 Q. [Mr. McDonald] Mr. Chiovarou, in front of you
12 is Exhibit 143. Do you recognize that document?

13 A. Yes, sir.

14 Q. And what do you recognize it to be?

15 A. Well, to be inclusive, this is the marketing
16 documentation that I received prior to making a decision
17 whether to invest my hard-earned money into The Oaks at
18 Rivers Edge.

19 Q. Okay. And the first six pages of that document,
20 that I have as a copy, you've got a tri-fold --

21 A. Yes, sir.

22 Q. What is that, sir?

23 A. Traditional Charleston living in a setting of
24 natural beauty, it says right on front.

25 Q. And when did you receive this marketing

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1 brochure?

2 A. Prior to August of 2004. I visited the double-
3 wide that was out on the premises of the property, or the
4 future premises of the property. I met actually a
5 wonderful guy named Lee McManus, out on site, if I recall
6 correctly.

7 Q. Now, were the buildings constructed at this
8 time?

9 A. No, sir. There was a dirt road. The dirt road
10 went from some point on Daniel Island Drive through the
11 woods to big, beautiful, grand oaks.

12 Q. So is this the only document you had, at least
13 at this point when you received it, that depicted what The
14 Oaks was going to look like?

15 A. Well, plus the other marketing -- and documents.

16 Q. Okay. And we'll go through that.

17 A. Yes, sir.

18 Q. All right, sir. And in this it's got a
19 Belvedere on the second page, and then the third page has
20 a Calhoun and a Drayton. Do you see that, sir?

21 A. Yes, sir.

22 Q. And the Belvedere is located on the second
23 floor?

24 A. Yes, sir.

25 Q. And you indicated your unit was 2-A?

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1 A. Yes, sir.

2 Q. Can you just explain for the Court kind of how
3 the setup is on --

4 A. Sure.

5 Q. -- on these buildings?

6 A. Sure.

7 It's a very nice floor plan, in that it had six
8 units that occupied about approximately fifty percent of
9 the floor. Of course, there are common elements that are
10 not included in that fifty percent. So the Belvedere,
11 which is the unit I purchased, is on the second floor.
12 There is a third- and fourth-floor unit, the fourth floor
13 with the high ceiling and the highest price point and the
14 second floor with a -- a little more modest in relative
15 comparison to the fourth floor. But it was a six-units
16 two-per-floor building that I purchased.

17 Q. So there are six units in each building?

18 A. Yes, sir.

19 Q. And that's two per floor; correct?

20 A. Yes, sir.

21 Q. So it would be 2-A, 2-B, 3-A, 3-B, and 4-A and
22 4-B?

23 A. As long as you counted correctly.

24 Q. Okay. And then there are six buildings;
25 correct?

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1 A. Yes, sir.

2 Q. So there's thirty-six units out at The Oaks?

3 A. Yes, sir.

4 Q. Okay. And was that your understanding when you
5 received these marketing materials?

6 A. Yes, sir.

7 Q. Now, if you would turn to the fourth page which
8 is entitled, The Oaks at Rivers Edge surrounds you with an
9 environment of unsurpassed natural beauty and it pleasures
10 your senses with an incredible array of standard luxuries.
11 Turn to the page that has that as its title.

12 A. I'm looking at it, sir.

13 Q. Were you presented this -- who did you get this
14 document from? You said in the trailer. But who gave it
15 to you?

16 A. Lee McManus.

17 Q. And who did you understand Lee McManus to be?

18 A. A representative of Daniel Island Riverside
19 Developers and Carriage Hill.

20 Q. And what did you understand -- when you received
21 this document, what did you understand it to be?

22 A. Romney Sales [phonetic] is a marketing
23 organization and I look at marketing documentation all the
24 time to make sure that what we represent to the public
25 marketplace is true, that we can deliver upon it.

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1 So when I looked at this, I read it in detail
2 and I accepted it and looked at the array, the broad
3 array, of as they called them the standard luxuries, and
4 made my decisions accordingly.

5 Q. What did you understand standard luxuries to be,
6 if anything?

7 A. Everything that was on this page I considered
8 standard luxury. Standard.

9 Q. And when you say this page, you're referring to
10 the page where you're talking about the fourth page with
11 the --

12 A. As I stated, page 4.

13 Q. -- page 4?

14 It says interior highlights there. Do you see
15 that?

16 A. Yes, I do.

17 Q. And one of them says oak flooring remainder,
18 including the master bedroom?

19 A. Yes, sir.

20 Q. And is that true? Does your unit have wood
21 flooring?

22 A. Yes, sir.

23 Q. And then it goes on to list a number of other
24 things including, at the bottom, there's soundproofing
25 between all units.

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1 A. Yes, sir.

2 Q. So what was your understanding that that meant?

3 A. Not to be sarcastic, but I thought it meant
4 soundproofing between all units.

5 Q. Were you expecting to live in a recording
6 studio? I mean, what were you thinking there, Joe?

7 A. Understand that this is a multi-family, multi-
8 tenant environment, so the expectation is that on occasion
9 you're going to hear noise because if your door is open
10 and the gentleman or lady on the third floor or the fourth
11 floor has their door open and they happen to be on the
12 porch, you can hear things. But there wasn't an
13 expectation that there would be no sound, period. But
14 there was an expectation that basic transference of noise
15 between floors would be muted, if not eliminated.

16 Q. So they were addressing it? They -- in a multi-
17 family environment they were addressing soundproofing
18 between all units?

19 A. Yes, sir.

20 Q. Okay. As a standard luxury?

21 A. As a standard luxury.

22 Q. And then it goes on to list other things. It
23 talks about what's going to be in the bathrooms; is that
24 right?

25 A. Yes, sir.

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1 Q. And then the custom kitchen --

2 A. Yes, sir.

3 Q. -- is that correct?

4 A. Yes, sir.

5 Q. And then it talks about the master baths and the
6 exterior features?

7 A. Yes, sir.

8 Q. And it says brick-and-stucco facade.

9 A. Yes, sir.

10 Q. Correct?

11 And what, if any, reliance did you put on this
12 document after you reviewed it moving forward?

13 A. I viewed it that I was going to be purchasing
14 a 7 series BMW.

15 And one more thing to point out on that exterior
16 features. Beautifully-landscaped settings needs to be put
17 there, too. The parcel is an elegant, absolutely
18 beautiful, parcel of land in Charleston, South Carolina.
19 City of Charleston, County of Berkeley, to be specific.

20 Q. Now, turn to the document in your sales and
21 marketing packet that's entitled condominium association
22 monthly fees as of March 25th, 2004.

23 A. Yes, sir.

24 Q. Do you have that document in front of you?

25 A. Yes, sir.

1 Q. All right, sir. And what do you recognize this
2 portion of Exhibit 143 to be?

3 A. As you purchase and go through the thought
4 process around a condominium, you're trying to put
5 together an understanding of, you know, your full cost,
6 what is it going to cost you to operate the dwelling
7 through time. And of course you're looking back at your
8 income, you're looking back at your assets, and you're
9 trying to determine whether or not it's a nut you can
10 carry. And this was a representation of the estimated
11 costs to operate my unit as a unit -- in common on thirty-
12 six. So this was my expectation of my monthly association
13 fees for the maintenance of the property, for turning the
14 lights on, taking the trash out, et cetera.

15 Q. And did you, in fact, review this document while
16 you were making a decision whether or not to purchase at
17 The Oaks?

18 A. Yes, sir.

19 Q. And one of the things it has is a line item for
20 the maintenance of the building and grounds; correct?

21 A. Yes, sir.

22 Q. And the building maintenance is sixteen sixty-
23 seven -- \$16.67 a unit; correct?

24 A. Correct.

25 Q. And then the total expenses, after you include

1 everything that's going to be an association monthly fee,
2 is \$470.47?

3 A. Yes, sir.

4 Q. Okay. And did you put any reliance on this
5 document to make your decision to purchase that unit?

6 A. At that point in time, I believed it to be
7 honest and true. Why not?

8 Q. Continuing to go through this document: if you
9 would turn to the page that's entitled The Oaks at Rivers
10 Edge options booklet in June -- dated June, 2004.

11 A. So you want me to bypass the details of parking,
12 et cetera, et cetera?

13 Q. Sure.

14 A. Okay. Then I have the options booklet, yes.

15 Q. And what is that document?

16 A. As an addition to the luxury of the standard
17 luxuries that were brought in, we were allowed to upgrade
18 to different styles and patterns and items in the packages
19 that they go through. There were multiple packages you
20 could choose from. This is marketing documentation about
21 what you could add to the finishes, et cetera, within the
22 unit.

23 Q. So you could choose certain things because the
24 buildings weren't constructed yet; right?

25 A. Yes, sir.

1 Q. So these are kind of the options or the
2 upgrades, or the things that you could choose out of, in
3 this booklet?

4 A. Yes, sir.

5 Q. Correct?

6 Is that your signature at the bottom?

7 A. Yes, sir.

8 Q. And it's dated September 15th of 2004?

9 A. Yes, sir.

10 Q. Is that prior to construction?

11 A. Prior to construction. Yes, sir.

12 Q. And let's take a look at this briefly.

13 A. Sure.

14 Q. The first page talks about carpet selections.

15 A. Yes.

16 Q. Correct?

17 And it looks like you can get carpeting in
18 bedroom one and bedroom two, and in the master bedroom you
19 could also get carpeting if you pay extra?

20 A. Yes, sir.

21 Q. It says on the bottom that master-bedroom
22 carpeting would be installed over the standard wood floor;
23 correct?

24 A. Yes, sir.

25 Q. And if we go back to our standard -- our list of

1 standard luxuries, one of the things is you get oak
2 flooring, including the master bedroom?

3 A. Yes, sir.

4 Q. Okay. So if you wanted carpet in the master
5 bedroom, you had to pay extra?

6 A. Yes, sir.

7 Q. And on the second page it's got wood-floor
8 selections.

9 A. Yes, sir.

10 Q. And the wood-floor selections that you can
11 choose in either the Belvedere --

12 That's your unit; right?

13 A. Yes, sir.

14 Q. That's the second floor?

15 A. Yes, sir.

16 Q. -- or the Calhoun and the Drayton, which is the
17 third and fourth floor, are all wood?

18 A. Yes.

19 Q. Right?

20 A. Yes, sir.

21 Q. And the stand luxury, the Barretta, is no
22 charge; right?

23 A. Correct.

24 Q. And then the rest, American Walnut, American
25 Cherry, quarter saw, and maple, those cost extra?

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1 A. Yes, sir.

2 Q. But they're still wood; right?

3 A. I'm not an expert in woods. But walnut, cherry
4 and maple, yes, I think are woods.

5 Q. And did you, in fact, fill out this document and
6 return it to the developer?

7 A. Yes, I did.

8 Q. And we won't spend time going all the way
9 through it. But you can make a number of selections,
10 can't you?

11 A. Yes, you can.

12 Q. Even down to what you want in the powder room
13 and the second bathroom, whether you want marble or
14 granite or things like that; right?

15 A. Yes.

16 Q. Some pretty nice stuff?

17 A. Yes.

18 Q. And what did you think when you were reviewing
19 these selections?

20 A. Well, I was thinking cost and I was thinking
21 about what I may want or need in the future. So a good
22 for instance, I think I purchased -- I put a bib on the
23 outside for the porch, which is per host. You know, I
24 purchased I believe the upgrade for the vacuum cleaner.
25 I mean, things that I thought would make my lifestyle more

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1 -- you know, more better. But the other part of it is
2 that when I looked at this I thought to myself, boy, this
3 is great, I get to choose the look and feel of the unit
4 itself. So I looked at this as a big benefit.

5 Q. Okay. And did they work with you --

6 A. Yes.

7 Q. -- on picking out the options?

8 A. Yes. She was great. She was great.

9 And, you know, the thing to try to do is
10 optimize here. So, for instance, you know, when you put
11 \$1200 for an upgrade to a rug in the back bedroom, I
12 thought to myself, you know, if I really want that, I
13 could probably pay \$2.95 less per square foot if I did it
14 myself. So I didn't -- I was thinking economically, as
15 well.

16 Q. All right, sir. And the next document in your
17 packet is the real estate purchase agreement. Do you have
18 that document?

19 A. Yes, I do.

20 Q. And what do you recognize that to be?

21 A. This is the document that is the real estate
22 purchase agreement that I entered into with the developer
23 and Carriage Hill and Daniel Island Riverside Developers.

24 Q. And it's dated August 4th of 2004; correct?

25 A. Yes, sir.

1 Q. It's got your name on it and then it lists unit
2 number 2-A, building number five?

3 A. Yes.

4 Q. Is that your building?

5 A. Yes, it is.

6 Q. That's your unit number?

7 A. Yes, sir.

8 Q. So is this the upshot, at least after the
9 marketing period, of the next step that you took?

10 A. Yes.

11 Q. Signed a real estate contract; right?

12 A. Yes.

13 Q. And included -- and the purchase price for your
14 unit, the base purchase price for your unit, was what?

15 A. It was 690,900.

16 Q. And then you've got an earnest-money deposit;
17 correct?

18 A. Yes, sir.

19 Q. And how much was that?

20 A. Thirty thousand four ninety-five.

21 Q. Okay. And included in this document, briefly,
22 sir, at exhibit A-2, standard residence finishes.

23 A. I'm not with you yet. Where are you located?

24 Q. I'm looking at exhibit A-2 to the real estate
25 purchase agreement.

1 A. Okay. I've got this A -- this? Brent, still on
2 this?

3 Q. Yes. Still on your real estate purchase
4 agreement.

5 A. Okay. Page?

6 Q. Well, let's just go through it.

7 A. Okay.

8 Q. The first page is what?

9 A. The first page is my name, my address, the date.
10 And my initials are on there.

11 Q. And then go to the last page, sir.

12 A. Yes.

13 Q. There's a check from you?

14 A. Yes, it is.

15 Q. Does that still have your account number on it?

16 A. Yes, it does.

17 Q. So I would like to do, if I may, briefly, some
18 housekeeping items, is have you just scratch through that
19 account number.

20 MR. BUNDY: With the Court's permission?

21 THE COURT: Yes, sir.

22 MR. MCDONALD: Thank you.

23 Q. [Mr. McDonald] Is that your down payment, sir?

24 A. Yes, sir.

25 Q. All right. Now, the last documents in this

1 packet, sir, are a letter of October 24th, 2004. Do you
2 see that?

3 A. Just before that?

4 Q. No past your --

5 A. Oh. Yes. Yes. Yes, sir.

6 Q. -- the next document.

7 A. Yes. Got it.

8 Q. Not your real estate agreement.

9 A. Got it. Yeah.

10 Q. And that's a letter from the Daniel Island Real
11 Estate Company to you?

12 A. Yes.

13 Q. Okay. And who is the Daniel Island Real Estate
14 Company?

15 A. The broker and agent who sold the unit on behalf
16 of Daniel Island Riverside Developer and Carriage Hill of
17 Charleston.

18 Q. And the next document is a document you received
19 from Carriage Hill Associates of Charleston dated June
20 27th, 2005; correct?

21 A. Yes, sir.

22 Q. And it talks about the options that you can
23 choose; correct?

24 A. Yes, sir.

25 Q. And that's what we looked at earlier?

1 A. Yes, sir.

2 Q. And then the next document is actually from
3 Carriage Hill Associates of Charleston, dated August 26th,
4 2004, and it says, congratulations on your purchase of a
5 condominium at The Oaks at Rivers Edge; correct?

6 A. Yes, sir.

7 Q. And it says, please call Lee McManus as your
8 contact; correct? See that on the second paragraph?

9 A. Yes, I do. Thank you.

10 Q. All right, sir. After you signed your contract,
11 there was a period of time when they were continuing to
12 construct the buildings; correct?

13 A. I believe that they didn't even start until
14 probably six or eight months later. But, yes.

15 Q. And what involvement, if any, other than the
16 options selection that we talked about, that you had
17 during construction?

18 A. None. We were denied access. We were denied
19 access up until a point in time when they had Sheetrock --

20 Q. What do you mean you were denied access?

21 A. They had a security guard out front, a guy with
22 a loaded pistol, right at the front gate so that anyone
23 that wanted to go in and check -- anyone that wanted to go
24 in and look at their unit was prevented from doing it.

25 Q. But you had already signed a real estate

1 contract; right?

2 A. Correct.

3 Q. Okay. And you mean you weren't allowed to go on
4 the property at all?

5 A. Correct.

6 Q. All right, sir. So during that construction
7 period, if you weren't allowed on the property, what did
8 you do?

9 A. You know, I was frustrated. So I called and
10 tried to understand how I could get in to see the unit. I
11 think it's very normal for an individual spending 690,000,
12 plus whatever the other costs associated with it, are
13 going to want to see progress through time in the
14 development of property. I think that's a normal request.
15 That was denied by the developer.

16 Q. And who did you contact the developer at?

17 A. Lee McManus, of course.

18 Q. And when did you ultimately see your unit if you
19 were denied access?

20 A. I saw my unit probably one month before the
21 closing date.

22 Q. Okay. And did you walk through it?

23 A. I walked through it, yes.

24 Q. Okay. And who walked through it with you?

25 A. I don't recall exactly who was there. It might

1 have been Mr. Selene, it might have been Rich Behringer,
2 it may have been Curtis.

3 Q. Let me interrupt you. Who is Mr. Selene?

4 A. Mr. Selene -- my understanding was -- he was one
5 of the employees of Carriage Hill of New York or
6 Charleston, whatever that conglomeration is, and he was a
7 project manager. Rich Behringer, of course, is the
8 brother of the principal, Mr. Behringer.

9 Curtis was really a great guy on the project who
10 did a lot of maintenance, and he was just a good guy, in
11 general, and he -- more than likely, he was going to be
12 working the punch list and managing the punch list for any
13 items that were discovered at that point in time.

14 Q. What did you understand the punch list to be at
15 that time?

16 A. Conceptually or specifically?

17 Q. Well, let's talk about conceptually and then
18 we'll talk about specifics.

19 A. Conceptually, a punch list is a list of items,
20 that are found during the initial walkthrough, that need
21 to be addressed prior to closing. So it's your
22 opportunity to look at and inspect the unit or the
23 property that you're purchasing and making sure that it
24 meets your standard at that point in time.

25 Q. So like nail pops, paint things?

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1 A. Yeah. Things to --

2 Q. Just things that --

3 A. -- address.

4 Q. -- you would address?

5 A. Yes.

6 Q. And did you, in fact, have an opportunity to go
7 through a punch list at the time you viewed the residence?

8 A. Yes.

9 Q. And it was your unit you went through; right?
10 It wasn't a model or anything. It was your actual unit;
11 right?

12 A. Yes. Yes, it was.

13 Q. And you can't exactly remember who was there?

14 A. No, not at this point in time. That was --

15 Q. Now let's talk --

16 A. -- that was 2006.

17 Q. -- about the specifics of the punch list.

18 MR. MAYBANK: Your Honor, I would object.

19 THE COURT: Yes, sir?

20 MR. MAYBANK: He's leading the witness. I don't
21 mind some leeway, but it's becoming a bit --

22 MR. MCDONALD: I'll move it on, Your Honor.

23 I'll move on.

24 THE COURT: Okay. Becoming annoying to you --

25 MR. MAYBANK: No, sir. Repetitive.

1 THE COURT: Repetitive. Okay.

2 MR. MAYBANK: Yes.

3 THE COURT: Don't lead your witness.

4 MR. MCDONALD: Thank you, Your Honor.

5 Q. [Mr. McDonald] Mr. Chiovarou, what specific
6 punch-list items did you have?

7 A. Specific punch-list items at that point in time
8 were mostly esthetic, mostly small things like flooring,
9 problems with the flooring from a seam perspective. Some
10 just things that didn't look proper when you walk in the
11 unit.

12 Q. And did you, in fact, ultimately close on your
13 unit after that?

14 A. Yes, I did.

15 Q. What if anything did the developer do to convey
16 to you what they were going to do about your punch list?

17 A. They basically said they were going to address
18 it as soon as they possibly could.

19 Q. Okay. Did you believe them?

20 A. Of course.

21 Q. Plaintiffs' Exhibit 175, which is towards the
22 back of your package, sir.

23 THE COURT: On 143, you said -- do you have any
24 objections?

25 MR. MCDONALD: I didn't think they had any

1 objection.

2 MR. MAYBANK: No, sir, Your Honor, except to
3 whether or not it's a complete and accurate
4 representation of the original file. I assume it is.
5 If that's what -- if that's what is being offered to
6 the Court, we'll accept that as --

7 THE COURT: Then 143 is admitted without
8 objection.

9 [Whereupon, Plaintiffs' Exhibit Number 143 is
10 admitted into evidence by the Court]

11 THE COURT: Go ahead. What's the next one?

12 MR. MCDONALD: 175, Your Honor.

13 THE COURT: 175.

14 A. 145?

15 Q. [Mr. McDonald] 175. It's towards the back of
16 your packet.

17 A. This packet?

18 Q. Yeah. The one I gave you.

19 [Whereupon, the witness reviews documents]

20 THE COURT: This is a deed?

21 MR. MCDONALD: This is a deed, Your Honor.

22 THE COURT: Any objection to the admissibility
23 of the deed?

24 MR. MAYBANK: No, Your Honor.

25 THE COURT: 175 admitted without objection.

1 [Whereupon, Plaintiffs' Exhibit Number 175 is
2 admitted into evidence by the Court]

3 Q. [Mr. McDonald] And, Joe, this 175 is your deed?

4 A. Yes, sir. It has the name on it of the
5 organization I used to close on business -- yes.

6 Q. And it is dated June 5th, 2006?

7 A. Yes, sir.

8 Q. And were the buildings, at least building five,
9 constructed at that time?

10 A. Yes. The move-in date was sometime in June.
11 Yes.

12 Q. And it lists a purchase price of \$621,179?

13 A. Yes, sir.

14 Is that on the front page? Could you point me
15 to it?

16 [Whereupon, the witness reviews documents]

17 A. Yes. I've got it. Thank you.

18 Q. [Mr. McDonald] Is that how much you paid?

19 A. Yes, sir.

20 Q. How did you pay for it?

21 A. Bank loan and \$30,495 for my five percent
22 deposit, 30,000 to -- and, actually, I put down twenty
23 percent at that point in time. So whatever 6.1 times .2
24 is. So something like \$125,000, roughly, is what I put
25 down.

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1 Q. Did you use cash out of your own pocket?
2 Savings or whatever?

3 A. Yes, sir. Of course I did.

4 Q. And then you borrowed the rest?

5 A. And then I borrowed the rest, yes.

6 Q. All right, sir. Take a look at Exhibit 145,
7 which is on the top of your packet.

8 A. Yes, sir.

9 Q. What do you recognize Exhibit 145 to be?

10 MR. MAYBANK: One moment, if it pleases Your
11 Honor, while I get there.

12 MR. MCDONALD: The master deed.

13 THE WITNESS: The master deed, sir.

14 THE COURT: Any objection to the master deed?

15 MR. MAYBANK: None, Your Honor.

16 THE COURT: Plaintiffs' Number 145 admitted
17 without objection.

18 MR. MCDONALD: Thank you, Your Honor.

19 [Whereupon, Plaintiffs' Exhibit Number 145 is
20 admitted into evidence by the Court]

21 Q. [Mr. McDonald] Mr. Chiovarou, can you --

22 THE COURT: Mr. Maybank, let me say this, and
23 Mr. Altman. If you find out later something is left
24 out or whatever, we can correct that. Okay?

25 MR. MAYBANK: Thank you, Your Honor.

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1 THE COURT: I've got to assume it is correct,
2 since they're being offered.

3 Please proceed.

4 MR. MCDONALD: Thank you, Your Honor.

5 Q. [Mr. McDonald] What do you understand the
6 master deed to be, sir?

7 A. The master deed is the overarching document for
8 the management of the association, for the management of
9 the parcel and how it fits into the community, what the
10 expectations are of its officers, what the expectations
11 are of the residents, what the expectations are of pretty
12 much every facet of life at the condominium development.

13 Q. And take a look at Exhibits 144 and 146.

14 A. Yes, sir.

15 Q. Do you recognize those documents?

16 A. Yes. Amendments to the master deed. Correct?

17 Yes. Yes, sir.

18 MR. MCDONALD: I would offer them into evidence,
19 Your Honor.

20 THE COURT: Any objection to 145 and 146 -- 144
21 and 146, amendments to the master deed?

22 MR. MAYBANK: Wait a minute. I'm looking at
23 146.

24 THE COURT: Any objection?

25 MR. MAYBANK: No objection, Your Honor.

1 THE COURT: 144 and 146 admitted without
2 objection.

3 [Whereupon, Plaintiffs' Exhibit Number 144 is
4 admitted into evidence by the Court]

5 [Whereupon, Plaintiffs' Exhibit Number 146 is
6 admitted into evidence by the Court]

7 Q. [Mr. McDonald] Mr. Chiovarou, do you understand
8 144 -- what do you understand 144 and 146 to be, as it
9 relates to Exhibit 145?

10 A. Yes. Part of the master -- the master deed is
11 considered a living and breathing document that gets
12 modified through time. These are modifications to the
13 terms and conditions within that master deed that are
14 first sometimes recommended by the legal team and other
15 times recommended by the executives of the homeowners
16 association president or directors.

17 Q. So the master deed can be amended?

18 A. Yes, sir.

19 Q. And 144 and 146 are amendments to The Oaks at
20 Rivers Edge master deed?

21 A. Yes, sir.

22 Q. Let's take a look at 145, which is the master
23 deed itself.

24 A. Yes, sir.

25 Q. And on the first page after the table of

1 contents --

2 Are you there?

3 A. Yes.

4 Q. -- it identifies the developer, does it not?

5 A. Yes. It says, whereas Daniel Island Riverside
6 Developers is a South Carolina LLC. Yes.

7 Q. And is that who you understood the developer to
8 be?

9 A. Yes, sir.

10 Q. All right, sir. What happened next? You closed
11 on your unit, you got a deed, you paid your money?

12 A. Yes.

13 Q. And what was the date of that?

14 A. Roughly -- I mean, I think you saw a date of
15 June 5th of 2006. I believe that I closed on or about
16 that date, moved in within, you know, two or three weeks
17 of that point in time.

18 Q. And how many people were living at The Oaks when
19 you first moved in?

20 A. A handful. I couldn't tell you the exact
21 number, but it was a handful.

22 Q. And when you say handful, are we talking five or
23 twenty units?

24 A. Five. Five to ten. I mean, that's just a rough
25 guess.

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1 Q. Okay. Did you know anybody else when you moved
2 in?

3 A. No. I didn't know any other residents.

4 Q. And did your whole -- did your whole family move
5 in at this point or did you move in by yourself?

6 A. I moved in by myself. I got married later in
7 that year. I got married in November of 2006.

8 Q. And your daughter wasn't born yet; right?

9 A. No.

10 Q. And what were your first experiences after going
11 through the period we just went through? Purchasing a
12 unit and now you've moved in. What were your first
13 experiences with The Oaks?

14 A. Well, the first thing I tried to focus on was
15 the punch list and making sure that items that were on the
16 punch list were taken care of. Though very immediately
17 thereafter, there was a period of time where alarms went
18 off probably every day or every-other day.

19 Fire alarms and -- so this was late June and in
20 July of 2006. The fire alarms went off every day in
21 building five. I, of course, called the developer
22 multiple times, I mean, endless number of times, because
23 every evening at 2:30 in the morning you were getting a
24 fire alarm in the unit. To the point in time to where I
25 had actually walked down and called -- and walked down to

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1 the fire department on Daniel Island. I walked in with a
2 full head of steam and said to the gentleman there that
3 this is a non acceptable set of conditions, every night
4 for the past couple weeks -- and that's got to be in
5 public record -- we were awakened, we had to walk out of
6 the building, we had to wait for the fire department to
7 come back, and we had to then wait until it was cleared,
8 whatever the alarm was, and then we could go back in the
9 building.

10 And the developer was never responsive to any of
11 my phone calls, never responsive to the point in time
12 where I called Chief Rusty myself and I said, Chief Rusty,
13 this is really a very dangerous circumstance because I
14 live in a place where the alarm goes off every night and
15 I'm being reinforced that it doesn't mean anything, and
16 the developer won't do anything about it. Well, wouldn't
17 you know, wouldn't you know, the developer responded to
18 Chief Rusty. I forget his last name. And everyone
19 probably knows Chief Rusty.

20 So I had to take it on my own back to get this
21 developer to not have fire alarms in my unit the first day
22 I was there, for the first three weeks I was there.

23 Q. Why did you go to the developer and not the
24 homeowners association board at that time?

25 A. Because there wasn't a board at that point in

1 time. It was the developer. They were one and the same.

2 Q. What do you mean they were one and the same?

3 A. My understanding is that the association starts
4 as -- excuse me -- the homeowners association starts as a
5 fiduciary duty of the developer prior to hand-off in
6 December of 2006. So the developer was the HOA board.
7 Rich Behringer's brother, the defendant, was the -- was
8 the president of the board at that point in time. And of
9 course I called Rich, and of course I called their office
10 on multiple occasions, and of course I talked to Megan, of
11 course I talked with Lee McManus. But I had to force
12 their hand to do anything.

13 Q. And after the fire-alarm issue -- was that
14 ultimately resolved by Chief Rusty?

15 A. Oh, yeah. I mean, with a gun to his head, he
16 was going to shut the project down, yes.

17 Q. Were there any other issues going on by that
18 time?

19 A. There were many, many issues. I mean, all
20 sorts.

21 Q. And at some point, did you have occasion to run
22 for the board of directors?

23 A. Yeah. You know, Bobby and I -- Reece and I were
24 in the same building. And we, of course, found ourselves
25 at 2:00 or 3:00 in the --

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1 Q. And Mr. Reece -- Reece is right there; correct?

2 A. Yes.

3 MR. MCDONALD: Mr. Reese, would you stand up,
4 please?

5 [Whereupon, Mr. Reece complies]

6 A. Mr. Reece and I found ourselves out on the front
7 porch at 2:30 a.m., on multiple occasions, wondering what
8 in God's name we got ourselves into.

9 Q. [Mr. McDonald] And what -- thereafter, you had
10 an opportunity to run for the board; correct?

11 A. Yes, sir.

12 Q. Okay. And could you explain to the Court how
13 that process worked?

14 A. Sure. We discussed board membership. We
15 discussed it with -- I believe we were introduced during
16 that period of time after we closed, at the end of the
17 year, to the property management company, who was Ravenel
18 at that point in time, Gavin [phonetic] and Sherry Martin,
19 and we told her about our desire to be on the board.

20 Q. And what did you understand the turnover process
21 was going to be, with The Oaks at Rivers Edge, for the
22 board?

23 A. Yes. The board turnover was at a meeting in
24 December of 2006. I think the date was the 4th or the --
25 at which all residents of The Oaks and owners of The Oaks

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1 were brought to a meeting place on Daniel Island to go
2 through the process of electing the board and go through
3 the process of the handoff between the developer's HOA and
4 the new board as an HOA.

5 Q. And that was sometime early December of 2006?

6 A. Yes.

7 Q. Correct?

8 Take a look at Exhibit -- Plaintiffs' Exhibit
9 147.

10 A. Yes, sir.

11 Q. Do you recognize that document?

12 A. Yes, I do. Items of concern sent to Mr.
13 Behringer, the president of the board. This is -- looks
14 like the day before the turnover.

15 Q. Okay. And we'll talk about that in a second.

16 This document is dated December 6th, 2006;
17 correct?

18 A. Yes.

19 Q. Who is Charlton Weiteers?

20 A. Charlton Weiteers was the gentleman who was the
21 property manager, day-to-day, at The Oaks. that was an
22 employee of Ravenel.

23 Q. And then this letter goes on to list a number of
24 issues; correct?

25 A. Yes.

1 Q. And did you have a discussion with Mr. Behringer
2 in compiling this list? Or how did this list come about?
3 Or do you know?

4 A. This looks like to be -- and, again, since I
5 wasn't privy to it, it was prior to being elected to the
6 board -- I might have seen it when I got on the board.
7 But this was probably a list that was created from
8 interactions between Ravenel and other HOA members that
9 were part of the team -- or part of The Oaks.

10 Q. Okay. So you, as a board member, that was --
11 when were you elected? Sometime in --

12 A. Yes. It was at that meeting.

13 Q. Didn't have any involvement in these punch-list
14 items that are --

15 A. Not to my recollection.

16 Q. -- expressed in Exhibit 147?

17 A. Not to my recollection.

18 MR. MCDONALD: I would move Exhibit 147 into
19 evidence.

20 MR. MAYBANK: No objection.

21 THE COURT: No objection. 147 admitted without
22 objection.

23 [Whereupon, Plaintiffs' Exhibit Number 147 is
24 admitted into evidence by the Court]

25 Q. [Mr. McDonald] All right, sir. Take a look at

1 Exhibit Number 148.

2 A. Yes.

3 Q. Do you have it in front of you?

4 A. Yes, sir.

5 Q. What do you recognize the first four pages to
6 be?

7 A. This was the minutes of the conversion meeting
8 that took place, as you can see now, December 7th, 2006.

9 Q. And what was the conversion meeting?

10 A. The conversion meeting was the handoff from the
11 developer to the board of directors of the HOA --

12 THE COURT: I'm sorry.

13 A. -- or to the HOA association, in general.

14 THE COURT: Which exhibit again?

15 MR. MCDONALD: 148, Your Honor.

16 THE COURT: 148. Thank you. Please proceed.

17 Q. [Mr. McDonald] And who were the new homeowner
18 board members?

19 A. The elected officials that day were Dr. Pekruhn,
20 Mr. Robert Reece, and myself, Joe Chiovarou.

21 Q. And is Mr. Pekruhn in the courtroom? Mr. Reece
22 is.

23 A. Yes, he is.

24 Q. And did you -- the board -- the homeowner-
25 controlled board create these meeting minutes?

1 A. This was actually created still by Ravenel, who
2 was hired by the developer.

3 Q. So this is the meeting minutes that -- the first
4 four pages of 148 are the meeting minutes created by the
5 developer at the conversion meeting?

6 A. Yes, sir.

7 Q. And the first --

8 MR. MAYBANK: Your Honor --

9 Q. [Mr. McDonald] -- heading is a landscape
10 report?

11 MR. MAYBANK: -- the testimony of the attorney
12 and the testimony of the witness seem to be going
13 different. I get a testimony that it's the creation
14 of Ravenel Associates and then Mr. McDonald interrupts
15 and says it is the testimony written by the developer.

16 MR. MCDONALD: And just -- as I remember the
17 testimony, he said Ravenel Associates was hired by the
18 developer.

19 THE COURT: Just ask the questions and let him
20 answer. Okay?

21 Q. [Mr. McDonald] The first item is landscape
22 report, sir.

23 A. Yes.

24 Q. What, if any, involvement did you have with that
25 issue?

1 A. I'm sure that I brought up -- or one of the
2 three board members brought up the issue of the backyard
3 landscaping. Which hadn't been done.

4 Q. What do you mean it hadn't been done?

5 A. At the point in time when they turned over the
6 owners association to the board members, the backs of the
7 buildings, with the exception of building one, which was
8 the one they used as the marketing venture, had no
9 landscaping, meaning that it was just mud.

10 Q. You were at this meeting; correct?

11 A. Oh, yeah. Yes, sir.

12 Q. On the second page under miscellaneous items --
13 Are you there?

14 A. Yes, sir.

15 Q. It says, the owner asked a question about the
16 loud noise coming from the above units because of the
17 flooring.

18 A. Yeah.

19 Q. Do you have any recollection if, at that
20 meeting, there were issues with loud noise coming from the
21 above units because of the flooring?

22 A. I did not, because I didn't have anyone living
23 above me. But in hindsight, if you look at that document
24 -- and let's read it: Rich explained the code had been
25 followed for the building with town building inspectors --

1 excuse me -- buildings' town's inspector.

2 So there's some suggestion there that this
3 passes building code. Right? He also mentioned that the
4 flooring -- because this is a cork, which is an absolute
5 blatant lie because there was no cork under these things.
6 And possible solutions for noises. So several others were
7 greatly concerned with the sound condition from the
8 floors. Wilson Brooks [phonetic] was the guy that was the
9 loudest. He's an HOA member that, unfortunately, is
10 deceased. What a wonderful guy he was. And he was -- he
11 had people living above him in I think it was building two
12 or building three, and was irate about the noise. Irate
13 about it.

14 Q. And what, if any, independent recollection do
15 you have with regard to what was said about the -- or what
16 the upshot was of this issue with the sound as of December
17 7th, 2006?

18 A. Well, of course, I mean, we bought luxury
19 condominiums. We didn't expect to have sound
20 transitioning between floors. I mean, none. We didn't
21 expect it to be such a blatant set of errors.

22 Q. And what, if anything, did the developer
23 indicate it was going to do?

24 A. Yeah. The next day I believe the developer said
25 they were going to hire a sound acoustical person in their

1 organization to test the environment to make sure that it
2 met some standard.

3 Q. And what was that -- what did you understand
4 that standard was going to be?

5 A. Luxury standards.

6 Q. And what does that mean, Mr. Chiovarou? What
7 does a luxury standard mean?

8 A. It's obtuse. It doesn't really have a
9 definition. But it's something above Section A housing
10 and passes the building code. I've got to say that.

11 Q. Turn to the fifth page of Exhibit 148, which is
12 the --

13 Let me know when you're there.

14 A. Page 5?

15 Q. Yes.

16 A. Okay. So this is the December 12 board minutes.

17 Q. Okay. Do you recognize that document?

18 A. Yes, sir.

19 Q. Okay. What do you recognize it to be?

20 A. This is the board minutes of the first reading
21 of the HOA board outside of the -- outside of the
22 turnover.

23 THE COURT: What number are you talking about?
24 What number?

25 MR. MCDONALD: It's still -- it's the fifth page

1 of 148.

2 THE COURT: All right.

3 Q. [Mr. McDonald] So did the board of directors --
4 is the board of directors controlled by the homeowner, at
5 this point, as of December 12th, 2006?

6 A. Yes, it is.

7 Q. And what, if anything, do you remember from this
8 meeting?

9 A. I think it's pretty well-documented here. I
10 mean, we're trying to really get an understanding of how
11 to, and what we needed to, think about when running an
12 organization like this because I don't think any of had
13 previous experience as executives running a homeowners
14 association.

15 Q. And so who were you relying upon?

16 A. Sherry Martin and Charlton Weikers, who we were
17 relying them -- on them for guidance, because they were
18 employees of Ravenel, who manages many, many properties
19 around Daniel Island.

20 Q. And on the -- under miscellaneous items, the
21 second paragraph. And read that and let me know when
22 you've had a chance to read it.

23 [Whereupon, the witness reviews documents]

24 A. Yes, I've read it and, yes. This is a
25 confirmation that Mr. Behringer, Rich Behringer, was going

1 to hire engineers to assess the loud noise between units.

2 Q. [Mr. McDonald] At the time of turnover --

3 MR. MCDONALD: I would move 148 into evidence.

4 THE COURT: Any objection?

5 MR. MAYBANK: No objection.

6 THE COURT: All right. 148 admitted without
7 objection.

8 [Whereupon, Plaintiffs' Exhibit Number 148 is
9 admitted into evidence by the Court]

10 Q. [Mr. McDonald] At the time of turnover, what
11 was your role on the board?

12 A. At the time of turnover, I believe I was the
13 vice president of the board, which means I'm in a support
14 role trying to understand what issues and items needed to
15 be addressed -- that needed to be addressed with the
16 association.

17 And the reason I joined the board was primarily
18 because I started to see a pattern of belligerence with
19 the developer. I was very irate about the fact that we
20 didn't have any landscaping done in our backyards.

21 And, actually, I would like to point out
22 something else about a statement from Mr. Behringer, if I
23 can find it.

24 [Whereupon, the witness reviews documents]

25 A. I just have it documented in my documents that

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1 are the same as these. I just was looking for a reference
2 point.

3 [Whereupon, the witness reviews documents]

4 A. Somewhere on this document it suggests that Rich
5 Behringer said that we're going to leave the landscaping
6 natural. I'm having trouble finding that right now.
7 Could you help me find it?

8 Q. [Mr. McDonald] Well, we'll come back to that.
9 Let's go through this.

10 A. Sure.

11 Q. Take a look at Exhibit 171 in your packet,
12 towards the back.

13 [Whereupon, the witness reviews documents]

14 A. Getting there. I'm there. Got it. Yes.

15 Q. [Mr. McDonald] Do you recognize that document?

16 A. Yes, I do.

17 Q. What do you recognize that document to be?

18 A. This is the balance or the account -- the
19 operating account that was handed over to the board of
20 directors upon the transference from the developer to the
21 HOA board.

22 Q. And were you involved in that process as the
23 vice president of the board?

24 A. Not in the -- yes. Yes. Of course I was.

25 Q. Can you explain this document, Exhibit 171 --

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1 A. Sure.

2 Q. -- what it means?

3 A. Sure.

4 This is an operating account. When you have a
5 board of directors to an HOA, you have day-to-day issues
6 that need to be managed. You know, you've got to pay the
7 bills. You've got to pay the electricity, you've got to
8 pay the insurance, you've got to pay the trash, you've got
9 to pay for cleanup, you've got to pay for the landscaping.
10 And that's the operating account. It's just like
11 everybody's checkbook. Right? And then you are supposed
12 to, of course, create a capital account. And that's
13 because, as we all know, through time things deteriorate,
14 whether it's mechanisms in a door or a paint job that
15 needs to be done.

16 So you're kind of looking down two avenues here.
17 So one is an operating account and the other is a capital
18 reserve account. They didn't have a capital reserve
19 account here. This was just the operating account.

20 Q. And does it reference, in the operating account,
21 a reserve fund is to be a part of it?

22 A. Yes. It was commingled at that point in time
23 and it was mentioned, yes.

24 Q. And can you point the Court's attention to where
25 that is on this document?

1 A. Sure.

2 The last page of the document, which actually
3 says page 1, as well.

4 Q. Let me back up. What do you mean it was
5 commingled at this point?

6 A. It's an accounting option, right? So from an
7 accounting perspective, you can commingle funds as long as
8 they're identified as separate and as long as there's a
9 fiduciary responsibility performed by the management of
10 the unit to assure that the funds are not physically
11 segregated but, you know, mentally, from an accounting
12 perspective, differentiated.

13 Q. So you can put the reserves in the operating
14 account, you just have to show it; is that correct?

15 A. Sure. Sure.

16 Q. Okay. All right.

17 A. Sure.

18 Q. Can you point the Court's attention to where
19 that is?

20 A. Yes. It's the last page of 171.

21 In the lower right-hand corner, you can see
22 capital reserve fund with a negative number. In other
23 words, a loss, which means that at handoff, while the
24 developer believed there needed to be a capital reserve,
25 had allocated a capital reserve. Over their stewardship

1 or fiduciary period, they did not, in fact, fund it and
2 did not turn over to the HOA a fund for capital reserves.

3 Q. And where on this document are you referring to,
4 sir?

5 A. It says capital reserve fund and it's the lower
6 right-hand corner. It says negative \$19,440, which means
7 they accounted for the need but did not fund the item.

8 Q. But had they funded it, how much would they have
9 funded it with?

10 A. \$19,440.

11 Q. So that would have been the capital reserves,
12 had they funded it?

13 A. Correct.

14 Q. And your testimony is what? They did what with
15 it? They didn't fund it?

16 A. They did not fund it, no.

17 THE COURT: Any objection to 171?

18 MR. MAYBANK: No objection, Your Honor.

19 THE COURT: Pardon?

20 MR. MAYBANK: No objection.

21 THE COURT: 171 admitted without objection.

22 [Whereupon, Plaintiffs' Exhibit Number 171 is
23 admitted into evidence by the Court]

24 Q. [Mr. McDonald] Sir, turn back to Plaintiffs'
25 Exhibit 149.

1 A. Yes.

2 Q. Do you recognize that document?

3 A. Yes, I do.

4 Q. What do you recognize it to be?

5 A. This is a note from Mr. Behringer and Daniel
6 Island Riverside Developers, stating that they have hired
7 or will hire an engineer to evaluate the sound problem,
8 sound-transference issue.

9 Q. And on the bottom it says, cc Joe Chiovarou.
10 That's you; right?

11 A. Yes, sir.

12 Q. What, if anything -- what, if any, understanding
13 did you have as to why this was being done in December of
14 2006?

15 A. It was actually a kind of a violent turnover
16 meeting, I've got to say. Violent from the perspective
17 that we had as many residents as we could have had at that
18 point in time at the meeting and it was pretty well stack
19 capacity at that point in time. I believe they closed on
20 most of the units prior to the end. But it was violent in
21 the fact that there were screams from the crowd about the
22 fact that there was such incredible sound transition
23 between floors that needed to be addressed.

24 So Mr. Behringer heard this and took it back as
25 soon -- to his board of directors and says, Houston, we

1 have a problem here. They went out and hired Stewart
2 Acousticals, I believe. That's after the fact I learned
3 that. But hired a third-party firm.

4 Q. Okay. And did the board have any role in the
5 selection of that?

6 A. No, sir.

7 MR. MCDONALD: I would move 149 into evidence.

8 THE COURT: Any objection?

9 MR. MAYBANK: No objection, Your Honor.

10 THE COURT: 149 admitted without objection.

11 [Whereupon, Plaintiff's Exhibit Number 149 is
12 admitted into evidence by the Court]

13 Q. [Mr. McDonald] Take a look at Exhibit 151, sir.

14 A. Yes.

15 Q. Do you recognize that document?

16 A. Yes, I do.

17 Q. What do you recognize it to be?

18 A. This is a letter, again, from Mr. Behringer,
19 representing Daniel Island Riverside Developers LLC, that
20 they have hired a sound engineer and that they will sample
21 units and gather data.

22 Q. Okay. And this is dated December 11th, 2006?

23 A. Yes, sir.

24 Q. Once again, did the board have any selection as
25 to who that sound engineer was going to be?

1 A. No, sir.

2 MR. MCDONALD: I would move Exhibit 151 into
3 evidence.

4 THE COURT: Any objection?

5 MR. MAYBANK: None.

6 THE COURT: 151 admitted without objection.

7 [Whereupon, Plaintiff's Exhibit Number 151 is
8 admitted into evidence by the Court]

9 Q. [Mr. McDonald] Take a look at Exhibit 152, sir.

10 A. Yes, sir.

11 Q. Do you recognize that document?

12 A. Yes.

13 Q. What do you recognize it to be?

14 A. This is a document stating that they had hired a
15 company called Stewart Acoustical -- excuse me -- Daniel
16 Island Riverside Developers LLC, through their
17 representative, Rich Behringer, had hired a company called
18 Stewart Acoustical to do the testing they spoke about in
19 the previous exhibit.

20 Q. Okay. And this is January 3rd, 2007; correct?

21 A. Yes, sir.

22 Q. And you were a recipient of it? You were cc'd
23 because you're on the board; correct?

24 A. Yes, sir.

25 Q. Who was the board's primary contact at this

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1 time? As of January 3rd of 2007?

2 A. The primary contact typically is the management
3 company. But that's -- it's very fluid. Generally, the
4 board of directors, the president of the board of
5 directors, also is the primary interface in communications
6 between the management company and the developer. But at
7 this point in time, it was probably still primarily
8 Ravenel and Associates.

9 Q. And what did you understand, as of January 3rd,
10 2007, was going on with the sound issue and what was going
11 to be addressed, if anything?

12 A. Again, everyone was irate about the fact that
13 they could not live in their units. Irate about it. So
14 this was the first recognition that they hired a third
15 party to analyze --

16 THE COURT: Can I interrupt just a second? See
17 the lawyers up here just a second.

18 [Whereupon, an off-the-record bench conference
19 is held]

20 Q. [Mr. McDonald] All right, sir. Take a look at
21 Exhibit 153.

22 A. Yes.

23 Q. And what do you recognize this document to be?

24 A. It's a warranty claim.

25 MR. MAYBANK: Did you move that last one into

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1 evidence? I don't recall.

2 MR. MCDONALD: Move Exhibit 152 into evidence.

3 THE COURT: Any objection?

4 MR. MAYBANK: No objection. Thank you, Your
5 Honor.

6 [Whereupon, Plaintiffs' Exhibit Number 152 is
7 admitted into evidence by the Court]

8 THE COURT: How about Number 151?

9 MR. MCDONALD: I believe we have --

10 MR. MAYBANK: No objection, Your Honor.

11 THE COURT: All right. You're right. That is
12 in evidence --

13 MR. MAYBANK: That's right.

14 THE COURT: -- without objection. Thank you
15 very much.

16 MR. MCDONALD: Thank you, Your Honor.

17 Q. [Mr. McDonald] Number 153 is a warranty claim
18 form?

19 A. Yes, sir.

20 Q. And what does this deal with, sir?

21 A. On January 1st, on New Year's Day, of 2007, my
22 wife and I were sitting in the living room and the --
23 there was a loud, loud, almost an explosive sound. When
24 we got up and looked at it, the floors of my unit, both in
25 the master bedroom and the dining room, popped up

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1 literally six inches. So maybe concrete was moving, maybe
2 there was some seismic activity in Charleston. But it
3 popped up. The floor popped up six inches. And this was
4 a claim for the hardwoods of my master bedroom --

5 Q. So this is in --

6 A. -- hallway and dining room.

7 Q. This is in your unit --

8 A. Yes.

9 Q. -- this claim here?

10 A. Yes.

11 Q. So you were on the board, but this is in your
12 unit here?

13 A. Correct.

14 Q. And it deals with the wood floors?

15 A. Yes.

16 MR. MCDONALD: I would move 153 into evidence.

17 THE COURT: Any objection?

18 MR. MAYBANK: No objection, Your Honor.

19 THE COURT: 153 admitted without objection.

20 [Whereupon, Plaintiffs' Exhibit Number 153 is
21 admitted into evidence by the Court]

22 Q. [Mr. McDonald] And take a look at 154, sir.

23 A. Yes, sir.

24 Q. And what do you recognize that to be?

25 A. This is a note from Daniel Island Riverside

1 Developers, it looks like to me, about the testing: we
2 have reviewed the findings and are not satisfied with test
3 results, et cetera.

4 So this is admission that the sound didn't meet
5 the -- expectations of the developer.

6 Q. Did they tell you -- did the developer ever send
7 you a letter, as of January 31st, 2007, to say it doesn't
8 meet the building code?

9 A. No. No, sir.

10 Q. Did the developer ever send you a letter, as of
11 January 31st, 2007, and say, we didn't construct this
12 thing in conformance with industry standards?

13 A. No, sir.

14 Q. Okay. So the only information you got says, we
15 have reviewed the findings and are not satisfied with the
16 test results?

17 A. Correct.

18 Q. The next document is Exhibit 155.

19 MR. MAYBANK: Did he move -- did you move that
20 into evidence?

21 THE COURT: Any objection?

22 MR. MCDONALD: I would move 154 into evidence.

23 THE COURT: Any objection to 154?

24 MR. MAYBANK: No. No objection, Your Honor.

25 Thank you.

1 THE COURT: Admitted without objection.

2 [Whereupon, Plaintiffs' Exhibit Number 154 is
3 admitted into evidence by the Court]

4 Q. [Mr. McDonald] Exhibit 155. Sir, do you
5 recognize that document?

6 A. Yes.

7 Q. Do you recognize that document --

8 A. Meeting minutes of January 18th, 2007, board of
9 directors of the HOA.

10 Q. Okay. And is it, in fact, a compilation of the
11 meeting minutes --

12 A. Yes, sir.

13 Q. -- through 2007?

14 A. Yes, sir.

15 MR. MCDONALD: I would move Exhibit 155 into
16 evidence.

17 THE COURT: Any objection?

18 MR. MAYBANK: None, Your Honor.

19 THE COURT: 155 admitted without objection.

20 [Whereupon, Plaintiffs' Exhibit Number 155 is
21 admitted into evidence by the Court]

22 Q. [Mr. McDonald] Exhibit 156. Do you recognize
23 that document, sir?

24 A. Yes, sir.

25 Q. What do you recognize it to be?

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1 A. This is a note from -- to Rich Behringer, from
2 me, in July of 2008, and this is a recap of the
3 construction issues that we identified in the previous
4 months.

5 Q. Okay. And it's from you as president of the
6 board of directors; correct?

7 A. Yes.

8 In January of 2007 or -- 2008 or thereabouts,
9 Dr. Pekruhn decided that he wanted to run for the board
10 again. Mr. Jung joined the board and it was myself, Bobby
11 Reece, and Mr. Jung as the board members at that point in
12 time, 2008.

13 The -- this is a note, after a meeting that we
14 had, discussing the issues that we found with -- the
15 quality issues we were finding that were showing their
16 face at The Oaks.

17 Q. And at some point in or about July 26th, 2008,
18 did the homeowners association hire an engineer?

19 A. Yes, sir.

20 Q. And who was that engineer?

21 A. That was Ted. Ted Padgett.

22 Q. Who is Ted Padgett? Explain to the judge who
23 Mr. Padgett is and what he's done on behalf of the board.

24 A. Your Honor, Ted Padgett is a certified engineer
25 in the state of South Carolina, city of Charleston, who

1 was hired as a professional to analyze the challenges that
2 we had been receiving at The Oaks, meaning water
3 intrusion, meaning lots of different things.

4 Q. And over the period that the board has hired Ted
5 Padgett, how did they interact with him?

6 A. We interacted with him -- he would look at
7 issues. For instance, on my porch -- my wife actually
8 found this. On my porch, I live in a second-floor unit,
9 there was a water stain and a crack on a header in my
10 porch and there was black water pouring through it. And
11 it was literally a crack in the stucco on the -- and,
12 again, I'm not a construction specialists so -- it was the
13 header and it was cracking through. So he would come in,
14 he would take a cut, he would look at it, and try to find
15 the cause of the problem.

16 Q. And did he, in fact, issue field reports?

17 A. He issued many field reports.

18 Q. Okay. And who did he issue --

19 A. Continues to. Pardon?

20 Q. Who did he issue the field reports to?

21 A. To the board of directors.

22 Q. And it looks like on Exhibit 156 it says: as
23 you will recall, we had a lengthy discussion concerning
24 the initial investigation report prepared by Ted Padgett.

25 A. Yes.

1 Q. So at least as of July 22nd, 2008, you-all had
2 hired Ted Padgett?

3 A. Yes.

4 Q. The last thing I want to point out on Exhibit
5 156 is the fourth paragraph. Would you take a look at
6 that?

7 A. It says, finally, yes.

8 Q. It says: finally I discussed the sound
9 remediations issue.

10 Who did you discuss the sound remediations issue
11 with?

12 A. I discussed it with Mr. Behringer.

13 Q. And it says: while remediations has been
14 completed in a majority of the affected units,
15 satisfaction with the results has been less than
16 satisfactory.

17 A. Yes.

18 Q. What does that mean?

19 A. That the problem wasn't solved. So, in other
20 words, the individual homeowners where the remediations
21 occurred were dissatisfied with the noise that was
22 transmitted between the floors at that point in time.

23 Remember, I was the guy that said I don't trust
24 that they're going to do a good job, didn't have mine done
25 because of it, for a lot of different reasons. I didn't

1 believe they addressed a lot of issues. The first thing I
2 didn't think they addressed was the fact that my value was
3 going to lose because they're lowering the ceiling on my
4 unit. So they didn't address that with me. They didn't
5 show the reports of what the problem was as it relates to
6 code, as it relates to anything. I mean, they never
7 showed us the results of the reports. They didn't give us
8 privy to that information. Fourth, from what I
9 understand, they used their home architect, who has no
10 certification in sound mitigation or remediations, to
11 implement the fix.

12 So this is just an unfortunate situation where
13 nothing worked. And everyone has come to court saying,
14 this is horrible, we still can't live here after this
15 remediations that dropped the ceiling six inches and
16 almost killed the esthetic beauty of the internal of these
17 units.

18 MR. MCDONALD: I would move 156 into evidence,
19 Your Honor.

20 THE COURT: Any objection?

21 MR. MAYBANK: No objection.

22 THE COURT: 156 admitted without objection.

23 [Whereupon, Plaintiffs' Exhibit Number 156 is
24 admitted into evidence by the Court]

25 Q. [Mr. McDonald] Now, you've referenced some

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1 field reports from Mr. Padgett. I have those field
2 reports here. It'll probably save a lot of time.
3 Plaintiffs' Exhibit 44, which is 2008, 45 is 2009, 46 is
4 2010, 47 is 2011, and 48 is 2012.

5 MR. MAYBANK: We would object on the grounds
6 that these were created by their expert or used by
7 their expert.

8 THE COURT: What numbers were they, again,
9 please?

10 MR. MCDONALD: 44 through 48.

11 THE COURT: 44 through 48. All right. Let me
12 find them.

13 [Whereupon, the Court reviews documents]

14 MR. MAYBANK: It is our understanding that this
15 witness was not the one who created it in any way,
16 reviewed it. He's not an engineer. And they can
17 certainly put Mr. Padgett up here and testify what he
18 created, but I don't see Mr. Chiovarou's name anywhere
19 as being part and parcel of the person --

20 THE COURT: Well, he hasn't asked him any
21 questions yet.

22 MR. MAYBANK: Well, he asked to go ahead and --
23 I'm sorry --

24 THE COURT: Do you have any objections? I
25 understand you have an objection. I'll sustain the

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1 objection at this time.

2 MR. MAYBANK: Thank you, Your Honor.

3 Q. [Mr. McDonald] Mr. Chiovarou, I'll hand you
4 Plaintiffs' Exhibit 44 through 48, ask you if you
5 recognize those documents.

6 A. Field reports. I recognize the documents. I
7 do.

8 Q. And what do you recognize them to be?

9 A. I recognize them to be field reports and
10 analysis of the engineering and problems associated with
11 the findings of Mr. Padgett.

12 Q. And were those reports submitted by Mr. Parker
13 to the board?

14 A. They were, in fact, electronically sent to each
15 board member as well as, more than likely, to me as a
16 board member.

17 Q. And were they sent to you as they were created?

18 A. Yes, they were.

19 Q. And did the board keep them in the ordinary
20 course of their business?

21 A. Yes, they did.

22 Q. And is that -- the information that is contained
23 in those reports, does it consist of information that was
24 presented to the board --

25 A. Yes.

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1 Q. -- that the board had knowledge of?

2 A. Yes.

3 MR. MCDONALD: Your Honor, I would move them in
4 evidence.

5 THE COURT: Any objection?

6 MR. MAYBANK: Your Honor, one thing that I
7 guess -- to the extent that -- we don't object to them
8 so long as they're coming in for the totality of what
9 they are and not for any limited purpose. Yes.

10 THE COURT: What do you mean limited purpose?

11 MR. MAYBANK: In other words, the damages being
12 claimed b the plaintiff in terms of I guess this
13 overall development, that is fine. I don't have a
14 problem with that.

15 MR. MCDONALD: And the --

16 THE COURT: Hold on a second. Let me listen to
17 him.

18 Go ahead, Mr. Maybank.

19 MR. MAYBANK: That's all, Your Honor. Instead
20 of -- there was some limited language I thought in the
21 opening as to what only they're going to be dealing
22 with. But I think it's -- as it relates to the
23 overall damages, the problems, no.

24 THE COURT: I haven't looked at it, but I assume
25 it -- is it all about water?

1 MR. MAYBANK: Yes, all about the water, Your
2 Honor.

3 THE COURT: All about the water intrusion around
4 the windows?

5 MR. MAYBANK: That's right.

6 MR. MCDONALD: It's about Mr. Padgett's notice
7 to the board of each time he discovered something. So
8 it's not just about intrusion around the windows, it's
9 about his involvement, inclusive of the fact of how he
10 developed his scope.

11 MR. MAYBANK: And to the extent that --

12 THE COURT: Mr. Maybank, what's your legal
13 objection? He's identified them. He said he kept
14 them in the course of business. Now, I'll hear you on
15 some relevancy argument.

16 MR. MAYBANK: I think it's relevant. I don't
17 think there's an objection as to legal standing. I
18 would just say for completeness maybe we could move
19 the entire package of reports in. But that's fine,
20 Your Honor.

21 THE COURT: Well, if you want to do that, where
22 is it?

23 MR. MAYBANK: I don't know yet. That's why I'm
24 moving in this direction.

25 THE COURT: You're moving around trying to find

1 it, huh?

2 MR. MAYBANK: Yes, Your Honor.

3 But, no, without --

4 THE COURT: Okay. Do you need time to find it?

5 MR. MAYBANK: -- without objection. No, we'll
6 accept these reports as being what they are.

7 THE COURT: Hold on a second. What number is
8 that? That's 44. 44 through 48 admitted without
9 objection.

10 [Whereupon, Plaintiffs' Exhibit Numbers 44
11 through 48 are admitted into evidence by the Court]

12 MR. MCDONALD: Your Honor, then I also have
13 Mr. Padgett's --

14 THE COURT: Hold on a second.

15 MR. MAYBANK: And, Your Honor, in furtherance,
16 there was a good article in the South Carolina Bar
17 Review magazine, about a month ago, in terms of
18 reports of experts being submitted as evidentiary
19 issues in that they're replete with hearsay --

20 THE COURT: Well, I understand that.

21 Do you want to -- you just said you might want
22 the report, entire report, admitted. Now, that's what
23 he was getting ready to do. Which is it?

24 MR. MAYBANK: I think --

25 THE COURT: Do you want it admitted or not

1 admitted?

2 MR. MAYBANK: No. We would object to its
3 submission as being hearsay, Your Honor.

4 THE COURT: All right. Well, for the record,
5 44, 45 and 46, 47 and 48 admitted without objection.

6 MR. MAYBANK: No. That was with objection, Your
7 Honor.

8 THE COURT: With objection.

9 MR. MAYBANK: Yes.

10 THE COURT: Okay. With objection. Excuse me.

11 MR. MAYBANK: Thank you, Your Honor.

12 THE COURT: With objection.

13 Which one are we going to now, Mr. McDonald?
14 What number?

15 MR. MCDONALD: I've got the reports here, that
16 Mr. Maybank objected to, as Plaintiffs' Exhibit --

17 THE COURT: Well, is it marked in any of these
18 books?

19 MR. MCDONALD: It is.

20 THE COURT: What number?

21 MR. MCDONALD: Plaintiffs' Exhibit 32.

22 THE COURT: 32. All right.

23 MR. MCDONALD: 33 -- and I'm just --

24 THE COURT: Mr. Maybank, I mean, I haven't read
25 it. If there's any hearsay, I have no problem

1 redacting it, if that's what you want, in the report
2 itself. Unless he's referring to some documents that
3 would be hearsay, that he reviewed at arriving at his
4 opinion, I think he can do that. But if there's any
5 rank hearsay of so-and-so said so-and-so, I'll be glad
6 for you to redact it.

7 MR. MCDONALD: And in order to move things
8 along, Your Honor, I can just put these in through
9 Mr. Padgett and have Mr. Padgett talk about them.

10 THE COURT: Well, you might, you might not,
11 based on his objection. I know you can move for it,
12 but they might not get in. That's what I should have
13 said. Okay?

14 MR. MCDONALD: I understand.

15 MR. MAYBANK: What I'm trying to figure out,
16 Your Honor, is --

17 THE COURT: I don't have any problem with you
18 moving for it.

19 MR. MAYBANK: -- is that it's dealing with the
20 water intrusion issues that I do not believe are part
21 of this case as it relates today. But, I mean, at the
22 same time --

23 THE COURT: Mr. Bundy, let me ask you this. I
24 started to ask you this in your opening statements and
25 I didn't ask you that. Are you still trying to claim

1 some water intrusion problems, or money to repair
2 that, from these clients?

3 MR. BUNDY: There are water -- there are
4 problems with the stucco and the brick and we're
5 claiming to have that repaired.

6 THE COURT: The stucco and the brick?

7 MR. BUNDY: Stucco and the brick.

8 THE COURT: Then, Mr. McDonald, where is his --
9 does his report relate to the stucco and the brick or
10 the windows?

11 MR. MCDONALD: It relates to both the stucco and
12 the brick and the windows.

13 THE COURT: Well, for purposes --

14 MR. MCDONALD: Some of our reports relate to the
15 windows.

16 THE COURT: -- of what was just said, we'll
17 redact whatever is related to windows. Okay?

18 MR. MCDONALD: And I have no problem with that,
19 as far as defects related specifically to the windows
20 themselves. And I don't believe that Mr. Padgett's
21 most recent report on the defects related to the code.
22 And inherent defects in the windows are in that
23 packet.

24 MR. BUNDY: I don't believe --

25 MR. MCDONALD: So there is some reference to the

1 windows --

2 MR. BUNDY: I don't believe the documents are
3 being offered for that purpose.

4 THE COURT: Mr. Maybank, as far as the windows
5 are concerned, I'll be happy to -- what's your
6 objection, as far as the report?

7 MR. MAYBANK: Well, I think to the -- well, I
8 really don't know if I have an objection, quite
9 frankly, Your Honor, because the way --

10 THE COURT: Well, if you don't, then I'm going
11 to admit it.

12 MR. MAYBANK: Well, the problem that I have is
13 I've got my own expert who's going to come up here and
14 testify as to the water intrusion causing the problems
15 to the various areas, as well. So I think without
16 objection we can -- that's fine.

17 THE COURT: What number --

18 MR. MAYBANK: -- use Padgett's reports.

19 THE COURT: -- is it? 44? I'm sorry. 32? Is
20 that the right number?

21 MR. MCDONALD: 32, yes, Your Honor, through 42.

22 THE COURT: 32 through 42. No objection; is
23 that correct?

24 MR. MAYBANK: That is correct, Your Honor.

25 THE COURT: 32 through 42 admitted without

1 objection. That's Mr. Padgett's reports.

2 [Whereupon, Plaintiffs' Exhibit Numbers 32
3 through 42 are admitted into evidence by the Court]

4 Q. [Mr. McDonald] Mr. Chiovarou, turn to Exhibit
5 157.

6 A. Yes, sir.

7 Q. Do you recognize that document?

8 A. Yes, sir.

9 Q. Does it relate to your -- the wood floors in
10 your unit?

11 A. Yes.

12 Q. And it is dated September 9th, 2008?

13 A. It is.

14 Q. Was there any fix of your wood floors from the
15 2007 until September 9th of 2008?

16 A. There were attempts.

17 Q. What do you mean?

18 A. Not that far long after my floors popped up --
19 and it literally was six inches, so you had, you know,
20 this big wave in the middle of my master bedroom. And
21 they sent a gentleman in. He called himself an expert on
22 flooring. And he came in with a circular saw and he cuts
23 through the -- right through the middle of my room and he
24 cuts a gash right down the center of my -- right down the
25 center of my master bedroom, right down the center of my

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1 dining room at that point in time, which I used as a
2 study, and pushed it down. Used a little caulking to fill
3 the hole and said, luxury condominiums.

4 So, yeah, they did a little remediations. But
5 then it popped up again and again and again and again, and
6 then it separated, and then it started to do all sorts of
7 things, so they did some small things that did not work.

8 Q. And that was related to the wood floors in your
9 unit specifically?

10 A. Yes, sir.

11 Q. And also at this time -- it's been admitted into
12 evidence, Mr. Padgett's report -- as of sometime in 2008,
13 what did the board become aware of with regard to the
14 issues at The Oaks in March?

15 A. Gee Whiz. My wife puts it best. She said to
16 me, honey, the windows don't work; right? And I said, no,
17 honey, the windows don't work. She goes, the floors don't
18 work, honey. And I said, no, honey, the floors don't
19 work. She goes, the walls don't work, do they? No,
20 honey, the walls don't work. What works here? What works
21 here? I said, honey, another quality job by Carriage
22 Hill. That's our statement in-house. Every time we hear
23 another issue come up -- and there's been hundreds, if not
24 thousands, of issues -- we say in our house, another
25 quality job by Carriage Hill. And I call them Brothers

1 Holy Drink [phonetic], because they never addressed them.

2 MR. MCDONALD: I would move 157 into evidence.

3 THE COURT: Any objection to 157?

4 MR. MAYBANK: I would object, yes, Your Honor.

5 Hearsay. It's full of third-party -- it looks like
6 some type of research done that we have no foundation
7 for.

8 MR. MCDONALD: And, Your Honor, I'm not offering
9 it for the truth of the matter asserted. I'm offering
10 it as notice from Mr. Chiovarou to Megan at Carriage
11 Hill as of September 9th, 2008, that there's problem
12 with the installation of his hardwood floors.

13 THE COURT: Where in that does it show that?

14 MR. MCDONALD: Yes, sir, Your Honor.

15 THE COURT: Show me where.

16 MR. MCDONALD: Ms. Megan: [Reading] I've done
17 some research about the installation of the hardwood
18 floors --

19 THE COURT: Where are you reading from?

20 MR. MCDONALD: I apologize. At the very top,
21 Your Honor, on 157. This is his e-mail.

22 THE COURT: This is to Megan. And Megan is with
23 who?

24 MR. MCDONALD: She's with the developer,
25 Carriage Hill.

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1 THE COURT: Carriage Hill. Okay. I'll allow
2 that one paragraph in, out of 157, for notice as to
3 Carriage Hill only. Okay?

4 MR. MCDONALD: Thank you, Your Honor.

5 THE COURT: I'll exclude the balance of it.

6 157 admitted with objection only as to notice in
7 the first paragraph, notice to the developer --

8 MR. MCDONALD: Thank you, Your Honor.

9 THE COURT: -- about the problems with the
10 floor.

11 [Whereupon, Plaintiffs' Exhibit Number 157 is
12 admitted into evidence by the Court]

13 Q. [Mr. McDonald] Take a look at 158, sir.

14 A. Yes, sir.

15 Q. What do you -- do you recognize that document?

16 [Whereupon, the witness reviews documents]

17 A. Yes. It's a note back from Megan that says it's
18 already been addressed and do a warranty claim form if you
19 have more problems with it.

20 Q. [Mr. McDonald] What's already been addressed,
21 sir?

22 A. The floor problems.

23 Q. And what did she tell you to do?

24 A. Fill out a warranty form.

25 Q. If we go back to Exhibit 153 -- do you have that

1 in front of you, sir -- already admitted into evidence.

2 A. Yes.

3 Q. Does that -- is this a warranty claim form with
4 regard to the wood floors?

5 A. Yes, it is.

6 Q. What they're telling you eighteen months later
7 is fill out another warranty claim form?

8 A. Yes.

9 MR. MCDONALD: Move 158 into evidence.

10 THE COURT: Any objection to 158?

11 MR. MAYBANK: No objection.

12 THE COURT: All right. 158 admitted without
13 objection.

14 [Whereupon, Plaintiffs' Exhibit Number 158 is
15 admitted into evidence by the Court]

16 Q. [Mr. McDonald] Have you got Exhibit 159 in
17 front of you, sir?

18 A. Yes, sir.

19 Q. Do you recognize that document?

20 A. Yes, I do.

21 Q. What do you recognize it to be?

22 A. This is a note from the board of directors to
23 the members of the homeowners association.

24 Q. And what was the purpose of this note?

25 A. The purpose of this note was that we were

1 probably now seven months or so into understanding the
2 gravity and the depth of all the quality issues that we
3 were facing with the development.

4 Q. And was the board informing its homeowners of
5 that?

6 A. Yes. We were informing of our course of action
7 to date, at that point in time, October the 15th, 2008.

8 MR. MCDONALD: Move 159 into evidence.

9 THE COURT: Any objection?

10 MR. MAYBANK: No objection.

11 THE COURT: 159 admitted without objection.

12 [Whereupon, Plaintiffs' Exhibit Number 159 is
13 admitted into evidence by the Court]

14 Q. [Mr. McDonald] Do you have 161 in front of you,
15 sir? How about 161 and 162

16 [Whereupon, the witness reviews documents]

17 A. Yes. I do have them now.

18 Q. [Mr. McDonald] Okay. Do you recognize those
19 documents?

20 A. Yes.

21 Q. What do you recognize them to be? Let's talk
22 about 161 first.

23 A. Okay. These are the board of directors
24 meetings, January, 2008.

25 Q. Did you-all keep -- and are they board of

1 directors meetings through 2008?

2 A. Yes.

3 Q. And did you-all keep these in the ordinary
4 course of business?

5 A. Yes.

6 MR. MCDONALD: I move 161 into evidence.

7 THE COURT: 161. Any objection?

8 MR. MAYBANK: One moment, Your Honor.

9 [Whereupon, Mr. Maybank and Mr. McDonald confer]

10 MR. MAYBANK: Your Honor, I just want to make
11 sure the record reflects that we are indicating that
12 161 are minutes, but contained within are letters from
13 Mr. Behringer to -- I'm sorry -- from Mr. Chiovarou to
14 Mr. Behringer, that there's more than just minute
15 meetings [phonetic] contained here. And if we've
16 already agreed to allowing it in without objection, I
17 don't mind it. But I just wanted that clarity for the
18 record.

19 THE COURT: Tell me if you've already admitted
20 it. I have no earthly idea.

21 MR. MCDONALD: Yes. July 22nd letter --

22 THE COURT: I'm sure Mr. McDonald knows.

23 MR. MCDONALD: -- admitted as 156. It was
24 admitted as 156.

25 MR. MAYBANK: That's fine.

1 No. I said no objection, since it's already
2 been admitted.

3 THE COURT: 161 admitted without objection.

4 [Whereupon, Plaintiffs' Exhibit Number 161 is
5 admitted into evidence by the Court]

6 Q. [Mr. McDonald] And then 162, Mr. Chiovarou. Do
7 you have that in front of you?

8 A. Yes, I do.

9 Q. What do you recognize that to be?

10 A. Construction meeting March 4, 2009, with
11 Mr. Sweeney, Mr. Padgett and Jerry Rumplick. Hey, he
12 made it in.

13 Q. And were those -- and is Exhibit 161 inclusive
14 of the minutes of the board in 2009?

15 MR. MAYBANK: Your Honor --

16 A. You meant 62.

17 MR. MAYBANK: -- the witness is being quite
18 hostile to my clients, the name-calling, the --

19 THE COURT: That's fine.

20 MR. MAYBANK: -- the insinuations.

21 THE COURT: I mean, he needs to get it off his
22 chest. Let him vent. Okay?

23 MR. MAYBANK: I understand, Your Honor.

24 THE COURT: Let him vent. He can vent. I'm not
25 going to -- he's not going to influence me with his

1 venting. Okay?

2 MR. MAYBANK: Very good, Your Honor.

3 THE COURT: But let him -- this is his
4 opportunity. He's been waiting five years. Okay?
5 Let him go. All right?

6 MR. MCDONALD: I would move Exhibit 162 into
7 evidence.

8 THE COURT: Any objection to 162?

9 MR. MAYBANK: Just to clarify: it appears that
10 -- is he supposed to be on the minutes for 2009?

11 THE COURT: The 2009 minutes.

12 MR. MAYBANK: 2009 minutes.

13 THE COURT: 2009 minutes.

14 MR. MCDONALD: Have you got something?

15 MR. MAYBANK: Well, you've got several dates in
16 here. March 4th, April 15th.

17 MR. MCDONALD: Yes. You're exactly right. It's
18 the minutes from 2009.

19 MR. MAYBANK: Okay. No objection.

20 THE COURT: 162 admitted without objection.

21 [Whereupon, Plaintiff's Exhibit Number 162 is
22 admitted into evidence by the Court]

23 Q. [Mr. McDonald] And very briefly, Mr. Chiovarou,
24 on the second page of 162 there's a financial review --

25 A. Sure.

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1 Q. -- included in the minutes of April 15th, 2009.

2 A. Yes.

3 Q. It lists a capital reserve amount.

4 A. Yes.

5 Q. Okay. It's \$16,155.86; correct?

6 A. Yes, sir.

7 Q. I don't understand. If you-all were aware of
8 the problems, why weren't you putting more money in your
9 capital reserve account?

10 A. Well, we had already at that point in time
11 assessed, minimally, for \$3,000 of each HOA member to
12 begin to fight the battle, to begin to hire -- hiring
13 subject-matter experts in engineering, like Mr. Padgett.
14 We had already increased our monthly dues to begin to fund
15 it. We had to adjust every year -- every six months we
16 had to adjust the amount of money we were taking out of
17 the HOA members to just maintain. Maintain. You've also
18 got to understand what was happening here during this
19 period of time is extreme, extreme, economic downturn
20 where we had six or seven or eight people default. And
21 the HOA has to maintain its liquidity, it has to maintain
22 its viability, and when you have a fixed cost to maintain
23 a property like this, you also have to adjust the burden
24 to the HOA members so that you can stay afloat. So if you
25 have a fixed cost of \$1,000 divided by, you know, ten

1 people, that's a pretty simple math problem. But if seven
2 or eight of them default, then you have to adjust to be
3 able to make sure that you're carrying the kitty for the
4 property, because fixed costs don't go away. So
5 understand the time frame here. So we went through a lot
6 of iterations to maintain viability of the board of
7 directors.

8 Q. Did the HOA ever have to borrow any money?

9 A. Yes, it has.

10 Q. Why did it have to borrow money?

11 A. To perform remediations, specifically in -- last
12 year we started to have to, forced to, correct some of the
13 problems. We were very close to a condemnation event of
14 the back of building four. By recommendation of Mr.
15 Padgett -- it was a strong recommendation that we had to,
16 quote, unquote, shore up the building and that we had to
17 actually go in and remediate the back of the building
18 because it was going to fall down. Well, we had almost
19 barely managed through the economic downturn. We went
20 from 345 or \$330 a month, in our HOA fees, up to \$675 over
21 that period of time just to maintain viability. So we had
22 to go out and get a line of credit.

23 Q. What do you mean just to maintain viability?

24 A. You have to pay the bills. I mean, you have --
25 you can't default on your bills. People get their

1 electric shut off, or you can't maintain the yard. I
2 mean, you have to do those things. So that's what I mean
3 by maintaining liability, financial liability, of the HOA.

4 But, yes, we had to take out a loan and that
5 loan specifically was to pay for remediations that we had
6 to perform to avoid condemnation events on the project.

7 Q. How long, sir, have you been on the board?

8 A. I was on the board as an original board member
9 from 2006, December, through to 2011, January, I went off
10 the board for eleven months. Unfortunately, one of our
11 friends wasn't as fortunate as many of us to weather the
12 storm. He had to leave, and I came back on in either
13 October or November of 2011. So I was off the board for
14 about eleven months since 2006.

15 Q. Do you have the pictures that are Exhibit 153 in
16 front of you, sir? 163. Excuse me.

17 A. Yes, I do.

18 Q. And that is a packet of 163-A through 163-H.
19 And we don't need to go through all of them. But I just
20 want you to explain to the Court what these are. Explain
21 to the Court what these are.

22 A. These are pictures from right outside my dining
23 room and kitchen.

24 Q. Did you take these pictures?

25 A. I took these pictures, yes.

1 Q. When did you take them?

2 A. I took them at the point in time where the back
3 of building five was being torn apart and, quote, unquote,
4 mediated.

5 Q. Okay. Take a look at 164, sir.

6 MR. MCDONALD: I would move 163 -- proffer it
7 into evidence, 163-A through H.

8 THE COURT: Any objection? 163-A through 163-H?

9 MR. MAYBANK: Your Honor, to the extent that we
10 don't know exactly what this damage is representing.
11 I don't know if it's window problems, water problems,
12 stucco problems, brick problems, or what they're
13 alleging through these different photographs, or all
14 of the above. It may be --

15 THE COURT: I guess somebody is going to have to
16 tie that in later. I'll admit them, subject to
17 relevancy at a later time.

18 MR. MAYBANK: Thank you, Your Honor.

19 [Whereupon, Plaintiffs' Exhibit Numbers 163-A
20 through 163-H are admitted into evidence by the Court]

21 Q. [Mr. McDonald] 164-A through 164-E?

22 A. Yes, sir.

23 Q. Do you recognize those pictures?

24 A. Yes, sir.

25 Q. Did you take them?

1 A. Yes, I did.

2 Q. When did you take them?

3 A. On or about the time that they were remediating
4 the back of building five.

5 MR. MCDONALD: I would move Exhibit 164-A
6 through E into evidence.

7 THE COURT: Any objection?

8 MR. MAYBANK: Same objection, Your Honor.

9 THE COURT: All right. The same ruling.
10 That's 164-A through --

11 MR. MCDONALD: E, Your Honor.

12 THE COURT: -- E. Okay. Admitted with
13 objection.

14 [Whereupon, Plaintiffs' Exhibit Numbers 164-A
15 through 164-E are admitted into evidence by the Court]

16 Q. [Mr. McDonald] Exhibit 165 A and B?

17 A. Yes, sir.

18 Q. Did you take that picture?

19 A. Yes, sir.

20 Q. When did you take it?

21 A. On or about the same time that remediations on
22 the back of building five was being done.

23 MR. MCDONALD: Okay. I would move Exhibits 165
24 A and B into evidence.

25 THE COURT: 165-A and B?

1 MR. MCDONALD: Yes, sir.

2 THE COURT: Any objection?

3 MR. MAYBANK: Same objection, Your Honor.

4 THE COURT: All right. Same ruling.

5 [Whereupon, Plaintiffs' Exhibit Numbers 165-A
6 and 165-B are admitted into evidence by the Court]

7 Q. [Mr. McDonald] Let's take a look at 166-A
8 through 166-I.

9 A. Yes, sir.

10 Q. Okay. Did you take these pictures?

11 A. Yes, I did.

12 Q. When did you take them?

13 A. This was approximately October or November of --
14 in 2011.

15 Q. And why were you taking these pictures?

16 A. On or about that time, I had to rip out my
17 ceiling in my master bathroom. I had to rip out my
18 ceiling because there was water leaking. And that water
19 came from the fourth floor and/or the third floor of the
20 units above me. So these pictures are of the damage
21 created from the pans being nailed into place, meaning the
22 shower pans being nailed into place, so the -- however it
23 was constructed, you know. You'll see in these documents
24 that the contractor that did these actually nailed the
25 shower pan in place, so the damage that you see below it

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1 is from the water damage that ensued because of it leaking
2 through and ultimately deteriorating down the structure to
3 ducts, as you can see.

4 Q. So is 166-A through 166-I from the unit above
5 your unit?

6 A. These are from the unit above my unit, or two
7 above.

8 Q. And they are taken in the bathroom in the tub-
9 shower area?

10 A. Yes, sir.

11 MR. MCDONALD: I would move Exhibits 166-A --

12 THE COURT: Any objection?

13 MR. MCDONALD: -- through 166-I into evidence.

14 MR. MAYBANK: Same objection, Your Honor.

15 THE COURT: All right. I'm going to admit this
16 with objection.

17 MR. MCDONALD: Thank you, Your Honor.

18 [Whereupon, Plaintiffs' Exhibit Numbers 166-A
19 through 166-I are admitted into evidence by the Court]

20 Q. [Mr. McDonald] Exhibit 167-A --

21 A. Yes, sir.

22 Q. -- through D. Do you recognize those pictures?

23 A. Yes, I do.

24 Q. Did you take them?

25 A. I took them.

1 Q. When did you take them?

2 A. On or about the same time that the previous
3 stack was taken. Sometime in the fall of 2011.

4 Q. Okay. When you say the previous pictures,
5 you're referring to Exhibit 166 --

6 A. Exhibit 166-A, yes.

7 Q. -- proper?

8 A. Yes.

9 Q. And what is being depicted in Exhibit 166 --
10 7 A through D?

11 A. Water running through the lights, in my master
12 bathroom, into my tub.

13 Q. And what is above, directly above, that; do you
14 know?

15 A. The master bathroom of building -- of unit 3-A.

16 MR. MCDONALD: I would move Exhibits 167-A
17 through 167-D into evidence.

18 THE COURT: Any objection?

19 MR. MAYBANK: Same objection, Your Honor.

20 THE COURT: Admitted with objection.

21 [Whereupon, Plaintiffs' Exhibit Number 167-A
22 through 167-D are admitted into evidence by the Court]

23 Q. [Mr. McDonald] Mr. Chiovarou, go back to
24 Exhibit 167.

25 A. Yes, sir.

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1 Q. You took this picture; right?

2 A. Yes, sir.

3 Q. You saw the water coming through the light
4 fixture; right?

5 A. Yes, I did.

6 Q. Did you feel it? Did you stick your hand out
7 there and feel the water?

8 A. I felt it, stuck my hand out.

9 Q. Exhibit 168-A through G.

10 A. Yes, sir.

11 Q. Do you recognize these documents?

12 A. Yes, I do.

13 Q. Did you take them?

14 A. Yes, I did.

15 Q. When did you take them?

16 A. I took them sometime in 2010.

17 Q. Okay. And what are they?

18 A. They're pictures of my livingroom floor with the
19 what can only be called a -- minimally, a quarter-inch gap
20 in my living room. Now, this wasn't the original part of
21 the floor that I mentioned in 2007, 2008 and 2009. This
22 was a different part of the floor of my unit separating,
23 at this point in time, that I could put three quarters,
24 literally, within the hole. And you can see the tongue
25 and the groove. The tongue is actually outside the groove

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1 in the center of my room. So that shows you my living
2 room in my unit.

3 Q. Did you actually put these quarters in this
4 crack?

5 A. Yes, I did.

6 Q. Are these -- are the flooring conditions that
7 are depicted in Exhibit 168-A through 168-G similar or the
8 same as the flooring conditions that we discussed earlier
9 in the warranty forms and the e-mails?

10 A. Similar, but different. It just means that the
11 whole floor -- we didn't have separation for a year or
12 two, until later, in the dining room and living room. So
13 it was the dining room, the bedroom and the hallway. And
14 then it was the main living area, which in the area I
15 purchased is is a common living area, a living room,
16 dining room and kitchen. So pretty much there's a rut
17 going all the way up my floor, you know, a quarter inch
18 wide.

19 And it's interesting. It goes in and out, based
20 upon year. And every year we see it, it pops up farther
21 in different spots. So you can go there and you can tap
22 it and you can hear it's not connected or glued to the
23 concrete. And it's all over my house.

24 THE COURT: Any objection to 168?

25 MR. MAYBANK: Same objection, Your Honor.

1 THE COURT: Admitted with objection.

2 [Whereupon, Plaintiffs' Exhibit Numbers 168-A
3 through 168-I are admitted into evidence by the Court]

4 Q. [Mr. McDonald] Exhibit 169, sir. Do you have
5 that in front of you?

6 THE COURT: That's the minutes of 2010. Any
7 objection?

8 MR. MAYBANK: No, Your Honor.

9 THE COURT: All right. 2000 -- excuse me.
10 169 admitted without objection. Minutes of the
11 board for 2010.

12 [Whereupon, Plaintiffs' Exhibit Number 169 is
13 admitted into evidence by the Court]

14 THE COURT: Anything you want to point out
15 to these boards to the Court very briefly? These
16 minutes --

17 MR. MCDONALD: Not at this point, Your Honor.

18 THE COURT: -- these minutes?

19 MR. MCDONALD: Not at this point, Your Honor.

20 THE COURT: Okay.

21 MR. MCDONALD: Thank you.

22 Q. [Mr. McDonald] All right, sir. Do you have --
23 at some point, did the board instruct Mr. Padgett to come
24 up with a scope of repair out there?

25 A. Multiple times. Currently, as a matter of fact.

1 Q. And how did that process work?

2 A. When a defect is found, we call Ted.

3 Q. And at some point did Mr. Padgett -- did the
4 board instruct Mr. Padgett to come up with a project-wide
5 scope of repairs?

6 A. Yes, sir, he did.

7 Q. And did he, in fact, do that?

8 A. Yes, he did.

9 Q. And did he deliver it to the board?

10 A. Yes, he did.

11 Q. And that would be inclusive in the Padgett
12 documents that were admitted earlier; correct?

13 A. Yes.

14 Q. And what did the board do when they got the
15 project-wide scope of repairs?

16 A. Well, we analyzed it. I mean, we looked at --
17 we sliced it and diced it, you know, and tried to
18 understand, you know -- because this was such a fluid
19 environment, we tried to understand whose responsible for
20 what. We tried to look at it from the perspective of how
21 we would charge the homeowners association members for
22 repairing these places. We looked at it from every
23 perspective you can imagine.

24 Q. Did the board have occasion to put Mr. Padgett's
25 scope of repair -- to get an estimate?

1 A. Yes.

2 Q. And I'll show you what has been marked as
3 Plaintiffs' Exhibit 49 and ask if you recognize that
4 document.

5 A. Yes. It's the cost estimate created by
6 Southeastern Construction.

7 Q. And did the board, in fact, receive that
8 document --

9 A. Yes, we did.

10 Q. -- Plaintiffs' Exhibit 49?

11 A. Yes, we did.

12 Q. What did it understand it to be?

13 A. We understood it to be a full scope of work to
14 correct -- or I should state it better -- to make The Oaks
15 at Rivers Edge what we purchased to begin with.

16 So it's a 12 million -- or an 11.9-million-
17 dollar scope of work to do what should have been done in
18 2004 and '05 to make a place where you could live, market,
19 not hear your neighbors pee, all sorts of things.

20 Q. Now, there are certain items in that Exhibit 49
21 that you are not claiming here today; correct?

22 A. Yes. From an estimate perspective, I mean,
23 clearly this has been very fluid. It's been very fluid
24 over the last few weeks. And my understanding, though I
25 haven't been privy to the documentation yet, is that some

1 of the items that were completed -- or not completed, but
2 settled upon, are going to be removed from this statement
3 of work. And, roughly, if you could point that towards
4 me, because I can't see it. I think Mr. Bundy went
5 through this earlier. This is everything between 13.4
6 million and 9.25 -- so the scope of services will take out
7 anything that was settled upon in the previous settlements
8 with other defendants.

9 Q. And the board is relying on its estimator to
10 show what happens when you take those numbers out?

11 A. Of course.

12 Q. And that would be the windows?

13 A. Yes.

14 Q. Okay. And the balusters?

15 A. Yes.

16 Q. And the window treatments; right?

17 A. Yes. Yes.

18 Q. Now, in addition to the cost of repairs, after
19 you move -- after you remove those items that have been
20 taken out, okay, the board -- has the board had occasion
21 to see what it's going to take to move people in and out?

22 A. Yes. I did that one myself.

23 Q. Okay. And what did you do? Tell the Court what
24 you did.

25 A. Well, I called a couple of different vendors

1 around Charleston, that are climate-control storage
2 facilities, because our estimate is it's going to take a
3 minimum of sixty days to move people out of the path, fix
4 their units, remediate the sound properly, and then move
5 them back in. Also a moving company. So roughly we found
6 a moving company that would do it for \$130 an hour. Come
7 in, pack up a house, bring it to a climate-controlled
8 environment, leave it there for sixty days, and then take
9 it and replace it in the home after remediations is
10 complete.

11 Q. And is that, in fact, part of the HOA claim,
12 what it's going to cost?

13 A. Yes. Of course.

14 MR. MAYBANK: Your Honor, we would object at
15 this time as that being hearsay as to what a third
16 party would do as it relates to moving anybody in and
17 out and the costs.

18 If they want to present -- if Mr. Chiovarou and
19 the board want to bring this gentleman in, or these
20 folks in, we'll be more than happy to listen to their
21 testimony as to their costs so we can get down to a
22 fuller understanding of what that --

23 THE COURT: Where is that in Exhibit Number 49?
24 Is it that --

25 MR. MCDONALD: It's not in Exhibit Number 49,

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1 Your Honor. It's Plaintiffs' Exhibit -- it's an
2 addition. Plaintiffs' Exhibit 178. I'm sure it's on
3 your list.

4 THE COURT: 178?

5 MR. MCDONALD: 178. It's a document created
6 by --

7 THE COURT: You need to learn to at least stay
8 in one book.

9 MR. MCDONALD: It's an addition, Your Honor.
10 It's 178. There's a copy right there. It's a
11 document created by Mr. Chiovarou.

12 THE COURT: You haven't put it in the book?

13 MR. MCDONALD: Have not put it in the book.

14 THE COURT: Okay. This is Plaintiffs' Number
15 178?

16 MR. MCDONALD: Yes, sir, Your Honor.

17 THE COURT: Have you shown -- Mr. Maybank, have
18 you seen it?

19 MR. MAYBANK: Your Honor, we received that on
20 this weekend. We've barely had a chance to look at
21 it.

22 THE COURT: What's your legal objection? I
23 assume we're talking about 178. He's already
24 testified to 130 for an hour. Is your objection to
25 strike that, and what's your legal objection to do

1 that? Or do --

2 MR. MAYBANK: It's hearsay, Your Honor.

3 THE COURT: -- you have an objection to 178?

4 MR. MAYBANK: Yes, sir, it's 178.

5 THE COURT: I believe you said in opening
6 statements y'all had moved some people out. You
7 should -- ought to know what the cost would be.

8 MR. MAYBANK: That is correct, Your Honor. But
9 we did not, to the best of my knowledge, go through
10 whoever they have listed on here, this Island Moving
11 Company and AAA Downtown Storage.

12 THE COURT: I mean, does it vary from what it
13 cost your client to move the people out when y'all
14 were doing the noise work --

15 MR. MAYBANK: I don't --

16 THE COURT: -- attenuation work?

17 MR. MAYBANK: I don't know, Your Honor. I can
18 try to find out for you.

19 THE COURT: I mean, they can bring in the mover,
20 but I hate to have to do that, okay? Now, if you want
21 them to do that, that's fine. I mean, I have no idea
22 whether it's 130 or 430.

23 MR. MCDONALD: And I would just suggest, Your
24 Honor, on that note, that it just goes to weight.
25 This is what he's --

1 MR. MAYBANK: Well, he's saying it's hearsay,
2 and he doesn't have the expertise to give that figure.
3 I assume that's what he's saying.

4 MR. MCDONALD: That is correct, Your Honor.

5 MR. BUNDY: If I may, this is no different from
6 asking the witness what somebody's phone number is.
7 He --

8 THE COURT: I understand. I understand your
9 argument. I'm just -- let Mr. Maybank get his
10 thoughts together and we'll talk about it.

11 MR. MAYBANK: That was my objection, Your Honor.

12 THE COURT: All right. What's your legal
13 objection?

14 MR. MAYBANK: Is that it's hearsay. And no
15 qualification for giving these figures --

16 THE COURT: I think he testified that was what
17 he had received.

18 MR. MAYBANK: Does he have a quote?

19 MR. MCDONALD: We can certainly explain the
20 process that he went to.

21 THE COURT: Well, lay some foundation.

22 MR. MCDONALD: Certainly.

23 THE COURT: For now, I'll sustain his objection.

24 MR. MAYBANK: Your Honor, if I may, we do have
25 some --

1 THE COURT: I just sustained the objection. I'm
2 sorry. What?

3 MR. MAYBANK: We do have some documentation with
4 regard to the cost. One of the cost I see very
5 quickly is labor at \$79.30 an hour, which we paid,
6 versus \$130 an hour, which they're now claiming they
7 would have to pay to move the material, the household
8 things. So we can see a substantial difference there.

9 MR. MCDONALD: And that's certainly --

10 THE COURT: Well, lay some foundation and --

11 MR. MCDONALD: Certainly.

12 THE COURT: -- I'll let him make his objection,
13 and rule.

14 Q. [Mr. McDonald] Mr. Chiovarou --

15 THE COURT: At this point in time, I'm going to
16 sustain his objection.

17 MR. MAYBANK: Thank you, Your Honor.

18 Q. [Mr. McDonald] Mr. Chiovarou, do you have
19 Exhibit 178 in front of you?

20 A. Yes, I did.

21 Q. Who created Exhibit 178?

22 A. I did.

23 Q. How did you go about creating Exhibit 178?

24 A. I made multiple calls yesterday, to multiple
25 organizations, and found what I found to be -- found a

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1 very reputable company that would come in and take real
2 good care of the physical assets of all of our members. I
3 didn't want to take some fly-by-night person that would
4 just come in and throw stuff in a truck. I wanted someone
5 who was going to take care of our goods, and that was
6 Island Moving. I spent time on the phone with them. \$130
7 [one hundred thirty dollars] per hour, and the estimate is
8 seven hours per each way to take a house, pack it up, move
9 it out, put it in conditioned storage, and then take it
10 back sixty days later. \$250 a night, well, that's the
11 standard hotel rate in any town you can find.

12 And the other thing is I went to AAA Downtown
13 Storage. I also went to Island Moving. Compared their
14 prices. And they're within say ten percent when it comes
15 to a sixty-day period of time. It's just an estimate of
16 eight rooms being moved into a storage facility. So, I
17 mean, I did my due diligence. Is it perfect? Absolutely
18 not. The world is not a perfect place.

19 Q. Now, is there anything else that you as the
20 board of directors had to consider in arriving at this
21 number, with regard to tenants and things like that, in
22 the future when you're moving people?

23 A. Could you repeat the question, please?

24 Q. Sure.

25 Is there anything else that the board took into

1 account with regard to this number, with regard to units
2 that might be leased by tenants and things like that,
3 moving forward in asking for this six forty-one five-
4 twenty for move-out costs?

5 A. It was not inclusive of rents that might be lost
6 during that period of time. It was not -- I mean, so it
7 wasn't a thorough analysis. I guess I -- I guess the
8 members will hold me accountable for that. So, no, it's
9 not a hundred percent complete.

10 Q. So 178 is your -- on behalf of the board, your
11 investigation into what it would cost to meet the board's
12 obligation in exercising its easement to perform these
13 repairs?

14 A. Correct.

15 MR. MCDONALD: Your Honor, I would move Exhibit
16 178 into evidence.

17 THE COURT: Mr. Maybank?

18 MR. MAYBANK: Subject to my objections, Your
19 Honor, previously put on the record, Your Honor, as to
20 hearsay, foundation. As far as to the -- I don't even
21 understand the lodging of \$250 a day, for sixty days,
22 at \$540,000

23 THE WITNESS: I can take you through that, if
24 you would like, sir.

25 THE COURT: Sir, be quiet, please.

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1 THE WITNESS: Yes, sir.

2 MR. MAYBANK: -- I don't know the foundation
3 for --

4 THE COURT: Don't interrupt the attorney. I
5 want to hear what everybody is saying. I can't hear
6 both of you at the same time. This lady can't take it
7 down --

8 THE WITNESS: Yes, sir.

9 THE COURT: -- with two people talking. Okay?
10 So we just need one person talking.

11 All right. Please, Mr. Maybank.

12 MR. MAYBANK: Yes, sir.

13 My objection on that was as to the foundation of
14 the two fifty per day. I understand -- I see the
15 Island Moving, if that's what he's relying on, the
16 mover and the storage. I don't understand where \$250
17 a day for sixty days, for each individual unit owner,
18 of \$15,000 came from.

19 THE COURT: Mr. McDonald, be glad to hear you.

20 MR. MCDONALD: Yes, sir.

21 I believe he testified to that. What he used
22 was a standard. And I think very -- for these type of
23 condominiums, what they're supposed to be, a very
24 frugal number, a standard hotel rate of \$250 a day,
25 which would be inclusive of meals. These people live

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1 there. They have kitchens. They have to eat out when
2 they're not going to be in their house. And I think
3 his testimony was simply the board has an obligation
4 to, when they exercise their easement to repair the
5 common elements, okay, to take these things into
6 account. And just as this man has done for five
7 years, he's trying to exercise that obligation as best
8 as he can. And if it's --

9 THE COURT: I understand --

10 MR. MCDONALD: -- in a situation where the
11 movers have to come in and --

12 THE COURT: -- that. But the question is it's
13 hearsay. That's the question. What exception --

14 MR. MCDONALD: And I --

15 THE COURT: -- do you think it would come under?

16 MR. MCDONALD: I think it would come under the
17 exception of --

18 THE COURT: -- I guess that's the specific
19 question.

20 MR. MCDONALD: -- basically, it's a business
21 decision as he's made. He's not saying he heard \$250
22 from someone. He's saying that from his analysis,
23 that is an average hotel rate in Charleston. He
24 travels a lot on business and that that's what he
25 would take into account when setting up the budget to.

1 exercise the board's easement to perform these
2 repairs.

3 MR. BUNDY: Your Honor, if I may. I don't want
4 to interrupt. But --

5 THE COURT: I'll be glad to hear from you.

6 MR. BUNDY: I think our Supreme Court -- I think
7 our Supreme Court has held, at least on several
8 occasions, that construction estimates are admissible.
9 Clearly, you're not going to require a contractor to
10 bring in everybody who gave --

11 THE COURT: Well, I understand.

12 But these are not necessarily construction
13 estimates. Okay? I mean --

14 All right. It's ten minutes after 1:00. We're
15 going to break at this time, anyhow. What time y'all
16 -- how much time y'all will need for lunch and get
17 your thoughts back together?

18 MR. BUNDY: Whatever --

19 THE COURT: Let's say -- Mr. Maybank?

20 MR. MAYBANK: 2:30, Your Honor?

21 THE COURT: That will be fine. We'll recess
22 until 2:30.

23 [Whereupon, Court's Exhibit Number 2 is marked
24 by the court reporter]

25 [Whereupon, Court's Exhibit Number 3 is marked

1 by the court reporter]

2 [Whereupon, a recess is taken from 1:12 p.m. to
3 2:52 p.m.]

4 THE COURT: Anybody have any brief about --
5 admissibility one way or the other?

6 MR. MCDONALD: Yes, Your Honor. I just only
7 have my previous argument, this: that the law in
8 South Carolina has always been, and continues to be,
9 that a landowner can testify as to his damages. This
10 is simply a variation of that. Mr. Chiovarou, on
11 behalf of the board of directors, is tasked with
12 determining what the damages are for the property
13 owners association as a result of damage to their
14 property. I think, under that longstanding law, that
15 the only thing he has to have in order to testify to
16 that, under the Reason case against Oshaunasee Realty
17 is a basis in which to testify. So I don't believe
18 Mr. Chiovarou could have come in and said, well, it's
19 going to cost six hundred and thirty-one -- \$641,000
20 in order to exercise these rights and then they would
21 have asked him on cross, do you have a basis. And
22 that's the only caveat in whether or not a landowner
23 can testify as to their damages. So I think it's
24 necessary that he went through this process in order
25 to establish the basis, on behalf of the HOA, in order

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1 to establish those damages.

2 Another way of handling it would be he can
3 certainly testify to it. I just think the document
4 spells it out a little better so that he can show how
5 he arrived at that basis for his damages. That's the
6 only point I would raise.

7 THE COURT: Okay.

8 MR. MAYBANK: Your Honor -- and I don't somewhat
9 disagree with Mr. McDonald. You know, \$250 a day,
10 where? New York, Charleston, Berkeley, Mt. Pleasant,
11 downtown, North Charleston? I don't know. There's no
12 foundation for the number. There's no way or
13 reasoning how he got to it. So that we would ask if
14 it's --

15 THE COURT: He's talking about the rate per day.
16 The --

17 MR. MAYBANK: \$250 a day.

18 THE COURT: -- \$250 a day is what you're
19 concerned about?

20 MR. MAYBANK: Yes, sir.

21 THE COURT: Not the storage -- the moving and
22 the storage?

23 MR. MAYBANK: Well, I think somewhat those two.
24 But, you know, if it is what it is, it is what it is.
25 And he's got a quote at \$130 an hour moving --

1 THE COURT: I'm going to go ahead and overrule
2 your objection and admit it.. Okay?

3 MR. MAYBANK: Thank you, Your Honor.

4 THE COURT: And you can deal with him on the two
5 fifty per day on cross-examination.

6 MR. MAYBANK: Thank you, Your Honor.

7 THE COURT: All right. Thank you very much.

8 178 is admitted with objection.

9 [Whereupon, Plaintiffs' Exhibit Number 178 is
10 admitted into evidence by the Court]

11 MR. MCDONALD: Thank you very much, Your Honor.

12 Q. [Mr. McDonald] Mr. Chiovarou, when we left off,
13 I handed you a document marked Plaintiffs' Exhibit 49,
14 which is not into evidence, and I would just ask you is
15 that -- reiterate, is that the estimate that you received,
16 that the board received, from the contractor pricing
17 Mr. Padgett's scope of work?

18 A. Yes. This was received from Southeastern
19 Construction Company. They were hired and we paid I
20 believe something like \$10,000 for them to do an objective
21 estimate on what they believed, as a contractor in South
22 Carolina, would be to correct the buildings to -- back to
23 the condition that we believe we purchased them at.

24 Q. To do the work that Mr. Padgett said needed to
25 be done?

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1 A. Correct.

2 Q. And what is the date on that document?

3 A. The date on that document is February 15th,
4 2011.

5 Q. And since that time, the HOA has, in fact,
6 removed portions of that cost of repair out of that
7 document?

8 A. Correct.

9 Q. And there's going to be a new document. And
10 you're relying on Southeastern for whatever it is they say
11 on that document --

12 A. Yes.

13 Q. -- correct?

14 A. Yes, sir.

15 MR. MAYBANK: Objection, Your Honor. How does
16 he know if he's going to rely on it if he doesn't know
17 what it is?

18 THE COURT: I'll strike that and sustain the
19 objection.

20 MR. MAYBANK: Thank you.

21 MR. MCDONALD: Thank you, Your Honor.

22 Q. [Mr. McDonald] What is the number, the total
23 number, that the HOA is asking from this Court here today?

24 A. \$9,245,690.

25 Q. And that is --

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1 MR. MAYBANK: Objection, Your Honor. He's
2 reading that off of something that somebody wrote on a
3 board.

4 THE COURT: Well, that's fine.

5 MR. MAYBANK: I don't know of any independent
6 knowledge.

7 THE COURT: That's fine. Overruled. Go ahead.

8 Q. [Mr. McDonald] And that is subject to whatever
9 Southeastern does; correct?

10 A. Correct.

11 Q. Thank you. Now, let's shift gears.

12 And that is inclusive of the number that's on
13 Exhibit 178, which is \$641,540; correct?

14 A. Yes, sir.

15 Q. Now, let's switch gears, sir. Well, let me ask
16 you this. Let me back up.

17 Can you tell the Court, as a member of the board
18 of directors for The Oaks at Rivers Edge Horizontal
19 Property Regime, how many hours you've spent dealing with
20 these issues that we're here about today?

21 A. Thousands. And at some points it was twenty and
22 thirty hours a week. You've got -- we had so much
23 activity, for such a prolonged period of time, playing
24 battle -- frankly, you know, we had to hire third parties
25 to do it. We had to assess their abilities. Thousands.

1 Thousands.

2 Q. And do you take those duties seriously?

3 A. I feel as though I am responsible for the
4 outcome of this to all of the members of the owners
5 association, every one of those thirty-six, past and
6 present. I feel I represent them. I take this extremely
7 seriously. I have committed -- I have committed endless
8 hours on this, endless, and have done everything to the
9 best of my ability to be a fiduciary to a large group of
10 people with a large dollar value.

11 Q. Mr. Chiovarou, in addition to all those hours,
12 do you have -- do you have any individual claim?

13 A. Yes, I do.

14 Q. Did you ever try and sell your unit after
15 purchasing it?

16 A. Yes, I did.

17 Q. And when was that?

18 A. That was in 2009, of April, through I believe it
19 was October.

20 Q. And just walk the Court, if you would, through
21 that process, what you did.

22 A. I vetted potential real estate companies and
23 asked them to represent and market my unit.

24 Q. And did you put it -- actually put it on the
25 market?

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1 A. Yes, I did.

2 Q. And what was the asking price, if you would,
3 when you put it on the market?

4 A. The asking price in 2009 was I believe 645,000
5 or thereabouts.

6 Q. And were you able to sell your unit?

7 A. I was not.

8 Q. Do you know why?

9 A. I did not get a bonafide offer.

10 Q. So you didn't receive any offers after putting
11 your unit on the market?

12 A. None.

13 Q. And have you hired an appraiser in this action
14 individually?

15 A. Individual, yes.

16 Q. Okay. And what is his name?

17 A. Donato.

18 Q. And with Atlantic Appraisers?

19 A. Yes. Yes.

20 Q. And are you relying on Mr. Donato's testimony to
21 assess whatever loss of value or loss of market access you
22 may have?

23 A. Yes. He's a subject-matter expert, real estate,
24 in Charleston, yes.

25 MR. MAYBANK: Your Honor, we would object at

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1 this time to any valuations of Mr. Donato coming in,
2 absent him being offered as a witness first, and as to
3 his credentials and how he may have arrived at what he
4 arrived at as to the value of the units.

5 MR. MCDONALD: And, Your Honor, I'm just laying
6 a foundation that he's hired Mr. Donato.

7 THE COURT: Well, all he asked was he hired him.
8 I don't think he's going to tell what his figure was.
9 If he does --

10 MR. MAYBANK: Thank you, Your Honor.

11 THE COURT: -- I'll sustain the objection.

12 MR. MAYBANK: Thank you, Your Honor.

13 THE COURT: I mean, let him ask a question, so I
14 can hear it, before you make your objection, because I
15 don't know what he's going to ask him. I know where
16 you think he's headed, but -- I appreciate your
17 ingenuity.

18 MR. MAYBANK: Thank you, Your Honor.

19 THE COURT: Go ahead.

20 Q. [Mr. McDonald] And have you, in fact, paid
21 Mr. Donato to analyze --

22 A. I paid out of my own pocket, and I believe it
23 was \$750.

24 Q. To analyze your situation, your individual
25 situation?

1 A. Yes.

2 Q. Outside of whatever the HOA is claiming?

3 A. Yes, sir.

4 Q. And are you asking the Court, upon Mr. Donato's
5 testimony, to award that to you individually as damages?

6 A. Yes.

7 Q. And what else are you asking -- individually,
8 are you asking this Court to do?

9 A. Individually, I'm asking for the replacement of
10 my hardwood floors.

11 Q. Why are you asking for the replacement of your
12 hardwood floors?

13 A. Because they clearly don't work. I mean,
14 they're popping up. They're broken. They're dangerous,
15 to some extent. I have a little infant running around the
16 house who could get splinters based upon those things.

17 Q. And are those the pictures we looked at earlier
18 of the floors?

19 A. Yes, sir.

20 Q. And have you hired an expert to evaluate what
21 it's going to cost to rip up the floors and put them back
22 down?

23 A. Yes, sir.

24 Q. Is that Southeastern Construction?

25 A. Yes, sir.

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1 Q. And much in the same way that you're relying on
2 Mr. Donato, are you relying on Southeast Construction as
3 to that number?

4 A. Yes.

5 Q. Okay. You're not in the wood flooring business;
6 right?

7 A. No, sir.

8 MR. MCDONALD: Beg the Court's indulgence.

9 [Whereupon, Mr. McDonald and Mr. Bundy confer]

10 MR. MCDONALD: Thank you very much, Mr.
11 Chiovarou. I would ask that you please answer the
12 questions the other lawyers may have.

13 THE WITNESS: Yes, sir.

14 THE COURT: Cross-examination.

15 MR. MAYBANK: Yes, Your Honor. May it please
16 the Court.

17 [Whereupon, Mr. Maybank proffers documents to
18 the Court]

19 THE COURT: Mr. Maybank, which tab did you say?

20 MR. MAYBANK: Yes, sir. I apologize. It's
21 around 164.

22 THE COURT: Mr. Maybank, Mr. Altman, are y'all
23 going to just do one cross or are y'all going to do
24 two crosses for the separate corporations?

25 MR. ALTMAN: One cross, Your Honor. We

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1 represent both --

2 THE COURT: I understand y'all represent them
3 together, but I didn't know if y'all were going to
4 break it up.

5 MR. ALTMAN: No, sir.

6 THE COURT: All right.

7 MR. ALTMAN: Frankly, I don't know what out of
8 those I'm going to use, so if you'll just --

9 [Off the record momentarily]

10 MR. MAYBANK: Mr. Chiovarou, my name is Roy
11 Maybank. I represent Carriage Hill Associates of
12 Charleston and Daniel Island Riverside Developers.

13 CROSS-EXAMINATION

14 BY MR. MAYBANK:

15 Q. I need some clarification just on a few things,
16 because I was a little confused.

17 If you would tell me again about your history
18 and background. I understand that you worked, in 2006,
19 for UBS; is that correct?

20 A. That's correct.

21 Q. Pardon me?

22 A. That's correct.

23 Q. And, specifically, what did you do for UBS?

24 A. I was a broker.

25 Q. What do you mean a broker? Is that --

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1 A. A financial adviser.

2 Q. Pardon me?

3 A. A financial adviser.

4 Q. Did you buy and sell stocks on behalf of
5 individuals?

6 A. Yes, I did.

7 Q. Did you advise individuals on the terms of
8 bonds, stocks, investments, long-term, short-term?

9 A. I don't believe a broker is an adviser. There
10 are multiple laws in effect. Brokers take instruction and
11 are not necessarily fiduciaries unless they have some
12 additional licensing. So I was a broker. And brokers
13 transact business, sometimes make a recommendation based
14 upon third-party analysts and the like, but we don't --
15 we're not fiduciaries, per se, as brokers.

16 Q. Did you ever advise an individual, at any time
17 while at UBS, on buying and selling of stock?

18 A. Typically, the business I ran was run through
19 mutual funds, or caps that were mutual fund based or
20 third-party based -- in other words, money managers and
21 money advisers that are, in fact, fiduciaries. So on
22 occasion, I transacted and recommended stocks to
23 individuals based upon information from my corporation --
24 at that point in time, UBS -- or third-party fiduciaries
25 managing stock portfolios or bond portfolios or some

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1 combination thereof.

2 Q. Sure.

3 So you would use -- you would use information
4 given to you by third parties to advise other parties on
5 how -- on which positions to buy and sell?

6 A. Yes.

7 Q. Did you rely on that information from the folks
8 at UBS as to giving that information on to third parties
9 for buying and selling stocks and bonds?

10 A. There's a caveat at the bottom of every
11 transaction, in that markets go up and down and ultimately
12 you bear the risk.

13 Q. Absolutely. I couldn't have said it better
14 myself.

15 Now, NYST 9, 10, 31: are those different
16 licenses?

17 A. Yes, they are.

18 Q. All right. What did you do to go and get those
19 licenses?

20 A. I had to study for examinations and I had to
21 take the examination and I had to pass that examination
22 with some grade, shall I say.

23 Q. And were those licenses in effect in 2006?

24 A. Some were.

25 Q. Which ones were?

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1 A. 6 and 7.

2 Q. What does that allow you, as a broker, to do?

3 A. That allows me to transact business as an agent
4 of UBS in the state of South Carolina or any state that
5 you're licensed within.

6 Q. I'm trying to think if I've got some friends at
7 UBS. I know I've got others. But when I go to a Merrill
8 Lynch -- is it kind of like going to a Merrill Lynch and
9 having a broker with a 6 and 7 license advise me on stocks
10 to buy and sell?

11 A. If they're an advisor, they own a different
12 license. That's called a certified financial advisor.
13 They are -- they're fiduciaries. So advice and
14 recommendations are two very different things.
15 Fiduciaries and brokers are two very different things.

16 Q. I'm not asking about fiduciary. I'm just
17 talking about did anybody ever have the right to rely on
18 you to give them advice on buying and selling stocks?

19 A. Yes. I -- yes, sure.

20 Q. All right. Did every stock you advised someone
21 on go up?

22 A. No, sir.

23 Q. Lost sometimes, didn't you?

24 A. Yes, sir.

25 Q. That's part of the market, isn't it? Sometimes

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1 it goes up and sometimes it goes down?

2 A. By an educated consumer, yes. Educated in the
3 fact that what they're going to buy could go up and down,
4 at any given point in time, based upon things outside
5 their control.

6 Q. And, now, you have a 9, 10 and 31. Are any of
7 those certified financial planers?

8 A. No, sir.

9 Q. What did you do -- what was the name of your
10 company in 2007?

11 A. Wachovia Financial -- what it was called, and
12 the name of the company was Carena Wealth Management.

13 Q. Carena Wealth Management. Now --

14 A. Yes.

15 Q. -- was that a subspecies within the Wachovia
16 family?

17 A. Yes, it was.

18 Q. Was that a business owned -- kind of carved out
19 by you alone?

20 A. No.

21 Q. Did you have a business partner?

22 A. I did.

23 Q. Who -- what was his name --

24 A. Jason Shaw.

25 Q. -- or her name?

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1 A. Jason Shaw.

2 Q. Jason. What's his last name?

3 A. Shaw.

4 Q. And how long did you have Carena Wealth
5 Management?

6 A. Just for one year.

7 Q. And on your licenses 9 -- you had 6 and 7 back
8 in '06 and then you got license 9, 10 and 31. What is
9 license 9?

10 A. I don't recall which is which, 9 and 10. One is
11 for options and the other is for -- is for just general
12 managerial brokerage so you can be a principal, a managing
13 principal, at an organization.

14 Q. Were you a managing principle at Carena Wealth
15 Management?

16 A. I was a managing principle, effective after
17 2007, after I passed my examinations and went through an
18 apprentice period, shall we say. The Wachovia Company was
19 the principle prior to that and technically the principle,
20 as well, through that time.

21 Q. But for Carena Wealth Management, were you a
22 manager?

23 A. Yes.

24 Q. And did people come to you -- and in that
25 position as a manager, did you have a fiduciary duty to

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1 those folks buying stocks and bonds and other investment
2 instruments through Carena Wealth Management?

3 A. It was Carena Wealth Management.

4 Q. Pardon me. Carena.

5 A. And did I have a fiduciary responsibility?
6 Implied or explicit?

7 Q. I didn't know we were cutting hairs that short.
8 I'm asking you.

9 A. I'm trying to go through my analysis of what I
10 did in my past and also trying to understand the relevance
11 to you. But that's different.

12 Was I a fiduciary? I was not held to a
13 fiduciary's responsibility because I was not -- there are
14 multiple Acts in the securities and exchange commission:
15 32, 33 and 40 Acts. So I was not a 40-Act fiduciary. I
16 was not a 40-Act fiduciary. A 40-Act is four fiduciaries.
17 It's four trust accounts. It's for widows and orphans, as
18 they put it back in 1940 -- created that act.

19 Q. So I guess the question is you did or you did
20 not have any fiduciary duties to anybody as a principle
21 manager of Carena Wealth Management?

22 A. I felt as though I did as a -- ethically, but as
23 legally I don't believe that I was.

24 Q. Did you invest people's money?

25 A. Yes.

1 Q. And you seem to have had a lot of testimony
2 today about how serious you took the fiduciary duty,
3 however we want to define it -- because you seem to have a
4 bunch of definitions of it -- but as to what you did as a
5 board member, did you believe that the fiduciary duties as
6 a board member to the homeowners were the same as your
7 fiduciary duties as a principle manager of Carena Wealth
8 Management?

9 A. It's hard to draw analogies, but if you're a
10 fiduciary, you're a fiduciary. Right?

11 Q. Now, when did Carena Wealth Management cease to
12 exist?

13 A. I believe it was after October, 2008.

14 Q. And can you tell me why Carena Wealth Management
15 was no longer in existence after October of 2008?

16 A. Because we were too small to succeed. Remember
17 too big to fail back then? We were too small to succeed.
18 We went under because we had very, very bad market timing,
19 we had a very tough environment to build the business in,
20 and ultimately the company went down.

21 Q. Now, would that be your money or other people's
22 money that invested with you?

23 A. Both.

24 Q. So not only did you lose money, but other people
25 that invested in Carena Wealth Management, with you as the

1 manager-principle with fiduciary duties, lost money;
2 correct?

3 A. There were no, quote, unquote, other investors,
4 other than Wachovia and myself and my partner. And myself
5 and my partner, we invested time in the company. So you
6 have to differentiate between equity to create a company
7 and people buying stocks and bonds in a marketplace for
8 their own portfolio. So there was -- there were no other
9 principles, other than my partner and myself and Wachovia,
10 that invested in Carena. When Carena went down, we lost
11 all of our stuff -- our homeowner's equity, but the people
12 in the marketplace lost it based upon marketplace
13 conditions at that point in time.

14 Q. Would you say that was the reason for the extent
15 of the massive, I believe you said, economic downturn
16 during the '08, '09 time frame?

17 A. Could you repeat the question, please?

18 Q. Sure.

19 Would you believe that it would be the same --
20 if I'm not mistaken, you're saying that you lost
21 everything, in the end of 2008, that you invested in
22 Carena, because it went under. And would that be because
23 of the extent of the massive economic downturn that the
24 United States was facing during that time?

25 A. Absolutely. There was a -- it was a very, very

1 unbelievably harsh economic period of time in the
2 financial markets, which ultimately turned into the real
3 estate market, of course. We've all been reeling from
4 that. But if you're trying to draw a correlation between
5 what happened in 2008 and my purchasing of my property in
6 2004 before the market went up and then what happened
7 after that, I don't think there's a necessary corollary
8 between the two.

9 Q. I'm just asking you questions, sir.

10 A. Okay.

11 Q. Now, did you see the purchasing of this
12 condominium as an investment similar to an investment that
13 you made in Carena Wealth Management?

14 A. No, sir. I considered this my home.

15 Q. Well, I believe you testified earlier that you
16 did due diligence before you, quote, unquote, invested in
17 the property. Now, would that investment be the same type
18 of investment that you and your partner would have put
19 into Carena Wealth Management? In other words, putting
20 your money into a risky investment?

21 A. Absolutely not. When it comes to my home, I
22 don't consider myself a speculator. I won't speculate on
23 my home. So absolutely no corollary, sir.

24 Q. Are you aware of whether or not there was
25 massive speculation going on on Daniel Island, in 2004,

1 2005, 2006, in the real estate market?

2 A. I can do so from a hearsay perspective, but I
3 was not in the minds of everybody in 2004 and what they
4 were thinking, nor was I in control of their investments.

5 Q. No. I don't want you to speculate on what
6 anybody else has said, none of your experts or anything.
7 I just want to know what you -- if you knew about it.
8 Because I believe you testified you lived on Daniel Island
9 prior to buying this condominium, didn't you?

10 A. Yes, I did. And let me tell you what happened,
11 why I did. I kind of, because I was in the marketplace,
12 saw that we were going to have an economic downturn. Not
13 to the extent that I thought that it would actually
14 happen. But I was downsizing at that point in time,
15 hopefully to a safer investment. And I was looking at my
16 own income and balance sheet and making sure that I was
17 secure during this period of time. So I was doing
18 anything but speculating on my home.

19 Q. But you down -- but you just testified you
20 invested in a smaller home. Now, you owned a lot and
21 built a home on the golf course?

22 A. Yes, I did.

23 Q. How much did you pay for the lot?

24 A. \$235,000.

25 Q. How much did you sell it for when you were done?

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1 A. Well, the lot I didn't sell. I sold the lot and
2 the home.

3 Q. For how much?

4 A. 1.25 million.

5 Q. That's a pretty, pretty return on that
6 investment, isn't it?

7 A. Thank you very much. Yes.

8 Q. And did you expect to have that type of return
9 on investment on all of your future real estate holdings?

10 A. Of course not.

11 Q. Okay. Let's talk about a couple of things here.
12 You had testified earlier that there was an
13 armed guard on this project; is that correct?

14 A. There was a sheriff's employee, with a handgun
15 on, so blocking anyone from entering the property.

16 Q. Well, you made it sound like somebody was
17 walking around with a shotgun, pointing it at you.

18 A. He felt pretty proud of himself when anyone
19 stopped by.

20 Q. Was he a real police officer?

21 A. He was a sheriff of Berkeley County, I believe.

22 Q. Did you ever complain to the Berkeley County
23 Sheriff's Department that he in any way intimidated you --

24 A. No.

25 Q. -- with using this handgun?

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1 A. No.

2 Q. Okay.

3 A. I didn't think he was going to use it.

4 Q. Are you aware of the provisions within the
5 master deed of the contract, that you bought to purchase
6 that, said that the reason why there would be limited
7 visits to the job site was due to safety reasons?

8 A. That's one good theory. But there's another
9 good theory that they were hiding a lot of things.

10 MR. MAYBANK: I would ask that the Court direct
11 the deponent to please answer the question.

12 THE COURT: Answer the question. You can answer
13 it yes or no, I don't know, I don't understand, and
14 you can give whatever explanation. But answer the
15 question first, please, sir.

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay?

18 THE WITNESS: Yes, sir.

19 THE COURT: Be responsive to the question. You
20 might not like your answer. But you can give an
21 explanation.

22 THE WITNESS: Yes.

23 THE COURT: But answer it first. Okay?

24 Q. [Mr. Maybank] Are you familiar with the
25 provision in your contract, that you signed, that said

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1 that there was -- on the job site the reason for the
2 limitation was for the safety of the work site?

3 A. Okay. So let's make sure I understand the
4 timing on this. I signed the contract in 2004 to purchase
5 the property from Daniel Island --

6 THE COURT: Sir, answer the question yes or no
7 or I don't know.

8 THE WITNESS: I didn't have a --

9 THE COURT: -- or I don't understand.

10 A. I don't know. I don't know.

11 THE COURT: Okay. Fine.

12 Q. [Mr. Maybank] Are you aware during the time of
13 construction that there was pilfering going on on the job
14 site that necessitated and required the hiring of armed
15 guards to protect not only the investment but also the
16 premises from looters?

17 A. No.

18 Q. Would you agree with me, as you sit up there and
19 testify, that if, in fact, that had been occurring and
20 that's the reason why armed guards were eventually hired
21 out there, that would be a reasonable, rational thing for
22 a construction company to do, don't you think?

23 A. Yes.

24 Q. And wouldn't you also agree with me that it
25 would be a reasonable and rational thing for a

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1 construction company to do to require the purchasers, like
2 yourself, to make arrangements to come and visit the job
3 site, not at your schedule but as one designated and in
4 working in conjunction with the builder?

5 A. Yes.

6 Q. Are you aware of the contracts between Daniel
7 Island Riverside Developers and Ravenel --

8 MR. MAYBANK: And I apologize. I don't mean to
9 turn my back to you, sir. I was looking for --

10 Q. [Mr. Maybank] -- Daniel Island Riverside
11 Developers, as it relates to property management on site?

12 A. I have never seen or reviewed them, but assumed
13 that they were in place because they were the management
14 company on hand at the time of the turn-over.

15 Q. And are you aware, as a board member -- because
16 you became a board member in December of '06; correct?

17 A. Yes.

18 Q. All right. Are you aware of the -- any prior
19 agreements between Ravenel Associates and Daniel Island
20 Riverside Developers to the day-to-day operation manager
21 for The Oaks?

22 A. I'm not aware of them.

23 Q. On the day you became a board member, was there
24 someone from Ravenel on site at the meeting introducing
25 themselves as, hi, I am here, I am the day-to-day person

1 to run your board?

2 A. Yes.

3 Q. And as part of that responsibility by the folks
4 from Ravenel, did they also tell you that they would
5 assist the board in preparing annual operating budgets --

6 A. Yes.

7 Q. -- setting for proposed revenues --

8 A. Yes.

9 Q. -- and expenditures for the new accounting year,
10 based upon an anticipated operations, and take into an
11 account general conditions of the regime and overall
12 conditions?

13 A. Yes.

14 Q. And did you rely on Ravenel to do that work for
15 you?

16 A. We relied upon them to advise the board on what
17 we should do from a fiscal perspective to manage the board
18 of directors, manage the homeowners association, yes.

19 Q. And as I understand your testimony earlier, I
20 think you adequately stated that Ravenel was well-known in
21 the community as a homeowners association company that was
22 more than capable of overseeing a project like this one;
23 right?

24 A. I assume so, yes.

25 Q. Do you have any -- do you have any criticism of

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1 Daniel Island Riverside Developers engaging Ravenel and
2 Associates to work in conjunction with the board to help
3 oversee the day-to-day operations?

4 A. No.

5 Q. Do you rely on Mr. Ted Padgett to advise the
6 board as to construction issues related to the problems
7 out at The Oaks at this time?

8 A. Yes.

9 Q. Are you aware that originally Mr. Padgett was
10 hired by my client to investigate the problems that were
11 existing out there at the time?

12 A. I'm aware.

13 Q. All right. So do you have any complaints of the
14 actions undertaken by Daniel Island Riverside Developers,
15 initially, in contracting with Mr. Padgett to investigate
16 any of the construction problems that were being found out
17 at the site?

18 A. Without an understanding of what they did, of
19 course not.

20 Q. Are you aware of how any of the capital reserves
21 verses the operating accounts were to be funded?

22 A. I believe that's in one of the exhibits that you
23 took away. It's explicitly stated in the documentation,
24 the marketing documentation that was received in that
25 marketing package right there -- I believe it's one of the

1 exhibits we talked -- or looked at earlier -- the
2 scheduling format. Yes.

3 Q. I am asking you as the board president, or the
4 past board president, I don't know --

5 A. Current.

6 Q. Current board president?

7 -- if you know, as you're sitting here today,
8 since you've been on the board or associated with it in
9 one way or another since December of 2006, if you can tell
10 the Court how the capital reserve verses the operating
11 accounts are to be set up, funded, and run.

12 A. Yes.

13 Q. And how is that delineation done?

14 A. The delineation is done based upon a forecast of
15 future expenditures necessary to manage normal day-to-day
16 maintenance of a property in the future, meaning that
17 things wear out in time, machines break. You know,
18 elevators need to be replaced, perhaps, as an example.
19 You try to -- you try to understand what needs to be done
20 in a normal maintenance environment and predict that cost
21 in the future and budget monies today for that future --
22 for the future expenditure.

23 Q. But you don't budget those monies today totally,
24 do you? Because, I mean, if somebody is going to come in
25 and own a unit for three months, you're not going to ask

1 them to forecast out thirty years what the wear on that
2 roof is going to be and say give me thirty years worth of
3 roof wear, are you?

4 A. The board has done that and amortized it over
5 the thirty-six people over a period of time. The board
6 has done that. We've done capital planning.

7 Q. Yeah. Well, that's -- again, I'm talking about
8 reserve study. Have y'all done an actual reserve study?

9 A. I believe we did, yes.

10 Q. And have you assessed every board -- every
11 homeowner that reserve amount?

12 A. We have a reserve amount that comes out every
13 month and goes into an account. That account happens to
14 be drained every month to fix the problems that we have.
15 We have not attempted to get \$12,000,000 out of people
16 that have spent between 600 and \$800,000 because we had a
17 disastrous scenario. That would be next to an impossible
18 thing to justify, wouldn't it?

19 Q. You understand, sir, that a reserve study is an
20 analysis of a property to give a present-day snapshot of a
21 future condition, and not as a replacement value,
22 irrespective of any type of construction defects
23 valuation?

24 A. As a fiduciary, absolutely yes.

25 But, you know, I never saw one come from the

1 fiduciary that preceded me. They didn't give us a capital
2 study of what they thought it would take. And they had
3 full knowledge --

4 Q. That wasn't --

5 A. -- of the defects at that point in time.

6 Q. That wasn't my question, sir. My question was
7 do you know, in fact, that's what a reserve study is meant
8 to do.

9 A. Yes.

10 Q. And you would agree with me that if you have --
11 Do you know Angela Black?

12 A. Pardon me?

13 Q. Do you know Angela Black?

14 A. Yes, I do.

15 Q. How do you know Angela?

16 A. I've known her for a decade, at least.

17 Q. Did she buy a unit out there? Do you know?

18 A. I believe she did.

19 Q. Did she ever even move into the unit?

20 A. I do not believe she did.

21 Q. Did she make a lot of money on it?

22 A. I don't know. I don't run a real estate agency,
23 so I don't see the transactions on a day-to-day basis.

24 Q. I understand that.

25 But you're not going to assess somebody like

1 Angela Black, who may have bought and never moved in and
2 flipped it, a full reserve assessment, are you?

3 A. She pays a monthly maintenance fee like every
4 owner does every month.

5 Q. So it's a monthly maintenance. Okay.

6 A. Yes, sir.

7 Q. Got you.

8 What is the name of the company you currently
9 work for now in Florida?

10 A. It's called Team International.

11 Q. And you do what for them?

12 A. I manage sales and marketing, business
13 development, contract negotiations.

14 Q. In Exhibit Number 143 -- this is Plaintiffs'
15 Exhibit 143 -- I believe you were asked to look at the
16 contents in here.

17 MR. MAYBANK: I don't want to get it out of
18 whack too much.

19 [Whereupon, Mr. Maybank reviews documents]

20 MR. MAYBANK: Here it is.

21 Q. [Mr. Maybank] You were asked about the standard
22 of luxury. You're in marketing, aren't you?

23 A. Yes.

24 Q. You were at UBS, as well; right?

25 A. I did not perform a marketing function at UBS.

1 Q. You never sold yourself as somebody who could do
2 a job?

3 A. I delivered marketing information that was
4 created by headquarters, either in Zurich or in New York
5 or -- I think they're actually in Hoboken, New Jersey, who
6 gave me marketing material that I presented. And of
7 course we all sell, all the time, ourselves, yes.

8 Q. Absolutely. You're not going to sell yourself
9 as a second-rate analysts, are you?

10 A. No, sir.

11 Q. I didn't think so.

12 Now, you had been given some marketing material
13 that looks like was in your initial package. And if you
14 would, you had looked at a portion of it that read, The
15 Oaks at Rivers Edge surrounds you with an environment of
16 unsurpassed natural beauty.

17 I've been out there. It is quite pretty. Would
18 you agree with that?

19 A. Yes, sir.

20 Q. And then you went on to read various items such
21 as interior highlights, bathrooms, custom kitchens, master
22 bath, exterior features, and additional features. Do you
23 agree with that?

24 A. Including sound attenuation. Yes.

25 Q. Absolutely. Oh. Soundproofing between all

1 units.

2 A. Uh-huh.

3 Q. I see that.

4 A. Uh-huh.

5 Q. Now, do me a favor. Read into the record -- I
6 know the judge doesn't want too much read, so I'm not
7 going to -- just the very last bottom. What does that
8 say?

9 A. The developer makes no warranty or
10 representation, express or implied, of the accuracy and
11 completeness of this information contained herein. All
12 items subject to change without prior notice.

13 Q. You seem to have latched onto many of the items
14 in here. Do you believe that that is also an intricate
15 part of this marketing material: that these items are
16 subject to change?

17 A. I've lived in a unit that doesn't pass the
18 building code, basic building code.

19 MR. MAYBANK: Your Honor, if you could please
20 ask him just to answer the question as asked.

21 THE COURT: Yes, sir.

22 Please answer the question. Okay?

23 A. Could you repeat the question, please.

24 Q. [Mr. Maybank] The question was you read this
25 litany of items that you say you relied on in purchasing

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1 this. However, at the end I asked you to read about the
2 developer makes no warranty representation, express or
3 implied.

4 THE COURT: Mr. Maybank, where are you reading
5 from?

6 MR. MAYBANK: Yes, sir. I apologize. Exhibit
7 Number 143, Plaintiff, Your Honor. It is this
8 marketing material here.

9 THE COURT: Where is the marketing --

10 MR. MAYBANK: Right here, Your Honor. Right
11 there [indicates].

12 THE COURT: Go show it to him --

13 MR. MAYBANK: Yes, sir.

14 THE COURT: -- please, sir.

15 Q. [Mr. Maybank] If you would, please, if you
16 could read this again for the Court.

17 A. Sure.

18 [Reading] The developer makes no warranty or
19 representation, express or implied, of the accuracy on
20 completeness of the information contained herein. All
21 items are subject to change without prior notice.

22 Q. All right. And so as to that language itself,
23 that's about as much as language you should be able to
24 rely on as much as the other items listed above; correct?

25 A. [No response]

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1 Q. Things change, don't they?

2 A. Yes.

3 Q. Market conditions change, don't they?

4 A. Market conditions change, yes.

5 Q. At the time of the turn-over, did you write
6 Ravenel and Associates or -- I didn't see anywhere, in any
7 of the documentation that we've entered, that you ever
8 wrote Ravenel and Associates and made any complaints of
9 any claims or statements made by either the developer or
10 the general construction manager as to the buildings prior
11 to your purchase of the unit; is that correct?

12 A. Yes. I had -- I wasn't a member before purchase
13 of the unit, so I wouldn't have interacted with Ravenel
14 before being a member of the HOA or a member of the
15 ownership.

16 Q. Okay. But even when you closed on the unit in
17 terms of any of the complaints that we're about here
18 today, prior to your closing on the unit you had no notice
19 of any of those what we -- you would call defects of the
20 problems that exist out there; correct?

21 A. I hadn't. Of course not.

22 Q. You wouldn't have closed on it, would you?

23 A. No, sir.

24 Q. You would have asked for certain things to be
25 fixed; correct?

1 A. If I had notice that the -- of all the defects
2 that we know today, back then --

3 Q. Sure.

4 A. -- of course I would have made sure that they
5 were fixed before I moved in.

6 Q. And once the board was turned over by Mr.
7 Behringer, Rich Behringer, in December 6th -- pardon me --
8 December of 2006, I do not have any notification in any of
9 these records that you made any complaints at that time,
10 as well, either, as to the allegations that you're here
11 about today.

12 A. I can't recall everything that was written from
13 a period of time of June to December of 2006. But I'm
14 sure that there were e-mails flying back and forth about
15 what was going on, questions that were going back and
16 forth between myself and Ravenel and myself and Daniel
17 Island Riverside Developers and Carriage Hill. But, Your
18 Honor, I -- I don't have any of that in front of me, no.

19 Q. Yeah. No, I haven't seen any. I can certainly
20 give you back these exhibits, if you would like. I
21 haven't seen anything at least that predates that.

22 Now, I understand that there were some problems
23 with some of the windows, if I'm not mistaken, that had
24 water coming through them. Do you have any of those
25 windows?

1 A. Yes. I have two.

2 Q. Did you ever make any warranty claims through
3 Carriage Hill or Daniel Island?

4 A. Yes, I did.

5 Q. Was that before or after the board turn-over?

6 A. After.

7 Q. So after the board turn-over, did you make the
8 warranty claims through Rich Behringer, Bob Behringer, or
9 through Megan Crocker?

10 A. I believe it was Megan, at that point in time.
11 Megan or -- it was Megan. I'm pretty sure.

12 Q. All right. Is there anything, that you're aware
13 of, that you now know -- well, strike that.

14 Did Megan attempt to assist you in making those
15 warranty claims?

16 A. To the best of her ability, yes.

17 Q. Do you know who she was making those warranty
18 claims to?

19 A. No.

20 Q. Did you ever deal with anybody from Weather
21 Shield?

22 A. I personally never did, no.

23 Q. Did you deal with anybody from Muhler?

24 A. I may have let contractors in my house from
25 Muhler but I never negotiated with Muhler or Weather

1 Shield, directly, to come to my house to do warranty
2 items. That was all done through Carriage Hill and/or
3 Daniel Island Riverside Developers.

4 Q. As it relates to your unit, do you know of any
5 type of misrepresentation made to you that somebody from
6 Daniel Island Riverside or Carriage Hill Associates knew
7 as to any problems with your units before you purchased
8 it?

9 A. No. Of course not.

10 Q. I think, Mr. Chiovarou, you would agree with me,
11 wouldn't you, that the process of discovering the problems
12 was a collaborative and collective effort on behalf of not
13 only you as the HOA president but Mr. Behringer and his
14 various corporate entities in trying to come to some kind
15 of understanding of what the problems were out at the
16 Daniel Island Oaks development. Wouldn't you agree with
17 that?

18 A. I would have to say no. I don't agree that it
19 was collaborative in nature. Pretty much everything done
20 with Daniel Island Riverside Developers and Carriage Hill
21 was done at gunpoint. And I can give you some -- a couple
22 of real good ones --

23 Q. Well, let me ask --

24 A. -- right now, today. You asked a question I
25 would be willing to answer.

1 MR. MAYBANK: I move --

2 A. You asked an open-ended question.

3 Q. [Mr. Maybank] Sir, let me ask you this. Do you
4 know Mike Parker?

5 A. Yes, I know him.

6 MR. BUNDY: Your Honor, I would request the
7 witness complete his answer. He was responding.

8 THE COURT: I allowed you to stand earlier.
9 It's not your witness.

10 MR. BUNDY: I'm sorry, Your Honor.

11 THE COURT: Mr. McDonald, if you have an
12 objection, please stand.

13 MR. MCDONALD: Will do, Your Honor. Thank you.

14 THE COURT: I gave some latitude earlier, when
15 we were making arguments, but right now it's his
16 witness. Okay?

17 MR. BUNDY: I understand.

18 THE COURT: Please proceed.

19 MR. MAYBANK: Thank you, Your Honor.

20 Q. [Mr. Maybank] Do you know Michael Parker?

21 A. I know him in his professional capacity.

22 Q. Do you know Jerry Rumplick?

23 A. I know Jerry Rumplick.

24 Q. Do you know Rich Behringer?

25 A. I know Rich Behringer.

1 Q. Do you know Megan Crocker?

2 A. I may have met her once. I only know her
3 electronically and on the phone.

4 Q. Do you know Lee McManus?

5 A. Yes. I've met her many times.

6 Q. Okay. Those are all either employees of or
7 agents of Carriage Hill of Charleston or Daniel Island
8 Riverside Developers. Would you agree with that?

9 A. If you say so, yes.

10 Q. Okay. Would you agree with me, then, that those
11 are the people that you were interacting with on a pretty
12 common basis in trying to get the problems resolved out at
13 your unit?

14 A. Much more often than I ever would have expected.

15 Q. So I guess my point is they didn't abandon you,
16 they were there trying to help you as much as they could;
17 correct?

18 A. You asked the question cooperation. And I don't
19 believe that Carriage Hill or Daniel Island Riverside
20 Developers were cooperative at all. And I can give you a
21 very good example today as to your client. What I'm
22 negotiating on behalf of the HOA today, with Mr.
23 Behringer, I am trying to get him to pay his fair share of
24 maintenance that he has forced upon us for seven years he
25 has not shared. I'm doing that today with Max Sloan and

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1 Daniel Island Company. He has had this group of people
2 pay for all of his maintenance for seven years and I'm
3 negotiating that today with Max Sloan and Daniel Island
4 Town Association. So until I have a gun to their heads,
5 until we have a gun to their heads, they do nothing.
6 Nothing. And I can give you another example, of
7 landscaping. The only reason they did landscaping is
8 because Jenny Bailey, from the Daniel Island Architectural
9 Review Board, had their bond. Otherwise, they were not
10 going to do their landscaping. Every step of the way with
11 this company has been uncooperative. Not only
12 uncooperative, arrogant and belligerent. Thank you.

13 Q. No. Thank you.

14 I'm going to hand you Defendants' Exhibit 164.

15 [Whereupon, Mr. Maybank and Mr. McDonald confer]

16 Q. [Mr. Maybank] This is a July 22nd, 2008 letter.
17 Do you have that letter? I believe it's 164, in front of
18 you. I believe it's this one right here [indicates]

19 A. Okay. July 22nd, 2008?

20 Q. Yes.

21 A. Uh-huh.

22 Q. It says: I would like to recap the July 18th
23 meeting where you -- this is to Rich Behringer.

24 A. Uh-huh.

25 Q. This is almost two years after the board had

1 been turned over, nearly two years after you purchased
2 your unit, wherein you, Rich Behringer, John Sweeney, met
3 with Bobby Reece, Bill Jung, and me at Bobby's office. On
4 behalf of the board of The Oaks, I would like to thank you
5 for attending on such short notice and beginning some
6 dialog concerning the construction defects that existed.

7 So even after almost two years being out there,
8 they were still out there trying to assist you and meet
9 with you and try to resolve your issues? At least this is
10 what this letter says to me.

11 A. This is an attempt to cross the bridge and to
12 get Carriage Hill to step up to the plate and do what they
13 should have done years before. And this is a president of
14 a homeowners association representing many people, trying
15 to manage through some very difficult circumstances. Now,
16 did they actually -- did Johnson & Johnson pull Tylenol
17 off the shelf and worry about what their suppliers did
18 after they fixed the problems with their customers?
19 Absolutely not.

20 Q. How about -- Exhibit 165, dated December 2nd
21 2009, is the next one.

22 MR. MAYBANK: I would like to move, by the way,
23 164 into evidence --

24 THE COURT: Any objection?

25 MR. MCDONALD: I don't have an objection, but

1 it's already Plaintiffs' 166.

2 THE COURT: It's already Plaintiffs' what?

3 MR. MCDONALD: 156.

4 THE COURT: It's already in evidence?

5 MR. MCDONALD: It's already in evidence, Your
6 Honor.

7 MR. MAYBANK: Then we're not. Thank you.

8 Q. [Mr. Maybank] The next one is a December 2nd,
9 2009 letter.

10 THE COURT: Is that one already into evidence,
11 also, Mr. McDonald?

12 MR. MCDONALD: It's not in.

13 THE COURT: Pardon?

14 MR. MCDONALD: It is not.

15 THE COURT: Okay.

16 Q. [Mr. Maybank] If you would, could you read
17 that. Just look at it for me. You don't need to read it
18 out loud.

19 [Whereupon, the witness reviews documents]

20 A. Okay. I understand the gist of it.

21 Q. [Mr. Maybank] Basically, this says that after
22 an attempt to amicably resolve the quality issues relating
23 to the construction, unfortunately we've arrived at an
24 impasse in our negotiations with Carriage Hill. Do you
25 see that?

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1 A. Yes, I do.

2 Q. So at least three years after turning over the
3 board from the developer to you and to other homeowners,
4 now is the time that y'all have decided that, we're at an
5 impasse, and that y'all are going to go down the legal
6 route; correct?

7 A. Yes.

8 Q. All right. So for at least three years with
9 Rich Behringer, Jerry Rumplick, Mike Parker, and various
10 other representatives in conjunction, if I'm not mistaken,
11 with Ted Padgett, y'all just could not come to a
12 resolution as to fixing of the project?

13 A. Correct.

14 Q. Are you aware of any proposals that were made by
15 my clients to fix all of the window problems out there
16 through Mike Parker?

17 A. I don't believe it was all of the window
18 problems. If the windows were defective and not going to
19 be replaced, that's not really a realistic answer.

20 THE COURT: Well, that wasn't the question.
21 I've told you twice to answer the question.

22 THE WITNESS: Sorry, sir.

23 THE COURT: Let me make it real clear. I've
24 told you three times. I'm not going to tell you
25 again.

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1 THE WITNESS: Yes, sir.

2 THE COURT: I have asked you repeatedly to
3 answer the question. When he asks a question, answer
4 it. If he asks you something about third base, you
5 don't go to first base. Do you understand?

6 THE WITNESS: Yes, sir.

7 THE COURT: Otherwise, we are going to be here
8 all week trying to get you to answer the question.
9 Now, I've asked you three times. I'm not going to ask
10 you again.

11 THE WITNESS: Yes, sir.

12 THE COURT: Do you understand?

13 THE WITNESS: Yes, sir.

14 THE COURT: Listen to the question. Answer it.
15 I know you've got an agenda to drive, but answer the
16 question. Do you understand?

17 THE WITNESS: Yes, sir.

18 THE COURT: Please proceed.

19 MR. MAYBANK: Thank you, Your Honor.

20 Q. [Mr. Maybank] My question -- I will try to
21 paraphrase it. I believe it had to do with that as of
22 three years after the turn-over, an impasse was reached,
23 but at that point -- up until that point, it would have
24 been a collaborative effort to try to resolve the window
25 problems?

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1 A. No.

2 Q. And at that point, after three years, a retrofix
3 had been proposed by my clients to remedy the balustrade
4 problems?

5 A. Yes.

6 Q. And, eventually, that was something that the
7 board deemed that they did not want done in a certain way
8 and they wanted it done another way?

9 A. Correct.

10 Q. Not for Carriage Hill or Daniel Island's lack of
11 attempting to try to fix the problems at your development;
12 correct?

13 A. Please repeat the question.

14 Q. Not for a lack of my clients, Daniel Island
15 Riverside and Carriage Hill Associates, trying to fix your
16 problems?

17 A. Not for lack of an attempt.

18 Q. My understanding is is that all of the units out
19 there are either currently being lived in or rented out;
20 is that correct?

21 A. That's correct.

22 Q. All right. And that at all times since they
23 have been built and sold, they have been either rented or
24 lived in; correct?

25 A. No.

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1 Q. Other than units that have been empty for
2 foreclosure, or for some other reason, they have either
3 been attempted to be rented or they have been rented?

4 A. Yes.

5 Q. Now, as to the sound-attenuation problems that
6 you have referred to, my understanding is that a gentleman
7 by the name of Noral Stewart was retained by Daniel Island
8 Riverside Developers to investigate the complaints of the
9 homeowners after the December the 6th, 2000 -- pardon
10 me -- the December 2006 turn-over; is that correct?

11 A. Yes.

12 Q. And it was at that initial meeting with the
13 homeowners association that the developer and/or
14 construction manager became aware of the complaints by the
15 homeowner?

16 A. Yes. Although there may have been -- Ravenel
17 may have also given information prior to 2007.

18 Q. Do you know if Ravenel did?

19 A. I believe that there was -- in the discovery
20 documentation, yes. There was something, that preceded
21 the board recognition of it, that Ravenel sent to Carriage
22 Hill.

23 Q. Did you -- were you involved in that meeting
24 with Ravenel --

25 A. No, I was not.

1 Q. -- and the information -- pardon me -- and the
2 information that would have been do you think given to
3 either Daniel Island Riverside by Carriage Hill?

4 A. No.

5 Q. In response, there was a gentleman by the name
6 of Noral Stewart. Did you ever meet Mr. Stewart?

7 A. No.

8 Q. Do you know what his investigation of the
9 acoustical problems consisted of at the project?

10 A. I don't believe we ever received the write-up,
11 the documentation. The board asked for it repeatedly, but
12 I don't think we ever actually got the report.

13 Q. Did you know whether or not anybody from
14 Ravenel, as the board representative for the day-to-day
15 management of the regime, ever received any letters from
16 Mr. Stewart concerning his investigation?

17 A. Yes. We saw a summary letter, yes. But it
18 wasn't the report itself.

19 Q. All right. Did you have any reason to disagree
20 with the findings of Dr. Stewart?

21 A. I had a conversation with one of the engineers
22 from Stewart Acoustical.

23 Q. And I -- let me strike that question, because it
24 was poorly worded. Let me rephrase it, please.

25 Did you ever read the report that was produced

1 by Dr. Stewart, or his company, that was submitted to
2 Ravenel?

3 A. I don't recall.

4 Q. My understanding is that in response to the
5 board's concern about the acoustical problems and
6 Dr. Stewart's investigation, the board undertook to hire
7 its own third-party investigator; is that correct?

8 A. Correct.

9 Q. And that investigation was Dr. Lisa Schott,
10 president and principle of Acoustical Consultants out of
11 Obedia, Florida; is that correct?

12 A. That's correct.

13 Q. Pardon me?

14 A. Yes.

15 Q. Did you, as the board president, contact Ms.
16 Schott as to the -- as to doing this investigation, or was
17 that done through Dr. Padgett?

18 A. It was through Mr. Padgett.

19 Q. And you relied on Mr. Padgett to get a
20 reputable, certified, licensed acoustical individual to
21 come in and test the units?

22 A. Yes.

23 Q. Were you there during any of the testing that
24 Ms. Schott did?

25 A. Yes.

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1 Q. Do you know whether or not Ms. Schott reviewed
2 the findings of Dr. Stewart in her analysis of the
3 remediations fix that was done by my clients?

4 A. No.

5 Q. Are you aware that, in fact, my clients did it,
6 Carriage Hill Associates and Daniel Island Riverside, and
7 remediated? And I use that term in terms of the
8 acoustical noise-emanating problems.

9 A. They remediated some of the problems.

10 Q. Now, do you know -- you don't know the process
11 by which they went through to do that, do you?

12 A. Of course not.

13 Q. And you don't know the engineering acoustical
14 standards by which Dr. Stewart went about doing his
15 investigation, do you?

16 A. The board never had that data.

17 Q. And so in response, y'all went out and got Ms.
18 Schott. Now, have you seen Ms. Schott's report?

19 A. Yes.

20 Q. And do you know what Ms. Schott's report
21 contains?

22 A. I haven't reviewed it in many years but I have a
23 little summary, if you want me to tell you what I've
24 heard.

25 Q. I don't want you to tell me what you heard,

1 because I'm going to bring it to you. But I want you to
2 read it for me:

3 [Whereupon, Mr. Maybank proffers documents to
4 the witness]

5 Q. [Mr. Maybank] If you would --

6 MR. MAYBANK: And this is -- pardon me. This is
7 Exhibit 229 in the Defendants' binder, Your Honor.

8 [Off the record momentarily]

9 MR. MAYBANK: You're going to have to flip a lot
10 of those pages, Your Honor.

11 THE COURT: Pardon?

12 MR. MAYBANK: It's all the way in the back.
13 It's about as far back as you can go.

14 THE COURT: All right.

15 [Whereupon, the Court reviews documents]

16 THE COURT: All right. Go ahead.

17 Q. [Mr. Maybank] This came out of Dr. Padgett's
18 documentation, and it's Defendants' Exhibit 229, Bates
19 stamped 0491 through 0518. If you would, could you please
20 turn to page 7? Pardon me. Page 9 of 27.

21 MR. MCDONALD: Your Honor?

22 THE COURT: Yes, sir.

23 MR. MCDONALD: Withdrawn.

24 THE COURT: Got a legal objection?

25 MR. MCDONALD: I'm going to let him ask the

1 question first.

2 THE COURT: Okay. Thank you.

3 MR. MCDONALD: Thank you.

4 THE COURT: Thank you very much.

5 Q. [Mr. Maybank] You're not an engineer, are you?

6 A. No, sir.

7 Q. You're not an acoustical engineer, are you?

8 A. No, sir.

9 Q. But you're an analyst who worked for UBS and
10 other financial institutions. So you've oftentimes been
11 given readings. So lets read this: under conclusion of
12 recommendation --

13 MR. MCDONALD: Your Honor, here's where I would
14 object.

15 THE COURT: Pardon?

16 MR. MCDONALD: Here's where I would object.
17 He's reading from a report that's not in evidence.

18 THE COURT: Well, he can ask him --

19 MR. MCDONALD: No foundation.

20 THE COURT: -- he can ask him some questions
21 about the report. I mean --

22 All right. Lay some foundation on his
23 knowledge. I think he said he's seen it but --

24 MR. MAYBANK: He has. And, Your Honor, not only
25 that, we've allowed Mr. Padgett's -- volumes of his

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1 field work in. He's testified that Mr. Padgett hired
2 this individual. This is part of Mr. Padgett's file.

3 THE COURT: Go show him what you want to ask him
4 about, and --

5 MR. MAYBANK: Sure.

6 THE COURT: -- ask him. Okay?

7 Q. [Mr. Maybank] Do you have it?

8 A. I don't know.

9 Q. You may not have it.

10 A. Point to it. Point to it.

11 THE COURT: Show him where you're talking about,
12 please, sir.

13 MR. MAYBANK: Sure.

14 Q. [Mr. Maybank] It's on page 9 of 27 at the top,
15 conclusions and recommendations:

16 I understand that you may not know what ASTC
17 means.

18 A. I do not.

19 Q. Can you read that first paragraph for me, under
20 page 9, conclusions and recommendations?

21 A. [Reading] The ASTC ratings exceeded the minimum
22 building code requirements for both the original and
23 modified floor and ceiling system designs, a modified
24 design at an ASTC rating of 63, which was ten points
25 higher than the original design of the AST fifty -- excuse

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1 me -- rating fifty-three.

2 Q. Okay. Now read the second paragraph for me.

3 A. What's the context of this? Because there were
4 multiple rooms tested.

5 Q. Can you read the second paragraph for me, sir?

6 A. Yes. [Reading] The FIIC rating with wood
7 flooring covered was forty-one for the original
8 construction, which falls below the minimum building code
9 requirement. An increase of eight points realized for the
10 modified construction --

11 Q. Hold on. Pardon me. I couldn't -- if you
12 would, I can't understand everything. And if you could
13 please start at, an increase.

14 A. An increase of eight points was realized for the
15 modified construction resulting in an FIC -- FIIC rating
16 of forty-nine, which means the applicable criterium.

17 Q. Which meets the applicable criterium. Is that
18 what that says?

19 A. Yeah. Yes.

20 Q. If you would go down to the second-to-the-last
21 paragraph. Because this gets to your claim, I believe.
22 If you would, see where it says a small?

23 A. Yes, I see it.

24 Q. If you could read that for the record, please.

25 A. [Reading] A small incremental improvement may be

1 possible by replacing the existing acoustical underlayment
2 below the floor covering the better-performing product --
3 covering with the better-performing product and installing
4 at least one inch of light-weight concrete over the
5 plywood subfloor, either the level or at above or above
6 the approved acoustical underlayment material. This would
7 require the movement of all hardwood floor coverings,
8 installation of light-weight concrete, and approved
9 acoustical underlayments, installation of proper perimeter
10 isolation in all areas --

11 Keep going?

12 Q. One moment. This would require the removal of
13 all hardwood-floor coverings, installation of light-weight
14 concrete, and an approved acoustical underlayment. Is
15 that what that says?

16 A. Yes.

17 Q. That's what you're asking for, isn't it?

18 A. Yes.

19 Q. That's what you got sixty days out of, \$15,000
20 [fifteen thousand dollars] a month, I guess, to have that
21 done; is that right?

22 A. It's not 15,000 per month. It's 15,000 for two
23 months.

24 Q. Two months. My apologies.

25 A. And that's about what it'll take to remove

1 floors, pour the concrete. But I can't -- I don't know.
2 I'm not an engineer.

3 Q. All right. Well, let's go on. After acoustical
4 underlayment, start with installation of. Do you see
5 that?

6 A. Installation of proper perimeter isolation in
7 all areas with hard-floor coverings and reinstallation of
8 new floor coverings. This would be a disruptive and
9 extensive modification --

10 Q. I'm sorry. The court reporter needs to hear
11 this.

12 A. I'm sorry.

13 Q. Please be clear.

14 A. This would be a disruptive and extensive
15 modification and if possible -- and the possible
16 improvement may be only one to three points in the AST --
17 FIST [sic] rating.

18 Q. Stop right there.

19 So the ASTC in paragraph one, which shows that
20 it is higher than the original design, and the FIIC
21 rating, which meets -- resulting in forty-nine, which
22 meets the applicable criterion, they're saying that you
23 would improve it but only minimally; is that correct?

24 A. I don't know what the scale means. I was told
25 it was geometric. A geometric scale that goes up three

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1 times could be extremely much better than something that
2 goes up in a linear fashion. So we need to understand the
3 basis of what they're comparing it to. And I believe it
4 was geometric.

5 Q. Why don't you go ahead and finish reading. If
6 the improved.

7 A. If the improved -- I'm reading to me here.
8 [Reading] If the improved acoustical underlayment is
9 installed without the addition of lightweight concrete,
10 the same small improvement of one to three points in the
11 FIIC rating may be achieved, but no change would be
12 expected in the ASTC rating.

13 Q. Did you ever read this before?

14 A. Yes, I have.

15 Q. It basically says the floors as remediated and
16 the acoustical issues, by your own expert, Lisa Schott,
17 has been fixed. Correct?

18 A. Meets minimum building code. That's what she
19 says.

20 Q. It seems -- or meets applicable criteria;
21 correct?

22 A. I don't know what that means.

23 Q. But you know what minimum building code means,
24 huh?

25 A. [No response]

1 Q. Let's go to the last page on that exhibit,
2 please. Do you know who Dan Collins is?

3 A. Yes.

4 Q. Who is Dan Collins?

5 A. Dan Collins was a representative of Ravenel,
6 back a couple of years, as a property manager for --

7 Q. Somebody the board would look to to run the day-
8 to-day operations?

9 A. Yes.

10 Q. So as you were asked earlier by Mr. McDonald,
11 rightly so, y'all would get reports in from these
12 different experts. Mr. Padgett, you relied on his, kind
13 of what we just read, because he hired Ms. Schott. Then
14 you got his report, kind of a business record, as Mr.
15 McDonald said. And this is to Dan Collins, to The Oaks.
16 If you would, would you look at the very last paragraph
17 and read that for me.

18 A. [Reading] This was a very successful
19 remediations, in a difficult situation, with major
20 improvements. Results are now clearly in compliance with
21 code requirements, with very good airborne isolation.

22 Q. So we've got the head of the acoustical
23 association of American -- and I'll let him speak to that.
24 He's coming -- and we've got Quietly Making Noise, an
25 acoustical and consulting noise control group out of

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1 Florida --

2 MR. MAYBANK: Which, Your Honor, I would now ask
3 to move into evidence as Defendants' Exhibit 229.

4 THE COURT: Any objection?

5 MR. MCDONALD: No, Your Honor. I think he's
6 read --

7 THE COURT: Pardon?

8 MR. MCDONALD: -- the whole thing. No, Your
9 Honor. Thank you.

10 THE COURT: All right. What is it? 229 is
11 admitted, without objection, for the defense.

12 MR. MAYBANK: Thank you.

13 [Whereupon, Defendants' Exhibit Number 229 is
14 admitted into evidence by the Court]

15 THE COURT: You don't have a list of all yours,
16 do you, by any chance?

17 MR. MAYBANK: I do, and I can get one for you.

18 THE COURT: Please.

19 MR. MAYBANK: Yes, sir.

20 THE COURT: And give one to the court reporter,
21 too, please, sir.

22 MR. MAYBANK: Yes, sir.

23 [Whereupon, Mr. Maybank proffers documents to
24 the Court]

25 THE COURT: Have you got one for the court

1 reporter?

2 MR. MAYBANK: We can get one for the court
3 reporter, too.

4 THE COURT: Here you go, Mia. You need it more
5 than I do.

6 THE COURT REPORTER: Thank you.

7 [Whereupon, Mr. Maybank proffers documents to
8 the Court]

9 THE COURT: Thank you.

10 MR. MAYBANK: Yes, sir.

11 THE COURT: That was 229; is that right?

12 MR. MAYBANK: Yes, sir. Yes, sir.

13 THE COURT: Okay. Let me find it.

14 [Whereupon, the Court reviews documents]

15 THE COURT: All right. Go ahead.

16 Q. [Mr. Maybank] What is Exhibit 143? Which has
17 already been listed as an exhibit. And I'll show it to
18 you so -- this is Exhibit 143, as given to us by
19 Plaintiffs' counsel. Does that look like what you've seen
20 already?

21 A. Yes.

22 [Whereupon, Mr. Maybank and the witness confer]

23 Q. [Mr. Maybank] And in that you were asked -- in
24 that you were asked to look at it. It looks like a
25 contract -- purchase agreement and a contract. Do you see

1 that? I believe it starts on page -- there's a number at
2 the bottom of page 1.

3 A. Real estate purchase agreement?

4 Q. That's correct. Yes, sir. Look on page 11 for
5 me, subparagraph O.

6 A. Okay.

7 Q. Do you see that job safety?

8 A. Yes, sir.

9 Q. In order to maintain safety standards, the
10 purchaser agrees that he shall not restrict in any way or
11 in any manner interfere with the construction of the unit
12 and the purchaser shall not enter upon the development
13 unless accompanied by the seller or its agent at times
14 designated by the seller.

15 Do you see that?

16 A. Yes, sir.

17 Q. Would you agree with me that that is a
18 reasonable provision of any purchase sales agreement?

19 A. Yes, sir.

20 Q. Such that if there were multiple homeowners or
21 purchasers -- strike that -- purchasers coming out there
22 unannounced on the weekends and other times without the
23 developer or builder's knowledge, that would certainly be
24 a cause of concern for that builder or developer.
25 Wouldn't you agree?

1 A. Yes.

2 Q. All right. So that if they had to then enact
3 and hire a sheriff's deputy with that in mind, as well as
4 the issues of pilfering on the job site, you would agree
5 with me that that's a reasonable thing to do?

6 A. Yes.

7 Q. Is Century Management the management company out
8 there today?

9 A. Yes.

10 Q. And they run the day-to-day management of the
11 property?

12 A. Yes.

13 Q. Do they also -- in that position, do they advise
14 and -- advise the board as to how to set reserves, how to
15 set capital expenditures and insurance and things like
16 that?

17 A. We haven't moved to that level of ensurity with
18 this, because of the case that we've been working on and
19 the remediations that we've been doing, so we haven't
20 gotten to that next phase with them because of this court
21 case.

22 Q. You have -- my understanding is Century has been
23 out there for at least since 2011. When were they hired
24 by you?

25 A. They converted I believe it was December 31,

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1 2011.

2 Q. So for the last now going on two years, you have
3 not had your onsite property manager involved in the day-
4 to-day operations of the general common elements?

5 A. Yes, we have.

6 Q. And how about in the budgeting and oversight of
7 assisting and setting those budgets?

8 A. Yes, we have.

9 Q. Has at any time Century or Ravenel ever written
10 to you, Mr. Chiovarou, or any board member, complaining of
11 any problems with the reserves, as they were set, at any
12 time?

13 A. Yes. I believe back in the 2007 time frame that
14 Sherry Martin said, hey, you guys have got to really begin
15 putting money aside for your reserve account. And we took
16 her advice on that and we increased it to a larger
17 percentage back in 2008. So yes.

18 Q. Maybe that was a poorly-worded questions.

19 Was there any time that anybody from Ravenel
20 Associates or Century in any way said that the developer
21 or the construction manager -- but I believe in this case
22 the developer -- failed to fund the reserves as they
23 advised to be done? They being Ravenel & Associates.

24 A. No. I don't think so.

25 MR. MAYBANK: All right. If you'll give me a

1 moment, please. I think --

2 [Whereupon, Mr. Maybank reviews documents]

3 Q. [Mr. Maybank] I am going to hand you what has
4 been Defendants' Exhibit 171. It looks like it was an
5 exhibit to somebody's deposition. Have you seen -- oh,
6 yeah. I'm sorry. I've given those to you.

7 171. Have you seen that letter before?

8 [Whereupon, the witness reviews documents]

9 A. I don't know if I've seen this personally. I've
10 seen it.

11 Q. [Mr. Maybank] This is from Dan Cainsborough or
12 berry --

13 A. Berry.

14 Q. -- vice president of sales, Daniel Island Real
15 Estate Company. Do you see that?

16 A. Yes.

17 Q. Is he still out there?

18 A. No.

19 Q. In that it says that: Dear Friend of Daniel
20 Island. It goes on to say that there are three existing
21 floor plans, offer gracious living, option ranges, and
22 then the square footage. Do you see that?

23 A. Yes.

24 Q. [Reading] All feature the highest quality
25 finishes and appointments, high ceilings, grand spaces,

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1 and elegant wrap-around verandas.

2 That would be marketing from the Daniel Island
3 Company; correct?

4 A. Yes.

5 Q. And would you agree that as these units were
6 being sold that they were, in fact, elegant and grand?

7 A. The features were very good, very nice, yes.

8 Q. They were luxurious, weren't they?

9 A. No.

10 Q. Exhibit 178. This is Plaintiffs' 178, that the
11 judge has asked me to look back at again, and this had to
12 do with the lodging. Do you have this breakdown? It's
13 this one right here, sir.

14 A. Yes, sir. I know it's in this pile somewhere.
15 Let me find it.

16 [Whereupon, the witness reviews documents]

17 A. I recall enough that you can ask me a question.

18 Q. [Mr. Maybank] All right. I don't --

19 A. It's okay. I've got it. I've got it.

20 Q. You've got it. Okay. Very good.

21 My understanding is that you testified that
22 prior to living on Daniel Island, you lived on Sullivan's
23 Island?

24 A. Yes, sir.

25 Q. Did you own a house there?

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1 A. No.

2 Q. Did you rent?

3 A. Yes.

4 Q. Were you on the front beach?

5 A. I was.

6 Q. Were you there year-round?

7 A. Seasonal.

8 Q. Which season? Winter or summer?

9 A. Winter in both cases.

10 Q. Winter in both cases.

11 What was the rent that you were charged at
12 Sullivan's per month?

13 A. 3500

14 a month.

15 Q. And that was for a full house on Sullivan's
16 front beach?

17 A. Yes.

18 Q. Pardon? Pardon me?

19 A. Yes. In the off-season, yes.

20 Q. You had a house out there. That's -- I know.
21 That's why I was wondering. So you've got \$15,000 for
22 hotel rooms for two months. You would agree with me that
23 -- well, let me strike.

24 Let me ask you this. Do you know if Sullivans
25 has -- is the zip code for Sullivans, when you lived out

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1 there, was that the highest house cost per home in the
2 United States? Do you know?

3 A. 29451. Yes.

4 Q. It was high, wasn't it?

5 A. Yes, sir.

6 Q. Very high.

7 So you would agree with me that there are
8 alternatives to a hotel rate room of \$250 that are
9 significantly more cost effective than you could get than
10 what you are showing here, wouldn't you?

11 A. You've got to be careful with your -- yes.

12 Q. Just want you to answer it. That's all. Okay?

13 And, as a matter of fact --

14 THE COURT: I don't mean to dampen your
15 enthusiasm. If you want to give an explanation to any
16 of these questions, feel free to do that. Okay?
17 There's a difference between answering a question and
18 giving an explanation. What I'm trying to get you to
19 do is answer the question and then explain it. Okay?

20 THE WITNESS: Yes, sir.

21 THE COURT: I don't want to dampen your
22 enthusiasm. Okay?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. Please proceed.

25 MR. MAYBANK: Yes, sir.

1 A. Yes. But with a qualification. Find me thirty-
2 six properties at one point in time, on Sullivan's Island,
3 for a two-month period of time when everyone has to move
4 out of their unit. Okay? That's what hotels are for.
5 Anyone can negotiate those leases with Carolyn on -- at
6 Sullivan's Island you're not going to --

7 Q. [Mr. Maybank] Do you think that in greater
8 Charleston, Berkeley, Dorchester -- Berkeley County --
9 y'all are in Berkeley County out there, aren't you?

10 A. We're on Daniel Island, sir, in Charleston, city
11 of.

12 Q. City of. But is it overseen by Berkeley County?

13 A. Yes.

14 Q. I bet I can find thirty-six homes to rent in
15 Berkeley County a lot less than \$15,000 for two months,
16 don't you think?

17 A. Cainhoy would be an incredible place to go.

18 Q. People in Cainhoy believe that. Yes, sir.

19 And if -- you would agree with me on this,
20 wouldn't you, that if Dr. Stewart's acoustical repair is
21 correct and if Quietly Making Noise, the acoustical
22 individuals who were retained by your expert, Ted Padgett,
23 who said that, to you, meets code, the acoustical issues
24 meet code, that we would not have to dingle back out and
25 rip out all these floors and do everything that you said

1 that you would need so that you wouldn't really have any
2 of these damages, would you?

3 A. I violently disagree with your perspective.

4 Q. You what?

5 A. Violently disagree with your perspective.

6 Violently.

7 Q. I don't understand why it needs to be violent.

8 But --

9 A. Well, you don't live in a unit that doesn't pass
10 building code, and you don't hear the people above you
11 urinating, and you don't hear the people above you walking
12 every step of the way, you don't hear the garbage things
13 going off, you don't hear their alarms in the morning.
14 You don't hear this stuff. You go back to your beautiful
15 house on Sullivan's Island. Oh, that's your second home.
16 That's the one you rent.

17 Q. Are you done?

18 A. No.

19 Q. Isn't that because you didn't take advantage of
20 what everybody else did of having the acoustical
21 remodification done to your unit, did you?

22 A. I didn't believe it would work, and it didn't.

23 THE COURT: Can I interrupt for just a second?

24 MR. MAYBANK: Yes, sir.

25 THE COURT: How many units did they do the

1 acoustical on?

2 MR. MAYBANK: I believe all but -- they did it
3 on thirty-four units.

4 MR. ALTMAN: Thirty-four units.

5 MR. MAYBANK: They did it on thirty-four units,
6 Your Honor.

7 THE COURT: So thirty-four units that's been
8 done on; is that correct?

9 MR. MCDONALD: No, Your Honor. Because the way
10 they -- the way they did it is they dropped the
11 ceiling in the bottom two --

12 THE COURT: I understand that. But I just asked
13 how many units did they do that work on.

14 MR. MCDONALD: Well, it would have been --

15 MR. ALTMAN: Twenty-one.

16 MR. MCDONALD: -- all but three of the two
17 bottom units.

18 THE COURT: So it would have been twenty-one
19 units; is that correct? Okay.

20 MR. MCDONALD: Yes.

21 THE COURT: Thank you very much.

22 MR. MAYBANK: The reason why, Your Honor, the
23 top floor doesn't have anybody walking on top of it.

24 THE COURT: I understand.

25 Q. [Mr. Maybank] But you chose not to have your

1 unit remediated; correct?

2 A. And I had specific reasons for that. Number
3 one, I --

4 Q. No. That's not -- can you answer the question?
5 We can give -- I'll give you as much time as you want to
6 answer it.

7 A. That's right. I can no and then respond.

8 Q. That's right. Did you --

9 A. So I did not have -- no.

10 Q. Let me ask the question again. Did you have
11 your unit modified as per the protocol that Dr. Stewart
12 put in place in what we now know to be twenty-one of the
13 units?

14 A. No.

15 Q. Did you allow him to come into your unit and
16 investigate your unit and acoustical problems?

17 A. I don't believe I was offered that.

18 Q. And did anybody from Carriage Hill or Daniel
19 Island Riverside Developers not offer you the option of
20 having Dr. Stewart remediate your unit?

21 A. It was offered.

22 Q. Okay. You just chose not to have it done?

23 A. I chose not to.

24 MR. MAYBANK: If you'll give me one moment.

25 [Whereupon, Mr. Maybank and Mr. Altman confer]

1 Q. [Mr. Maybank] Mr. Chiovarou, did you put a
2 damage list together for your stuff?

3 A. Yes, I did.

4 Q. Have you produced that?

5 [Whereupon, Mr. Maybank and Mr. Altman confer]

6 MR. MAYBANK: Thank you. That's all I have.

7 THE COURT: Let me just clarify one thing in my
8 mind. You said none of the top floors were done.
9 Twenty-one units. So there's twelve -- apparently
10 there are six units, two per building. There's twelve
11 top floors. So it's not but three units that have not
12 been complied with on the third and fourth -- excuse
13 me -- I guess the second and third floor?

14 MR. MAYBANK: There was a -- to the best of my
15 knowledge without --

16 THE COURT: Is my math correct?

17 MR. MAYBANK: There was a lady from California
18 and there was Mr. Chiovarou and Brooks.

19 THE COURT: Mr. Bundy or Mr. McDonald, is that
20 correct? Three units on the second and third floor
21 that have not been noise attenuated?

22 MR. MCDONALD: What was your number?

23 THE COURT: Well, my number was three. You said
24 it wasn't done on the top floor. There's two units
25 per building. There's six units, so that's twelve. I

1 was told there was twenty-one done. That leaves
2 thirty-three. There's thirty-six units total.

3 MR. MCDONALD: There's thirty-six units total.

4 THE COURT: So that leaves three that it has not
5 been performed on. We know his hasn't.

6 MR. MCDONALD: Yes. And this is just the roof
7 lowering, not the flooring. Just half of it.

8 THE COURT: I'm sorry. What?

9 MR. MCDONALD: This is just the remediations
10 that they did, just half --

11 THE COURT: Right. I understand. That's what I
12 was asking, the remediations that they did.

13 MR. MCDONALD: Yes. Yes.

14 THE COURT: I'm just trying to get the numbers
15 straight.

16 MR. MCDONALD: Certainly. Yes, you are correct.

17 THE COURT: All right. Thank you.

18 MR. MAYBANK: Thank you, Mr. Chiovarou. That's
19 all I have.

20 THE COURT: All right. Redirect.

21 MR. MCDONALD: A very brief redirect, Your
22 Honor, if I may.

23 THE COURT: Please do.

24 MR. MCDONALD: Thank you.

25 - - -

REDIRECT EXAMINATION

BY MR. MCDONALD:

Q. Mr. Chiovarou, you were asked some questions on cross-examination about Exhibit 143, which would constitute the marketing materials that you received; correct?

A. Yes, sir.

Q. And you were asked some questions, over a period of time, about the fact that the page about standard luxuries -- and, in fact, I think he made you read it twice. This is Exhibit 143 -- he made you read it twice, that the developer makes no warranty or representation; correct?

A. Yes.

Q. But this isn't the only marketing material they put out there, is it?

A. I don't believe so.

Q. All right. Turn in 143 --

A. Yes, sir.

Q. -- if you would, sir. It's a document towards the back that looks very similar to the document you were shown by Mr. Maybank.

A. Yes. My contract?

Q. Yes, sir.

A. Oh. Yes.

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1 Q. Now, the language that you were cross-examined
2 by, does it appear on this document?

3 A. It does not.

4 Q. Does soundproofing between all units appear on
5 this document?

6 A. Yes, it does.

7 Q. Under additional features?

8 A. Yes, it does.

9 Q. And they've got another note here. They've got
10 another small print here. Can you read that into the
11 record, please, sir.

12 A. The developer reserves --

13 THE COURT: Where are you reading from, so I
14 can --

15 MR. MCDONALD: I'm sorry.

16 THE COURT: Pardon?

17 MR. MCDONALD: This is -- if you go through his
18 contract of sale, on Exhibit 143, it's towards the
19 back. One more page after that, Your Honor.

20 THE COURT: Here?

21 [Whereupon, the Court reviews documents]

22 MR. MCDONALD: I'm sorry, Your Honor. It's
23 right here. Keep going. This exhibit is too big.
24 There you are, Your Honor.

25 THE COURT: Okay. Thank you very much.

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1 Q. [Mr. McDonald] And it's got another note. And
2 what does it say?

3 A. [Reading] The developer reserves the right to
4 make substitutions of materials that are equal to or
5 greater quality in the event of material shortages or
6 discontinued items.

7 Q. Did anybody from the developer ever come to you
8 and say, we're going to change, we're not going to
9 soundproof your building?

10 A. No.

11 Q. Turn if you would, sir, to Exhibit 145, which is
12 the master deed.

13 A. Got a little messy here.

14 [Whereupon, the witness reviews documents]

15 A. 155; correct?

16 Q. [Mr. McDonald] No, sir. 145.

17 A. Number 145. Yes. Got it.

18 Q. It's the master deed; correct?

19 A. Yes, it is.

20 Q. Have you read that document?

21 A. Many times.

22 Q. I would like to refer to section 9.15 of that
23 document. It's page 33.

24 A. Yes, sir.

25 Q. And before we get there: I think you testified

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1 to this earlier. The developer, as listed in this
2 document, is who? On the first page after the table of
3 contents.

4 A. Daniel Island Riverside Developers.

5 Q. So that's who wrote this?

6 A. They wrote it.

7 Q. You didn't write it, did you?

8 A. No, sir.

9 Q. And section 9.15 says what?

10 A. Noises.

11 Q. Okay.

12 A. [Reading] No owner, his family, servants,
13 employees, agents, visitors, guests, invitees, licensees,
14 tenants, or lessees shall make or permit any disturbing
15 noises in the common area or limited common area for his
16 or her unit, nor shall any such person do or permit to be
17 done anything that will interfere with the rights,
18 comfort, and convenience of the remaining unit owners or
19 occupants --

20 Q. All right. I'll stop you there, because the
21 judge can read it. But I've just got a real simple
22 question. Are the tenants, owners, agents, the people
23 listed in this document in section 9.15, whether they had
24 their unit remediated for sound attenuation or whether
25 they're like you and didn't, are they able to comply with

1 this section?

2 A. They are not able to comply with this section.

3 Q. And why? Why are they not able to comply?

4 A. Because noise remediates through basic everyday
5 living.

6 THE COURT: Which exhibit are you referring to
7 on the 9.15?

8 MR. MCDONALD: Exhibit 145, Your Honor, the --

9 THE COURT: 145. Okay.

10 MR. MCDONALD: -- master deed.

11 THE COURT: Let me find it.

12 [Whereupon, the Court reviews documents]

13 MR. MCDONALD: That's all I have, Your Honor.

14 Thank you.

15 THE COURT: All right. What page on the master
16 deed, please, sir?

17 MR. MCDONALD: Yes, sir. It's page 33 and it's
18 section 9.15 with regard to noises.

19 THE COURT: Hold on a second.

20 MR. MCDONALD: May I approach, Your Honor?

21 THE COURT: I'm sorry. What page, now?

22 MR. MCDONALD: 33.

23 THE COURT: 33. Okay. All right. 9.15.

24 MR. MCDONALD: Yes, sir.

25 THE COURT: All right. Thank you so very much.

1 MR. MCDONALD: Thank you, Your Honor. That's
2 all I have. Appreciate the Court's indulgence.

3 THE COURT: All right. Any --

4 MR. MAYBANK: Very briefly. Two questions.
5 That's it. Two questions.

6 THE COURT: Well, he didn't ask very many.
7 Let's make sure --

8 MR. MAYBANK: I know. And I'm going to stay --

9 THE COURT: -- it's in relation to what he said.
10 Okay?

11 MR. MAYBANK: It is right within the same
12 documents.

13 THE COURT: All right.

14 MR. MAYBANK: Yes, Your Honor. Very briefly.

15 RECROSS-EXAMINATION

16 BY MR. MAYBANK:

17 Q. If you would, under that -- if you would go back
18 to Exhibit 143 for me.

19 A. 143?

20 Q. Yes, sir. The marketing material in which you
21 have the sale contract.

22 A. Yes.

23 Q. Page 7 of that.

24 [Whereupon, the witness reviews documents]

25 A. I'm sorry. Did you say page 7 of the sale

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1 contract?

2 Q. [Mr. Maybank] Yes. Under Exhibit Number --
3 Plaintiffs' 143.

4 A. Yes.

5 Q. Do you see the floor plans, construction
6 matters, and construction flexibility?

7 A. Yes.

8 Q. And that gives -- [reading] you are hereby
9 acknowledging and agreeing that any floor plan rendering,
10 drawing, or the like, from a private company to you, or to
11 depict unit thereof, do not necessarily reflect the actual
12 as-built conditions?

13 [Whereupon, the witness reviews documents]

14 A. That's a lot of verbiage. It's a lot of
15 verbiage.

16 [Whereupon, the witness reviews documents]

17 Q. [Mr. Maybank] I don't want to be confusing to
18 you, now. Could you read it?

19 THE COURT: Go show him where you're talking
20 about, please, sir.

21 MR. MAYBANK: Sure.

22 Q. [Mr. Maybank] It's paragraph 3, top paragraph.

23 A. I'm looking at it.

24 Q. First sentence.

25 A. It's about 700 words here.

1 Q. First sentence, that's all.

2 A. [Reading] Which hereby acknowledges and agree
3 that any floor plan rendering or drawing, and the like,
4 furnished by the company to purchasers, which purport or
5 depict the unit or any portion thereof or build -- or the
6 building containing the same and merely approximations --

7 Q. Or, no. Are merely approximations.

8 A. -- are merely approximations and do not
9 necessarily reflect the actual as-built condition of
10 the --

11 Q. And you would agree with me that that -- because
12 these are fluid situations, people need flexibility, that
13 that would be a reasonable insertion or language in a
14 purchase contract?

15 A. I didn't realize architectural plans that are
16 written multiple years ago are really that very flexible,
17 so I disagree. No.

18 MR. MAYBANK: Thank you very much.

19 THE COURT: You may step down. Thank you very
20 much.

21 MR. MAYBANK: Thank you, Your Honor.

22 [Whereupon, Mr. Chiovarou is excused and exits
23 the witness stand]

24 THE COURT: We'll take about a ten-minute break.

25 [Whereupon, a recess is taken from 4:32 p.m. to

1 4:39 p.m.]

2 THE COURT: If you'll call your next witness,
3 please.

4 MR. BUNDY: Thank you, Your Honor.

5 The plaintiff calls Ms. Sue Ruvo, please.

6 THE COURT: Sue what? I'm sorry.

7 MR. BUNDY: Ruvo. R-U-V-O.

8 THE COURT: R-U what?

9 MR. BUNDY: V-O. V-O.

10 THE COURT: Okay.

11 MR. BUNDY: Your Honor, she is one of the
12 trustees for the Gerald M. Ruvo and Sue S. Ruvo as
13 trustees for the Ruvo 2006 living trust.

14 [Whereupon, Ms. Ruvo comes forward]

15 THE CLERK OF COURT: Raise your right hand.

16 [Whereupon, Ms. Ruvo is duly sworn by the clerk
17 of court as follows: do you swear or affirm that your
18 testimony will be the whole truth and nothing but the
19 truth, so help you God]

20 THE WITNESS: I do.

21 THE CLERK OF COURT: State your full name and
22 spell your last name.

23 THE WITNESS: Sue Ruvo. R-U-V, as in Victor-O.

24 - - -

25 - - -

1 SUE S. RUVO,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:
4 DIRECT EXAMINATION
5 BY MR. BUNDY:
6 Q. You are Sue Ruvo, one of the trustees of the
7 Gerald M. Ruvo and Sue S. Ruvo trustees for the Ruvo 2006
8 living trust?
9 A. Gerard Ruvo. Yes.
10 Q. And you are a plaintiff in this action?
11 A. Yes.
12 Q. And you live where?
13 A. San Francisco.
14 Q. And you got here when?
15 A. Last -- yesterday afternoon.
16 Q. And when are you leaving?
17 A. Tonight at 7:30.
18 Q. Okay. I'm going to hand you Exhibit 123-A and
19 ask you if this is the deed, into you and your husband, of
20 your unit.
21 MR. BUNDY: Exhibit 123-A, Your Honor.
22 THE COURT: Yes, sir. Any objections?
23 MR. ALTMAN: Yeah. Is it the deed --
24 THE COURT: Yes. It's the deed where she bought
25 the property. Any objection?

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1 MR. ALTMAN: No objection. No objection.

2 THE COURT: 123 admitted without objection.

3 Q. [Mr. Bundy] All right. The property was
4 initially purchased in your husband and your names and it
5 was then transferred into trust; is that correct?

6 A. Correct.

7 Q. And you have the authority to bring this action
8 on behalf of --

9 A. Yes.

10 Q. -- the trust; is that correct?

11 I now hand you Exhibit 123-B. And can you
12 identify that for the Court, please.

13 A. This is -- it looks like a copy of the brochure.

14 Q. Which brochure is that?

15 A. Of The Oaks at Rivers Edge.

16 Q. Now, what did y'all pay for your unit?

17 A. We paid \$647,749.

18 Q. And when did you purchase it?

19 A. I believe it was March. We closed I believe in
20 March of '06.

21 Q. '06.

22 And your unit is what number in what building?

23 A. It's 144, and it's building 6-3-A.

24 Q. 3-A. So you're on the third floor. You're in
25 the middle?

1 A. Correct.

2 Q. And why did you and your husband purchase it
3 initially? What was your initial plan?

4 A. Our plan -- we lived in Connecticut at the time
5 and our plan was to use it as a vacation home until my
6 husband retired and at that point to retire here.

7 Q. Okay.

8 A. That was in '04. And then in '05 we were
9 transferred to California -- because it wasn't built. But
10 it was in the works by then.

11 Q. And so you had already signed the contract of
12 sale?

13 A. Yes.

14 Q. You couldn't get out of it at that point?

15 A. Right.

16 Q. What does your husband do?

17 A. He works for Campari America.

18 Q. So you were in San Francisco and you knew at
19 that point you weren't going to be moving back to
20 Charleston?

21 A. When I came to do the walkthrough and realized
22 you can't -- that it can't be a weekend thing to come, I
23 said to him, I don't think we can do this. So --

24 Q. San Francisco to Charleston is not a weekend-
25 getaway sort of place?

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1 A. Exactly. And there aren't direct flights.

2 Q. Since you now have this unit, what did you do
3 with it?

4 A. We were advised to wait for a year because of
5 tax reasons. So we decided to rent it.

6 Q. So before -- even before closing, you knew you
7 were going to sell this unit as soon as reasonably
8 practical?

9 A. Yes.

10 Q. But you didn't buy it as a speculative unit?

11 A. No, no. we were going to use it as a retirement
12 home.

13 Q. Would you have been more than happy to have
14 taken your security money back and gone back to
15 California?

16 A. Hindsight is twenty-twenty. Yes.

17 Q. So you did -- you were able to attempt it; is
18 that correct?

19 A. We did. In June of '06.

20 Q. And what was the rent that that tenant paid you?

21 A. \$2500 a month.

22 Q. And what was the term of that lease?

23 A. I believe it was -- it was a year.

24 Q. A year.

25 And did those tenants remain during the entire

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1 one year?

2 A. No. They moved out in January of '07.

3 Q. And who was in breach of the lease when they
4 moved out? Were you in breach of the lease or were they
5 in breach of the lease?

6 A. We were.

7 Q. You were.

8 Why were you in breach of the lease?

9 A. Because the noise was unbearable to them.

10 Q. So you did not give them the obligation of
11 peace-and-quiet enjoyment that they were entitled to --

12 A. Right.

13 Q. -- as a tenant, as you being the landlady;
14 correct?

15 A. Right.

16 Q. And you didn't argue with them about that, did
17 you?

18 A. No. I had no legs to stand on.

19 Q. And so did you lose any rent from that initial
20 tenant because they -- because you were in breach of the
21 lease and they weren't?

22 A. Yes.

23 Q. Okay. How much money --

24 A. Yes.

25 Q. -- did you lose?

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1 A. \$15,000.

2 Q. Have you ever stayed in the unit?

3 A. No.

4 Q. So but you have received complaints about the
5 noise in the unit?

6 A. Yes.

7 Q. Now, did you have any leaks in the unit?

8 A. Yes.

9 Q. Now, were those -- do you know the source of
10 those leaks?

11 A. Yes.

12 Q. What were they?

13 A. We had a leak from the air-handler in the unit
14 above us that went through our closet and subfloor and the
15 hot-water heater, et cetera. And then we also had a leak
16 behind the wall in one of the bathrooms about the same
17 time frame.

18 Q. So none of these leaks were associated with
19 windows or doors or anything like that?

20 A. No.

21 Q. Now, the leak, the first leak you had, did you
22 file an insurance claim?

23 A. Yes.

24 Q. And did you sustain any loss after you received
25 your insurance proceeds?

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1 A. Yes.

2 Q. And what loss did you sustain?

3 A. \$1914, plus the 1,000-dollar deductible.

4 Q. So is it a fair statement that of the -- how
5 much do you think -- how much did the insurance company
6 pay to fix everything? Do you know?

7 A. It was in the neighborhood of \$10,000.

8 Q. So they paid ten and you had out pony-up out of
9 your pocket nineteen fourteen -- twenty-nine fourteen --

10 A. Right.

11 Q. -- the deductible and the nineteen? Okay.

12 A. Uh-huh.

13 Q. Now, you also said there was a leak in the wall.
14 What problems did that cause?

15 A. That when they got behind the wall, they saw
16 there was mold. We had to have mold remediations.

17 Q. Did you have a tenant in it at the time?

18 A. Yeah. The same tenant.

19 Q. The same --

20 A. The same as the -- the Potters [phonetic].

21 Q. So that was a different tenant than --

22 A. Exactly.

23 Q. -- the tenant that had moved out --

24 A. Yes.

25 Q. -- in July?

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1 A. That was our second tenant. Right.

2 Q. All right. So based upon that leak, did you
3 incur any damages?

4 A. Yes.

5 Q. Can you tell the Court what those damages were?

6 A. 1400 for mold testing; 3930 for mold
7 remediations; 842 for wood repair, 577 and 1154 for carpet
8 replacement; and \$300 short rent.

9 Q. And so you cut the rent by \$300 to sort of keep
10 the tenants happy?

11 A. Exactly.

12 Q. Or less unhappy, I guess?

13 A. Right.

14 Q. So that comes to twenty-six thousand one
15 seventeen, by my math.

16 A. Yes.

17 Q. That's what you're asking the Court --

18 A. Yes.

19 Q. -- to award you today as it relates to that?

20 A. Yes.

21 Q. Now, in addition, have you retained the services
22 of an expert appraiser?

23 A. Yes.

24 Q. And are you relying on your appraiser to testify
25 and tell the jury what, in his opinion, your damages were

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1 because you were unable to sell the unit?

2 A. Yes.

3 Q. Have you tried to sell the unit?

4 A. Yes.

5 Q. When did you begin to try to sell the unit?

6 A. After the noise remediations.

7 Q. Why didn't you --

8 A. We had --

9 Q. Why didn't you -- excuse me. I'm going to
10 interrupt you one minute.

11 Why didn't you try to sell it before the noise
12 remediations?

13 A. We decided it would be much easier to have it
14 remediated empty, so we decided to wait. And we put it on
15 the market in July of '07.

16 Q. And how did that work out for you?

17 A. No offers.

18 Q. No offers.

19 What price did you put on it?

20 A. 759,000.

21 Q. Did you pay that much for it?

22 A. Six forty-seven.

23 Q. Would you have entertained an offer for less
24 than your asking price?

25 A. Yes.

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1 Q. But you weren't -- you didn't get any offers?

2 A. Right.

3 Q. Did you list it with a real estate broker?

4 A. Yes.

5 MR. BUNDY: That's all I have. Thank you very
6 much.

7 THE COURT: Cross-examination.

8 Are you going to offer 123 into evidence?

9 MR. BUNDY: Yes, sir. I apologize.

10 THE COURT: Any objection to 123?

11 MR. ALTMAN: No. No objection.

12 THE COURT: 123 admitted without objection.

13 MR. BUNDY: I guess the whole -- and there's --
14 and also --

15 What's the other one?

16 THE COURT REPORTER: A and B.

17 MR. BUNDY: A and B, I guess.

18 THE COURT: I think it's A through I, I believe.

19 [Whereupon, Mr. Bundy and Mr. McDonald confer]

20 MR. BUNDY: 123-A and B, Your Honor.

21 THE COURT: A and B is all you offered?

22 MR. MCDONALD: Yes, sir.

23 MR. BUNDY: Yes, sir. The court reporter has
24 them --

25 THE COURT: 123-A and B admitted without

1 objection.

2 MR. BUNDY: Thank you, Your Honor.

3 [Whereupon, Plaintiffs' Exhibit Number 123-A is
4 admitted into evidence by the Court]

5 [Whereupon, Plaintiffs' Exhibit Number 123-B is
6 admitted into evidence by the Court]

7 MR. BUNDY: Your witness.

8 MR. MAYBANK: Yes, ma'am. I hope I don't
9 misstate your name. Is it Ruvo?

10 THE WITNESS: Ruvo.

11 MR. MAYBANK: Ruvo. I apologize.

12 THE WITNESS: Uh-huh.

13 MR. MAYBANK: I did misstate your name,
14 Ms. Ruvo.

15 CROSS-EXAMINATION

16 BY MR. MAYBANK:

17 Q. Ms. Ruvo, you testified that you could not get
18 out of the initial contract; is that correct?

19 A. We didn't even try.

20 Q. That's what I -- that's what -- my question was
21 going to be if you even tried.

22 Do you understand -- did you get in the lottery
23 system to buy one of these units?

24 A. No. We had a choice of several.

25 Q. So you were one of the initial purchasers?

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1 A. I wouldn't say initial. But we didn't have to
2 be in a lottery.

3 Q. Who was the listing agent that you listed your
4 unit with to sell it?

5 A. Lynn Barber.

6 Q. And is Ms. Barber with Daniel Island Real
7 Estate?

8 A. Yes.

9 Q. So when she listed your unit did she list, as a
10 part of the disclosure, all of any construction problems
11 on the unit?

12 A. I don't know.

13 Q. Would you agree with me that if Ms. Barber did
14 not put the disclosures on the seller disclosure form that
15 there were any construction, for lack of a better term,
16 defect problems, whether it be sound or water intrusion,
17 that the reason why you couldn't sell your unit at
18 \$759,000 was because, as Mr. Chiovarou aptly testified to,
19 that the extreme economic downturn -- if I'm not mistaken,
20 I think that it's been referred to as worse than the great
21 depression -- could have been the reason why you didn't
22 sell your unit in 2007?

23 A. When was the downturn? I believe we had it on
24 the market before that.

25 Q. Did you hear my question?

1 A. Please repeat it.

2 Q. Yes, ma'am. I sure will.

3 That, in fact, you submitted your unit to sell
4 in July of 2009 with Lynn Barber of --

5 A. No, no, no. In 2007.

6 Q. -- Daniel Island Real Estate?

7 Did I say in '09?

8 A. Yeah.

9 Q. I apologize. 2007 with Ms. Barber; correct?

10 A. Correct.

11 Q. All right. And she's with Daniel Island Real
12 Estate; correct?

13 A. Yes.

14 Q. And as far as you know, Ms. Barber did not
15 disclose -- not that she did or didn't. You just don't
16 know whether or not she disclosed in the seller disclosure
17 form whether there were any lawsuits or pending litigation
18 or construction problems with The Oaks unit; correct?

19 A. Yeah. I don't know.

20 Q. How about you? Were you the seller of the unit?
21 Were you the representative of the trust to sell this
22 unit?

23 A. Yes.

24 Q. Did you fill out a seller disclosure form,
25 pursuant to South Carolina real estate law, that said that

1 you were disclosing to a subsequent purchaser any of these
2 construction problems that you have just testified to?

3 A. I don't know. We were faxed the real estate
4 agreement. We signed it, we faxed it back.

5 Q. I understand that. But my question -- I'm not
6 asking what you signed.

7 A. Yeah.

8 Q. Did you disclose to any subsequent purchaser in
9 2007, July, when you listed it, the fact of one of three
10 things, whether or not there was any water intrusion,
11 sound attenuation, or construction problems on your
12 project?

13 A. In a nutshell, please repeat.

14 Q. Did you, in July of '07, disclose on a South
15 Carolina residential disclosure form the existence of
16 either any construction defect problems, any water
17 intrusion problems, or any sound attenuation problems, to
18 any purchasers?

19 A. No, unless it was in the standard contract.

20 Q. So if you did not disclose it and Lynn Barber
21 did not disclose it, the fact that your property failed to
22 sell at seven fifty-nine could simply be explained away by
23 the fact that the global economic meltdown, if it hadn't
24 occurred, may have been occurring and that was the reason
25 why you didn't sell your unit at that point in time?

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1 A. Could be, yeah.

2 Q. The leak behind the walls, was that due to water
3 intrusion due -- around the windows?

4 A. No.

5 Q. Did you ever have any water intrusion around
6 your windows?

7 A. Not to my knowledge.

8 Q. The inability to sell -- I believe you testified
9 that you lost \$15,000?

10 A. Of rent.

11 Q. Pardon me. Rent.

12 When did you start that rent again? I didn't
13 hear you.

14 A. Well, our tenant moved out in January of '06,
15 and we, at that point, because of a remediations, started
16 counting loss of rent then for six months.

17 Q. Did you have the unit remediated for sound
18 attenuation?

19 A. Yes.

20 Q. Was it paid for by Carriage Hill Associates or
21 Daniel Island Riverside Developers?

22 A. Yes. I -- yeah.

23 Q. Did they pay to have your tenant moved out of
24 the house --

25 A. I didn't have a tenant. We had left it empty so

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1 we wouldn't have a tenant in there for remediations.

2 Q. Okay. So that time was a voluntary time to have
3 it remediated; correct?

4 A. Right.

5 Q. After the sound remediations was complete, did
6 you then move to re-rent the unit?

7 A. Yes.

8 Q. Did you use Daniel Island Real Estate as your
9 rental agency, so to speak?

10 A. No.

11 Q. Who did you use to rent your --

12 A. At the time, they were called Barrister Creek
13 Property Management.

14 Q. Is that a division of Daniel Island Real Estate?

15 A. I don't think so.

16 Q. Were they able to rent your unit out after that?

17 A. In February of '08.

18 Q. So you did not re-rent your unit until February
19 of 2008?

20 A. Right.

21 Q. Do you recall when your unit was remediated for
22 the sound attenuation?

23 A. I believe it was -- well, we put it on the
24 market in July. It was probably remediated in June,
25 because we waited until after the remediations to put it

1 on the market.

2 Q. Well, let me back up. I'm a little confused.

3 So January of '06 is when you --

4 A. The tenant moved out.

5 Q. When did you buy your unit?

6 A. Oh. Excuse me. '07. We bought it --

7 Q. Thank you. I apologize. That's my --

8 A. Okay.

9 Q. So January of 2007 is when your tenant moved
10 out?

11 A. Correct.

12 Q. So -- okay. Between January of '07 and February
13 of 2008, my understanding is that the actual remediations
14 time was about three weeks to complete the sound
15 attenuation. Does that sound about right?

16 A. I have no idea. I was in California.

17 Q. And so during that time, once the remediations
18 process was complete, is there any reason why you couldn't
19 have moved to immediately rent your unit during that year?

20 A. We could have but we decided to try and sell it
21 without getting somebody in there, you know, and it was
22 sold for six months and --

23 Q. Got you. Got you.

24 So the rental -- the renting -- the rental
25 monies that you didn't have was because that was a

1 voluntary decision you and your husband made to attempt to
2 sell the unit during the 2007 time frame?

3 A. Right.

4 Q. All right. You've never stayed in the unit?

5 A. No.

6 Q. I apologize. I didn't hear this. What does
7 your husband do?

8 A. He works for Campari America.

9 Q. What is that?

10 A. Campari is an Italian liquor. And he runs their
11 American business unit. North American.

12 Q. Do you work?

13 A. No.

14 Q. So that I understand, other than this money
15 loss, due to rent from that time frame when y'all were
16 trying to sell the unit, you have the claim of about 1900
17 for the air-handler with \$1,000 -- when were those claims
18 made? Do you know?

19 A. Yes. That was the summer of 2008.

20 Q. You understand that after a certain period of
21 time, certain obligations fall onto the homeowner to
22 maintain their property?

23 A. Right.

24 Q. Since 2007 -- and that's July -- have you tried
25 to sell your home again?

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1 A. No.

2 Q. Did you buy a home in California?

3 A. No.

4 Q. Do you rent?

5 A. Yes.

6 Q. Did you own a home in Connecticut?

7 A. Yes.

8 Q. Have you sold that?

9 A. Yes. We sold it before we moved.

10 Q. Before you moved to California --

11 A. Uh-huh.

12 Q. -- in 2005?

13 A. Uh-huh.

14 Q. So the only home you rent -- or condominium you,
15 pardon me, own today is the one on Daniel Island?

16 A. Correct.

17 MR. MAYBANK: If you'll give me one moment, Your
18 Honor. I think I'm about done.

19 [Whereupon, Mr. Maybank reviews documents]

20 Q. [Mr. Maybank] Any involvement involving -- any
21 negotiations involving Carriage Hill Associates, Daniel
22 Island Riverside Developers, the board, the homeowners
23 association after it was turned over, the experts
24 involved, is it a fair statement to say that you really
25 didn't have any knowledge or input during those

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1 negotiation processes?

2 A. Yes.

3 [Whereupon, Mr. Maybank and Mr. Altman confer]

4 Q. [Mr. Maybank] Ms. Ruvo, is this -- this lawsuit
5 is being brought on behalf of your trust?

6 A. Yes.

7 Q. Are any contracts to purchase by, or to sell, or
8 rent that unit with the trust itself or with you and your
9 husband individually?

10 A. I guess it's with the trust.

11 Q. Is your unit rented now?

12 A. Yes.

13 Q. And when was it rented now?

14 A. Most recently, March 1st.

15 Q. Of 2013?

16 A. Yes.

17 Q. And was it rented before that?

18 A. Yes.

19 Q. Has it stayed continuously rented other than the
20 time from January of 2007 until February of 2008?

21 A. For the most part. We've had four tenants in
22 the course of owning it and when one left, there might be
23 a gap in there for a few months.

24 Q. And that's just to find another tenant?

25 A. Exactly.

1 Q. Okay.

2 A. Yeah.

3 Q. Now, I'm not going to be too much of a stickler,
4 but I see you're reading something up there in front of
5 you. What have you got in front of you?

6 A. Oh. No. I have the dates that the different
7 tenants moved in.

8 Q. I know. But is that a notepad?

9 A. No. It's -- well --

10 Q. Those are your notes that you took?

11 A. Yeah, but I -- oh, well, I -- I had it here and
12 I transferred them over to here.

13 Q. Okay. Are those notes -- have you given those
14 notes to your attorney?

15 A. Yes.

16 Q. Okay. How much are you currently renting the
17 unit for?

18 A. \$2200 a month.

19 Q. Is that price set by your real estate agent?

20 A. No. My real estate agent isn't involved in it.
21 I don't have a real estate -- I have the management
22 company and we determine a price then we say this is what
23 we would like and then they come back to us and say, we
24 haven't gotten anybody, maybe you need to -- yeah. So we
25 work it out with the management company.

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1 Q. Through market conditions, I assume; correct?

2 A. Well, yeah. Yeah. If you want to rent it,
3 yeah.

4 Q. Yeah. You've got to go with what the current
5 market will bear; correct?

6 A. Yeah.

7 Q. And at this time, it's 2200 a month?

8 A. Uh-huh.

9 Q. Is that a yes?

10 A. Yes. Sorry.

11 MR. MAYBANK: All right. Thank you very much,
12 ma'am. Have a safe trip back to San Francisco.

13 THE WITNESS: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. BUNDY:

16 Q. You are not claiming lost rent, are you, for the
17 period of time you were waiting on them to do
18 remediations?

19 A. No.

20 Q. All you're claiming lost rent for is a tenant
21 who moved out and didn't pay you rent that you were
22 otherwise entitled to; correct?

23 A. Yes.

24 Q. Because it was too loud for them to live there?

25 A. Yes.

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1 Q. That's all the rent you're asking for; right?

2 A. Right.

3 Q. Now, as it relates to the notion that you're
4 supposed to maintain your unit, tell me, Ms. Ruvo, how you
5 maintain plumbing pipes in a wall that blow up and cause
6 you to fix mold and mildew.

7 A. Exactly. You can't.

8 Q. Do you know how to do that?

9 A. No, not without getting behind the wall.

10 Q. Did you understand when you bought this unit
11 that this developer expected you to go in and maintain the
12 pipes within the walls?

13 A. No, I didn't.

14 Q. Would you have purchased it with that knowledge?

15 A. No.

16 Q. Now, the first leak was from the HVAC system
17 above?

18 A. Exactly.

19 Q. Somebody else's unit?

20 A. Exactly.

21 Q. And did you know you were supposed to maintain
22 your neighbor's HVAC?

23 A. No. And I didn't know I would be responsible
24 for it, as well.

25 MR. BUNDY: Thank you.

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1 THE COURT: Any recross?

2 RECROSS EXAMINATION

3 BY MR. MAYBANK:

4 Q. When your unit -- when your renter moved out,
5 did you try to re-rent the place?

6 A. No.

7 MR. MAYBANK: No further questions, Your Honor.
8 Thank you.

9 THE COURT: You may step down. Thank you so
10 very much.

11 Call your next witness.

12 MR. BUNDY: Your Honor, may Ms. Ruvo be excused
13 to go back home?

14 THE COURT: Yes, sir.

15 MR. BUNDY: Thank you.

16 THE WITNESS: Thank you.

17 THE COURT: Have a safe trip.

18 THE WITNESS: Thank you.

19 [Whereupon, Ms. Ruvo is excused and exits the
20 witness stand]

21 THE COURT: Call your next witness.

22 MR. BUNDY: Terry Johnson.

23 THE COURT: Did you say Terry Johnson?

24 MR. BUNDY: Yes, Your Honor. T-E-R-R-Y. Terry
25 D. Johnson.

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1 [Whereupon, Mr. Johnson comes forward]

2 THE COURT: Hold on just a second.

3 [Off the record momentarily]

4 THE CLERK OF COURT: Raise your right hand.

5 [Whereupon, Mr. Johnson is duly sworn by the
6 clerk of court as follows: do you swear or affirm the
7 testimony you shall give this Court will be the truth
8 and nothing but the truth, so help you God]

9 THE COURT: What is his name?

10 THE WITNESS: I do.

11 THE CLERK OF COURT: State your full name for
12 the record, please.

13 MR. BUNDY: Pardon me?

14 THE COURT: What is his name?

15 MR. BUNDY: Terry Johnson. J-O-H-N-S-O-N.

16 Give us your full name for the record, please.

17 THE WITNESS: Terry Dwayne Johnson.

18 - - - - -

19 TERRY D. JOHNSON,

20 Having Been First Duly Sworn,

21 was Examined and Testified as Follows:

22 DIRECT EXAMINATION

23 BY MR. BUNDY:

24 Q. Where do you live?

25 A. Daniel Island, South Carolina.

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1 Q. What do you do?
2 A. I'm a family physician.
3 Q. Where do you practice?
4 A. At the Navel Weapons Station in Goose Creek.
5 Q. And how long have you been a physician?
6 A. Thirty-seven years.
7 Q. Do you recognize Plaintiffs' Exhibit 117-A as
8 the deed into Terry D. Johnson from Daniel Island
9 Riverside Developers on June 23, 2006, and a deed out of
10 Nancy K. Johnson --
11 I assume that's your wife?
12 A. Yes.
13 Q. -- out of that into First Columbia Property LLC
14 on July 26, 2010? Can you identify those documents?
15 [Whereupon, the witness reviews documents]
16 A. I can identify them, yes.
17 Q. [Mr. Bundy] Have I accurately described them?
18 A. Yes.
19 MR. BUNDY: Your Honor, we move to introduce
20 Exhibits 117-A and B into --
21 THE COURT: Any objection?
22 MR. BUNDY: 117-A actually is two documents.
23 MR. MAYBANK: No objection.
24 THE COURT: No objection. All right. 117-A
25 admitted without objection.

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1 MR. BUNDY: Thank you, Your Honor.

2 [Whereupon, Plaintiffs' Exhibit Number 117-A is
3 admitted into evidence by the Court]

4 Q. [Mr. Bundy] I hand you now Plaintiffs' Exhibit
5 117-B and ask you to identify this for the Court.

6 A. It's The Oaks at Rivers Edge traditional living,
7 and there was a marketing piece of design that
8 demonstrated the floor plans and the location.

9 Q. And when did you first see this document,
10 Dr. Johnson?

11 A. It would have been in 2005..

12 Q. Did it influence your decision as to whether or
13 not to purchase this unit?

14 A. Absolutely. Yes.

15 Q. Did you rely on the truth of the contents?

16 A. Yes.

17 MR. BUNDY: Your Honor, at this point I would
18 move to introduce Plaintiffs' Exhibit 117-B into
19 evidence.

20 THE COURT: Any objection?

21 MR. MAYBANK: I'm sorry. I didn't hear. Which
22 exhibit was that?

23 MR. BUNDY: 117-B.

24 THE COURT: It's the prospectus that's -- it's
25 already in, I believe.

1 MR. MAYBANK: No. No objection.

2 THE COURT: 117-B admitted without objection.

3 [Whereupon, Plaintiffs' Exhibit Number 117-B is
4 admitted into evidence by the Court]

5 Q. [Mr. Bundy] After you purchased the unit,
6 what's the unit's history in terms -- did you move in?

7 A. No, we did not.

8 Q. Okay. And why did you buy the unit?

9 A. We bought the unit with the intent to think of
10 moving here and retiring. We have children and
11 grandchildren in the area and we thought that when we were
12 presented this by our realtor, and this was a beautiful
13 place on a beautiful island -- and we thought it would be
14 a great place to retire.

15 Q. And what were you going to do with the unit
16 after you purchased it until you retired?

17 A. To rent it.

18 Q. And were you able to rent it?

19 A. Yes.

20 Q. And how long did you rent it?

21 A. We started renting it in January of 2007. And
22 all was well until February of 2008, when a renter filed a
23 complaint of mold and mildew in our unit.

24 Q. I hand you Exhibit 117-D and ask you if you can
25 identify this document.

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1 A. Yes, I can.

2 Q. Who prepared that document?

3 A. I did.

4 Q. And what is it, generally, without going into
5 the details?

6 A. It is a summary of the rent and loss of rent
7 that we sustained because of the problems in our unit.

8 Q. So it's your claim? This is the written
9 documentation of your claim --

10 A. Yes.

11 Q. -- correct?

12 A. Yes.

13 Q. And what source documents have you reviewed in
14 order to come up with these numbers?

15 A. Our property manager provided us with monthly
16 statements of rent and loss of rent of our unit.

17 Q. So this is just merely a compilation of those
18 documents?

19 A. Yes.

20 MR. BUNDY: Your Honor, at this time we would
21 move to introduce 117-D into evidence.

22 THE COURT: Any objection?

23 MR. MAYBANK: I would object, Your Honor, only
24 for the fact that we don't know that any of the
25 documents that support these rents -- he testified

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1 that they came from a third party. I'll say that
2 that's hearsay.

3 THE COURT: I think he said that it was an
4 estimate of what rents he had lost, even though the
5 agent prepared it. But he was not saying he knew
6 about it.

7 THE WITNESS: I have a letter from my property
8 manager --

9 THE COURT: Be quiet, please, sir.

10 Is that basically the way -- I mean, I think he
11 said he knew about the loss of rents but his agent,
12 his rental agent, prepared it, is all he said.

13 MR. BUNDY: It's a compilation of --

14 THE COURT: Anyhow, your objection is overruled.

15 MR. MAYBANK: Thank you, Your Honor.

16 THE COURT: What is it? 117 --

17 MR. BUNDY: 117 --

18 THE COURT: -- B admitted --

19 MR. BUNDY: D.

20 THE COURT: -- with objection.

21 MR. BUNDY: D, as in dog.

22 THE COURT: All right. D. Excuse me.

23 MR. BUNDY: Yes, sir.

24 [Whereupon, Plaintiffs' Exhibit Number 117-D is
25 admitted into evidence by the Court]

1 Q. [Mr. Bundy] Now, with regard to -- let's start
2 with -- you bought the unit on June 23rd, 2006; is that
3 correct?

4 A. Yes.

5 Q. And what did you pay for the unit?

6 A. Six hundred and seventy-three -- \$670,633.

7 Q. And then you put it up for sale at some point?

8 A. Yes.

9 Q. And why did you put it up for sale?

10 A. Because of the problems of the unit, the -- all
11 the construction defects, our problems with rent or loss
12 of rent, we decided it was not a desirable unit, we did
13 not want to live there ourselves when we retired, and that
14 it would be best to sell it.

15 Q. Have you ever been in the unit?

16 A. I've been in it, but not lived in it.

17 Q. But have you been in it when people were
18 upstairs?

19 A. No.

20 Q. So you put it on the market when?

21 A. I believe it was in 2009.

22 Q. And what did you put it on the market for?

23 A. It was about \$650,000.

24 Q. Okay. And it appears as though you sold it on
25 July 26th, 2010; is that correct?

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1 A. Yes.

2 Q. And what did you get paid for it?

3 A. \$490,000.

4 Q. So you took a little hit there?

5 A. Yes.

6 Q. And have you hired Donato to opine as to what
7 portion of this was a result of the inability to get into
8 the market as opposed to a downturn of the economy?

9 A. Yes.

10 Q. And his testimony will come later.

11 A. Yes.

12 Q. But you -- I assume you agree with your -- you
13 rely on your expert?

14 A. Right. I rely on him.

15 Q. Now, with regard to Plaintiffs' Exhibit 117-B,
16 which was the document you relied upon, I believe you
17 said --

18 A. Yes.

19 Q. -- before you purchased?

20 A. Yes.

21 Q. Is there anything in particular in this document
22 that you believe was not provided to you as promised?

23 A. Well, as everybody else has said, we had
24 significant noise and sound issues.

25 Q. And has that -- have those issues resulted in

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1 loss of rent?

2 A. There are multiple issues that contributed to
3 our loss of rent, and that was one of them.

4 Q. Now, let's go through Plaintiffs' Exhibit 117-D.
5 And if you would tell the Court how much rent you lost in
6 the year 2008, 2009, 2010, and why in your opinion -- one,
7 how you calculated the number. I believe your opinion is
8 because you lost the rent because of the problems with
9 these units; is that correct?

10 A. Right. The property manager said we had to
11 reduce the rent, initially, to maintain a tenant who was
12 in there. The tenant finally, at the end of 2008, moved
13 out because of the multiple problems, that she couldn't
14 take it anymore. There was health issues with the mold
15 and mildew that she was breathing. And in 2009 the unit
16 was -- we were trying to rent it but it was empty for five
17 months while the property manager tried to find a tenant.
18 And then when we finally did find a tenant in 2009, again,
19 the rent had to be reduced because of the multiple issues
20 that were in the unit and around the unit. And then
21 finally got that -- that tenant was in there until 2010
22 when we sold it.

23 Q. So in addition to your request that the Court
24 award you damages, to be testified to by Mr. Donato,
25 you're requesting the Court to award you how much for lost

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1 rents?

2 A. Lost rent was \$23,125, documented by our
3 property manager.

4 MR. BUNDY: Thank you, Your Honor. The witness
5 is with you.

6 THE COURT: Cross-examination.

7 MR. MAYBANK: Hi, Mr. Johnson. How are you
8 today?

9 THE WITNESS: Fine. Thank you.

10 CROSS-EXAMINATION

11 BY MR. MAYBANK:

12 Q. Mr. Johnson, who did you list your unit with in
13 2009?

14 A. Daniel Island Realty.

15 Q. Who there, specifically?

16 A. Angie Johnson.

17 Q. And you listed it for 650,000; is that correct?

18 A. I think it was approximately that. I don't have
19 the exact number in front of me, but I think it was
20 something like that.

21 Q. All right. And then in 2010 you sold it for
22 490,000?

23 A. Yes.

24 Q. Do you know who the listing agent was at that
25 point?

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1 A. Angie Johnson, with Daniel Island Realty.

2 Q. Who purchased your unit?

3 A. I do not remember the name.

4 Q. When you sold your unit, did you sell your unit
5 fee simple? Do you know what that term means?

6 A. No.

7 Q. Did you retain any rights in that unit
8 whatsoever?

9 A. No.

10 Q. When you sold it, you sold it? gone?

11 A. Yes.

12 Q. You retained no rights for any litigation, or
13 for any other purposes, in that unit?

14 A. No.

15 Q. So you've not owned that unit since July 26 of
16 2010?

17 A. Correct.

18 Q. And when you listed it with Ms. Johnson -- I'm
19 going to ask you the same questions -- did you, in fact,
20 draft any disclosures identifying the unit to have been
21 part of a litigation?

22 A. Yes.

23 Q. All right. Did Ms. Johnson put that in the MLS?

24 A. Yes.

25 Q. Was that specifically bargained for, when you

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1 sold the unit in 2009, for those defects?

2 A. Yes.

3 Q. But you don't recall who bought it?

4 A. No.

5 Q. How about the health issue? The individual who
6 you claim had some kind of health issue with the mold, did
7 they receive any kind of doctor's orders?

8 A. I do not know.

9 Q. Do you know if the doctor diagnosed it, other
10 than just somebody saying to you we've got health
11 problems?

12 A. The tenant said she could smell the mold and
13 mildew and she was very concerned about health issues and
14 didn't feel comfortable living in there anymore. So she
15 moved out.

16 Q. How long was the home on the market when you
17 eventually sold it for \$490,000?

18 A. I think a little over six months, nine months,
19 something in there.

20 Q. Was it sold as a short sale or a regular sale?

21 A. Regular sale.

22 Q. Was your unit part of the remediations
23 attenuation -- sound attenuation?

24 A. Yes.

25 Q. During that time, you did not have any out-of-

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1 pocket expenses to pay for that attenuation, did you?

2 A. No.

3 Q. Was your renter in the unit at the time?

4 A. They were moved out for three weeks while that
5 was going on.

6 Q. All right. Did Daniel Island or Carriage Hill
7 Associates pay for that individual to live in a different
8 location?

9 A. Yes.

10 Q. You didn't have to pay for that, did you?

11 A. No.

12 Q. Have you ever -- have you ever had any time to
13 interact with Bob Behringer, Rich Behringer, or anybody
14 from Daniel Island Riverside or Carriage Hill Associates
15 of Charleston?

16 A. Initially, at time of the purchase of the unit,
17 I had a conversation with Rich Behringer.

18 Q. And that was the only time that you interacted
19 with anyone from these companies?

20 A. I also interacted with Rich Behringer during the
21 attenuation.

22 Q. And during that time, do you believe that Rich
23 was responsive to your requests and/or complaints to try
24 to remedy the attenuation problem?

25 A. He listened to what I said but said he would do

1 nothing about it.

2 Q. Did he, in fact, bring in Dr. Noral Stewart to
3 try to fix the attenuation problem?

4 A. He just told me he was -- he listened to what I
5 said and said it wouldn't make any difference in what he
6 was going to do.

7 Q. Doctor, do you have a top-floor unit?

8 A. A middle-floor unit.

9 Q. And if, in fact, it had been -- your renter was
10 moved out; correct?

11 A. Yes.

12 Q. And they did come in and perform an attenuation
13 on your unit; correct?

14 A. Yes.

15 Q. All right. So they did do something?

16 A. Yes.

17 Q. Did you have anybody in July 26, 2010, do an
18 appraisal on your unit?

19 A. I believe that would have been done by the
20 purchaser or realty that bought it.

21 Q. But you don't know who the purchaser was or the
22 real estate agent that would have -- that represented that
23 buyer?

24 A. No.

25 Q. You don't have any construction or general

1 construction knowledge, do you?

2 A. No.

3 Q. Explain just a little bit more -- we're about
4 done on these lost rents. You closed on this unit in 2009
5 -- in 2006?

6 A. Yes.

7 Q. June?

8 A. Yes.

9 Q. And did you immediately put it into a rental
10 program?

11 A. Yes.

12 Q. Now, these lost rents -- this is what -- I
13 should have asked this prior -- is that gross rent or is
14 that net rent income to you?

15 A. Gross rent.

16 Q. What's net to you off of 2500?

17 A. The property manager took ten percent and I
18 received the remainder, less any expenses that were
19 incurred.

20 Q. All right. And so what would be -- do you have
21 a ledger that would show the average net to you versus
22 gross?

23 A. The standard rent at the time, when we started
24 renting, was 2500. The ten percent was \$250. So I
25 received twenty-two fifty a month, less if there were any

1 expenses incurred that month.

2 Q. And does your breakdown show any expenses
3 incurred, or is that just gross rent?

4 A. Gross rent.

5 Q. So, in actuality, it is likely that that rent
6 amount, or those pages on Exhibit Number --

7 MR. MAYBANK: Do you have the exhibit, sir?

8 THE COURT: 117.

9 Q. [Mr. Maybank] On the Exhibit 117-D, actual net
10 to you would be less than what is shown on that exhibit?

11 A. It would be a ten-percent property management
12 fee.

13 Q. In addition to any type of costs or expenses, as
14 you've also testified?

15 A. Expenses would have been separate from this.

16 Q. Do you have a list of those expenses?

17 A. I have a monthly summary from the property
18 manager. But that had nothing to do with the reduced rent
19 that I incurred.

20 Q. I understand that. But that would be off of --
21 those expenses would be less the ten percent of the
22 management fee, as well; correct?

23 A. I'm not sure I understand how you stated that.

24 Q. Sure. It was probably poorly worded.

25 You did a gross income. Then you take, back off

1 of that, ten percent. That would be to the rental-income
2 company?

3 A. Right.

4 Q. Then you would also take off expenses off of
5 that, and then after that would come net to you?

6 A. Right.

7 Q. So what you have, then, in Exhibit 117-D, then,
8 would be an amount greater than what you would actually be
9 taking home; correct?

10 A. It should have been -- it could have been
11 corrected by ten percent by the property management fee.

12 Q. Minus any expenses?

13 A. Expenses had nothing to do with the reduction in
14 rent and the losses that I incurred because I still paid
15 those expenses.

16 Q. Which you would normally have to pay anyway?

17 A. Right. So that has nothing to do with my claim.

18 Q. You live here in Charleston?

19 A. Yes.

20 Q. Are you from Charleston?

21 A. No.

22 Q. Where are you from?

23 A. Rockford, Illinois, originally.

24 Q. Would you agree with me that the overall economy
25 from '07 and '08, '09, '10 -- my gosh, it depends on who

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1 you're talking -- even today -- was in your lifetime one
2 of the largest downturns in the overall economy in the
3 United States?

4 A. Yes.

5 Q. Impacted both incomes, livelihoods, and
6 investments of individuals?

7 A. Yes.

8 Q. Including real estate values?

9 A. Yes.

10 Q. Doctor, if you would give me one moment, please.

11 [Whereupon, Mr. Maybank and Mr. Altman confer]

12 Q. [Mr. Maybank] Doctor, I failed to ask, and I
13 apologize.

14 When you started renting your unit in '06, it
15 was at \$2500?

16 A. Yes.

17 Q. And when did your rent go down?

18 A. In March of 2008.

19 Q. And Ms. Ruvo testified that she arrived at her
20 rent amount in discussing with her realtor or property
21 manager what the going rate for that unit type would be.
22 Did you consult with anybody about what you should be
23 charging for rent in 2008?

24 A. The property manager. And we had a current
25 tenant in there who he said, she's threatening to move out

1 and we have to reduce the rent because she's unable to use
2 two of the bedrooms because of the mold and mildew that
3 were in those units -- in those bedrooms. He said, we
4 have to reduce the rent; if we don't reduce it this
5 amount, she will move out.

6 Q. And what did you reduce it to?

7 A. I reduced it \$750 a month.

8 Q. You reduced it to seven fifty per month?

9 A. We reduced it from 2500 a month to \$1750 a
10 month, a reduction of \$750 a month.

11 Q. I apologize. I misheard.

12 A. The first month of March was prorated.

13 Q. And then has the rent gone -- did the rent ever
14 go back up from that time?

15 A. No.

16 Q. Did you ever go in there and fix the two rooms
17 so that you could have full value of 2500 per month for
18 the rent?

19 A. Our tenant filed a complaint in February, end of
20 February, 2008. My property manager contacted Carriage
21 Hill about the problems with mold and mildew on the carpet
22 and the walls. After several calls, my property manager
23 -- in April, we still had not received any response so in
24 April he sent a letter to them, which I have a copy of.
25 And finally in June, four months later, they came to the

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1 unit and investigated the problem. They cut out part of
2 the Sheetrock and they found there was black mold and
3 mildew over all the wood frame in the wall. They did
4 patch the wall and they did clean the carpet, but they did
5 not solve the problem, which they obviously discovered was
6 much more extensive than they realized. The smell of the
7 mold and mildew, and persisted throughout the unit, again
8 raising significant health issues, as you can ask any
9 physician, that would be breathing mold and mildew. And
10 so we had to reduce the rent. Those problems were not
11 ever solved while I owned the unit.

12 Q. So you reduced the unit but let somebody stay in
13 there with black mold?

14 A. She moved out. And then they came in and
15 patched the unit. And then it was left vacant for about
16 five months while we tried to find another tenant, who
17 came in aware of the problems, and a temporary patchwork
18 and paid, again, a reduced rent.

19 Q. Why didn't you just simply fix the problem?

20 A. The problems were throughout the walls and the
21 roof, that were major construction issues that were far
22 beyond anything that was capable of my repair.

23 Q. Did you inquire to the HOA, to Mr. Chiovarou, to
24 tell him that, I've got these problems in my common-wall
25 elements, please get the HOA to fix them?

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1 A. The HOA quickly became aware of the extension of
2 all these problems in all of the units and in all of the
3 buildings and has tried to work with Carriage Hill to
4 repair it.

5 Q. And that was in '08 that they were working with
6 Carriage Hill to try to fix those problems?

7 A. I don't remember the dates exactly -- but it
8 became apparent to the HOA and to Carriage Hill -- but it
9 was somewhere in there.

10 Q. But they were working with the HOA to try to
11 repair and --

12 A. The repairs --

13 Q. -- fix these problems?

14 A. The repairs were never done while I owned the
15 unit. It was merely a simple patchwork of putting the
16 Sheetrock back in the little hole that they cut out. The
17 wood was never repaired, never replaced. It was a mere
18 simple cosmetic fix.

19 Q. Was Mr. Padgett made aware of this?

20 A. I do not know.

21 Q. Do you know who Mr. Padgett is?

22 A. No.

23 [Whereupon, Mr. Maybank and Mr. Altman confer]

24 Q. [Mr. Maybank] You were in building five?

25 A. Yes.

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1 Q. Were you part -- were you, again, a part of the
2 retrofix that was completed? And my understanding is the
3 back side of building five was pulled off at some point?

4 A. Yes.

5 Q. Were you -- was your unit affected by that?

6 A. Yes.

7 Q. Were the problems, at that point, addressed and
8 fixed?

9 A. Not while I owned the unit.

10 Q. So thereafter?

11 A. The major part of the stucco was pulled off the
12 back of the wall -- there was large sheets of plastic that
13 hung over there for a month, if not over a year -- and was
14 not repaired while I owned the unit. There may have been
15 some cosmetic fix to it, but there was no repair.

16 MR. MAYBANK: All right. Thank you.

17 MR. BUNDY: Nothing further from the plaintiff.

18 May this witness be excused, Your Honor?

19 THE COURT: Yes, sir.

20 MR. BUNDY: Thank you, Your Honor.

21 [Whereupon, Mr. Johnson is excused and exits the
22 witness stand]

23 MR. BUNDY: The plaintiffs would call

24 John E. Atkinson.

25 THE COURT: What number is he?

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1 MR. BUNDY: The unit number?

2 THE COURT: No. The exhibit number.

3 MR. BUNDY: 111-A and 111-B.

4 [Whereupon, Mr. Atkinson comes forward]

5 THE CLERK OF COURT: Raise your right hand.

6 [Whereupon, Mr. Atkinson is duly sworn by the
7 clerk of court as follows: do you swear or affirm the
8 testimony you shall give this Court will be the truth
9 and nothing but the truth, so help you God]

10 THE WITNESS: I do.

11 THE CLERK OF COURT: Have a seat, please.

12 [Whereupon, Mr. Atkinson takes the witness
13 stand]

14 THE CLERK OF COURT: State your full name for
15 the record, please.

16 THE WITNESS: My name is John Edwin Atkinson.

17 - - - - -

18 JOHN E. ATKINSON,

19 Having Been First Duly Sworn,

20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MR. BUNDY:

23 Q. Mr. Atkinson, where do you live?

24 A. New Freedom, Pennsylvania.

25 Q. What do you do?

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1 A. I'm an investment adviser.

2 Q. When are you headed home?

3 A. Quarter of 8:00, tonight, is my flight.

4 Q. Exhibit 111-A, Mr. Atkinson, is that the deed to
5 the unit you bought?

6 A. Yes, it is.

7 Q. How much did you pay for it?

8 A. 735,000.

9 Q. And what unit number did you buy for \$730,000?

10 A. Building four, 3-B.

11 Q. 3-B. So you're in the middle?

12 A. Yes, sir.

13 MR. BUNDY: Your Honor, move to introduce
14 Plaintiffs' Exhibit 111-A into evidence.

15 THE COURT: Any objection?

16 MR. MAYBANK: We're getting there, Your Honor.

17 THE COURT: What building was it?

18 MR. BUNDY: Building four.

19 THE COURT: Thank you, sir.

20 MR. MAYBANK: No objection, Your Honor. Thank
21 you.

22 THE COURT: 117-A [sic] admitted without
23 objection.

24 [Whereupon, Plaintiff's Exhibit Number 111-A is
25 admitted into evidence by the Court]

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1 Q. [Mr. Bundy] Do you rent your unit?

2 THE COURT: 111-A. Excuse me.

3 Q. [Mr. Bundy] Do you rent your unit?

4 A. No, sir.

5 Q. So it's unoccupied?

6 A. No, sir. We're using it as a second home, and
7 it was to be a retirement home.

8 Q. So you've actually stayed in the unit?

9 A. Oh, yes.

10 Q. How often are you there, Mr. Atkinson?

11 A. Three or four weeks a year.

12 Q. How is the soundproofing working out for you?

13 A. It is not working out for me.

14 Q. Will you tell the judge -- were you in the units
15 before this alleged remediations took place?

16 A. Pardon me? I didn't hear the first part.

17 Q. Were you in your unit, did you spend any time in
18 your unit, before the alleged remediations took place?

19 A. Yes, we did.

20 Q. What was it like then?

21 A. Noisy, like everybody has said. Yes, you can
22 hear everything.

23 Q. Have you ever been in anybody else's condominium
24 in your life?

25 A. In my life?

1 Q. Yeah, in your life.

2 A. Yeah.

3 Q. Have you ever been in anybody else's
4 condominium?

5 A. Oh. Sure. You means friends and --

6 Q. Do you have friends that have condominiums?

7 A. Absolutely.

8 Q. People up north have condominiums?

9 A. Absolutely.

10 Q. And so you've had some experience. How old are
11 you?

12 A. I'll be sixty-six in June.

13 Q. Okay. So in your sixty-six years, some portion
14 of that time was spent in people's condominiums and they
15 may have had people living above them; right?

16 A. Absolutely. Yes, sir.

17 Q. Tell the judge how your condominium compares,
18 okay, in terms of sound transmission, from the
19 condominiums you've been in of your friends in other
20 places around the country.

21 A. Interesting. I have a home in New Freedom,
22 Pennsylvania, but I also work in Townsend, Maryland. And
23 I'm renting a condominium from a friend of mine in
24 Townsend, Maryland, to be closer to work. That unit was
25 built in the '60s and it's much more quiet than it is. It

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1 also has six units in it, ironically. And I'm on the
2 bottom level, so I have a couple of people -- and it's
3 more quiet than the building which was built eight or ten
4 years ago. So, yes. Personal experience --

5 Q. Is it -- is it any more luxurious, in terms of
6 the finishes and fit, than your unit that you bought over
7 on Daniel Island?

8 A. No. This is a very inexpensive condo. It's in
9 Townsend, Maryland, where I work.

10 Q. Can you identify Plaintiffs' Exhibit 111-B for
11 us, please?

12 A. That's the marketing or sales brochure that was
13 handed to us --

14 Q. Prior to purchase?

15 A. -- prior to purchase. Yes.

16 Q. Did you review it?

17 A. Absolutely.

18 Q. Did you rely on it?

19 A. Yes, sir.

20 MR. BUNDY: Your Honor, I would move to
21 introduce Plaintiffs' Exhibit --

22 THE COURT: Why are -- are we going to introduce
23 them all?

24 MR. BUNDY: Sir?

25 THE COURT: Are we going to introduce them all?

1 MR. BUNDY: Well, I think I have to prove each
2 and every person read it and relied on it unless --

3 THE COURT: I understand. Okay. All right.

4 MR. BUNDY: I mean, you know, I don't want to --

5 THE COURT: I mean, as far as the paperwork, I
6 mean, it's going to mount and mount and mount.

7 MR. BUNDY: If they'll stipulate that everybody
8 got one of these, certainly. If they'll stipulate
9 everybody got one of these, I'm glad to do that.

10 THE COURT: All I'm saying, if he identifies
11 that he received it, do y'all want to put the paper
12 in?

13 MR. MAYBANK: Absolutely not.

14 THE COURT: Anything --

15 MR. MAYBANK: You want to put it in as an
16 exhibit?

17 THE COURT: Yes.

18 MR. BUNDY: This will be the second exhibit --
19 the third exhibit --

20 MR. MAYBANK: My only concern, Your Honor -- my
21 only concern would be in that if it's consistent
22 throughout --

23 [Whereupon, Mr. Maybank and Mr. Bundy confer]

24 MR. MAYBANK: -- if it's the same group of
25 documents, we don't care.

1 THE COURT: I assume it's the same documents.

2 MR. BUNDY: As far as I know it is, unless --

3 THE COURT: I'm just trying to say, I mean, the
4 paperwork is going to get this high. I'm just trying
5 to cut down on the paperwork.

6 MR. MAYBANK: Just show him the last one and ask
7 him if it's the same one.

8 MR. BUNDY: Thank you for your help. I
9 appreciate it.

10 THE COURT: All right. Please proceed.

11 Q. [Mr. Bundy] Did you rely on the contents of
12 Plaintiffs' Exhibit -- which has been identified as
13 Plaintiffs' Exhibit 116-B?

14 A. Yes.

15 Q. What, in regard or relation to any
16 representations regarding the soundproofing, did you rely
17 on in purchasing this unit?

18 A. The brochure itself and --

19 Q. And it says --

20 A. -- it says soundproofing and all that. Plus the
21 word luxury.

22 Q. When you -- before the remediations, did you get
23 what you paid for as it -- in regard to the soundproofing?

24 A. No.

25 Q. Now, tell me about the remediations. How did

1 that -- how were you informed of the remediations and what
2 were you told and what occurred?

3 A. We had an option. We had an option to either
4 have it done or not to have it done. And since it was a
5 second home and we weren't there a lot, we said, hey,
6 let's get it done. And we asked to have it done while we
7 didn't have a lot of furniture in there. So they got it
8 done pretty quickly.

9 Q. And so they didn't have any expenses, in terms
10 of moving you in, moving you out? You didn't make any
11 lost-rent claims or any of that stuff --

12 A. No.

13 Q. -- did you?

14 A. No.

15 Q. You just wanted a quiet place to live; right?

16 A. That is correct.

17 Q. And after they did the remediations, did you
18 have a quiet place to live within the confines of what you
19 were expecting?

20 A. We noticed no difference. It was still very
21 noisy.

22 Q. Give His Honor, just very quickly, some examples
23 of the type of things you can hear in your unit that you
24 did not expect to hear and would not have purchased the
25 unit had you known you were going to hear these things.

1 A. I think a lot of them have been mentioned.
2 Heavy footsteps, flushing of toilets, people's personal
3 bathroom things. I mean, you name it. Footsteps is the
4 big thing. A little bit of everything. You can hear the
5 toilets flush all the time and --

6 Q. Do you feel lapped in luxury while all that is
7 going on?

8 A. Not at all.

9 MR. BUNDY: Thank you, Your Honor.

10 THE COURT: Cross-examination.

11 MR. BUNDY: I'm sorry. I apologize. May I --
12 my lawyer here is telling me I left something out.

13 THE WITNESS: Thank you.

14 THE COURT: What did you leave out?

15 MR. BUNDY: His damages.

16 THE COURT: Okay. That might be important.

17 MR. BUNDY: Thank you, Your Honor. That's why
18 I've got this gentleman helping me.

19 Q. [Mr. Bundy] Tell us, tell the judge, what your
20 damages are.

21 A. My damages are my inability to refinance. I
22 have a rather large mortgage on the property. It's a
23 seven-and-three-eighths mortgage. And as everybody knows,
24 this is our historically low interest rates that we have
25 right now. I've tried, with no less than eight different

1 mortgage-type companies or banks or credit unions, to get
2 financing and I've gotten say up to the alter and then
3 they find out about the issues and the problems of the
4 building and will not go any farther. I've actually had
5 appraisals done and paid for those. I've done a lot of
6 the -- gotten right up to the alter, like I say, and
7 nothing has happened. They just say, no, we can't touch
8 this, you've got lawsuits going on and you've got bad
9 problems. I've even asked to front more money. I could
10 do that. And it was still they don't -- they don't care.
11 They won't talk to me. They'll get right up there and say
12 no.

13 Q. So your inability to refinance is not a function
14 of your financial situation, it's a function of the
15 condition of the building?

16 A. Absolutely. Correct.

17 Q. Have you also hired Mr. Donato to opine and tell
18 the judge what he believes your damages to be?

19 A. Yes, I have.

20 MR. BUNDY: Thank you very much.

21 THE COURT: Are you going to put 111-L in?

22 MR. BUNDY: What's the number? Excuse me.

23 What's the number?

24 THE COURT: 111-L. Do you want to put it in?

25 111-L.

1 MR. BUNDY: Pardon me.

2 [Off the record momentarily]

3 MR. BUNDY: Oh. We've got a document? We've
4 got an exhibit?

5 MR. MCDONALD: I believe he's updated it.

6 THE COURT: 111-L.

7 MR. MCDONALD: He can tell you.

8 MR. BUNDY: Have you got an updated -- have you
9 got an updated number?

10 A. Yes, I do.

11 Q. [Mr. Bundy] Tell us what it is.

12 A. Just under \$100,000 in extra interest that I've
13 paid over the five and a half years of not being able to
14 finance.

15 MR. BUNDY: Thank you so much.

16 MR. MAYBANK: Mr. Atkinson --

17 THE COURT: Let me ask one question. I want to
18 find out --

19 Mr. Atkinson, I know you said it's 100,000. But
20 look at your exhibit, Plaintiffs' Exhibit Number 1-L
21 [sic], where it says 650,000 at seven and three-eighths
22 percent for thirty years. 650,000, four and three-
23 quarters for thirty years, and you're showing it looks
24 like four years of payments. You didn't reduce the
25 principal at all?

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1 THE WITNESS: No, Your Honor, I didn't. And
2 there's two things. First of all, as most people
3 know, everybody knows, the early part of a thirty-year
4 mortgage, it's mostly interest and very little
5 principal.

6 THE COURT: Well, the principle does reduce
7 some.

8 THE WITNESS: Well, I --

9 THE COURT: You're talking about six fifty, and
10 seven years later you talk about six fifty again.

11 THE WITNESS: Yes. And also, Your Honor, those
12 numbers were given about a year and a half ago during
13 the deposition. And it's been another year and a half
14 since that time.

15 And if I may, since that time interest rates --
16 so my four and three quarters may be a little high.
17 But, I mean --

18 THE COURT: I understand --

19 THE WITNESS: Yes, sir.

20 THE COURT: -- your principle is very little to
21 begin with. They get their interest on the front end,
22 basically. But you still reduce it some.

23 THE WITNESS: Yes.

24 THE COURT: It might be infinitesimal, but it
25 does reduce some.

1 THE WITNESS: Well, I have some hard numbers,
2 that I think are probably on there, that I used a
3 mortgage book that showed the PI and TI -- or PI.
4 Principal, interest.

5 THE COURT: Okay. Go ahead.

6 MR. MAYBANK: Was 111-L entered in as an
7 exhibit?

8 THE COURT: No. No.

9 MR. MAYBANK: Okay. Good.

10 THE COURT: I was just asking that question
11 because --

12 MR. MAYBANK: All right. Thank you, Your Honor.

13 Mr. Atkinson, my name is Roy Maybank. I
14 represent Carriage Hill of Daniel Island.

15 CROSS-EXAMINATION

16 BY MR. MAYBANK:

17 Q. I understand you are an investment banker?

18 A. Investment advisor, not a banker.

19 Q. An advisor. Does that have a fiduciary
20 component to it to your folks that you advise?

21 A. Yes, I do.

22 Q. Very good.

23 All right. Who do you work for?

24 A. I work for a regional brokerage firm, Janey
25 [phonetic], Montgomery, Scott, headquarters out of

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1 Philadelphia.

2 Q. And what exactly do you do as a financial
3 advisor?

4 A. I wear a few different hats. I'm a financial
5 advisor for private clients. Individuals, in other words.
6 I also manage their Townsend office for Janey, Montgomery,
7 Scott. And I work with some institutional small -- or
8 medium-size banking-type institutions such as credit
9 unions.

10 Q. So you, in your history, have advised private
11 clients as -- is that private wealth?

12 A. Private wealth? Yes. You could call it that, I
13 guess.

14 Q. Private wealth, as well as institutional
15 bankers?

16 A. Institutional banks -- or credit unions.
17 Correct.

18 Q. Credit unions.

19 A. Correct.

20 Q. So if anybody has seen the ugliness of this
21 financial mess, have you seen a pretty bad amount of it?

22 A. Referring to the stock market, or the economy,
23 or which --

24 Q. Actually --

25 A. -- one?

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1 Q. All of the above.

2 A. Yes. That's been brutal at times, but it's
3 gotten better.

4 Q. But it's been brutal, hasn't it?

5 A. Yes, sir.

6 Q. It was brutal in 2007, wasn't it?

7 A. More in 2008. Right.

8 Q. And 2009?

9 A. Yes.

10 Q. 2010?

11 A. Gotten better. It's gotten better as far as --
12 Now, we're talking about the economy, or the
13 stock market, or what are we talking --

14 Q. Real estate values --

15 A. Oh. Real estate values --

16 Q. -- real estate.

17 A. -- real estate --

18 THE COURT: Why don't we limit it to real estate
19 values? That's what we're --

20 MR. MAYBANK: Yes.

21 THE COURT: -- talking about.

22 MR. MAYBANK: That's what I said, real estate
23 values.

24 THE WITNESS: Oh. Okay. Well, I'm not --

25 THE COURT: But you were talking about the

1 economy. The stock market is higher than it's ever
2 been in the history of this country right now.

3 MR. MAYBANK: Absolutely.

4 THE COURT: So let's limit it to real estate.
5 Okay?

6 Q. [Mr. Maybank] Real estate --

7 MR. MAYBANK: Yes, sir.

8 Q. [Mr. Maybank] -- back in '09 and 0'10.

9 A. It's getting better in '09 and '10,
10 geographically. In some areas yes and in some areas no,
11 you know, nationally. They've had some problems in, you
12 know, Florida and so on. But --

13 Q. My understanding is you had a first mortgage on
14 this property, and a second mortgage, when you initially
15 purchased it?

16 A. Yes.

17 Q. You had two mortgages totaling \$647,000?

18 A. That's correct.

19 Q. All right. And this -- and how old are you?

20 A. I'll be sixty-six in June.

21 Q. Please don't take this the wrong way. But as a
22 financial advisor, would you advise somebody of that age
23 to accumulate a debt burden of nearly a million dollars at
24 the age of sixty-seven?

25 A. [No response]

1 Q. I'm sorry. What are you? Sixty-six?

2 A. Oh. I'm sixty-five, will be sixty-six in June.

3 Q. Yes, sir.

4 A. It depends on their wherewithal.

5 Q. Would you be thinking that, at the time you did
6 this, it would be a good investment, so to speak, not
7 necessarily as a return on the money in '06? Because as
8 you said, the economy hadn't gotten bad yet then. And
9 that's really what -- this was an investment?

10 A. I never looked at it as an investment.

11 Q. You did not?

12 A. No.

13 Q. So you did not think that --

14 THE COURT: He testified he was buying it for a
15 retirement home, okay, not to flip.

16 Q. [Mr. Maybank] Did you ever move into it?

17 A. Yes, sir. As I testified earlier, I -- we were
18 down here three or four times a -- three or four weeks a
19 year and we lived there.

20 Q. The framing component on this project, do you
21 know what it is?

22 A. Framing component?

23 Q. Yes, sir.

24 A. You mean the structure?

25 Q. Yes, sir.

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1 A. No. I -- no.

2 Q. I've asked the other deponents: would you agree
3 with me that under your Exhibit 111-B, making warranties
4 and representations, that none were made, express or
5 implied, by either the developer or the construction
6 manager?

7 A. What was the question? I didn't quite get it.

8 Q. Yes, sir. 111-B --

9 A. Right. This one?

10 Q. Right. That document right there. I apologize.

11 A. Okay.

12 Q. It's page 5, at the very bottom. As it relates
13 to soundproofing, or any of the other items listed on
14 here, that the developer makes no warranty or
15 representation as to the accuracy or completeness of the
16 information and that all items are subject to change
17 therein?

18 A. I see that disclaimer, yes.

19 Q. Did you ever see the sound-remediations report,
20 generated by the homeowners association, by Quietly Making
21 Noise out of Florida?

22 A. I think I remember reading it, yes, sir.

23 Q. Did you ever attend a board member [phonetic]
24 homeowners association where the contents of that report
25 was discussed?

1 A. I was never at the board meetings. No.

2 Q. Are you aware whether or not the findings by the
3 acoustical engineers found that the units and the sound
4 attenuation have brought all the units to code?

5 A. I was aware of that.

6 Q. You were?

7 A. Earlier testified by -- yeah, I saw the -- you
8 said that they were by code, just barely over code. If
9 I'm not -- if I'm not mistaken, that was brought out
10 earlier --

11 Q. I'm sorry. Before today -- did you read any
12 reports that indicated that?

13 A. Oh. Before today?

14 Q. Yes, sir.

15 A. I read the report. I didn't understand it.
16 That's not my expertise.

17 Q. Did you ever read anything from Dr. Noral
18 Steward to the property manager?

19 A. I don't recall. I'm sorry.

20 [Whereupon, Mr. Maybank and Mr. Altman confer]

21 Q. [Mr. Maybank] When you borrowed the money
22 originally on the first and second mortgage --

23 A. Yes.

24 Q. -- were those interest-only loans?

25 A. One is interest only, yes. Yes.

1 Q. And then did that have a two- to three- to five-
2 year payment return that if you didn't -- that it
3 ballooned --

4 A. Ten-year balloon. Yes, sir.

5 Q. Ten-year balloon.

6 Which of the -- which of the two loans that you
7 had -- and I'm going to pull out your sheet. I've got --

8 A. Right.

9 Q. -- one loan at \$547,921. Is that the interest-
10 only?

11 A. The Chase. From Chase.

12 Q. I don't know. I only know one is large and one
13 is small.

14 A. Be the larger one, yes.

15 Q. Okay. So and then the hundred and five, that's
16 for -- so five forty-seven is interest only?

17 A. Yes.

18 Q. And the -- do you remember what your interest
19 was at that time?

20 A. No, I do not.

21 Q. And then on the one zero five six forty-three,
22 the second mortgage, do you know what that was?

23 A. No. That's -- I have no idea what that was.

24 They've been paid off by the -- my new
25 financing. Those two which you are referencing, they're

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1 paid off. And then there's the one from Chase, which is
2 the larger one that I have now that's a ten-year balloon.
3 Am I making that clear?

4 Q. So you have actually paid off these first two
5 mortgages?

6 A. Yes.

7 Q. And when did you do that?

8 A. '07, I believe.

9 Q. So you were able to refinance this in 2007?

10 A. Correct.

11 Q. I see.

12 And at that point, you locked into a long-term
13 thirty-year rate?

14 A. No. No, sir. That's the ten-year balloon.
15 It's a thirty-year amortized loan with a ten-year
16 balloon, is what you -- is what I'm -- right now. And
17 that was done in '07.

18 Q. And I see two lines on here. One is seven and
19 three-eighths and one is four and three-quarters?

20 A. I'm not sure what you're looking at.

21 Q. Oh. I'm sorry. This is something that --

22 A. Oh. The -- oh, yes. Right. Uh-huh. I know
23 what that is now.

24 Q. And which one are you locked in on?

25 A. The one on the -- the one on the left.

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April 8, 2013

1 Q. The seven and three-eighths?

2 A. Yes. That's to illustrate the difference
3 between a seven and three-eighths and a four and three-
4 quarters, the differential and the principal and interest
5 payments.

6 Q. So that --

7 A. Those numbers are from the mortgage --

8 Q. So you currently owe a 650,000-dollar mortgage
9 at seven and three-quarters -- three-eighths interest at
10 thirty years, interest and principal?

11 A. Yes, sir.

12 Q. Pardon me?

13 A. Just interest.

14 Q. Interest only?

15 A. Yes, sir.

16 Q. Then why do you keep saying principal?

17 A. I'm sorry. It's a matter of habit to say
18 principal and interest.

19 You're right. It's only interest.

20 Q. Did you ever try to buy down the mortgage rate
21 on that mortgage at the time?

22 A. At what time was that? I mean, in '07?

23 Q. In October of 2007, did you try to buy down the
24 points, from seven and three-eighths, by putting up any
25 further cash in the property?

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1 A. Not at that time, no.

2 Q. Was there an option at that time to do so?

3 A. No.

4 Q. Could you have put -- you could not have put
5 more money down to lower your interest rate on this
6 project?

7 A. That was the -- that was what I contracted for
8 with the bank at that time in '07.

9 Q. I understand that.

10 Did you go to any local banks, South Carolina
11 National Bank, BB&T, anybody here?

12 A. Since that time, yes. Since '07 I have. That's
13 what I'm talking about. I tried to refinance, since '07,
14 with eight different institutions.

15 Q. And did you ever try to go to any of the eight
16 institutions without telling them that you were in
17 litigation? Or did you explain to every one of them that
18 the property was in litigation?

19 A. Yes and no. I mean, some of them asked -- once
20 I found out that you had to disclose it, because they were
21 going to find out anyway because they were going to do
22 searches on the properties and find, you know, legal
23 documents all over it, you're better off telling them,
24 look, here's the problem; we've got litigation going on;
25 we've got bad construction going on here; I can come up

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1 with some more money. But when you refinance, seven and
2 three-eighths, they would say no or let me look into it.

3 And then some people would tell you, yeah, I can
4 get this done for you. And then they would give up. Like
5 I said, I would get an appraisal done and I would get up
6 to the offer and they would go, no, we can't do this
7 because of the litigation and the construction problems.

8 Q. All right. So some you submitted without
9 disclosure and they said no, and some you submitted with
10 disclosure and they said no. So it was just no all
11 around?

12 A. Yes.

13 MR. MAYBANK: Okay. Thank you very much.

14 MR. BUNDY: Your Honor, may this witness be
15 excused?

16 THE COURT: Do you have any questions?

17 MR. BUNDY: No, Your Honor.

18 THE COURT: You may be excused. Thank you so
19 very much.

20 THE WITNESS: Thank you. Thank you, Your Honor.

21 [Whereupon, Mr. Atkinson is excused and exits
22 the witness stand]

23 THE COURT: What time do y'all want to start
24 tomorrow?

25 MR. BUNDY: As early as possible.

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April 8, 2013

1 MR. MAYBANK: 9:30, Your Honor.

2 THE COURT: 9:30 suits you?

3 MR. BUNDY: 8:30 suits me.

4 THE COURT: All right. 9:30.

5 MR. BUNDY: Thank you, Your Honor.

6 THE COURT: We'll adjourn until 9:30 tomorrow.

7 Thank you very much.

8 [BENCH TRIAL ADJOURNS AT 5:48 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the bench trial held before the Honorable J.C. Nicholson, Jr., on Monday, April 8, 2013.

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

Dated this 12th day of October, 2013.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY) CASE NO.: 2009-CP-08-3916

THE OAKS AT RIVERS EDGE PROPERTY)
OWNERS ASSOCIATION, INC., JOHN E.)
ATKINSON, JOAN D. STRANDQUIST, JOSEPH)
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,)
BRENDA COOK, JOHN W. EDELEN, KAREN)
A. NELSON, ROBERT J. GRAHAM, MAUREEN)
S. GRAHAM, NANCY K. JOHNSON as trustee)
for the Nancy K. Johnson Revocable Trust,)
WILLIAM JUNG, CHARLES MARAZITI,)
PATRICIA MARAZITI, GEORGE S. POLLARD,)
ELEANOR J. POLLARD, ROBERT REECE,)
GERALD M. RUVO AND SUE S. RUVO as)
trustees for the Ruvo 2006 Living Trust,)
CAROLYN M. JENNINGS, THOMAS EDWARD)
KEANE, EDWARD WALLACE BARR, III,)
RICHARD B. PEKRUHN, PAULINE PEKRUHN,)
MATTHEW J. SEVERANCE and ELIZABETH)
ASHLEY PHILLIPS SEVERANCE,)

PLAINTIFFS,)

VS.)

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC,)
CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,)

DEFENDANTS.)

BENCH TRIAL

VOLUME 2 OF 4

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on April 9th, 2013, Commencing at 9:39 a.m.

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF THE OAKS AT RIVER'S EDGE PROPERTY OWNERS ASSOCIATION, INC., JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIOVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM NANCY K. JOHNSON AS TRUSTEE FOR THE NANCY K. JOHNSON REVOCABLE TRUST, WILLIAM JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, GEORGE S. POLLARD, ELEANOR J. POLLARD ROBERT REECE, GERARD M. RUVO AND SUE S. RUVO AS TRUSTEES FOR THE RUVO 2006 LIVING TRUST, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, MATTHEW J. SEVERANCE, AND ELIZABETH ASHLEY PHILLIPS SEVERANCE

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CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC.

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Robert Lyles, Esquire
Susan Walls, Esquire
Carl Vansel, Esquire

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MARKED/ADMITTED

PLAINTIFFS'

Plaintiffs' Exhibit Number 75-A [Permit Application]	/ 367
Plaintiffs' Exhibit Number 82 [Certificate of Occupancy]	/ 367
Plaintiffs' Exhibit Number 114-C [Disclosure]	/ 544, 549
Plaintiffs' Exhibit Number 114-D [Judgment]	/ 549
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MARKED/ADMITTED

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Plaintiffs' Exhibit Number 121-D [Warranty Claim Form]	/ 465
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MARKED/ADMITTED

DEFENDANTS'

Defendants' Exhibit Number 231 [MLS and Property Disclosure]	565 / 565

Defendants' Exhibit Number 232 [Questionnaire]	567 / 567

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1
2 THE COURT: All right. As far as the record is
3 concerned, when we started this trial, based upon a
4 letter from Ms. Susan Wall the Court made certain --
5 ordered the parties to stay in the courtroom and
6 participate in the trial if they so desired. And the
7 issue of collusion was brought to the Court's
8 attention last week.

9 I believe Ms. Wall and Carl Vansel and Mr. Lyles
10 have reached an amicable arrangement that you want to
11 put on the record to clarify what collusion you are
12 alleging and what collusion you are not alleging. Be
13 glad for you to put it on the record.

14 MS. WALL: Thank you, Your Honor.

15 To clarify the matter involving the defendants
16 in case number 2010-CP-08-4318, which case we will
17 refer to as the insurance litigation, the Court is not
18 requiring an involuntary intervention by these
19 defendants.

20 The defendants in the insurance litigation,
21 Mount Holly [phonetic], Burns & Wilcox, Robert P.
22 Brady Agency, Inc. and Clifford Brady, did not seek to
23 intervene in this action being tried before the Court
24 this week, consolidated case number 2009-CP-08-01068,
25 nor were they ever made parties to this action. The

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1 defendants in the insurance litigation, however,
2 raised a concern to this Court regarding collusion
3 based upon their understanding of the settlement
4 agreements in consolidated case number 2009-CP-08-
5 01068.

6 As officers of the Court, the insurance
7 litigation defendants raised the issue of collusion,
8 prior to this trial proceeding, in order to preserve
9 their rights and preclude any argument of waiver in
10 the insurance litigation. The Court, pursuant to its
11 inherent right to protect the integrity of its
12 courtroom, requested these counsel to be present
13 during the trial of the action pending before the
14 Court this week. Upon further discussion between the
15 Court and counsel for insurance litigation defendants,
16 counsel for the insurance litigation defendants have
17 clarified that they were not contending, nor did they
18 raise, any issue that this Court is involved in any
19 claimed collusion. In addition, counsel for the
20 insurance litigation defendants are not, based upon
21 their current understanding of the facts, questioning
22 the ethics of the attorneys who are representing the
23 parties in the trial before the Court this week.

24 On these terms, the Court will not request any
25 participation in this matter by counsel for the

1 insurance litigation defendants, and those defendants
2 expressly reserve all rights and do not waive their
3 right to raise in the insurance litigation any issue
4 arising from consolidated case number 2009-CP-08-0168,
5 including but not limited to settlements, collusion,
6 damages, and mitigation of damages. The insurance
7 litigation is the appropriate forum for the defendants
8 in the insurance litigation to raise these issues,
9 since they are not parties to the subject action.

10 Thank you, Your Honor.

11 THE COURT: Mia, did you get all that down? Do
12 you need the written document?

13 THE COURT REPORTER: I did get it down.

14 [Whereupon, Ms. Wall proffers documents to the
15 Court]

16 THE COURT: All right. Thank you very much.
17 You're welcome to stay, if you so choose, but I'll
18 relieve you from sitting in the Court in this trial,
19 okay, as I previously ordered Monday morning. I'll
20 rescind that order. You're welcome to stay if you
21 want to stay.

22 MS. WALL: Thank you, Your Honor.

23 THE COURT: Okay. Thank you very much.

24 The plaintiff call their next witness.

25 MR. MCDONALD: Your Honor, may it please the

The Oaks at Rivers Edge v. Daniel Island Riverside Development
Bench Trial - Volume 2 of 4
April 9, 2013

1 Court. Brent McDonald, on behalf of the plaintiffs.

2 The plaintiffs call Mr. Thomas Scholtens, chief
3 building inspector for the City of Charleston.

4 [Whereupon, Mr. Scholtens comes forward]

5 THE CLERK OF COURT: Would you raise your right
6 hand.

7 [Whereupon, Mr. Scholtens is duly sworn by the
8 clerk of court as follows: do you swear or affirm
9 that your testimony will be the whole truth and
10 nothing but the truth, so help you God]

11 THE WITNESS: Yes, I do.

12 THE CLERK OF COURT: State your full name and
13 spell your last name.

14 [Whereupon, Mr. Scholtens takes the witness
15 stand]

16 THE WITNESS: My name is Thomas Scholtens.
17 Scholtens is spelled S-C-H-O-L-T-E-N-S.

18 MR. MCDONALD: Mr. Scholtens, how are you doing
19 this morning?

20 THE WITNESS: Doing fine. Thank you.

21

22

23

24

25

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- - -

- - -

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1 THOMAS SCHOLTENS,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. MCDONALD:

6 Q. Could you please tell the Court what your title
7 is with the City of Charleston?

8 A. I function as a chief building official for the
9 City of Charleston.

10 Q. And could you please explain to the Court what
11 the chief building official does for the City of
12 Charleston?

13 A. I'm responsible to enforce the State of South
14 Carolina's building code for the jurisdiction of the City
15 of Charleston. I supervise the employees and prepare
16 documents such as permits and certificates of occupancy.

17 Q. And how long have you been the chief building
18 official for the City of Charleston?

19 A. I've been there since October of 2006.

20 Q. And what did you do prior to that, Mr.
21 Scholtens?

22 A. I was the chief building official for the City
23 of Spokane Valley for the two years prior to that.

24 Q. And where is Spokane Valley? Is that in
25 Washington?

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1 A. Yes, it is. It's on the eastern side of
2 Washington. It's near the Idaho border.

3 Q. Mr. Scholtens, what did you do prior to that?

4 A. I was the chief building official for the county
5 of Oneida in Idaho.

6 Q. Okay. And what did you do -- what did you do
7 prior to being the chief building official for the County
8 of Oneida?

9 A. I was the chief building official for the City
10 of North Bend, Oregon.

11 Q. And prior to that, what did you do?

12 A. I was the chief building official and inspector
13 for the county of Payette in Idaho.

14 Q. Okay. And prior to that, what did you do?

15 A. I was in construction for the twenty years
16 previous to that, as well as a ski bum.

17 Q. And in the city of Charleston, who does the
18 chief building official report to, if anyone?

19 A. I report to the director of public service,
20 Laura Cabiness [phonetic], who is the city engineer and
21 she reports directly to Mayor Riley.

22 Q. And if you would, sir, would you please walk the
23 Court through briefly how -- in your department as the
24 chief building official, how the inspection process works
25 from the pulling of a building permit for a new structure

1 through the issuance of a certificate of occupancy. And I
2 know there's a lot of stages in between there, but I just
3 wanted you to give the Court a general idea of how that
4 process works.

5 A. Well, certainly -- it certainly would be
6 different depending upon the scope of the project. But
7 typically, after the plans are reviewed for compliance
8 with the adopted code, we issue permits to a licensed
9 contractor, a general contractor, that's kind of an over-
10 arching permit over the whole project.

11 Q. And let me interrupt you briefly. How does the
12 City of Charleston determine that the contractor has a
13 license?

14 A. We verify that the contractor is a licensed
15 contractor doing business in the city of Charleston,
16 legally, with a business license. And we also verify that
17 the licensed contractor has a credential issued by the
18 state of South Carolina that would cover the scope of the
19 project in which they're applying.

20 Q. When you say the state of South Carolina, you're
21 referring to the LLR?

22 A. That is correct.

23 Q. And you-all go -- when a contractor comes in to
24 pull a building permit, do they have a license number?

25 A. Yes, they do. They typically have a wallet card

1 and we verify that using the internet.

2 Q. Okay. And that's -- you can go on the LLR
3 website and either search the name of the contractor or
4 put the license in and determine who's pulling the
5 building permit?

6 A. Yes. That's hopefully the way that that website
7 works.

8 Q. And is there anything else that the City of
9 Charleston does, other than just rely on the general
10 contractor that it's got a permit -- I mean, that it's got
11 a general contracting license?

12 A. No. Once they prove that up, we don't have any
13 separate testing or any other verifications.

14 Q. So the City of Charleston doesn't go back and
15 try to determine whether they obtained that license
16 fraudulently or anything like that?

17 A. No, sir, we don't.

18 Q. That's a reliance on the contractor at that
19 point; correct?

20 A. That's a reliance on the contractor, as well
21 through LLR.

22 Q. And after the contractor comes in and that
23 initial process is undertaken, along with the review of
24 the plans, what happens next?

25 A. Well, the permit is issued, fees are paid, and

1 work begins. And at certain points during the process of
2 construction, inspections are called for and we respond by
3 sending an appropriate inspector to verify the
4 contractor's work at that point.

5 Q. And on a typical project, what are the stages of
6 inspection?

7 A. Well, we typically have inspections that are --
8 the first one would be a footing inspection, where they
9 would take a look at the construction of the support of
10 the building and verify that the soils at least appear to
11 be the soils that the geotechnical report had identified.

12 On larger structures, we typically ask for a
13 geotechnical engineer, the person who prepares the
14 original report that the structural engineer has based his
15 design on. We ask that the geotechnical expert verifies
16 that the earth is really the factual earth that they all
17 assumed was going to be there so the building can stand
18 appropriately.

19 After the foundation -- or the footing
20 inspection, the foundation inspection follows. If it's a
21 large project and there's extra-strong concrete involved,
22 high-strength concrete involved, there will be a special
23 inspection that goes forward at that point where licensed
24 special inspectors test the concrete, verify the steel is
25 in place right.

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1 After that would be the subtrades would be
2 involved. The plumber, electrician, probably would be
3 putting in some of their work, underground work, prior to
4 a slab being poured. That would be inspected by the
5 electrical and the plumbing inspector.

6 The building starts up, we would be doing rough
7 inspections for the heating ventilation and air-
8 conditioning, electrical inspections, and plumbing
9 inspections as different floors or different portions of
10 the building were ready to be inspected.

11 And then structural framing inspections would be
12 done. Verification along the way of other special
13 inspections, other concrete inspections, or wood
14 inspections even, or special inspections if there are
15 seismic diaphragms that are being designed to resist
16 lateral forces. And all of those inspections keep going
17 on in that way until the building is done.

18 And then the final inspections for all the
19 subtrades occur. The building is being finished off and a
20 final inspection occurs and then the certificates of
21 occupancy are issued for that building.

22 Q. So based upon that, is it fair to say that the
23 city of Charleston does not inspect every aspect of
24 construction?

25 A. No, we do not. It is fair to say that. We only

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1 inspect those -- at those certain points, that the codes
2 have deemed relevant, to make sure that things at least
3 appear to be going in the right direction at those times.

4 Q. And does the City of Charleston, in fact, have
5 the resources? To the extent you wanted to change the
6 policy, does the City of Charleston have the resources to,
7 in fact, inspect every aspect of construction?

8 A. No, we don't. We don't. And nowhere that I've
9 ever worked has those resources. That isn't the duties of
10 an inspection agency to be a construction manager.

11 Q. So if the City of Charleston doesn't have the
12 resources and nowhere you've ever worked has the resources
13 to inspect every aspect of construction, how does the City
14 determine whether or not the construction was done either
15 in accordance to the plan, in accordance with code, in
16 accordance with industry standards, any of those aspects?

17 A. Well, the code is specific in requiring more
18 complex construction to be inspected by special inspectors
19 that -- under the employ of the owner of the building.
20 Not the contractor, but the owner of the building.

21 Q. So in some instances, the City relies on the
22 owner of the building to have special inspections?

23 A. That's correct.

24 Q. And what about the other instances where there's
25 not special inspections required but the City is not

1 inspecting that aspect of construction? Who does the City
2 rely on?

3 A. Well, the City has to rely on a licensed
4 contractor to execute the plans as drawn.

5 Q. So if someone were to suggest to this Court, or
6 otherwise the City of Charleston, that to the extent they
7 were issued a C.O. and there were inspections that went
8 on, that it's the City of Charleston's responsibility to
9 make sure that every aspect of construction is completed
10 in accordance with the plans and accordance with the code
11 and accordance with industry standard, that would just not
12 be your understanding of how it works; correct?

13 A. No. That is correct. That wouldn't be my
14 understanding of how the code enforcement works.

15 Q. Sir, are you aware of what code was in place for
16 building permits that were pulled in the City of
17 Charleston subsequent to January 1st of 2005?

18 A. We were -- I believe we were dealing with the
19 2003 international family of codes at that point.

20 Q. Sir, I have an exhibit here, which is Exhibit
21 73, and this may refresh your recollection. Plaintiffs'
22 Exhibit 73.

23 [Whereupon, the witness reviews documents]

24 Q. [Mr. McDonald] Is that document consistent with
25 what you just testified to?

1 A. This document indicates that we were enforcing
2 the 2003 edition of the International Building Code on
3 January 1st of 2005. And then we changed to adopt the
4 International Building Code, I believe the 2006 version,
5 on July 1st of 2008. So it sounds like the 2003 code was
6 the one that would have been in effect at the time that
7 that permit was issued.

8 Q. At the time of construction, you have the 2003
9 IBC; correct?

10 A. That's correct.

11 Q. And then today, as we sit in this courtroom, you
12 have the 2006 IBC?

13 A. That is correct.

14 Q. And can you explain briefly to the Court --

15 MR. MCDONALD: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes, sir.

18 Q. [Mr. McDonald] Can you explain just briefly to
19 the Court what the IBC is and why there would be a 2003
20 and a 2006?

21 A. Well, the IBC are initials for the International
22 Building Code. And the International Code Council is the
23 promulgator of building, plumbing, mechanical, all
24 construction codes that are used in South Carolina.
25 Different organizations have published different codes

1 throughout the years and around 2000 there was a real move
2 by the federal government to move all of those little code
3 agencies together into a great big code agency to enable
4 the economy to cross state lines easier and to make the
5 enforcement of codes more predictable around the country,
6 and, for that matter, around the world.

7 So that's what the International Council does.
8 It's made up of people like myself, made up of thousands
9 and thousands of people, who get together on a regular
10 basis and discuss these codes and promote changes to the
11 codes. And the changes are promoted through an ANSI-
12 approved process where anyone can promote a change and
13 discuss those changes. But only the building officials
14 are finally allowed to vote on those changes to vote them
15 up or down.

16 And every three years, a new edition of the code
17 is made. And the reason that they make these code changes
18 is because in construction, techniques vary. Different
19 materials may come into play. And as the materials might
20 change or the techniques of construction may change,
21 different levels of safety might be required, for the
22 people who use the buildings, in order to keep that level
23 of public safety acceptable.

24 The other issue that seems to show up is many
25 times one of the big players, as we're dealing with

1 building safety and building construction, is the
2 insurance industry. And many times the insurance industry
3 can realize that unnecessary claims are being -- that they
4 deem unnecessary -- claims are being made for safety or
5 reimbursement for fires or wind damage, or whatever, and
6 that changing the codes in a certain way might alleviate
7 the risks that the insurance companies are bearing to make
8 the building safer and more long-lasting.

9 Q. Now, when the City of Charleston adopts a
10 code -- let's go back to the 2003 code --

11 A. Uh-huh.

12 Q. -- is that the minimum standard in which you can
13 construct a building by?

14 A. First of all, cities in South Carolina are not
15 allowed to adopt codes. That's done at the state level.

16 Q. And can you explain that process briefly to the
17 judge?

18 A. The general assembly decided I believe in about
19 2003 -- I'm not sure when that occurred. But they decided
20 that they wanted to bring about a minimum-maximum
21 statewide building code so that people -- contractors and
22 developers -- would be able to predict, any place in South
23 Carolina, what codes might be happening.

24 So the code is a minimum requirement. But we're
25 forbade to make changes in that code, locally, that would

1 raise that requirement for any special reason, unless
2 there's a geographic or climatological reason to make
3 those changes. And then those changes have to be promoted
4 at the LLR, the building code council, for approval.

5 Q. So how it works is the State of South Carolina,
6 in or about --

7 What date did you say? 2003 --

8 A. I think so.

9 Q. -- 2003 said, here's the code we're going to
10 adopt and the various jurisdictions have to adopt those
11 specific codes?

12 A. No. We don't even adopt them.

13 Q. You just comply with them?

14 A. We just comply with them.

15 Q. Perfect.

16 And then the other element of that is what you
17 can't do is go out and adopt and say at this point the
18 2012 IBC or what -- some other more stringent code?

19 A. That is correct.

20 Q. Okay. And the purpose of that is so when
21 contractors are working in South Carolina, they don't have
22 to know fifteen different codes, they know what code is
23 going to apply because it's going to be expected of them;
24 correct?

25 A. That is correct.

1 Q. So once the City of Charleston doesn't adopt but
2 is told what the code is, okay, is that the minimum
3 standard in which you can construct a building by?

4 A. Yes, it is.

5 Q. So it doesn't matter what you're constructing,
6 it has to be code?

7 A. That is correct.

8 Q. And you, sir, have you brought your code books
9 with you today?

10 A. I have a few, yes.

11 Q. Can you pull them out?

12 A. [Witness complies]

13 Q. Thank you, sir.

14 And can you hold up for the judge the 2003 IBC,
15 which would have been applicable to these buildings at the
16 time of construction?

17 A. This would be it.

18 Q. Okay. And why is that document so thick? What
19 is in there?

20 A. I'm really -- the reason it's so thick is
21 because that's what's published and that's what we're
22 required to enforce.

23 Q. And do you have to know just portions of it or
24 do you, as the chief building inspector, have to know the
25 whole thing?

1 A. Well, it's very difficult, such as it would be
2 difficult to know the whole thing of a law book. What's
3 really important is to know how to use these codes as
4 tools to help people reach compliance.

5 Q. Sir, I'm going to show you a document --

6 MR. MCDONALD: And for the Court's and Mr.
7 Maybank's and Mr. Altman's benefit, it is a portion --
8 it is one page of Plaintiffs' Exhibit 75, and I've
9 marked it for identification purposes as Plaintiffs'
10 Exhibit 75-A.

11 Q. [Mr. McDonald] Could you take a look at that
12 document, sir.

13 [Whereupon, the witness reviews documents]

14 MR. MCDONALD: May I approach, Your Honor?

15 THE COURT: Yes, sir.

16 MR. MCDONALD: It's that right there.

17 THE WITNESS: Thank you.

18 Q. [Mr. McDonald] Okay. Sir, have you --

19 A. Sure.

20 Q. Pardon me. Have you had time to look at it?

21 A. Yes, I did.

22 Q. Do you recognize that form?

23 A. It looks to be a copy of a City of Charleston
24 building permit application for a property at 118
25 Fairbanks Oak Avenue.

1 Q. And is that the typical building permit
2 application that the building [sic] of Charleston either
3 would be using at that time, or, in fact, continues to use
4 today?

5 A. We've changed it somewhat, but it is a typical
6 building permit application from that period of time.

7 Q. And the information on there, one of the things
8 it asks you to list is the contractor; correct?

9 A. Yes. It looks like the contractor is the -- it
10 says contractor-owner and it talks about the City of
11 Charleston license number. And I believe that would be
12 our business license number that was issued.

13 And it also talks about the type of state
14 license that the person would have.

15 Q. And does it list on there who the contractor is?

16 A. It says it's Carriage Hill Associates of
17 Charleston.

18 Q. And then there would be a corresponding license
19 number for Carriage Hill Associates of Charleston that we
20 talked about earlier; correct?

21 A. Yes, I believe so. And that's been -- that's
22 been written down here as being 107574.

23 Q. That's 107574?

24 A. That's correct.

25 Q. Sir, are you aware of anything in the City of

1 Charleston's file wherein that was ever changed for this
2 project? where there was a new general contractor that
3 substituted its license for that entity?

4 A. Not at this time.

5 Q. And if we would have forwarded all the documents
6 -- if we would have sent a Freedom of Information Act
7 request to your office, and requested all those documents,
8 you would have sent everything that you had; correct?

9 A. Yes.

10 Q. And if the contractor -- general contractor is,
11 in fact, changed, who has the permit, you-all would
12 require them to come in and say, I'm the general
13 contractor and here's my license number?

14 A. Yes. We would ask for the contractor to vacate
15 the permit so we would have a written record of that, and
16 then we would back away from this permit and then reissue
17 a new permit.

18 Q. And why would you go to all that trouble? Why
19 is that important?

20 A. Well, it's important to keep track of who's
21 doing what to who.

22 Q. Sir, I'm going to hand you what has been marked
23 as Plaintiffs' Exhibit --

24 MR. MCDONALD: I would move Plaintiffs' Exhibit
25 75-A into evidence.

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1 THE COURT: Any objection?

2 MR. MAYBANK: No objection, Your Honor.

3 THE COURT: All right. 75-A admitted without
4 objection.

5 [Whereupon, Plaintiffs' Exhibit Number 75-A is
6 admitted into evidence by the Court]

7 Q. [Mr. McDonald] I'm going to hand you what's
8 been marked as Plaintiffs' Exhibit 82 and ask if you
9 recognize these documents.

10 THE COURT: What number?

11 MR. MCDONALD: 82, Your Honor.

12 THE COURT: Are you going to offer 82?

13 MR. MCDONALD: I believe so, once -- I was going
14 to wait until he identified it.

15 THE COURT: I understand. But are you going to
16 offer it?

17 MR. MCDONALD: Yes.

18 THE COURT: Any objection to 82? It's the
19 certificate of occupancy.

20 MR. MAYBANK: No objection.

21 THE COURT: 82 admitted without objection.

22 [Whereupon, Plaintiffs' Exhibit Number 82 is
23 admitted into evidence by the Court]

24 [Whereupon, the witness reviews documents]

25 Q. [Mr. McDonald] Do you recognize those, sir?

1 A. They appear to be temporary certificates of
2 occupancy issued for different periods.

3 Q. Okay. And can you tell me who they were issued
4 to?

5 A. Carriage Hill Associates.

6 Q. And is that consistent with the contractor that
7 was on the building permit application that we looked at?

8 A. Yes.

9 Q. So it would appear, based upon those documents,
10 that the contractor had not, in fact, changed throughout
11 this --

12 A. That's correct.

13 Q. -- throughout the construction?

14 A. That's correct.

15 Q. And just to be very clear about something. Just
16 because the City of Charleston issues a certificate of
17 occupancy, that does not absolve the contractor of its
18 duties to build, comply with the code, comply with
19 industry standards, comply with any manufacturers'
20 specifications, to build a proper building; correct?

21 A. That is correct. They're required to build
22 according to the approved plans.

23 Q. All right, sir. Let me ask you this. If there
24 are repairs done to the building today --

25 At the time of construction, the 2003 code would

1 have applied; correct?

2 A. That is correct.

3 Q. And today the 2006 code applies; correct?

4 A. That is correct.

5 Q. And there were, presumably, changes in between
6 the 2003 code and the 2006 code; correct?

7 A. That is correct.

8 Q. Would the City of Charleston require the repairs
9 that were done to be made in accordance with the 2003
10 code, because that's when these buildings were
11 constructed?

12 A. No.

13 Q. What would the City of Charleston -- what would
14 you require the contractor who was making any repairs on
15 these buildings to comply with?

16 A. New work equates to new codes.

17 Q. So you don't go back in time and say because
18 there was construction in 2003, even if we didn't comply
19 with it back then we only have to bring it up to that
20 standard; correct?

21 A. That is correct.

22 Q. And will -- on this project, if any repairs are
23 done on this project will you, in fact, require that? that
24 it be brought up to the current code, if they're doing the
25 repairs?

1 A. Either the current IBC or the current existing
2 building code.

3 Q. I want to ask you a couple of specifics,
4 Mr. Scholtens. In 2003, do you know whether or not the
5 code adopted certain standards associated with the
6 installation of brick?

7 A. The code lists certain standards for masonry
8 construction.

9 Q. And can you explain to the judge how that
10 process works? how the code interacts with standards that
11 are, in fact, adopted by the code?

12 A. Well, codes typically tell one that they have to
13 do something, and standards typically detail how the
14 something is done.

15 For instance, if you put fire sprinklers in, the
16 code tells you the different occupancies in which fire
17 sprinklers would be located. And to figure out how you
18 really put the fire sprinklers in, you would look at
19 several different National Fire Protection Association
20 documents, as referenced in the code, to detail that level
21 of work and the way you would put them in. And that would
22 -- one standard would detail how the water supplies would
23 be brought in. Another standard would detail the location
24 of the sprinkler heads. And either you would have to
25 establish the volume of water that you're coming in

1 [phonetic], so another standard may detail what size fire
2 pump and how to put a fire pump in.

3 So the standards throughout the codes typically
4 show how -- or give you instructions on how to do the
5 work, and the code tells you when to do it that way.

6 Q. And then outside of that, outside of standards
7 that are actually adopted in the code, there's also
8 industry standards or best practices of a contractor;
9 correct?

10 A. That is correct.

11 Q. And the City of Charleston building inspector,
12 or your office, doesn't, in fact, inspect and make sure
13 that a contractor is doing things that are outside of the
14 code but are best practices in industry standards within
15 the community of Charleston; correct?

16 A. That is correct. It's not our business to do
17 anything but verify code compliance.

18 Q. And there's things outside of the code that are
19 required during construction that you-all just aren't
20 involved in; correct?

21 A. That is correct.

22 Q. And that goes back to what we talked about
23 earlier, that you-all relied on an actual competent
24 general contractor; correct?

25 A. That is correct. That's why they're required to

1 be licensed by LLR.

2 Q. And that's what you expect when you go out to a
3 job site? You expect to see a competent general
4 contractor; correct?

5 A. That is correct.

6 Q. But that's not always the case, is it,
7 Mr. Scholtens?

8 A. Well, no, it isn't. Sadly, it's not.

9 Q. And in addition to the code-adopted standards,
10 and in addition to the contractor best-practices-industry
11 standards, we also have manufacturer specifications;
12 correct?

13 A. That is correct.

14 Q. And those are, quite simply, directions from the
15 manufacturer on how to use their product?

16 A. Yes. Many times the code will specify a product
17 that has a certain -- that meets a certain strength or
18 meets a certain test. For instance, in our zone we have
19 hurricanes that are frequent and the code identifies the
20 high-wind areas so that much of the cladding that goes on
21 the outside of a building and the roofs that go on a
22 building are required to meet those hurricane winds when
23 hurricanes happen.

24 And so specifications are written that say,
25 well, we need to resist those different reactions

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1 throughout the building. So ways to resist those
2 reactions might be putting on metal ties between the
3 trusses in the walls or possibly steel rods running from
4 the roof structure down to the foundation that will resist
5 those engineered numbers, those reactions, that are
6 determined, mandated by the code.

7 And then many times manufacturers that want to
8 use their product will have tested those products to meet
9 those requirements. And then those products then say,
10 well, if you want to use this product and you install it
11 in a certain fashion just like these instructions say,
12 then it's going to work.

13 Q. And if you read the code, if you just have your
14 big copy of the code, it's not necessarily going to have
15 the manufacturer's specifications in it; correct?

16 A. No. It certainly won't have those.

17 Q. And what it relies on is that it just adopts the
18 manufacturer's specification and says, listen, if you're
19 going to use this product, you've got to do this. And if
20 you use a product to accomplish that, you've got to follow
21 the manufacturer's specifications?

22 A. That is correct.

23 MR. MAYBANK: Your Honor, I would object to
24 leading the witness. He is, in fact, describing what
25 the code says and having the witness agree. I think

1 he can ask a question. He knows what it's about.

2 THE COURT: Don't lead your witness, please,
3 sir.

4 MR. MCDONALD: Thank you very much.

5 At any time, Mr. Scholtens, you disagree with
6 anything I say, let me know, because I'm interested.

7 Q. [Mr. McDonald] Now, I'll wrap it up with you
8 here, sir.

9 MR. MAYBANK: Your Honor, I think he just led
10 the witness again.

11 THE COURT: No. He just made a comment to the
12 witness. He can do that.

13 Please proceed.

14 MR. MAYBANK: Okay. Thank you.

15 MR. MCDONALD: Thank you very much, Your Honor.

16 Q. [Mr. McDonald] So we've got -- so what you
17 testified to is the building code, industry standards, and
18 manufacturer's specifications. Does the building code,
19 with regard to -- and I want to go back to the adopted
20 industry standards. With regard to brick or masonry
21 construction, I just want to give the Court an example, in
22 your experience, the type of industry standards that are
23 adopted in the code with regard to brick or masonry
24 construction. Can you just briefly show the judge how you
25 would go about doing that in your code book?

1 A. I can certainly explain it to him or I could
2 show it to him; if you would like.

3 Q. By all means. Whichever is easier.

4 A. Well, if you would like me to show you my
5 process, I'll be happy to come up there and show you.

6 But the process that we would use for masonry
7 construction is first of all we would take a look at what
8 the plans describe, whether the wall for masonry
9 construction meets a certain requirement or not and
10 whether the buildings meet a certain requirement or -- a
11 risk requirement or not. Risk requirements are based on
12 the type of the use of the building. A courthouse, a
13 hospital, and a jail all have higher risk requirements
14 than a garden shed or an apartment building.

15 So the higher risk requirements require a higher
16 level of scrutiny. So once we've decided the risk
17 requirement of the building, we take a look at the defined
18 construction and the location in which the building is
19 set.

20 Since we're in a high seismic area, we would
21 take a look at the provisions of that masonry construction
22 for high seismic areas. And in the high seismic area, it
23 refers in the code book that that's a -- needs to be an
24 engineered -- if the brick construction is part of the
25 seismic resistance, it's an engineered system. And an

1 engineered system for masonry requires special inspection.
2 So we would be relying on a special inspector being out
3 intermittently, not -- it doesn't require a continuous
4 special inspection, but it requires an intermittent
5 special inspection. So we would expect that a special
6 inspector is out there watching the construction of those
7 brick assemblies and be able to verify that the assemblies
8 were constructed according to the plans.

9 Q. And just to be clear: that special inspector,
10 as you indicated, that's not the City of Charleston
11 inspector? That's hired by the owner?

12 A. That is correct. The architect could do that
13 work, or the engineer could do that work, or they could
14 hire a special inspector, who is certified to be a special
15 masonry inspector, to do that work.

16 Q. And just to be clear. I think we touched on
17 this earlier. But the code that would apply to any
18 repairs to this building would be the -- these buildings,
19 these six buildings, would be the 2006 IBC; correct?

20 A. Right now that would be the case. But we're
21 looking forward to the 2012 code being adopted the first
22 of July. So that if repair work for this building was
23 being permitted after first of July, it would ratchet it
24 into the 2012 code.

25 Q. And there would be changes associated with that,

1 as well; correct?

2 A. Yes.

3 MR. MCDONALD: All right. Beg the Court's
4 indulgence.

5 [Whereupon, Mr. McDonald and Mr. Bundy confer]

6 Q. [Mr. McDonald] All right, sir. When an
7 architect submits plans to the City of Charleston, what
8 does the City of Charleston expect of that architect, on a
9 minimum standard, after they submit the plans?

10 A. Well, the architect is required to -- or may be
11 required to be the architect design professional and
12 responsible charge for the project.

13 Since I've been in Charleston, I've required
14 that any architect that submits plans to the City for
15 consideration remains the architect, the design
16 professional, and responsible charge for that project. So
17 that after we've issued -- done the plan review and issued
18 the permits, if changes have to be done to the project --
19 because the contractor just can't execute the plans,
20 because it's physically impossible to do that -- that
21 those changes would then go back, those proposed changes
22 would then go back, to the architect or the architect's
23 engineer for verification that that is what they want in a
24 building. And then it would come to our office for
25 approval of those changes and then the change would

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1 actually be implemented in the field.

2 Q. So inasmuch as the City of Charleston relies on
3 the general contractor, you also require the architect to
4 be involved --

5 A. Yes, sir.

6 Q. -- throughout the process?

7 A. That's correct.

8 Q. And that's so you-all can rely on the architect?

9 A. That is correct.

10 Q. And is the architect, if he's not going to
11 perform construction administrations, required to submit a
12 letter to you-all saying, I'm not going to be on site, I'm
13 not going to be involved anymore?

14 A. That is correct.

15 Q. And at that point, what do you require?

16 A. I still require the architect to remain involved
17 as the design professional and responsible charge. It's
18 not -- and the owner can also designate a different design
19 professional and responsible charge. But we need to have
20 -- in a complex construction, we need to have registered
21 design professionals licensed in the state of South
22 Carolina to help us achieve the finished product.

23 Q. And why is that, sir? Why do you need to have
24 licensed in the state of South Carolina design
25 professionals involved in a project?

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1 A. Well, the law in South Carolina requires that
2 anyone who submits plans to the city building official, or
3 any jurisdiction building official, those plans be stamped
4 by an architect who is licensed in the state and is
5 working for a firm, if that's the case, that's licensed in
6 the state, as well.

7 Q. And how does that process work? If an architect
8 wants to notify the City of Charleston that he's no longer
9 going to be involved, how does that process work or how
10 would you expect it to work?

11 A. Well, they typically write us a letter. And
12 then we -- if we were in the midst of a situation that we
13 would need another architect to step in and we didn't have
14 an architect of record that was able to step in in place
15 of this person, we would order the work stopped.

16 Q. You would issue a work-stoppage order?

17 A. That's correct.

18 Q. Where is your office, sir?

19 A. 75 Calhoun Street, top floor of the building.

20 Q. And you've been with the City of Charleston
21 since 2006?

22 A. Yes.

23 Q. Where was it prior to 2006?

24 A. I have no idea.

25 Q. Has the City of Charleston ever had an office --

1 has a City of Charleston building official ever had an
2 office on Daniel Island?

3 A. Not that I'm aware of, sir.

4 Q. So if someone wanted to contact you or another
5 City of Charleston chief building official, they wouldn't
6 just send a letter addressed Daniel Island, South
7 Carolina?

8 A. I can't account for what they do. It wouldn't
9 reach me.

10 Q. But you wouldn't have gotten it had they done
11 that?

12 A. That's correct.

13 Q. And in that instance, had that actually been
14 done, someone just sent a letter addressed to Daniel
15 Island, South Carolina, and you wouldn't have gotten it,
16 then what you just talked about as far as making sure
17 there's a design professional involved or substituting a
18 new design professional, you-all wouldn't have known
19 anything about it; correct?

20 A. That is correct. We would just expect that the
21 order of the construction would continue in that way, that
22 we had a licensed architect and licensed engineers that
23 submitted plans, those people were still involved in the
24 project, and we were taking the project forward with the
25 licensed contractor that took the permit out and we were

1 going to take it to conclusion with issuing certificates
2 of occupancy.

3 Q. And that goes back to where we started, that
4 you're relying on these people to do what's required of
5 them; right?

6 A. That's correct.

7 MR. MCDONALD: Beg the Court's indulgence.

8 [Whereupon, Mr. McDonald and Mr. Bundy confer]

9 Q. [Mr. McDonald] Sir, do you know whether the
10 requirement that you've implemented in the city of
11 Charleston that an architect notify you that he's not
12 going to be performing C.A. or he's not going to be
13 involved anymore, do you know whether or not state law
14 requires him to do that, as well?

15 A. I'm not sure of that, sir.

16 Q. And when the City of Charleston receives the set
17 of plans from the architect, okay, is it the City of
18 Charleston's responsibility to keep track of those
19 forever?

20 A. No, sir. Those are considered work documents.

21 Q. And does the City of Charleston rely on the
22 owner and the contractor, the architect, to keep a
23 complete set of the plans?

24 A. I'm not sure what the legal responsibility is
25 for that, but it would seem like that would be a wise

1 move.

2 Q. But you-all don't keep them?

3 A. No, sir. No, sir. We're required to keep them
4 for a year beyond the certificate of occupancy.

5 Q. Okay. And then you-all get rid of them at that
6 point?

7 A. That's correct. We recycle them.

8 Q. And why do you do that?

9 A. There's thousands of pounds of plans that come
10 through out office, and the record retention policy that's
11 approved by the state archivist agrees that building plans
12 are work documents, not necessarily permanent documents.
13 It's not listed as a permanent document and we don't treat
14 it as a permanent document.

15 The only plans in the City of Charleston that we
16 treat as permanent documents are those plans that the --
17 for projects that the City is involved with as an owner.

18 MR. MCDONALD: Mr. Scholtens, I know you're very
19 busy. I appreciate your time today. I would ask you
20 to please answer any questions these other attorneys
21 may have.

22 THE COURT: Cross-examination.

23 MR. ALTMAN: Mr. Scholtens, my name is Charles
24 Altman. I represent Daniel Island Riverside and
25 Carriage Hill Associates of Charleston.

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CROSS-EXAMINATION

BY MR. ALTMAN:

Q. I understand that you started working in
Charleston in October of 2006?

A. That is correct, sir..

Q. What part of October?

A. October 16th, I believe.

Q. October 16th.

In preparation for coming here today, what did
you review? What records did you review?

A. I've looked at the building codes to see what I
think were maybe quality answers for questions that might
be asked.

Q. Did you review any documents related to this
specific project?

A. No, I didn't.

Q. Do you know when the building permit was issued
for this project?

A. Only from the document that the attorney who was
first --

Q. When was -- when the permit issued?

A. I don't see there's a date on it, sir.

MR. ALTMAN: May I approach the witness, Your
Honor?

THE COURT: Yes, sir.

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1 Q. [Mr. Altman] I believe there was a --

2 [Whereupon, Mr. Altman reviews documents]

3 Q. [Mr. Altman] Mr. Scholtens, this was attached
4 to Defendants' Exhibit 75. Can you identify that? Have
5 you ever seen that before -- or seen it before?

6 A. I've seen this -- wow. I've seen this prior as
7 a -- this is -- this looks to be a copy of the permit
8 record.

9 Q. Does it show that the permit was issued in July
10 of 2004?

11 [Whereupon, the witness reviews documents]

12 A. Yes, it does. It looks like it was July 8th of
13 '04.

14 MR. MCDONALD: Can I see what page you're
15 referring to?

16 MR. ALTMAN: It was the first page of your
17 Exhibit 75.

18 MR. MCDONALD: Okay.

19 Q. [Mr. Altman] So, Mr. Scholtens, if the permit
20 was issued in 2004, what edition of the building code
21 would have been in effect?

22 A. I can't answer that, sir. I don't have the
23 schedule.

24 Q. I believe you stated that the 2003 building code
25 was adopted in January 1 of 2005; is that correct?

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1 A. I believe that was what that document said.

2 Q. So if that's what the document said, the 2003
3 building code would not have been in effect at the time?

4 A. That is correct.

5 Q. So this building -- these buildings would have
6 been constructed under the 2000 building code?

7 A. That is correct. Unless the designer had
8 requested to move into the 2003 code, as an alternative
9 material or design, and I'm not aware of that.

10 Q. Were the -- the certificates of occupancy were
11 issued for the six buildings at The Oaks on Daniel Island;
12 is that correct?

13 A. They appear to me the ones that -- the copies
14 that I have are certificates of occupancy that were issued
15 as a temporary certificate of occupancy for a limited
16 time.

17 Q. Do you know if a certificate of occupancy had
18 been issued for the buildings that we're here about?

19 A. No, I don't, sir.

20 Q. Do you know if any permanent certificate of
21 occupancy -- certificates of occupancy were ever issued
22 for these buildings?

23 A. No, I don't, sir.

24 Q. Do you know if the City of Charleston has ever
25 told people to vacate these buildings?

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1 A. I'm not aware of that, sir.

2 Q. Do you know if the buildings are occupied?

3 A. I believe they are. But for certain, I don't
4 know that.

5 Q. You've never seen them?

6 A. That's correct.

7 Q. Do you know if any stop-work orders were ever
8 issued with regard to construction of these buildings?

9 A. I have no idea of that, sir.

10 Q. Would a building permit have been issued if the
11 plans were not stamped by an architect and engineer?

12 A. No. I can't really speak to that, sir. I can
13 say that in my jurisdiction, when I'm a building official,
14 plans that were required to be stamped by an engineer and
15 an architect. And a large residential building such as
16 this would be required to be designed by an architect with
17 engineering stamps. We wouldn't consider that for a
18 permit with those stamps.

19 Q. That's where -- that's been your policy?

20 A. That's correct.

21 Q. Do you know if that policy was changed when you
22 took over in Charleston?

23 A. I don't believe it changed, no.

24 Q. Okay. Are all of the policies that you
25 implement now the same ones that were implemented prior to

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1 your taking --

2 A. I can't answer that for sure. But I doubt if
3 they are.

4 MR. ALTMAN: Bear with me one moment, Your
5 Honor.

6 [Whereupon, Mr. Altman and Mr. Maybank confer]

7 Q. [Mr. Altman] Mr. Scholtens, as far as you know,
8 all of the plans would have been approved for these
9 buildings?

10 A. Yes, sir.

11 Q. Okay. There was no problems with them that you
12 know of?

13 A. I have no knowledge of any problems being there
14 or not being there. I wasn't -- I was not here.

15 Typically, though, sir, there are problems with
16 any project. Somebody misses a detail. The larger the
17 project, the more complex it is.

18 Q. But the inspections were all passed,
19 certificates of occupancy were issued --

20 A. Yes, sir.

21 Q. -- for --

22 A. Yes, sir.

23 Q. -- and they're being occupied today, as far as
24 you know?

25 A. As far as I know, that is correct.

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1 Q. And not in violation of any City code with
2 regard to construction?

3 A. That is correct.

4 MR. ALTMAN: Thank you.

5 MR. MCDONALD: Brief redirect, Your Honor.

6 THE COURT: Okay.

7 REDIRECT EXAMINATION

8 BY MR. MCDONALD:

9 Q. Mr. Scholtens, you were handed a document by
10 Mr. Altman, who I'll represent to you is the lawyer for
11 the general contractor. And the suggestion was that the
12 building permit was issued for these projects in 2004. I
13 would like for you to read on that document what the
14 nature of work is for that building permit.

15 THE COURT: What Exhibit are you referring to?

16 MR. MCDONALD: Did you move it into evidence?

17 MR. MAYBANK: 75.

18 MR. ALTMAN: 75. It was part of your 75.

19 A. This appears to be building inspection zoning
20 approval for extension for a work-site trailer.

21 Q. [Mr. McDonald] For a work-site trailer?

22 A. That's correct.

23 Q. That's what that building permit was issued for;
24 right?

25 A. Yes.

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1 Q. So let's go through the building permits, now
2 that -- that's not for the construction of a condominium,
3 that's for a work-site trailer?

4 A. That's correct.

5 Q. So the 2000 code would have applied to the work-
6 site trailer?

7 A. That is correct.

8 Q. I'm going to hand you, sir, Plaintiffs' Exhibit
9 76. This is another permit, sir. I would ask you to read
10 what the nature of that work is.

11 A. This looks like it's for construction of a -- it
12 says, new construction, condominiums. I believe this is
13 the -- just a copy of the same permit.

14 Q. Okay. You --

15 A. But this looks like it's part of the -- a
16 building permit number 369 and it's for construction of
17 the condominiums at Fairbanks Oak Alley.

18 Q. And when, sir, was that permit issued?

19 A. This was issued the first -- or the 11th of
20 January, 2005.

21 Q. And that would have been subsequent to the
22 January 1st, 2005 adoption that we talked about earlier;
23 correct?

24 A. Yes. I think that's about ten days.

25 Q. So the 2000 code would have applied to the work-

1 site trailer and the 2003 code would have applied to these
2 condos that were actually constructed out there for that
3 building permit?

4 A. Well, the time that -- when the codes are --
5 when a project is vested is at the time of application.

6 Q. Thank you, sir. I mean --

7 Let me ask you this. What we looked at
8 earlier --

9 MR. MCDONALD: May I approach?

10 THE COURT: Yes, sir.

11 Q. [Mr. McDonald] The application, does it list
12 what the proposed cost of construction is on that
13 document? I believe that's 75, isn't it?

14 A. Yes. It says it's 1,200,000.

15 Q. Okay. And why is that important to have on the
16 application?

17 A. Well, that determines the fee that the City
18 collects for the project.

19 Q. So if somebody lowers what the cost of
20 construction is, then they pay the City less money?

21 A. That's correct.

22 MR. MCDONALD: Thank you very much.

23 THE COURT: Any recross?

24 MR. ALTMAN: Yes, sir.

25 - - -

CROSS-EXAMINATION

BY MR. ALTMAN:

Q. You just testified, Mr. Scholtens, that the permit was issued on January 11th, 2005; correct?

A. That's correct.

Q. Is there any possibility that the application could have been made on January 1, 2005, and issued by January 11th, 2005?

A. I can't speak to that, sir.

Q. Could you do that today, sir?

A. No. No, we wouldn't --

Q. It's a --

A. We wouldn't respond that rapidly. But, you know, it depends. We speak with customers in preparation to application all the time and then when the application comes in, the plan review is virtually done. We've accomplished the plan review because the customers have been in conversation and we've looked at all of the points of may be contention, if you will, that might have arisen in the design, and solved those. So by the time the application comes in we are ready to issue the permit.

And that, for example, took place with the Gailliard Theater project that the City is building right now. We worked two hours -- for two months -- for two years prior to the application coming in. We were ready

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1 to issue the permit the day the application came in
2 because the plans had been constructed, drawn, the way
3 that we had all agreed needed to be drawn. So it is a
4 possibility that you can have those short turnarounds.

5 Q. But as a practical matter, ten days is not
6 enough time --

7 A. Typically, no.

8 Q. Typically, no?

9 A. That's correct.

10 MR. ALTMAN: Thank you. Excuse me one moment.

11 [Whereupon, Mr. Altman and Mr. Maybank confer]

12 MR. ALTMAN: Mr. Scholtens, one more question.

13 Q. [Mr. Altman] If a set of plans is submitted,
14 let's say was submitted, in 2004 and the application is
15 submitted and is applied for in 2005 or the building
16 permit is not issued until 2005, you don't have to change
17 the plans, do you?

18 A. No.

19 Q. Okay. Thank you.

20 A. It depends on what application it is, sir. If
21 it's the application for that building construction and
22 that building construction is vested on the date that the
23 application is submitted.

24 Q. So in this case the application was submitted in
25 2004, the 2000 code would have been applicable?

1 A. Well, the code that would have been applicable
2 in -- by that date. Unless, of course, the designers had
3 taken a proactive step to move it to the new code.

4 MR. ALTMAN: Okay. Thank you. I have nothing
5 further, Your Honor.

6 MR. MCDONALD: May I just ask him one more
7 question?

8 FURTHER REDIRECT EXAMINATION

9 BY MR. MCDONALD:

10 Q. Sir, based upon your review of the documents,
11 did the 2003 code apply to this project at the time of
12 construction?

13 A. I'm not -- I'm not sure.

14 MR. MCDONALD: Thank you.

15 MR. ALTMAN: I have nothing further, Your Honor.

16 THE COURT: You may step down. Thank you very
17 much.

18 [Whereupon, Mr. Scholtens is excused and exits
19 the witness stand]

20 THE COURT: Call your next witness.

21 MR. MCDONALD: The plaintiffs would call
22 Mr. William Jung.

23 May Mr. Scholtens be released from his subpoena,
24 sir?

25 MR. ALTMAN: No objection, Your Honor.

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1 THE COURT: Yes, sir. Thank you very much, Mr.
2 Scholtens.

3 THE WITNESS: Thank you.

4 [Whereupon, Mr. Jung comes forward]

5 THE CLERK OF COURT: Stand here and raise your
6 right hand.

7 [Whereupon, Mr. Jung is duly sworn by the clerk
8 of court as follows: do you swear or affirm that your
9 testimony will be the whole truth and nothing but the
10 truth, so help you God]

11 THE WITNESS: I do.

12 THE CLERK OF COURT: State your full name and
13 spell your last name.

14 [Whereupon, Mr. Jung takes the witness stand]

15 THE WITNESS: My name is William C. Jung,
16 spelled J-U-N-G. My address is 243 South Plaza Court,
17 Mount Pleasant, South Carolina.

18 MR. MCDONALD: Mr. Jung, how are you doing this
19 morning?

20 THE WITNESS: Wonderful.

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1 WILLIAM C. JUNG,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. MCDONALD:

6 Q. Mr. Jung, would you tell the Court a little bit
7 about yourself? Where are you originally from?

8 A. Well, I was born and raised on Long Island and
9 spent most of my adult life there, except for military
10 service.

11 I moved to South Carolina permanently in 2000
12 and I've been a permanent resident ever since. We began
13 coming to South Carolina in 1975 and we liked it so much
14 that when I retired, we came here permanently.

15 Q. And where did you serve in the military, sir?

16 A. Korea.

17 Q. And in what branch?

18 A. I was in the army. And I was there for the last
19 year of the war. I spent seven months on line in Korea.
20 I was the Emblis [phonetic] company commander for the 25th
21 Infantry Division.

22 Q. Okay. And how long did you serve after your
23 service in Korea, sir?

24 A. Well, they offered early release after the war,
25 after the armistice was signed, which I took. And I came

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1 home in November of '53, while I stayed active in the
2 reserves for perhaps another four or five years.

3 Q. Okay, sir. And did you receive any honors or
4 distinguishments after your service in Korea?

5 A. I was awarded the Bronze Star medal.

6 Q. Okay. And what did you receive the Bronze Star
7 medal for?

8 A. For my service on line. There's no specific
9 instance. But it was my duty to evacuate wounded men,
10 which I performed as best I was able, and they saw fit to
11 issue the decoration.

12 Q. Well, I thank you for that, sir.

13 And how did you come to move -- you're
14 originally from New York. What did you do? What was your
15 profession there?

16 A. I am a lawyer.

17 Q. And what kind of law did you practice in New
18 York?

19 A. Primarily estates.

20 Q. What did you do with estate law?

21 A. Well, I drew wills and trust agreements, I
22 settled estates, I filed estate tax returns, and near the
23 end of my career I began to specialize in accounting. I
24 did a great deal of lecturing, pro bono, to other lawyers.
25 And I developed the reputation as a person skilled in the

1 preparation of surgates [phonetic] accountings.

2 Q. Okay, sir . And how long did you practice law in
3 New York?

4 A. It was perhaps forty-five years.

5 Q. Are you still licensed to practice law in New
6 York?

7 A. Yes, I am.

8 Q. And do you still, in fact, practice law in New
9 York?

10 A. Yes, I am.

11 Q. Now, sir -- and I believe you mentioned earlier
12 that you're -- what brought you down to South Carolina was
13 your retirement?

14 A. Yes. Permanently, it was because I retired
15 here.

16 Q. And you made that decision in 1975 that you were
17 going to retire down here; correct?

18 A. No, not necessarily in 1975. I would say later
19 on, probably around 1990 or so, I decided that this was
20 the place to come.

21 Q. And why was this the place to come, sir?

22 A. Well, as the expression goes, smiling faces,
23 sunny places. It's a lovely state, we liked the climate,
24 we liked the people, and we thought this was a good place
25 to come after the congestion on Long Island.

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1 Q. And what did you do in preparation for retiring
2 down in South Carolina? How did you decide where you were
3 going to locate, things like that?

4 A. Well, in '75 we purchased a small home on Hilton
5 Head, and we owned various properties there until perhaps
6 I guess about 1995. But Hilton Head was a victim of its
7 own success. I was leaving congested Long Island to go to
8 congested Hilton Head, and decided that that really wasn't
9 what I was looking for. And we had friends who had a
10 house on Kiawah, which they lent me for a week, and we
11 thought that was a much better arrangement. And we sold
12 our property in Hilton Head and we bought a property in
13 Kiawah. This was before we retired. And after we
14 retired, I sold the first place and I bought a larger home
15 and we were there for five years.

16 Q. On Kiawah?

17 A. On Kiawah.

18 Q. And that was after you retired?

19 A. That's correct.

20 Q. And then at some point did you decide to move
21 from your home in Kiawah?

22 A. Yes. What happened was both of my sons, both of
23 whom are lawyers, also relocated to South Carolina and
24 both of them are today South Carolina attorneys. And my
25 youngest son said that he had planned to come down here

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1 and seek a license in South Carolina. He was already
2 licensed in New York. And I asked him where he was going
3 to live and he says, your house. So he came before we did
4 permanently. And my other son moved down just about the
5 same time that we retired and he's now practicing here in
6 Mount Pleasant. He also became a South Carolina attorney.

7 Q. And what caused you to move from Kiawah to
8 somewhere else?

9 A. Well, I would say the real motivation were
10 grandchildren. My oldest son has three children, my
11 grandchildren, and as they started to get older and do
12 Dixie League and other sporting events, we were driving
13 Main Road over to here and Mount Pleasant to see the games
14 and we were doing a white-knuckle drive back on Main Road
15 in the dark to Kiawah. So we decided that that really
16 wasn't going to work out. There's a lot of things you can
17 say about Kiawah, but one of them is that it's a long way
18 from Charleston. So we decided to sell the Kiawah
19 property and to seek a residence over on this side of
20 the -- in the East Cooper area. And --

21 Q. What did that process entail? How did you start
22 looking?

23 A. Well, we saw -- my wife saw an ad in the paper,
24 magnificent condos.

25 Q. Sir, I --

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1 MR. MCDONALD: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 Q. [Mr. McDonald] I'm going to hand you what's
4 been marked as Plaintiffs' Exhibit 118-C.

5 A. Yes, sir. I know what that this. This is a
6 photocopy I made of the original ad that we saw in the
7 Post and Courier about magnificent condominiums on
8 prestigious Daniel Island. So in response to that add, I
9 called the phone number that was listed. It was an 843
10 number, but it rang through to New York. And they said
11 that they were not prepared to go ahead at that time, they
12 were just making their plans. But they took our name and
13 they said they would advise us as the project developed.

14 Q. And what other aspects of your search? What
15 else did you look at? Did you look at other places on
16 Daniel Island or east of the Cooper?

17 A. We looked at a number of places but we decided
18 that Daniel Island was probably the best place for us.

19 Q. And at some point, did you take -- did you make
20 the decision to further pursue The Oaks after looking at
21 that newspaper article?

22 A. Yes. There was a brochure that they gave us,
23 and we put our name into the Daniel Island Real Estate.

24 Q. Let me just stop you there very briefly.

25 MR. MCDONALD: Your Honor, I would move 118-C

1 into evidence.

2 THE COURT: 118-C?

3 MR. MCDONALD: Yes, sir.

4 THE COURT: Okay. Any objection?

5 MR. MAYBANK: No objection.

6 THE COURT: No objections. All right. 118-C
7 admitted without objection.

8 MR. MCDONALD: Thank you, Your Honor.

9 [Whereupon, Plaintiffs' Exhibit Number 118-C is
10 admitted into evidence by the Court]

11 Q. [Mr. McDonald] I hand you what's been marked as
12 118-A, Mr. Jung. Do you recognize that document?

13 A. Yes. That's one of the brochures that we
14 procured and that gave the plans of the sketches of the
15 various units that they were going to put into the
16 buildings. And we were satisfied with those. It also
17 gave a list of the attributes of the amenities in the
18 building. And we decided to ask to be put into what we
19 found out to be a lottery.

20 Q. Okay, sir. And did 118-A play a role in your
21 decision as to whether or not to purchase at The Oaks?

22 A. Yes, it did.

23 MR. MCDONALD: Okay. I would move 118-A into
24 evidence.

25 And I have a specific reason for moving this one

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1 in. I know we agreed yesterday not to move them all
2 in.

3 THE COURT: Well, this is the same as 143, isn't
4 it?

5 MR. MCDONALD: It's --

6 THE COURT: Pardon me?

7 MR. MCDONALD: This one is, in fact, not. I
8 have one more point to make on this one.

9 THE COURT: Any objection to 118-A? I think
10 we're going to probably have it in twenty times. But
11 any objection to 118-A?

12 MR. MAYBANK: No, Your Honor.

13 THE COURT: Pardon?

14 MR. MAYBANK: No.

15 THE COURT: All right. 118-A admitted without
16 objection.

17 [Whereupon, Plaintiffs' Exhibit Number 118-A is
18 admitted into evidence by the Court]

19 Q. [Mr. McDonald] Okay. On the fourth page of --
20 fifth page of 118-A, sir, some of the things on the
21 standard array of luxuries have been crossed out there.

22 A. Yes. I see that.

23 Q. Did you cross those out?

24 A. No, I did not.

25 Q. Who crossed those out?

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1 A. I believe it was presented to us by I think it
2 was Lee McManus and when it was presented it had these
3 mark-outs, these cross-outs, on it. That's my best
4 recollection.

5 Q. So whatever they changed, they changed by
6 marking them out?

7 A. Yes. That's correct.

8 MR. MAYBANK: Objection. It's speculation, Your
9 Honor.

10 THE COURT: Overruled. Go ahead.

11 Q. [Mr. McDonald] All right, sir. What happened
12 next in your process, once you found out that you had been
13 entered in the lottery?

14 A. Well, after -- they asked us to come in and to
15 select options, if we were interested. And my wife was.
16 And we went to the trailer that they had at the site and
17 met there with Lee McManus, who showed us various exhibits
18 about the different options that were available. And my
19 wife selected a total of thirty-nine -- I'm sorry -- a
20 total of \$35,919 worth of extras.

21 Q. And at this point, had you already signed your
22 contract in which to purchase?

23 A. Not yet, no.

24 Q. So what happened next, after you made your
25 selections?

1 A. Well, there came a time that the lottery was
2 conducted and they advised me that we had been successful
3 and that our application for unit 3-A in building four had
4 been approved.

5 Q. In unit 3-A of building four? That's the middle
6 unit?

7 A. That's the middle unit of the three. It's in
8 residence four.

9 Q. And after you were informed you had been
10 successful in the lottery, did you, in fact, sign a
11 contract to purchase?

12 A. Yes, I did.

13 Q. And what -- when was that?

14 A. The date of the --

15 [Whereupon, the witness reviews documents]

16 A. I'm not sure about the date of the contract.
17 I'll have to look at -- locate it here.

18 [Whereupon, the witness reviews documents]

19 A. I don't believe I have a copy of the contract
20 here in my papers.

21 Q. [Mr. McDonald] That's okay.

22 A. It was sometime before -- it was perhaps two
23 years before the --

24 THE COURT: 18-D shows May the 17th, '04.

25 A. All right. I have it here. It's dated --

1 perhaps it's dated at the end.

2 Q. [Mr. McDonald] Is it May 17th, 2004, sir?

3 A. I'm trying to find the date here.

4 THE COURT: It's on the front --

5 A. Just a second.

6 THE COURT: It's on the front page at the top.

7 On the very first page of the agreement.

8 [Whereupon, the witness reviews documents]

9 A. Oh. Yes. 17th of May, 2004.

10 Q. [Mr. McDonald] And tell the Court, if you
11 would, what the process was between the 17th of May in
12 2004, what you did prior to the first time you ever
13 stepped foot in your unit or closed on your unit.

14 A. Well, what had happened was we had sold our
15 house in Kiawah so we rented a house on Daniel Island.
16 And from time to time we would go over to the site and
17 look at the projects. Initially there was a delay, as I
18 recall, because the design of the bridge across the marsh,
19 which was eventually the main access road to this
20 development, was in question. So we used to walk through
21 I guess that's Seven Farms Drive and go to the site and
22 look at it. And after a bit, a foundation went in on I
23 believe building two. And work continued. And after a
24 bit, our building four was started and we would go over
25 there and look at the construction, usually on a Sunday

1 morning.

2 Q. And at some point after you went and visited the
3 construction, were you prevented from doing anymore
4 visitation?

5 A. Yes, sir. It got to the point where the framing
6 was completed. And we went there one Sunday morning and
7 we found a police officer in the road and he told us that
8 there would be no further access to the property.

9 Q. And after that, after there was no further
10 access to the property, were you ultimately allowed to go
11 into your unit prior to closing?

12 A. We did a walkthrough a couple, three days,
13 before we closed. That was the next time, and the only
14 time, I saw the unit after the police officer was posted.

15 Q. And during that walkthrough, did you make some
16 punch-list items?

17 A. Yes, I did.

18 Q. And what did you expect would happen with the
19 punch-list items that you made?

20 A. Well, they told me that it would be complied
21 with within thirty days.

22 Q. Okay. And then, ultimately -- hand you what's
23 been marked as Plaintiffs' 118. Do you recognize that
24 document?

25 [Whereupon, the witness reviews documents]

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1 MR. ALTMAN: Your Honor, which part of 118 are
2 you talking about?

3 THE COURT: F.

4 MR. MCDONALD: Just the -- the first one on 118.

5 THE COURT: I think it's F, isn't it?

6 MR. MCDONALD: It's 118. It's the deed.

7 THE COURT: Pardon?

8 MR. MCDONALD: It's the first one. Its just
9 118.

10 THE COURT: 118. All right.

11 MR. MCDONALD: No letter. It's the deed.

12 Q. [Mr. McDonald] Do you recognize that document,
13 sir?

14 A. Yes, sir. That's the deed conveying title to
15 myself and my wife, from Daniel Island Riverside
16 Developers, for the unit.

17 Q. And what did you pay for your unit, sir?

18 A. I paid a total of \$722,619.

19 Q. So you ultimately closed on your unit?

20 A. Yes. That's correct.

21 Q. And what happened after you closed on your --

22 MR. MCDONALD: I would move Exhibit 118 into
23 evidence, if I already haven't.

24 THE COURT: Any objection?

25 MR. MAYBANK: No objection.

1 THE COURT: All right. 118 admitted without
2 objection.

3 [Whereupon, Plaintiff's Exhibit Number 118 is
4 admitted into evidence by the Court]

5 Q. [Mr. McDonald] So what -- after you closed on
6 your unit, what was your next experience?

7 A. Well, we went to go through the unit and the
8 police officer wouldn't let us on. I said to him, look,
9 we purchased it, it's my property. And he said, well, no
10 one told me anything about any closing so you can't come
11 in. So I --

12 Q. Wait a second, Mr. Jung. I'm not talking about
13 when the police officer stopped you before. I'm talking
14 about after you bought your unit.

15 A. I'm talking about that.

16 Q. So the police officer stopped you from going in
17 your unit after you bought it?

18 A. Yeah. No one bothered to tell him that closings
19 had taken place, and he was still barring everybody from
20 the site. So I said, look, I think maybe you ought to
21 call somebody, because we purchased it and paid for it and
22 we're entitled to go in. So he made a call and he said,
23 oh, yeah, they never told me that closings had taken place
24 in these. He said, did you buy your unit. And I said,
25 yes, I did. And he said, well, then, you can go in.

1 Q. And what happened thereafter? The first time
2 you walk into your new home, what did it look like?

3 A. Well, it looked fine. It was finished. We had
4 contracted for an upgrade on the floor, but they had
5 somehow misplaced that. And they never did the upgrade,
6 so I got a 3900-dollar credit at closing for that -- that
7 particular option hadn't been installed. Other than that,
8 everything was in place. I didn't find any problem.

9 Q. Did you ever move into the unit?

10 A. Never.

11 Q. Why not?

12 A. What happened was this. We were on the island
13 in a rental home for a little over a year. Now, at that
14 point I was in my late seventies, pushing eighty. My wife
15 was in her middle seventies. And we had joined a civic
16 association. We went about the island. We went --
17 participated in things. And my wife, particularly,
18 concluded that we were out of place. We're senior
19 citizens and everybody on Daniel Island seemed to be
20 thirty-something.

21 So we felt that we weren't fitting in there.
22 Well, you know how the ladies can be. She said that we
23 have to do something else. She said, we have to find
24 another condo.

25 So we looked around a bit. And then we were

1 invited by a relative to come to a New Year's Eve party at
2 the Renaissance. We walked into their unit, looked out
3 the window at the bridge illuminated, and my wife said,
4 this is it, this is the place. I said, what are we going
5 to do with the other place? She said, well, we'll sell
6 it. I said, all right, that sounds fine. Because we
7 hadn't closed yet. So we then went with a broker and we
8 purchased a unit in the Renaissance and we have lived
9 there from that time until the present day.

10 Q. And did you, in fact, try to sell at some time
11 at the end of 2006?

12 A. As soon as I closed title, I immediately offered
13 it for sale.

14 Q. And then at some point -- I'll hand you what's
15 been marked as Plaintiffs' Exhibit 18-G [sic]. Do you
16 recognize that document?

17 A. Yes, I do.

18 Q. And it's dated January 4th, 2007, and it's a
19 residential rental agreement. So at some point you
20 decided to rent it; correct?

21 A. Yes. Over that summer, from the date of closing
22 until into the fall, we tried to sell it. There was no
23 success. I never received a single offer. I then said to
24 the real estate agent that perhaps we should rent it for a
25 bit until we can try again for a sale. And this was

1 Daniel Island Realty. At the time they said they didn't
2 handle rentals but they would put me with a firm called
3 Hereford Creek for rentals. And I gave them my listing
4 and they immediately produced these purchasers -- I mean,
5 these renters.

6 Q. Okay. And the renters are Mr. and Ms. Harvey;
7 correct?

8 A. That is correct.

9 MR. MCDONALD: And I would move Exhibit 118-G
10 into evidence.

11 THE COURT: Any objection?

12 [Whereupon, Mr. Maybank and Mr. McDonald confer]

13 THE COURT: Any objections?

14 MR. MAYBANK: No objection.

15 THE COURT: 118-G admitted without objection.

16 [Whereupon, Plaintiffs' Exhibit Number 118-G is
17 admitted into evidence by the Court]

18 Q. [Mr. McDonald] So the rental period on 118-G
19 was the 4th day of January, 2007, through the 4th day of
20 January, 2008?

21 A. Actually, they moved in four days before the end
22 of the year and -- but it was then for the entire year of
23 2007.

24 Q. And I'll hand you what's been marked as 118-N.
25 Do you recognize that document, sir?

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1 [Whereupon, the witness reviews documents]

2 A. Yes, I do. That's an option agreement that went
3 along with the rental agreement with Mr. and Ms. Harvey.

4 Q. [Mr. McDonald] So the people that you rented it
5 to also signed a purchase option agreement?

6 A. Yes. That was a strong inducement for me to go
7 into this rental agreement because they said that they
8 would likely purchase it, and they were prepared to put up
9 \$2500 as an option price, and that they would exercise the
10 option at the end of the lease, if not sooner. So --

11 Q. How were you going to arrive at the option --
12 the sales price if they exercised the option?

13 A. The agreement provided that it would be market
14 value based on sales and I guess an analysis by the
15 brokers as to what was fair price at the end of the option
16 period.

17 Q. Because it would have been a year in advance?

18 A. That's correct.

19 MR. MCDONALD: I would move 118-N into evidence.

20 MR. MAYBANK: No objection.

21 THE COURT: All right. 118 you said G?

22 MR. MCDONALD: N.

23 THE COURT: N.

24 MR. MCDONALD: G is in.

25 THE COURT: 118-N admitted without objection.

1 [Whereupon, Plaintiffs' Exhibit Number 118-N is
2 admitted into evidence by the Court]

3 Q. [Mr. McDonald] So at least as of January 4th of
4 2007, you had your unit rented for a year and you had a
5 purchase option agreement from the couple that was renting
6 it from you?

7 A. That is correct.

8 Q. And then ultimately did they exercise that
9 option in order to purchase it from you?

10 A. No, they did not.

11 Q. Do you know why they did not?

12 A. Yes, I do. In December of that year they
13 invited us for lunch, and we went to the luncheon and we
14 found Mr. and Ms. Harvey walking around in the unit in
15 their stocking feet. And they said that they were doing
16 their very best to not create any kind of a nuisance for
17 the people living below. And during the lunch they told
18 us that because of the numerous repairs that had taken
19 place during the period of time they were in occupancy,
20 and in view of the noise situation, they had decided not
21 to exercise the option.

22 Q. Well, now, let me ask you this. Did you --
23 you've been in this courtroom, haven't you, throughout
24 this trial?

25 A. I've done what?

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1 Q. You've been in this courtroom throughout this
2 trial?

3 A. Yes, sir.

4 Q. And have you heard -- you're familiar with the
5 sound remediation?

6 A. Yes.

7 Q. Did you have your unit remediated?

8 A. Yes.

9 Q. And when did that take place?

10 A. Shortly after the Harveys vacated the property.

11 Q. And what were you -- so the Harveys vacated the
12 property and you became aware at that point of the sound
13 problem?

14 A. Yes.

15 Q. And what did you do relative to the sound
16 problem?

17 A. Well, I told Mr. Behringer that the unit was now
18 vacant and it would be a good time to do the sound
19 remediation in the unit while it was vacant. And it was
20 done, you know, I think a month or two after the Harveys
21 vacated it December the 31st of 2007.

22 Q. And what did they tell you about the sound
23 remediation, what it was going to accomplish?

24 A. Well, they said it would solve the sound problem
25 and that the -- it was going to be a success and that it

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1 would satisfy all of the owners and including myself.

2 Q. And, ultimately, did you have the remediation
3 done on your unit?

4 A. Yes, it was.

5 Q. And when was that done?

6 A. Well, as I say, it was early in 2008.

7 Q. And did you go in your unit after the
8 remediation had been done?

9 A. Yes, I did.

10 Q. And what was your experience being in the unit
11 post-remediation?

12 A. I could still hear the people above and I was
13 advised that they could hear me below. It didn't seem to
14 make any difference.

15 Q. So as you sit here today, you're telling this
16 Court that you had been in the unit before, you had lost a
17 person that was going to purchase it, and you went in
18 there after and it didn't make a difference to you, you
19 could hear the same thing?

20 A. I didn't notice any difference.

21 Q. After that, did you have occasion to put -- did
22 you try to put your unit on the market again?

23 A. Yes, I did.

24 Q. I'll hand you what's been marked as Plaintiffs'
25 Exhibit 118-O. Do you know what your -- what you listed

1 it for when you put it on the market?

2 [Whereupon, the witness reviews documents]

3 A. Just bear with me. I'm not familiar with this
4 form.

5 Q. [Mr. McDonald] It's at the bottom.

6 A. Oh.

7 [Whereupon, the witness reviews documents]

8 A. Oh. I see it. It was on for 899,000.

9 Q. [Mr. McDonald] And do you know what the date of
10 this that you listed it was?

11 A. Yes. This document is dated March 18, 2008.

12 Q. So you re-listed your property after they told
13 you the sound remediation had been done; correct?

14 A. That is correct.

15 Q. Were you able to sell it?

16 A. No, I was not.

17 Q. Do you know why you weren't able to sell it?

18 A. Well, the broker told me that the disclosure
19 agreement that I had --

20 MR. ALTMAN: Objection.

21 MR. MAYBANK: Hearsay, Your Honor.

22 MR. MCDONALD: I can rephrase, Your Honor.

23 THE COURT: Rephrase your question.

24 MR. MCDONALD: Thank you. Thank you.

25 Q. [Mr. McDonald] Do you have an understanding,

1 your own understanding, as to why you were unable to sell
2 it?

3 A. Yes, I do.

4 Q. And what is that understanding?

5 A. I filed a truthful I guess it's called a
6 disclosure statement --

7 Q. Yes.

8 A. -- and I listed in it that by that time I had
9 learned about the rotting in the walls and the sound
10 problems and the other problems in the building, and I
11 truthfully answered the questions of that. And that -- I
12 guess it's truth in -- I'm not sure of what the title --

13 Q. And were you able to sell it, sir?

14 A. No, I was not.

15 Q. And in this action have you hired Mr. Donato to
16 determine what your damages will be related to that?

17 A. Yes, I did.

18 Q. And you, in fact, paid him some money?

19 A. \$750.

20 Q. And you're relying on his expertise in that
21 field of appraisal?

22 A. Yes, I am.

23 Q. Well, at this point, did you just give up or did
24 you try and rent it again?

25 A. Well, the broker came and advised me that she

1 had a client who was a border patrol agent and that he was
2 going to occupy it alone, because he was normally based in
3 San Diego but he was assigned here, and that he would
4 occupy it hopefully for a year because he was appointed
5 the weapons instructor at the border patrol school that
6 they have established up at the weapons station. And he
7 took occupancy on May --

8 Q. Sir, I'll hand you what's 118-J, to refresh your
9 memory.

10 A. Yeah.

11 [Whereupon, the witness reviews documents]

12 A He took occupancy on May the 16th of 2008.

13 Q. [Mr. McDonald] Okay, sir. And how long was he
14 in possession of the unit?

15 A. Well, he was in possession until September the
16 21st. And prior -- just shortly prior to that date he
17 told me that through their astonishment, the border patrol
18 people had decided to shut the school that they had just
19 opened and transfer him back to San Diego and that he was
20 very sorry but he was leaving.

21 Q. And did he, in fact, leave?

22 A. He certainly did.

23 Q. And at this point, did you just give up or did
24 you try and rent it again?

25 A. Well, I tried to rent it but there was no

1 opportunity to rent it. Incidentally, I had to furnish it
2 and I spent \$3600 doing light furnishing of the unit
3 because he came without furniture and it had to be a
4 furnished unit.

5 Q. And when was the next opportunity you had to
6 rent it?

7 A. Well, I guess you could call this a rental. But
8 my daughter-in-law at that time was just finishing her
9 first two years in medical school and they had come back
10 to Charleston. And there was a period of time before she
11 started her clinical training at a hospital in Kansas
12 City, so they occupied the property.

13 Q. Your son and your daughter-in-law?

14 A. My son and daughter-in-law.

15 Q. And are you asking the Court for a reduction or
16 a reimbursement for the time that your son and daughter-
17 in-law lived in your unit?

18 A. No, I am not.

19 Q. So you let them live there because you are the
20 father?

21 A. Yes.

22 Q. Okay.

23 A. Yes.

24 Q. And did you have an agreement with your son or
25 daughter-in-law what was going to take place if you sold

1 it or rented it?

2 A. Yes. They promised to pay 1500 a month.
3 Sometimes they did and sometimes they didn't. And the
4 agreement was that if I obtained a purchaser, that they
5 would vacate it and go back with my daughter-in-law's
6 mother and stepfather. But that did not occur. And after
7 that, my daughter-in-law got an appointment at St. Luke's
8 Hospital in Kansas City for her clinical training and they
9 went to Kansas.

10 Q. So were you, in fact, trying to sell it during
11 this period, as well?

12 A. Yes. I had it up for sale.

13 Q. And were you able to do so?

14 A. No. No.

15 Q. Did you have an understanding as to why you were
16 unable to do so?

17 A. Well, the condition of the property had started
18 to become well-known and it was only a few brokers that
19 came. And most of the brokers that are active in the area
20 weren't showing the property.

21 Q. Okay, sir. I'm going to hand you what's been
22 marked as Exhibit 118-K, ask if you've seen that document
23 before.

24 [Whereupon, the witness reviews documents]

25 A. Yes. This is a memo that Mr. Padgett gave me

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1 concerning some of the damages to the buildings.

2 Q. [Mr. McDonald] And specifically deals with
3 leaks in your shower?

4 A. Yes.

5 Q. And it's dated September 9th, 2009?

6 A. Yes.

7 Q. Did you, in fact, have leaks out of your shower
8 in September 9th, 2009?

9 A. No. I didn't observe any leaks and I've never
10 had any complaint about a leak from the shower. He's
11 talking about the shower pan here.

12 Q. Certainly. Underneath the shower.

13 A. Underneath the shower.

14 Q. Yes.

15 A. That hasn't happened.

16 Q. And that's under -- the shower pan is underneath
17 your tile? underneath the finished floor?

18 A. That's correct.

19 Q. And this was an issue where you had -- a shower
20 pan was leaking?

21 A. Well, there were a number of them leaking in
22 places in the different units in the project. But the
23 best of my knowledge, it did not occur in my unit.

24 MR. MCDONALD: And I would move 118-K into
25 evidence.

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1 THE COURT: Any objections?

2 MR. MAYBANK: No, Your Honor. Just I didn't
3 hear the answer. He said none of the -- none of the
4 leaks occurred in your unit?

5 MR. MCDONALD: A number --

6 THE WITNESS: No. None of the leaks in the --

7 THE COURT: He said a number occurred --

8 MR. MAYBANK: Oh. Okay. I'm sorry. I didn't
9 hear that.

10 THE COURT: -- in other units.

11 MR. MCDONALD: In other units.

12 THE COURT: All right. 118-K admitted without
13 objection.

14 [Whereupon, Plaintiffs' Exhibit Number 118-K is
15 admitted into evidence by the Court]

16 Q. [Mr. McDonald] And, sir, just as a matter --
17 before we move on from 118-K, can you read the last
18 sentence in Mr. Padgett's report? On the second page.

19 [Whereupon, the witness reviews documents]

20 A. The shower contains a horizontal edge
21 approximately --

22 Q. [Mr. McDonald] On the second page, Mr. Jung.

23 A. On the second page?

24 Q. Yeah. The last sentence on the second page.

25 A. The last full paragraph?

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1 Q. The last sentence.

2 A. Oh, last sentence.

3 It is likely that this problem is present
4 project-wide.

5 Q. So that confirmed your recollection --

6 A. Yes.

7 Q. -- that you thought it was an issue going on
8 throughout the project?

9 A. Yes. It's --

10 Q. You don't know why the shower pans are leaking,
11 do you?

12 A. No, I don't.

13 Q. That's what Mr. Padgett has looked at; correct?

14 A. Yes.

15 Q. Did you have occasion to rent your unit again?

16 A. Yes.

17 Q. Hand you what's been marked as 118-L.

18 A. Yes, I did. This is a rental that I made with
19 Dr. Robert Adams and Dr. Gail Adams. Gailer, I think it's
20 pronounced. Gailer Adams.

21 Q. Okay. And did they stay the entire term of this
22 lease?

23 A. No, they did not.

24 Q. And did they move out because of the sound?

25 A. Yes, they did. They were getting complaints

1 from the people below about noise and there was some
2 difficulty between them and those persons and --

3 Q. And did you, in fact, let them out of this lease
4 voluntarily?

5 A. I had to because I wasn't complying with the
6 covenant of quiet enjoyment.

7 Q. Do you know if you were complying with your --
8 with the master deed in respect to noise?

9 A. I don't think so.

10 Q. All right, sir. And you are asking this Court
11 for those damages which you've hired Mr. Donato to
12 establish; correct?

13 A. That's correct.

14 Q. Okay. And what else are you asking this Court
15 for?

16 A. Well, the ongoing repairs. There's a number of
17 them that occurred that I had to pay for after the
18 warranty period. There were constant leaks. The plumbing
19 seemed to be the worst of the various systems in the
20 building. As I understand the building code, the pipes
21 are supposed to have a nail shield on them when they're
22 between the walls.

23 Q. You're talking about the pipes in the wall?

24 A. In the walls, yeah.

25 No such nail shield was ever installed. And we

1 had a series of leaks where the Sheetrock was fastened
2 with -- they use an airgun, I believe. And if they don't
3 hit a stud, they might hit a pipe. And at first nothing
4 happens because the nail is jammed into the pipe but as
5 the nail rusts, it starts to leak. And we had I would
6 say, conservatively, eight of those occur during the
7 period of time I've owned the property.

8 Q. And were you required to spend money out of
9 pocket in order to fix those problems?

10 A. Yes, I was.

11 Q. And how much was that, sir?

12 A. Well, there was one in which there was a leak
13 above my unit, the top-floor until. that got down into the
14 ceiling of my unit and I believe it also got down into the
15 ceiling of the unit below. So a restoration company was
16 engaged and they came in and they tore the ceiling down.
17 And I made a claim against my insurance policy but I had
18 to pay the 500-dollar deductible.

19 And then there was another leak -- again, this
20 was in the unit above -- that got down into my unit. And
21 they had to open the wall. And after a time they
22 determined that it wasn't in my unit but it was the unit
23 above. And it cost me \$450, I believe, to have the wall
24 restored.

25 Q. Any other out-of-pocket costs?

1 A. Well, there were a number of appliance repairs
2 and things of that sort. The --

3 Q. I'll show you what's been marked as Plaintiffs'
4 Exhibit 118-P and ask you if those are those repairs.

5 [Whereupon, the witness reviews documents]

6 A. Yes. This is a repair by a plumbing company.
7 This was -- yeah. Oh. This was the one where there were
8 -- the connections to the Jacuzzi tub. Apparently, when
9 they were installed the guy never tightened it down so
10 after a time it started to leak. But in the process of
11 getting at the thing so it could be tightened, they had to
12 lift up the tile. There's like a shelf between the wall
13 of the shower and the opening of the Jacuzzi tub. It's
14 about six or eight inches wide and the pipes are in that
15 space. So they had to remove the tile and then get at the
16 pipe. And they found all they needed was the pipe
17 tightened.

18 Q. [Mr. McDonald] And are the invoices that
19 are -- that comprise Exhibit 118-B, the first for two
20 twenty-five --

21 A. Yeah.

22 Q. -- the second for two twenty-five, and the third
23 for four thirty-seven ninety-two, are those out-of-pocket
24 expenses that you incurred --

25 A. Yes.

1 Q. -- due to leaking?

2 A. Yes. I had to pay those, yes.

3 Q. And by my math, what you testified to out-of-
4 pocket expenses is a total of \$1,887.92 ; is that correct?

5 A. Yes, that's correct.

6 Q. And are you asking the Court to be awarded that
7 amount?

8 A. Yes. I would like that to be awarded, yes.

9 Q. And in addition to that, have you lost any rent?

10 A. Well, I list the rent for the rest of that lease
11 that the Doctors Adams had entered into. That was I think
12 \$17,800 that I would have obtained but they left.

13 Q. So you're asking the Court to award you, in lost
14 rent, \$17,800 for the time that they -- you had a lease
15 and they left because of the sound issue?

16 A. That's correct.

17 Q. And that was post-remediation?

18 A. Oh, yes. That was post-remediation, yes.

19 Q. Mr. Jung --

20 MR. MCDONALD: Beg the Court's indulgence.

21 [Whereupon, Mr. McDonald and Mr. Bundy confer]

22 THE COURT: Mia, do you need a break? We can
23 stop right now if you need a break.

24 MR. MCDONALD: We can take a break. I'm at a
25 great stopping point.

1 THE COURT: Are you through?

2 MR. MCDONALD: No. I probably have five minutes
3 left.

4 THE COURT: Well, hurry up.

5 MR. MCDONALD: Okay.

6 Q. [Mr. McDonald] Mr. Jung, you also served on the
7 HOA board, did you not?

8 A. I did. Yes, sir.

9 Q. And you've been in this courtroom this whole
10 trial; correct?

11 A.. That is correct.

12 Q. And you've heard the discussions about dealing
13 with Carriage Hill while you were on the board?

14 A. Yes. I'm aware of those.

15 Q. When were you on the board, sir?

16 A. I took office on January 1 of 2008 and I was on
17 the board until December the 31st of 2010.

18 Q. And who did you serve with?

19 A. With Bobby Reece and Joe Chiovarou and, later,
20 Joe Moran.

21 Q. And what type of experience did you have in
22 dealing with Carriage Hill? Was it they just did
23 everything you-all asked them to do and just took care of
24 it straight away?

25 A. Well, it was like pulling teeth.

1 Q. And what did that -- explain the process.

2 A. Well, we set up a pattern. We would meet with
3 Carriage Hill for a progress report every two weeks. We
4 met at Mr. Reece's office. And usually we made some
5 progress, but quite often there was little or no progress
6 on the repairs. So we would, in effect, badger Mr.
7 Behringer to get moving and to fix this and that. We then
8 had numerous discussions about how it was to be done and
9 whether who was at fault. And this went on for almost two
10 years.

11 Q. Did they ever offer to repair all of the
12 buildings and get everything done?

13 A. No, they did not.

14 Q. Did they ever admit to you that there's problems
15 with the building that we constructed?

16 A. Yes, I would say that they did. For example,
17 through our efforts and through Mr. Behringer's work, we
18 stopped the leaks in the roof and we also stabilized the
19 parapet wall at the top and also we tied down the air-
20 conditioning equipment, which was just sitting on the roof
21 loose. They weren't tied down to anything. We also made
22 some progress on some of the leaks in the walls, but that
23 was limited.

24 Q. And did it ever get to a point where the
25 problems were so significant that they just weren't going

1 to fix it anymore?

2 A. Well, we finally came to the issue of the
3 windows and we said that our engineer and the inspections
4 that had been made -- they opened the wall at various
5 places -- that the wall was wet. I mean, it was -- the
6 water was down in between the walls, and that the
7 structural members were rotting away, and that we wanted
8 the windows to be fixed. And at that point, Mr. Behringer
9 pointed out that they were suing the window company and
10 they wanted to wait until that matter was resolved. And
11 we said, well, you know, we're getting constant damage
12 with the condition with the windows and that we thought it
13 should be taken care of by him and then he could pursue
14 his remedy against the window company separate. Well, he
15 declined to do that, so we made a counteroffer. We said,
16 well, just fix the ones that are on exterior walls and
17 we'll wait on the stuff that are underneath the balconies.
18 And he didn't accept that proposal, either, and at that
19 point we had an impasse.

20 MR. MCDONALD: Thank you very much, Mr. Jung.

21 Please answer any questions these gentlemen may have.

22 THE COURT: We'll take about a ten-minute break.

23 MR. MAYBANK: Your Honor, because we do, can he
24 just -- when he said the Behringers -- okay.

25 THE COURT: Pardon?

1 MR. MAYBANK: I couldn't -- is he talking about
2 Rich or Bob Behringer?

3 THE WITNESS: Richard Behringer.

4 MR. MAYBANK: Richard Behringer.

5 MR. MCDONALD: And just as a housekeeping
6 matter, if I haven't already done it I would move
7 Exhibit 118-P into evidence.

8 THE COURT: I think you've already done it.
9 It's already in.

10 MR. MAYBANK: Over objection. We would object
11 to it being untimely, Your Honor --

12 THE COURT: 118-P?

13 All right. Everybody be quiet for a minute,
14 please. Have a seat.

15 MR. MAYBANK: Yes, sir. We --

16 THE COURT: Im sorry, Mr. Maybank. I couldn't
17 hear what you were saying.

18 MR. MAYBANK: I apologize, Your Honor.

19 On Exhibit 118-P with the dates of 2011, 2013
20 and 2012 for those bills, we would just object as to
21 the timeliness and whether or not they --

22 THE COURT: What's your legal objection?

23 MR. MAYBANK: Your Honor, I'll reserve my
24 objection until I've questioned him about this, Your
25 Honor. I object to the time --

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1 THE COURT: All right. You can question him
2 about the dates.

3 MR. MAYBANK: I agree.

4 THE COURT: That doesn't keep it out.

5 MR. MAYBANK: I agree..

6 THE COURT: 118-P admitted without objection.

7 MR. MCDONALD: Thank you, Your Honor.

8 [Whereupon, Plaintiffs' Exhibit Number 118-P is
9 admitted into evidence by the Court]

10 THE COURT: Anything else before we take a
11 break? All right. A ten-minute break.

12 MR. MCDONALD: And Mr. Jung knows he's not
13 supposed to discuss his testimony with anybody here
14 during the break.

15 THE COURT: You just told him, didn't you?

16 MR. MCDONALD: Judge --

17 THE COURT: Okay. Thank you very much.

18 [Whereupon, a recess is taken from 11:32 a.m. to
19 11:43 a.m.]

20 [Whereupon, an off-the-record bench conference
21 is held]

22 THE COURT: All right. I believe we're at cross-
23 examination on Mr. Jung. Is that correct?

24 MR. MCDONALD: Yes, sir.

25 THE COURT: Mr. Jung. Cross-examination. Okay?

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1 MR. MAYBANK: Yes, Your Honor.

2 Good morning.

3 THE WITNESS: Good morning.

4 MR. MAYBANK: It's still morning so I can say
5 that, I guess, technically.

6 Is it Jung or Jung?

7 THE WITNESS: I'll take it either way.

8 MR. MAYBANK: How is it pronounced properly?

9 THE WITNESS: It should be pronounced Jung --

10 MR. MAYBANK: Jung.

11 THE WITNESS: -- in German, because the rumor
12 that I'm Korean is not true.

13 MR. MAYBANK: Well, I'll be honest with you,
14 with everything going on over there, they may need
15 your expertise back in action. I hope not but --

16 THE WITNESS: Well, every other person in Korea
17 seems to be named Jung.

18 MR. MAYBANK: Okay.

19 CROSS-EXAMINATION

20 BY MR. MAYBANK:

21 Q. Mr. Jung, where on Hilton Head did you live in
22 1975?

23 A. Well, at that time we were living in Hilton Head
24 Plantation in a condominium on Skull Creek.

25 Q. And did you always have a condo or did you ever

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1 own a house on --

2 A. No. The first property we owned was a house, a
3 small house. It was one of these Adirondacks, they called
4 it, and that was right near the beach. And then,
5 subsequently, we sold that and we bought a couple of lots.
6 And then we sold those and we ended up in this condo on
7 Skull Creek.

8 Q. You are claiming certain damages in this case.
9 One is an appraisal done by Mr. Donato and some damages
10 from that; is that correct?

11 A. That's correct.

12 Q. Would you agree with me that if the buildings
13 are fixed, that there would be no damage --

14 MR. MCDONALD: Objection, Your Honor. The
15 objection earlier was that these witnesses couldn't
16 testify about what Mr. Donato was going to say and now
17 we're being cross-examined on what Mr. Donato has
18 done.

19 MR. MAYBANK: But he's claiming damages that
20 Mr. Donato --

21 THE COURT: I'll allow the question. Overruled.

22 MR. MCDONALD: Thank you.

23 THE COURT: Go ahead.

24 Q. [Mr. Maybank] Well, let me rephrase it. In
25 2000 -- you never moved into the unit out on Daniel

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1 Island?

2 A. Never moved in, no.

3 Q. But you served in a capacity as a board member;
4 correct?

5 A. That is correct.

6 Q. As a board member, did you take that job
7 seriously?

8 A. Oh, yes. Definitely.

9 Q. You had duties and obligations to the other
10 homeowners at the development?

11 A. Yes, I did.

12 Q. And did you work -- and did you also employ the
13 use of Ravenel and Associates, during the time you were on
14 the board, to be the day-to-day operator of the homeowners
15 association?

16 A. Yes. They were the managing agents for the
17 entire time I was on the board.

18 Q. Are you aware that they were also the managing
19 agents at the time that Carriage Hill or Daniel Island
20 Riverside Developers appointed a board member to oversee
21 the board during the developer-control period?

22 A. Yes, I do.

23 Q. Okay. Any information that the board during the
24 developer-control period would have had, and in Ravenel
25 and Associates possession, you, as a subsequent board

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

SC Court of Appeals

J. C. Nicholson, Jr., Circuit Court Judge

Trial Case No.'s 2009-CP-08-1068, 2009-CP-08-3916,
2009-CP-08-1413, 2008-CP-08-2714
Appellate Case No. 2014-002390

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC., JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIOVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, NANCY K. JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, GEORGE S. POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, MATTHEW J. SEVERANCE, and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

Respondents,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,

Appellants.

PROOF OF SERVICE

I certify that I have served the Record on Appeal Vol. I through Vol. VI, pursuant to the Order entered June 12, 2015, on Respondents on July 6, 2015, addressed to its attorneys of record,

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July 6, 2015



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