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. III of VI

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member, would have been privy to any of that information; correct?

A. Yes, I guess I would have. Yeah.

Q. Was there anything, that you're aware of, known by Carriage Hill or Daniel Island Riverside Developers, during the developer-control period, that was not then given to subsequent board members? Any information about the construction or problems that existed?

A. I have no knowledge of that.

Q. In 2006, you and your wife moved into the Renaissance building?

A. Yes, that's correct. Yes.

Q. Did you rent there beforehand, before you purchased your unit?

A. No, we just purchased it and moved in.

Q. Can I ask you how much you paid for the Renaissance building?

A. $1,100,000.

Q. And correct me if I'm wrong. I apologize if --

That's the same price you originally listed your unit for on Daniel Island, wasn't it?

A. That's what they told me it was worth. Yes. I took the advice of my broker, Angela Black.

Q. I think we spoke about Ms. Black yesterday.

A. I believe you did.

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Q. Did she inform you that she had also owned units out on that -- in that development?

A. She never did inform me of that, but I learned of it.

Q. So before you moved in -- or at the time you closed, you were going to turn around and sell your unit and in 2006 you were informed by your real estate agent, Daniel Island --

Was that Daniel Island Real Estate?

A. Daniel Island Real Estate. Yes.

Q. -- Mr. Jung, that your unit was worth 1.1 million dollars?

A. That's what she told me.

Q. Eventually, though, you did not list it for that price, did you?

A. No. We dropped it down. There was absolutely no interest at that price, so we dropped it several times and I believe we ended up at about 800,000.

Q. I believe it was 899,99. Does that seem about right?

A. That could be correct, yeah.

Q. But that didn't have anything to do with any disclosure of any construction defects --

A. No, I --

Q. -- for the lowering of that price, did it?

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A. No. I didn't -- she never presented me with a document that a later real estate broker did, the disclosure statement. I had no knowledge that that was a requirement. She never presented the form or discussed it with me.

Q. And how long was that listing agreement with Ms. Black, that I believe has been marked as an exhibit? Do you recall?

A. I believe it was for six months and it expired sometime that fall of 2006.

Q. So though she told you the market value was 1.1 million, you listed it at right around 900 and you still didn't get any offers on the property?

A. That is correct. Not a single offer.

Q. The property that you actually moved into at the Renaissance, that you paid 1.1 million, are you aware that there were construction defects at the Renaissance when you purchased your unit?

A. Yes. They were completely visible. The building was surrounded by scaffolding and work was in progress.

Q. Okay. So at that time that you saw the Renaissance, while it was in breakdown mode, so to speak --

Would that be a good term for it?

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A. Yes, it certain would.

Q. -- y'all choose to go ahead and purchase in that building, even though you knew that there were construction defects on that property?

A. That is correct.

Q. And was the reason that you purchased was -- did somebody tell you that all the problems there were being fixed?

A. Yes. The broker and, of course, my son's in-laws, who lived in the building, all told us that the construction defects were being repaired by the original builder at his expense and that we might anticipate, once the repairs were completely made, that the value of the property would be even higher.

Q. And Mr. Donato told you the same thing about the property on Daniel Island?

A. According to his appraisal, yes.

Q. So if he -- if the fixes and repairs are made, then the value -- there will be no lost value. Is that your understanding?

A. That's my wish. I hope that's going to be correct, yes.

Q. Has that occurred at the Renaissance?

A. No. The opposite.

Q. Has it gone down in value?

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A. It's gone down in value.

Q. And is that because of the economic impact to the Charleston area?

A. That is correct.

MR. MAYBANK: All right. Just a few more questions.

Q. [Mr. Maybank] You sat on the board. Did you attend any meetings with Ted Padgett?

A. Yes. A number of them.

Q. Mr. Behringer?

A. Yes.

Q. More than one, wasn't it?

A. Oh, yes. Numerous. We would meet every two weeks.

Q. And that was for at least a two-year time frame?

A. I would say roughly a two-year time frame, yeah.

Q. And how about Jerry Rumplick? Do you know Jerry?

A. Yeah. I believe he was an assistant to Rich Behringer. He was a construction man. He was also from Long Island.

Q. Do you see him in the courtroom?

A. With my eyesight, no.

Q. Okay. I understand.

How about Bob Behringer? Did you ever meet with

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Bob, as well?

A. Oh, yeah. Yes. Just a couple of times.

Q. And so during the time that you were on the board, Carriage Hill Associates and Daniel Island Riverside Development actively participated in trying to assist the homeowners in fixing the problems that were out there, didn't they?

A. That was the initial thrust of our endeavors. They were trying to fix it, and we were trying to get them to fix it.

Q. Are you aware that they also turned to their subcontractors, who sold them the product and also installed different components on the building, to try to get them to assist in assisting in the repair and remediation of the problems?

A. Yes. Rich Behringer told us that he was making those attempts.

Q. Are you familiar with whatever happened with those attempts? Were they successful, or did they fail, or do you know?

A. I don't know.

Q. Okay. My understanding from your testimony is that progress was made in dealing with my clients in that y'all stabilized the parapets, the roof issues, which I believe -- did you ever meet with a Mike Parker?

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A. I'm not sure.

Q. Sutton Carolyn [phonetic] and Associates and a water intrusion engineer?

A. I don't recall meeting him, no.

Q. It's not that he wasn't there, you just don't recall possibly meeting --

A. I'm not sure. There were several occasions where Mr. Behringer would bring some person into the meeting, but I'm not sure just who it was.

Q. But they did, over those years and over those meetings, try to address and fix the problems as were being brought to their attention by the homeowners association?

A. I would say some of them, yes; some of them, no.

Q. On the balustrades and the bannisters, do you recall whether or not there was a scope of work or remediation fix that was agreed to and presented to the board?

A. We did not agree to it. I recall that there was a proposal, but we did not agree to it.

Q. And it was their attempt to try to present something to the board to fix whatever problems existed with those issues?

A. Yes. It was presented for that purpose.

Q. And they presented fixes and repairs to the roof

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problems?

A. Yes.

Q. They tried to present them -- present, to the homeowners association, repairs to the window issues?

A. Yes, they did.

Q. Were you ever made aware, as a homeowner or a board member, that eventually at some point the windows were deemed to have been manufactured defectively?

A. Yes, I was -- certainly was. The actual testing of the windows was conducted in my unit and I was present when that was taking place.

Q. Were you -- I believe it was your units, and other units, had water testing done to them; correct?

A. Yes. They -- I think the principle -- the testing was done in my unit.

Q. And as president --

THE COURT: Mr. Maybank, hold on just a second, please.

MR. MAYBANK: Yes, sir.

[Off the record momentarily]

THE COURT: Okay. Mr. Maybank, you may proceed.

Q. [Mr. Maybank] Mr. Jung, we've talked about different mediations and plans and proposals. As to the water testing that was done on your windows, would you agree with me that Carriage Hill Associates of Charleston

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hired and paid for the experts who did the water testing on your windows?

A. Yes.

Q. They were as curious as the homeowners association, were they not, as to why the windows were failing at these -- on these buildings, weren't they?

A. We all were. Yes.

Q. At some point, the determination was made as to the failure and the cause; correct?

A. That is correct.

Q. And you understand that my client didn't manufacture the windows, don't you?

A. I do -- I understand that, yes.

Q. They didn't design them?

A. No.

Q. And in terms of the installation, that was also done by other subcontractors that were not employed by my client?

A. Yes. That's correct, yeah.

Q. Do you remember what the warranty was provided for, when you purchased the unit, as to the plumbing or the electrical or the appliances that were in your unit?

A. I believe that he warranted everything for a period of one year. I never saw a written warranty on anything.

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Q. So you don't know if it might be in your sales contract or contract to purchase?

A. I believe it is, yes.

Q. Would you agree with me that these bills that you're asking to be paid -- and these are Exhibit 118-P, as in Peter -- are dated in 2011, 2013, and 2012, at least six to seven years after you have closed on your unit?

A. I am aware of that, yes.

Q. That would make that outside the warranty time for my client, wouldn't it?

A. It would make it outside of the original warranty period, yes.

Q. Did you ever deal with a Meggan Crocker?

A. A Meggan? Yes. Yeah.

Q. Did she assist you in making warranty claims to the window manufacturer?

A. No. Not to the window manufacturer, no.

Q. Did she assist you in making warranty claims?

A. Yes.

Q. Okay. Did she submit those to third parties, or were those warranty claims processed and repaired for [phonetic] by Carriage Hill or Daniel Island?

A. Both.

Q. At any time did Meggan, as an employee of Carriage Hill, ever tell you that she or they would refuse

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to do any of the warranty work that you asked for?

A. She never refused it, no.

MR. MAYBANK: Mr. Jung, thank you very much.

THE COURT: Any redirect?

MR. MCDONALD: Very brief.

REDIRECT EXAMINATION

BY MR. MCDONALD:

Q. Mr. Jung, did you ever make warranty claims that arose out of somebody else's unit you didn't know?

A. No.

Q. You didn't make any warranty claims when somebody else's pipe burst in the wall --

A. Oh.

Q. -- in their unit?

You didn't make a warranty claim for something that was outside of your unit?

MR. MAYBANK: Objection. Leading the witness.

A. No. I didn't understand the question.

Yes, I made a warranty claim --

THE COURT: I'll let him lead for a while.

MR. MAYBANK: Thank you.

A. I made a warranty claim because of damage that had occurred in another unit and came into mine.

Q. [Mr. McDonald] Inside the walls; right?

A. Inside the walls. Yes, sir.

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MR. MCDONALD: Thank you, sir.

THE COURT: Any recross?

MR. MAYBANK: None, Your Honor. Thank you.

THE COURT: You may step down. Be careful stepping down. Thank you very much.

[Whereupon, Mr. Jung is excused and exits the witness stand]

MR. MCDONALD: Your Honor, I'm just going to get that --

THE COURT: Move that thing out of his way, if you would, that poster or whatever you call it. Poster paper.

Call your next witness, please.

MR. MCDONALD: Plaintiff would call Mr. Robert Reece.

[Whereupon, Mr. Reece comes forward]

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

THE WITNESS: I do.

THE CLERK OF COURT: State your full name and spell your last name.

[Whereupon, Mr. Reece takes the witness stand]

THE WITNESS: My name is Robert Reece. Last

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name, R-E-E-C-E.

MR. MCDONALD: Mr. Reece, how are you doing this afternoon?

THE WITNESS: Afternoon. Good. Thank you.

- - - - -

ROBERT REECE,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCDONALD:

Q. Mr. Reece, would you state your address for the record, please.

A. My address is 1327 Deep Water Drive, Mount Pleasant, South Carolina.

Q. Okay, sir. Where are you from?

A. I am from Montgomery, Alabama.

Q. And born and raised in Montgomery, Alabama.

A. Born and raised in Montgomery, Alabama.

Q. And where did you go to school?

A. I did not go to college. Finished Sidney Lanier High School in 1973.

Q. In Montgomery?

A. Yes.

Q. And on what occasion did you have to move from Montgomery, Alabama?

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A. I was employed in the heating and air-conditioning industry, working for a wholesaler, and moved to a couple of locations: Selma, Alabama, for a while, and Pensacola, Florida.

Q. And how long did yo live in Pensacola, Florida?

A. Two years, two and a half years.

Q. And are you married, Mr. Reece?

A. I am not.

Q. And where -- on what occasion did you have to locate to Charleston, South Carolina?

A. I was hired by Lenox Industries in Atlanta, Georgia, as an account representative in the Charleston area and I moved to Charleston in 1987.

Q. And working for Lenox?

A. Working for Lenox.

Q. And what did you do for Lenox?

A. A sales representative for them, representing the eastern part of -- eastern -- coastal part of South Carolina.

Q. And what does a sales representative do?

A. Call on heating and air-conditioning contractors to try to get them to use the Lenox product, sell it, work with them on marketing programs, calling architects and engineers. Same thing. Trying to get the product specified.

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Q. And how long did you work there?

A. Worked there from 1987 until sometime in 1991.

Q. What did you do in 1991?

A. 1991, I became a partner with Pardee Heating and Air-Conditioning in Charleston.

Q. Okay. Still in the HVAC business?

A. Still in the HVAC industry.

Q. And how long were you with Pardee?

A. Until 1996.

Q. And what did you do then?

A. 1996, we sold the company to a national company called Service Experts and I was hired by Service Experts to be their regional manager for the southeastern United States.

Q. So still in the HVAC business?

A. Still in the HVAC industry.

Q. And how long were you with them?

A. I was with them until 2001. No. Yeah, 2000.

Q. And are you in Charleston this whole time?

A. No. I moved to -- relocated to Nashville, Tennessee, and I had the responsibility for I think thirty-three locations in nine states.

Q. And in 2001, did you find yourself back in Charleston?

A. 2001, I missed Charleston and I moved back to

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Charleston. Quit that job and didn't do anything for about six months.

Q. And then what did you get into?

A. I got into the commercial real estate business.

Q. And what aspects of the commercial real estate business?

A. Sales, leasing, and doing some development work.

Q. In the commercial rather than the residential setting?

A. Strictly commercial.

Q. And what type of -- are you currently still employed doing that?

A. I am.

Q. And what do you do, just briefly, in that field?

A. As I said, sales. Third-party brokerage work, sales for clients, and leasing for clients that own properties. And I've acquired some of my own properties over the years and do some leasing for those and management.

Q. Do you work for yourself?

A. I am an independent contractor, yes.

Q. And on what occasion did you have to find out about -- hear about and get involved with The Oaks, which bring us here today?

A. You know, I honestly don't recall exactly how I

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found out about the property. It may have been through a newspaper ad. I'm not sure. But I ended up inquiring about the property, and subsequently decided to move forward with a purchase, and entered their so-called lottery.

Q. And I'll hand you what's been marked as 121-A. Is that --

THE COURT: What number?

MR. MCDONALD: 121-A. Your Honor, it's --

THE COURT: Okay.

MR. MCDONALD: I'm not going to move it into evidence. It's this.

THE COURT: Just you can refer to it for the record. I believe it's what, 134? The same thing?

MR. MCDONALD: 143.

THE COURT: 143. Okay.

Q. [Mr. McDonald] Do you recognize that document, sir?

A. I do.

Q. And was this document presented to you prior to you making your decision to purchase at The Oaks?

A. It was.

Q. Did you rely on it in making your decision?

A. I did.

Q. Ultimately, you said you entered into the

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lottery?

A. Yes.

Q. And how did that process work?

THE COURT: We heard the lottery before. Let's go on, move on, okay? I don't need --

Q. [Mr. McDonald] Did you get --

THE COURT: -- to hear about the lottery again.

A. Yeah, I ended up --

Q. [Mr. McDonald] Did you win the lottery?

A. Yeah, I won the lottery all right.

Q. And at some point after deciding -- or finding out that you had won the lottery and were going to move into The Oaks, what unit did you end up purchasing?

A. Unit 4-B in building five.

Q. I'll hand you what's been marked as Plaintiffs' Exhibit 121, ask you if you recognize that.

A. It looks like a record of the deed. And it is the deed behind it.

Q. That's your deed when you bought it; right?

A. Correct.

MR. MCDONALD: I would move 121 into evidence.

THE COURT: Any objection?

MR. MAYBANK: No objection.

THE COURT: 121 admitted without objection.

[Whereupon, Plaintiffs' Exhibit Number 121 is

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admitted into evidence by the Court]

Q. [Mr. McDonald] And your purchase price was $716, 850; correct?

A. That is correct.

Q. And for what purpose did you purchase The Oaks? Were you going to move in there?

A. Yes. I purchased --

Q. You were going to live there?

A. I purchased it to live in and did, in fact, live there for about five years.

Q. And upon moving in, did you have an opportunity to serve on the board?

A. Yes.

Q. And why did you decide to serve on the board?

A. Well, it became evident pretty quickly that there were some problems with the property and I thought given some of my background in the construction-related trades that I might be of some assistance. And having done some development work.

Q. So when the board was handed over to the individual homeowners, you were on that first board?

A. That's correct.

Q. And it was your intention to try and help out with some of the problems that at least y'all knew about at that point?

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A. Correct.

Q. Okay. And did you, in fact, do that? Did you try and work through those problems?

A. We tried our best.

Q. And how long did you serve on the board?

A. From 2006 I think until 2010 or through 2010. And I think I came off in -- I think I came off the board in January of '11.

Q. So did you -- there's been a lot of testimony in this courtroom about whether or not the developer was going to fix things and whether or not you-all were working with the developer. Were you involved in that process?

A. Very much.

Q. Can you explain or just tell the Court what your testimony is on how that process went, what your version is, how it was to work with Carriage Hill?

A. Well, I think it's already been described as pulling teeth, and I would put that -- say that was mild. It was a struggle the whole way. Yes, they made some attempts to try to fix some of the problems that were identified, but a lot of problems they just refused to fix. For instance, the elevator pit in building number one, it still leaks water, to my knowledge. You have rusty equipment in there that's rusting in a 50,000-dollar

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elevator. They just refuse to do anything about that.

Q. And did they give you a reason why they refused to fix that issue?

A. No. They just refused to do it.

Q. What about other things that they wouldn't fix? Did they give you a reason why they refused to do that?

A. Well, you know, for instance, the windows and the doors: they just -- you know, I sat in a meeting -- we had numerous meetings at my office over, as Mr. Jung testified, I think a two-year period. And we tried to identify items, come up with a plan, and then check progress in a couple of weeks. And some of the things we made some progress on, but some things we just did not, like the windows and the doors.

And I can't tell you the date of the meeting, but I remember a very specific meeting at my office. I was -- not in the normal conference room with everybody else. I was in a smaller conference room with Mr. Bob Behringer. And when it was apparent, after testing had already been done, that the windows leaked, I asked him, are you going to replace these windows. He avoided answering the questions and I had to badger him and press him to say these windows are judged defective; are you going to replace these windows. He eventually said, yes, of which, of course, they eventually refused to do.

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Q. And what building was your unit in?

A. Building five.

Q. And in building five -- they pulled the stucco off the back of building five, didn't they?

A. That's correct.

Q. And that was during the time you -- the board was working with them; right?

A. Correct.

Q. And that was -- how did that process go, in that the board working with them, in trying to do a remediation of building five?

A. Well, it was -- my unit was affected. And they built a temporary wall on the inside while they took the windows out. They didn't replace the windows with new windows. They took the windows out and reworked that opening and put the same windows back. But they built a temporary wall on the inside, with plastic up, to try to not make such a mess and be so intrusive on my life. But, you know, there was dust throughout the whole house and I just had to deal with that for quite a while.

Now, once they got the windows replaced, the back of the building was still left exposed and they covered it with plastic, but you can imagine in a wind storm what that plastic sounded like flapping.

Q. Was this just where they just had the plastic up

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for a couple of weeks?

A. They just had plastic up there, I don't know, it was probably nine months to a year.

Q. They had the plastic covering the back of the building --

A. Just plastic covering the back of the building.

Q. -- for nine months to a year?

A. Yes.

Q. And that's when the homeowners association was trying to get them to do something to fix these things?

A. Yes.

Q. And that's building five; right?

A. Building five.

Q. Do you know whether or not building five, as it sits today, has to be repaired, that back side?

A. It -- to my -- well, I understand -- now, I -- they put the back of building five -- finally put it back together. Again, did not replace the windows. Put the same defective windows back in.

Q. So they put the same defective windows back into the building?

A. Correct.

Q. Now, did there come a point in time when the board could not -- could no longer work with Carriage Hill as to what they were proposing?

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A. Yes.

Q. What happened then? Why did that come about?

A. Well, it just kind of built up for a number of things. I mean, dealing with the roof, dealing with the air-conditioning units not being tied down, which they did eventually tie those down. But the roof, it's my understanding, never did ever meet code. We allowed them -- it didn't have enough slope, but we allowed -- and then we had water standing on the roofs. They did some work on it. They tapered the roof some, so that the water wouldn't puddle as bad. The roof didn't meet the manufacturer's criteria for a proper installation because it didn't have enough fasteners at the proper spacing. So they finally did come back and agree to do that. You know, and that's the roof.

But when it got to the windows, the doors, when it came to the balustrades and the railings that were rotting and becoming dangerous, they were not willing to do anything else on those.

Q. Did they ever do a fix that you felt like, as a board member or an individual owner, was up to the standard of what you bought?

A. Absolutely not.

Q. Did you ever see a single repair that was done, when you-all let Carriage Hill do a repair, that was up to

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the standard that you thought, this is exactly what it should have been before, this is what I was expecting to purchase?

A. No.

Q. You don't live at The Oaks anymore, do you, sir?

A. I do not.

Q. This is on the back side of Exhibit 121, which is already in evidence. Do you recognize this portion of 121?

A. This is the deed where I transferred the property to the purchaser in January of -- January 4th, 2012.

THE COURT: Any objection to 121-G, which is the deed?

MR. ALTMAN: No, sir. None.

THE COURT: 121-G admitted without objection.

[Whereupon, Plaintiffs' Exhibit Number 121-G is admitted into evidence by the Court]

Q. [Mr. McDonald] And, sir, what was your sales price?

A. $377,000.

Q. There were some questions earlier, sir --

And this was January 6h, 2012?

A. January 4th, 2012.

Q. Have you hired the services of Mr. Donato?

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A. I did.

Q. Okay. And are you relying on his testimony as to determine what individual damages you may have suffered in this lawsuit?

A. Yes.

Q. Now, there were some questions earlier, sir, about this warranty -- warranty claims that you might be able to make to a developer, when you're an owner, or Carriage Hill. Are you familiar with that process, the warranty claim forms?

A. Yes.

Q. And how did that work? Did you make a warranty claim and put on there what was the problem and they would come in and fix it and it would just be the end of it right there? Is that your experience of how it goes?

A. Some of the very small items, yes. But, I mean, there were -- there began to be so many -- you know, early on after I bought, you know, I wouldn't even fill out a warranty claim form. I would just call them and tell them I have a problem and they would come fix it. But I think when the claims became so numerous from all the homeowners, in order for them to organize their procedure and make sure they took care of everything, they came up with a form.

Q. And I will hand you what has been marked

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Plaintiffs' 121-B, 121-C, 121-D and 121-E. And let's start with the first one. Do you recognize that document?

A. I do.

Q. What do you recognize it to be?

A. It is warranty claim form -- I don't know when it was submitted. It's not signed. They must have typed it up themselves.

Q. And it deals with tile on the threshold under the shower door is cracked; if not repaired, it can cause a leak in the unit below.

A. That's correct.

Q. And did you fill these out -- these warranty claim forms out?

A. I did not fill this one out because it's typed and it was -- I'm sorry. There is a date. No, that was the closing. I closed in June of 2006, so this was sometime subsequent to that.

Q. So did you offer a -- or did you call them up and tell them what the warranty was and then they typed this out?

A. I would assume that. I didn't fill it out.

Q. But you don't know?

A. I don't know.

Q. You don't know. Okay.

Here is -- I'll hand you -- 131-C you've got in

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front of you?

A. Correct.

Q. And this is another warranty claim form; right?

A. February of 2007. Correct.

Q. Is that your signature?

A. It is.

Q. And it says the stucco wall is cracked on your front porch?

A. Correct.

Q. And do you know whether or not they fixed the stucco problem pursuant to this warranty claim form?

A. They did come back and put another coat over it, yes.

Q. So they patched the crack?

A. That's my opinion, yes.

Q. Now, the next one is 121-D?

A. Okay.

Q. This is another warranty claim form?

A. Correct. Dated July -- excuse me -- August 2006. [Reading] Hardwood floors are beginning to separate in the dining room in three places.

Q. So hardwood floors are beginning to separate; right?

A. Correct.

Q. Take a look at 121-E. Do you recognize this

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document?

A. Yes.

Q. What do you recognize it to be?

A. From Daniel Island Riverside Developers. It is a notice to me -- let's see.

[Whereupon, the witness reviews documents]

A. This is about the sound transference issues, the fact that they hired an acoustical engineer and conducted tests.

Q. [Mr. McDonald] And it's dated January 31st, 2007; correct?

A. That's correct.

Q. And it says: we have reviewed the findings and are not satisfied with the test results between floors in certain areas of the homes. Right? Second paragraph.

[Whereupon, the witness reviews documents]

A. Yes.

Q. [Mr. McDonald] Did they ever tell you that their findings were -- initially, that it didn't meet code?

A. No.

Q. Did they ever tell you that their only goal was to bring it up to the minimum standard? While they were going to move you out and do all these things, they were just going to make it meet the building code? Did they

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ever tell you that?

A. No.

MR. MCDONALD: I would move 121-B through 121-E into evidence.

THE COURT: Any objection?

MR. ALTMAN: No objection.

THE COURT: B, C, D and E, 121, admitted without objection.

[Whereupon, Plaintiffs' Exhibit Number 121-B is admitted into evidence by the Court]

[Whereupon, Plaintiffs' Exhibit Number 121-C is admitted into evidence by the Court]

[Whereupon, Plaintiffs' Exhibit Number 121-D is admitted into evidence by the Court]

[Whereupon, Plaintiffs' Exhibit Number 121-E is admitted into evidence by the Court]

MR. MCDONALD: Beg the Court's indulgence.

[Whereupon, Mr. McDonald and Mr. Bundy confer]

Q. [Mr. McDonald] Let me ask you this on that last question. If all you would have -- if all you would have known -- if you would have known that they were only going to bring it up to the minimum building code, would you have went through this whole process in going through the sound remediation if that's all they were trying to accomplish?

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A. Probably not, you know, because I've been in apartments before and these, as they're built, are nothing more than a basic apartment is built where you can hear everything that goes on above you and below you. So, no, I would not have gone to that trouble.

Q. Did you have to put rugs down, after that, throughout --

A. I put rugs down all over my house, and wore socks most of the time instead of my shoes, so that I didn't cause any noise to people below me.

Q. Did you upgrade when -- did you get the upgrade package?

A. I upgraded a number of things.

Q. Did you upgrade any of the floors or did you just get the wood floors --

A. No, I --

Q. -- that they gave you?

A. Well, they were would floors. They were cherry floors.

Q. So you did upgrade to the cherry package?

A. I did. I did.

Q. And so you upgraded to the cherry package on the floors; right?

A. That's correct.

Q. And what ended up happening was you put rugs

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over the whole flooring?

A. Over most of it.

Q. In 2012 you sold, sir, for $377,000?

A. That's correct.

Q. And why did you sell?

A. Just got tired of dealing with the B.S. with the contractors, things not getting done, a trial that just continued to drag on, all the continuances. And, fortunately, I was in a position just to realize I made a huge mistake getting into -- purchasing from a group that, in my opinion, didn't know what the hell they were doing. So I was able to take the loss. I took a loss of $420,000 cash and left and bought another house.

Q. And that's why you've hired Mr. Donato to figure out what, if anything, you're entitled to; correct?

A. That's correct.

MR. MCDONALD: Thank you very much, Mr. Reece. That's all I have.

THE COURT: Cross-examination.

MR. ALTMAN: Mr. Reece, we've met before. I'm Charles Altman, representing Daniel Island Riverside and Carriage Hill.

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CROSS-EXAMINATION

BY MR. ALTMAN:

Q. How long have you been in the real estate business?

A. In the real estate business, per se, eleven, twelve years.

Q. And you said you do some development work?

A. Do some development work. Have in the past. Not doing any currently.

Q. When was the last time you developed any property?

A. Oh, put three office buildings in North Charleston in the '05 to '07 range.

Q. Is that the last time you did anything?

A. That's the last time I did some development work. That's correct.

Q. You're just in sales and leasing now?

A. And my own properties. Yes.

Q. And how many properties do you own?

A. Five or six.

Q. Do those properties have problems that need fixing periodically?

A. Sure.

Q. Tenants or purchasers come to you and say, we need something fixed?

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A. Sure.

Q. Do you always agree with them?

A. If it's reasonable and if it's a -- and if it's a real problem, I'll take care of it --

Q. But you don't --

A. -- like any good landlord would do.

Q. You don't fix everything all the time? You don't agree with everything, do you?

A. I always refer them back to their lease and, you know, what does the lease say, what does the lease say the landlord is responsible for and what does it say the tenant is responsible for. If I'm responsible for it, I fix it.

Q. Like you say, you served on the board for several years?

A. Correct.

Q. And you were involved in meetings with people from Carriage Hill and Daniel Island --

A. Yes.

Q. -- Daniel Island Riverside?

A. Yes.

Q. Were you aware that the window manufacturer, Weather Shield, denied that the windows were the problems with the leaks?

A. Sure. They denied that, yes.

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Q. They absolutely denied it, didn't they?
A. Yes.
Q. They claimed that it was some other problem?
A. They always did.
Q. They always did.

What if they had been right? Would that have meant -- if the windows had been changed out, it would have been somebody -- Carriage Hill or Daniel Island's --

A. Well, it's my understanding there were problems with the windows. But there were also problems with some of the installations. None of the installations were perfect, either. So they indeed were leaking other places, not just the window. They were leaking around the windows, as well. Not in all cases, but in some they were, particularly Mr. Jung's unit when they took that window out.

Q. The main problem was the windows; right?
A. That was one problem with the property.
Q. Was that the main problem, or was that just a minor problem?
A. It wasn't a minor problem; it was a major problem.
Q. It was a major problem.
A. It wasn't the only major problem.
Q. You talked about the roof, didn't you?

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A. Talked about the roof.

Q. Is the roof still under warranty?

A. I'm not sure.

Q. Do you know if the manufacturer continued to warrant the roof --

A. The manufacturer has a warranty, and I believe it was a ten-year warranty. I'm not sure. Ten-, fifteen-year warranty.

Q. But the manufacturer did not void the warranty because of what you said were problems in how it was installed, did they?

A. They didn't void the warranty, but they certainly said that additional things had to be done for their warranty to be effective.

Q. Who paid for those additional things to be done?

A. Carriage Hill did.

Q. It wasn't the homeowners association, was it?

A. No. The roofer paid for it.

Q. It wasn't you personally, was it?

A. No, it wasn't.

Q. Carriage Hill worked with the roofer to get the work done; correct?

A. They did.

Q. Are you familiar with --

A. Actually, I communicated with the roofers much

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as -- as much, or more, probably than they did.

Q. But the roofer took care of it? The roofing contractor took care of it?

A. He took care of what he -- he could not correct, though; the fact that the slope on the roof was not proper.

Q. But he installed the roof?

A. He installed the roof according to the plans and specifications, is my understanding, which it's my understanding were incorrect as to the slope of the building -- of the roof.

Q. Again, it's --

A. And, again, we have another person that will testify to that effect -- I'll refer to him on that.

Q. Have there been any leaks in the roof since it was fixed?

A. There were leaks from time to time, but, you know, they were taken care of.

Q. When you did your development, you ran into problems with roof leaks or other problems --

A. Sure.

Q. -- throughout, didn't you?

A. Absolutely.

Q. Not unusual?

A. Well, but not to the extent that we had with

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this property.

Q. I'm talking about the roof now.

A. You're talking about the roof?

Q. Yes, sir.

A. I didn't have any problems with the roof. Well, I did have a problem with the roof on one building, but the roofer took care of it. The roofer and the general contractor stepped up and took care of it.

Q. In all the buildings you've developed, have they all been constructed exactly like they were supposed to be and like the architect designed them? Has there been any defects with the way the buildings were constructed?

A. Not to my knowledge.

Q. Not to your -- none at all?

A. Not to my knowledge.

Q. How many times did you meet with the Behringers?

A. Which Behringer?

Q. Any of them.

A. Numerous times. Probably twenty-five or thirty times, at least. Probably more than that.

Q. They made some recommendations to fix the balusters and railings; correct?

A. Right.

Q. And the HOA turned that down?

A. We did for a reason.

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Q. Did you know if it would work? The recommendation.

A. Based on our experts, they were just covering up the problem, which it was going to continue to happen again and they were going to continue to rot.

Q. You didn't give it a chance, though, did you?

A. No, we didn't, because we followed the advice of our experts. When we found out the railings were not properly primed before they were put together, we knew it was just a disaster for future problems.

Q. Did you know that there was some work done on the railings?

A. I know there was some work done on the railings.

Q. Do you know what condition of the work that was done on the railings, that tried to fix them, what that condition is today?

A. I don't know.

Q. Do you know if they rotted?

A. I don't know. They did some work on one unit and we found it not be satisfactory, either from an esthetic standpoint or the fact that it didn't meet what our experts recommended to do, so we asked them to discontinue work.

Q. What happened to the value of property, generally, in the Charleston area after 2008? Did it go

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up or down?

A. I think we all know it went down.

Q. You said you lost $420,000 when you sold; correct?

A. Yes.

Q. Do you contribute all of that to the condition of the building?

A. No.

Q. How much would you contribute to the economy?

A. I would contribute -- well, let's see. I'll just have to reference my appraisal, is the best way for me to answer that, is the professional that did it. And he -- I think he appraised it for --

Q. No. I want to know your opinion.

A. Well, my opinion --

Q. -- your opinion --

A. My opinion is the lawsuit damaged the value of my property to some degree. $280,000 is my figure for that.

Q. For the damage from the construction?

A. No. Based on the -- yes. Based on the lawsuit and the fact that I couldn't sell my property in a normal -- in a normal fashion because of the lawsuit. The fact that nobody could get financing. It was most likely going to be a cash buyer, which is what ended up happening with

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my unit.

Q. And so that would mean $140,000 that you would attribute to the economy?

A. At one time it appraised for nine forty. So, you know, it's just -- yeah. The market -- I've already answered the question. The market conditions went down. I don't know exactly what value to put on that.

Q. You put two eighty on the construction defect?

A. I did.

Q. And you said four twenty was the total loss?

A. Four twenty -- based on what I had in the unit.

Q. So the amount from that would be one forty was the loss attributable to the economy; is that fair?

A. I haven't added the numbers up. I don't know. $280,000 is my figure for what I feel like I am due, based on the fact that I had to sell it at loss. And that's the number -- the difference between what I got for it and what it would have been if I had been able to sell it without the defective conditions.

Q. Have you seen the reports on the sound attenuation?

A. We asked Carriage Hill for the reports on numerous occasions and were denied access to those and were never given them. So the reports that I saw were after the fact and I'm not sure -- I know I saw our

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engineer's reports. I'm not sure if I saw Carriage Hill's reports. I know I've never -- the only time we might have ever seen them was after we subpoenaed them, and I don't remember whether I ever saw them. We requested them numerous times, as we did the building plans, and were refused and never given them.

Q. Mr. Reece, you said you saw the report from your engineer. That's Quietly Making Noise?

A. Yes.

Q. A company out of Florida?

A. Yes.

Q. Do you remember what that report said regarding the repair that was done or the remediation that was done?

A. I believe it brought all them up to just barely basically meeting the building code, except for I think it was in some bathroom areas where there was tile and there was nothing they could do, I think, in that area. I think there was an area that was not brought up completely to code.

Q. Do you remember seeing any wording in that report regarding what more could be done or what would be done -- if more work was done, how it would help or make the sound less of a problem?

A. I don't remember.

Q. You don't remember any language like that in the

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report?

A. I believe there was some, but I don't remember exactly what it said.

MR. ALTMAN: Just a moment, Your Honor.

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

THE COURT: Yes, sir. Any redirect?

MR. MCDONALD: Very brief.

REDIRECT EXAMINATION

BY MR. MCDONALD:

Q. Mr. Reece, you were asked some questions earlier about problems that Carriage Hill was trying to address. Did they ever tell you that the brick veneer wasn't connected properly to the building?

A. No, they never told us that. We discovered --

MR. ALTMAN: Your Honor, I do not believe this is proper examination --

THE COURT: I'm sorry. What's your objection?

MR. ALTMAN: This was not covered --

THE COURT: It's not responsive to --

MR. ALTMAN: -- to my examination.

THE COURT: -- cross?

Ask the question again, please -- I'm sorry, it passed me by, I didn't hear it -- and I'll rule on his objection.

MR. MCDONALD: Not a problem, Your Honor.

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Q. [Mr. McDonald] Mr. Altman asked you some questions about Carriage Hill working with you-all as to various problems?

A. Yes.

Q. Did they ever tell you -- Carriage Hill or Daniel Island Riverside Developers, did they ever tell you --

THE COURT: Go ahead.

Q. [Mr. McDonald] -- that the brick wasn't properly attached to the building on all six of these buildings?

MR. ALTMAN: Your Honor --

THE COURT: All right. What's your legal objection?

MR. ALTMAN: There's absolutely been no discussion whatsoever about brick. That was not asked on direct or on cross-examination, as far as what the problems were. We discussed many problems. He's discussed --

THE COURT: I'll sustain the objection.

MR. MCDONALD: Thank you, Your Honor.

MR. ALTMAN: Thank you, Your Honor.

THE COURT: Do you have any other redirect?

MR. MCDONALD: No, sir.

THE COURT: Okay. You may step down. Thank you

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very much.

[Whereupon, Mr. Reece is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. MCDONALD: Your Honor, I would call Mr. George Pollard.

[Whereupon, Mr. Pollard comes forward]

THE CLERK OF COURT: Raise your right hand.

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

THE WITNESS: I do.

THE CLERK OF COURT: State your full name and spell your last name.

[Whereupon, Mr. Pollard takes the witness stand]

THE WITNESS: George Samuel Pollard, Jr. My address is 136 Fairbanks Oak Alley, unit 2-A, Daniel Island.

MR. MCDONALD: Mr. Pollard, how are you doing this afternoon?

THE WITNESS: Fine. Thank you.

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GEORGE S. POLLARD,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCDONALD:

Q. What is your current address?

THE COURT: He just gave it. Go ahead.

MR. MCDONALD: I apologize.

A. Just provided it. It's building --

Q. [Mr. McDonald] Is that at The Oaks?

A. Yes.

Q. And what's your unit number?

A. It's building four, unit 2-A.

Q. And that's on the -- that's on the bottom level; correct?

A. That's correct.

Q. And where are you from, Mr. Pollard?

A. Originally, I'm from Bethesda, Maryland.

Q. And were you born and raised there?

A. I was born in St. Louis, moved to east coast at an early age to Townsend, Maryland, outside of Baltimore, and then spent junior high school and high school in Bethesda, Maryland.

Q. What did you do in Townsend, Maryland, after you graduated high school? Did you go to school?

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A. That was in Bethesda. Yeah. Townsend was kind of early age.

Q. When you graduate high school, did you go to college?

A. I did.

Q. Where did you go to college?

A. University of Missouri in Columbia, Missouri.

Q. And what did you study there, sir?

A. Industrial engineering.

Q. And did you get a degree?

A. Yes, I did.

Q. In industrial engineering?

A. Yes.

Q. And did you pursue employment after you graduated college?

A. I did.

Q. What did you do?

A. I worked for General Electric Company. My first assignment was in Arkansas. Had subsequent manufacturing -- engineering and manufacturing management assignments in Virginia and North Carolina.

Q. And about what time frame was this?

A. I graduated in 1971 and I was with GE until 1975.

Q. Okay. And were you in the same position with GE

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for those four years?

A. It was generally a -- I was in a manufacturing-management program, kind of rotating through different phases of manufacturing, and I finished as what they call a produceability engineer. You're trying to improve the production processes and work with the design engineers to improve the efficiency of the plant.

Q. I got you.

And what type of plants would you have been working in?

A. I worked in a motor assembly plant, I worked in a TV production plant before the Japanese took over the whole industry, and I worked in an outdoor-lighting plant.

Q. Okay. And your role was to figure out how the manufacturing process could be more efficient?

A. Yes.

Q. Okay. And you left GE in 1975?

A. I did.

Q. And what did you do once you left GE?

A. I went to work back in Bethesda, as a matter of fact, for Lou's Island Applied Research.

Q. Okay. What did you do at Lou's Island Applied Research?

A. I did -- again, it was manufacturing engineering related. We did several engagements, one large one with

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the U.S. Army with ammunition production. Did another one for Fairchild Industries, it was a defense contractor, on manufacturing. I also participated, as a junior member, in a big Atomic Energy Commission study that we did. And also worked on some naval legal shipbuilding claims. So it was a number of different assignments, primarily leveraging my manufacturing background.

Q. And how long were you with Lou's Island?

A. About two and a half years.

Q. And what did you do after that?

A. Then I moved, started work for AT&T.

Q. And where were you -- where were you working with AT&T --

A. In Washington, D.C.

Q. And what did you do with AT&T?

A. First assignment was in a sales function, and a client was the U.S. Navy. Then I moved into an operations assignment, out in West Virginia, where I had a central office and a set of customers I was responsible for. I then went to Pittsburgh and was a national account manager for a large account. And following that I moved to New Jersey, where I actually stayed for the rest of my career in New Jersey in various progressively more responsible assignments.

Q. And that was still in New Jersey with AT&T?

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A. Yes.

Q. And when you said for the rest of your career, at some point did you retire from AT&T?

A. I did. I took an early retirement from AT&T in 1998.

Q. And did you stay in New Jersey after that?

A. We did.

Q. And you said we. Are you married, Mr. Pollard?

A. Yes.

Q. And is your wife in the courtroom?

A. She is. Ellie.

Q. And how long have you been married?

A. Thirty years.

Q. Well, you got that -- you got that question right. That was quick.

And did Ms. Pollard move with you each time? Move with your job?

A. Well, we met in New Jersey. It's a second marriage for both of us. So we met while we were both working for AT&T and we lived in New Jersey -- I've got to get the dates right versus the work right. But we lived, after being married, for twenty-two additional years in New Jersey before coming down here.

Q. And that was going to be my next question, sir. Did Ms. Pollard retire from AT&T at the same time as you

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did?

A. Yes. We both worked, subsequently, after that.

Q. And what did you do, subsequently, after working with AT&T?

A. I worked for a call-center outsourcing company, OSI, and I was with them and subsequent companies essentially in the same business, for eleven years.

Q. And that was still in New Jersey?

A. In New Jersey up until 2005 we moved down here, while I was still working.

Q. And were you -- what was the purpose of moving down to Charleston?

A. We decided that it was time to kind of downsize our life and it was a decision to move from New jersey, try to experience something new in a new environment somewhere. We looked at three or four different options, did some visits, and we -- well, my -- you have to know my wife is sometimes a taskmaster, so we did set a target date for when we wanted to sell -- list our house, and it turned out that we sold the house in one day. So we said, well, what are we going to do now, where are we going. I had reason to be doing business in the Charleston area. We were both kind of fond of our visits to the city over the years so we said, well, hey, let's try moving to Charleston, I still have reason to be here on work-related

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basis. And that's how we made the decision to come here.

Q. And how did it -- how did the process work in going about finding a place to live in Charleston?

A. The first time?

Q. Yes.

A. We came down, we made a couple of visits down here. During the process that we were kind of downsizing everything in our home up in New Jersey, and getting the house listed, we had made some visits. Once we sold the home, we made subsequent visits to Charleston and tried to find -- we decided we were going to rent, initially, just to get to know the area, get to experience what it was like to live here, and make sure that it was going to be the right decision for us to, you know, own in Charleston.

Q. And where did you rent at?

A. We ended up renting downtown at Laurens Place. It's a condominium on the harbor right next to the maritime center.

Q. Okay. And at some point, did you have occasion to find out about The Oaks?

A. We started -- I guess we lived at Laurens Place for a total of over two years, almost two and a half years. And during the last year we knew our lease was going to come up and we were trying to decide, all right, what are we going to do, are we going to keep renting or

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are we going to find a place to make our permanent home and, you know, actually buy a place.

Q. How many stories is Laurens Place?

A. It is, let's see, similar to our units here. There is a first-floor garage level, then the actual living units start at two and they go up to five.

Q. And what floor were you on?

A. We were on both the third floor for a period of time, and then we transitioned down to the second floor.

Q. And in -- okay. So at some point you have -- your lease was about to run up in Laurens?

A. And we started investigating where are we going to live. We actually were quite pleased with the condo living. We were on a single floor. It was good for us. We thought as you -- you know, you get older and you think about retirement, maybe, you know, a condo with a single floor would be good approach for us.

We looked at several options throughout Charleston and were having difficulty trying to find a place that we felt best suited our needs and what we liked about what we were experiencing at Laurens Place.

Q. So you didn't have any problems at Laurens Place with regard to sound, hearing things? You were pretty comfortable with the condominium living?

A. We were.

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Q. So at some point, you found out about The Oaks; correct?

A. Correct.

Q. Can you walk me through that briefly?

A. Yes. We had engaged a real estate agent. Lee Rowe was her name. She took us all over Charleston looking at different things. We kept -- it was kind of a lengthy process of occasionally going to look at units. We looked at them all over the peninsular. We finally -- and initially we said we really didn't want to leave -- we liked living right in the city. We liked the energy of the city. And finally she asked if we would be willing to look at units out on --

Q. Daniel Island?

A. -- Daniel Island. And I believe at one time we had even independently taken a ride out there and looked around. But eventually she brought us to a couple of units on Daniel Island. One was The Island Park condominiums and then the other one was at The Oaks.

Q. And what did you think of The Oaks when you first saw it? when you first saw the six buildings?

A. We thought that they looked very impressive. And we particularly liked the floor plan. It seemed to fit the style of living that we were looking for.

Q. Okay. And eventually you bought a unit there,

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didn't you?

A. We did.

Q. I'm going to hand you what's been marked as Plaintiffs' Exhibit 120-A. And is that your deed?

A. Yes, it is.

Q. And it is from William B. Wright and Barbara R. Wright; correct?

A. That's correct.

Q. So you didn't buy directly from Daniel Island Riverside Developers, did you?

A. No.

Q. And what was the state -- and your purchase price was $870,000; correct?

A. That's correct.

Q. And what was the state of the unit when you moved in?

A. It was virtually new. The previous owner, they had other properties that they lived in. I believe they used some of the bedroom and actually what some people use as a dining room but they converted it into a den-office type arrangement and they kind of worked -- they were a work-from-home kind of couple. They had a little business of some advertising type things that they did. And the unit was very nice. Essentially, everything looked brand new.

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Q. And what was your understanding, when you purchased, about the sound issue out at The Oaks?

A. We were told that there were some sound issues, that we had a choice to get the ceilings lowered -- I believe it was four inches is what we were told -- that there was a process to fix the noise problem, particularly that, you know, the unit above, by dropping the ceiling four inches and putting insulation in there in a way that would fix it. Actually, the multiple listing that we had on the unit, the agent notes refer to soundproofing twice on that multiple listing. So -- and having the good experience that we had, you know, at Laurens Place, we were under the impression that this would fix, you know, any of the complications.

Q. And who was your understanding was going to be performing the sound remediation?

A. The builder.

Q. Not you. You weren't going to put it up, were you?

A. No. In fact, we delayed closing specifically so that the -- so that this remediation could be accomplished.

Q. And when you say the builder, you mean Carriage Hill --

A. Correct.

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Q. -- correct?

Now, was it, in fact, accomplished in your unit, the sound remediation? Did they do the work?

A. They did the work.

Q. And did you, in fact, move in?

A. We moved in not until March of 2008.

Q. And why was that? Why did you not move in until March of 2008?

A. Our closing was November, November 1st, of 2007. And, immediately, when we showed up to, you know, begin to plan our move from downtown -- and we had some overlap between when our lease downtown was completed and so we did not want to try to move in in one week and everything. We knew we were going to take our time and get in there. We found that we were having a very difficult and severe odor and air-quality issue in the apartment.

Q. What do you mean odor-air-quality issues?

A. There was some kind of chemical smell that was in the apartment and we couldn't stay there for more than fifteen, twenty minutes without, you know, feeling it in our throat, feeling it in our lungs, and eyes would water. It was very severe.

Q. And what did you do about that?

A. We started to actually communicate with both the manufacturing company, Ravenel, and Lee McManus at the

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offices of Carriage Hill, about the issues we were facing so that -- you know, first thing we wanted to know, did anybody else experience this and is there a problem or a solution that, you know, is common that we can engage. We didn't get anywhere with those efforts.

We then hired our own specialist, Environment -- the name of the company was Environmental Clean Air Systems. And they conducted some tests. The type of test they conducted is you put like a little swab of some kind, like a petri dish, in various parts of the apartment. You leave it open, then go back in a couple of days, and then they send it to a lab for analysis.

Q. And, other than doing your own test, where did you get with dealing with the Carriage Hill folks on taking care of the issue? What was the upshot of that?

A. They came for a visit. And this was also related to some of the other issues we were having which we can, you know, go into subsequently. But we had visited -- I personally visited the Ravenel offices to see if I can find anything in our file of complaints or anything that would give me some kind of history or background on this. And I had mentioned to the Ravenel representation, Dan Tollins was his name, that I was -- my next step was going to be to get an attorney. I think that motivated him, along with our notes that we had been

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sending over to Lee McManus. That motivated them to respond.

What happened is they came to our unit and visited. This was before we even moved in yet, because we were unable to move in, or felt we could not move in, until this problem was fixed. Who actually showed up was John Behringer. That was the only time I met John.

Q. And that's one of the Behringer brothers?

A. That's correct.

And he had brought I guess you would call it his own expert. I showed him the reports. I showed them to his expert where it detailed the kind of mold, and other chemical issues that were present in the apartment, based on the analysis that was done. His expert basically said there that he would look it over but it looked like to him that it was within, you know, acceptable limits.

Q. Okay.

A. That gave me the opinion that they weren't going to do anything. And, you know, subsequent letters and notes, we never really did hear anything from them.

Q. So they didn't do anything about that, did they?

A. No.

Q. Okay.

A. We went back to Environmental Clean Air Systems and we actually paid them to remediate -- we thought we

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paid them to remediate the issue. It seemed -- I went to the apartment right after they completed their procedure and process. It seemed to be better. We went back two days after that and the smell was back.

So the next thing we did is that we purchased air purifiers, which we continue to operate today. And, you know, a combination of using two air purifiers full time, as well as, you know, running the furnace often. Sometimes we just put the fan on even without, you know, the air or heat on, to make sure the air is circulating.

Q. Now, did you have an occasion to attend a homeowner's meeting in January of 2008?

A. Yes. Before we moved in, that was my first experience with the introduction to The Oaks and --

Q. You hadn't moved in yet?

A. We hadn't moved in. We were trying to resolve the problems that I just described.

Q. And what do you recall from he homeowners association [phonetic] you attended in January of 2008?

A. Well, one of the things I was very interested in attending was while we were visiting the apartment and beginning to, you know, get the furnishings and everything situated the way we wanted, we knew now that there was some very severe issues with the noise, that dropping the ceilings really did not solve any kind of issue relative

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to the noise. So I went to that meeting to understand what was going on and also to bring that up in the meeting.

Q. So you were going to raise at the meeting the fact the building had done its remediation in your unit -- Which is unit two, right, on the bottom?

A. That's correct.

Q. -- and as far as you knew, it's still very loud in there?

A. That's right.

Q. And what happened when you got there? Did you get a chance to raise that?

A. There were a number of other residents that raised it immediately. Some of them were full-time residents and some of them were landlords claiming that they couldn't hold a tenant in there units.

Q. And what happened next? After that meeting, did you move into the unit?

A. We did. After that meeting, I believe the board said that there might be a committee to investigate the noise further. And I know the board, you know, continued to review that to some extent. But we were coming to the end of our lease at Laurens Place and, you know, we were out of time, so we moved in on March the 1st.

Q. And once you moved in on March the 1st -- I know

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you had been there to move around some furniture and you thought it sounded loud. But did it get any better once you moved in on March the 1st?

A. It -- no. I mean, the living conditions were even worse. It's one thing to be there when you can hear, you know, footsteps. It's another to try to live through it full time.

You know, this is our only real estate that we own. We moved in here to be full-time residents, and it's been a struggle. It's been horrendous trying to live in the apartment with that kind of noise issue from above. I'll give you an example. Last night the tenants above returned home at midnight. We never now when we're going to be able to go to sleep, because you're subject to the whatever's happening above you. They got up sometime between 5:00 and 5:30. So a typical night -- a good night is six hours of sleep for us. Currently, sometimes there are four adults in the apartment so we can't even retreat to another bedroom and say, oh, I know nobody is going to be above there. You never know what's going to happen with the noise above you.

We have come to find that we -- for a long period of time, we couldn't even have guests over for dinner because the noise above us, if somebody's, you know, having dinner hour above you, it's just too severe

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to even consider trying to have a conversation with guests.

So it's just been horrendous. Every time there's a new tenant above, we have to change our sleeping pattern. We don't know if we're getting up early, we're getting up late. We don't know what's going to happen with that.

Q. And that is all related to the sound transference from the unit above you --

A. That's right.

Q. -- to your unit?

A. That's right.

Give you an example. Not only is it thunderous, the footsteps, but there's creaking. Something about the actual construction of the drop ceilings -- and, you know, I'll leave it to the engineering witnesses to explain that. But we actually hear a creaking. When children were present, kind of playing above us --

Q. As children do.

A. -- that's even more severe. We've actually seen our fans waffle, okay, due to kind of running and jumping in the apartment. There is actual vibration transference into our ceiling. And I don't know if any acoustical engineer will, you know, claim any expertise in that, but I know there's vibration transference into our apartment.

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Q. Let me ask you this.

A. Uh-huh.

Q. If an acoustical engineer sits down right where you're sitting right there and tells you to your face that what you are hearing in your unit you are not hearing, is he ever going to change your mind?

A. No. I would just -- you know, my scenario or my -- what I would really like to see is for the Court to come experience it, because I don't think expert testimony really captures what we've experienced or what it's like to live there.

Q. Now, what other problems have you encountered, other than the sound, in your experience with The Oaks?

A. We've had -- in addition to, you know, the odor issue and the fact that we need the air purifiers, and we still have them, we've had a series of at least five water intrusion or flood type occurrences. The first one occurred -- I made a note on it -- February 25th of 2008. That was due to the unit above. They were going through the dropping of the ceiling, and part of that process is to make some changes to the sprinkler system.

Q. The fire-sprinkler system?

A. That's correct.

In the process of doing that, they released water into the apartment above and it flowed into our

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kitchen, den, and dining room, a significant amount of water. It just so happened that we were there just after it had happened. We had come for a visit kind of preparing to move in on March 1. We went upstairs. They immediately shut the water off. I mean, this water, it came through the fan vent over the stove, it came through the lights over the center counter, it -- you know, it destroyed ceiling. It was a significant water event. They immediately brought in, you know, one of those flood remediation type companies. We had fans going in the apartment for a week to dry everything out.

Q. And you said you've had five of these instances where there's been flooding from above, or the side, or whatever it came from?

A. Yes. The others were related to, you know, various shower leaks above, or at least water events in the bathrooms above us, either on the fourth floor or the third floor. There was one in August of 2008. We had a shower leak. There was one in May of 2009. This wasn't in the -- this one was in our master bath, but it was one of those ones that's described earlier today. It was a cold-water feed line that was in the wall, and I guess due to a nail or something, the same kind -- the same kind of event. It rusted out, finally, and started leaking. Actually leaked through the bathroom into the master

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closet and into the closet in the adjoining spare bedroom. Actually, there was water dripping into the garage and onto cars below our unit from that.

Q. And are those types of experience spread out over time? Has that been kind of what it's like to live at The Oaks?

A. It's been very difficult, because we never know what's going to happen next. We've had -- you know, also, I think from the fourth floor we had in January of 2012 brown water seeping into our shower and this caused us to experience, you know, some repairs on the ceiling and on the drywall there, the external wall there in the bathroom. The latest leak was just in January of this year.

Q. So you've experienced them from sometime in February of 2008 on --

A. That's correct.

Q. -- through January of this year?

Let's talk about -- you've been in this courtroom during this trial, have you not?

A. I have.

Q. Let's talk about your wood floors that you have in your unit. Do you have any issues with them?

A. We do. We have some separation. We have also some black kind of mold-looking spots coming up through.

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And it seems to be progressive. You know --

Q. Why do you say that?

A. Well, I mean, when we first moved there, we did not notice any of these types of defects. But over time, you know, we're now getting many of the floorboards separating. And, you know, it seems like we've continued to find new areas where these black spots are showing up. Our floor is installed on, you know, the concrete subfloor there. There's concrete, you know, between the garage and the first level of the building and that's what our wood floors are -- have been installed on.

Q. Sir, I'm going to hand you what's been marked as Plaintiffs' Exhibit 120-C, which is a collection of three pictures, and ask you if you recognize those pictures.

A. Yes. I took those.

Q. And when did you take them?

A. I took them over this weekend, this past weekend.

Q. Okay. And are they a true and accurate representation of how your floors looked when you took them?

A. Yes.

Q. And do they represent what you just described to the Court?

A. Yes.

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MR. MCDONALD: I would move Plaintiffs' Exhibit 120-C into evidence.

THE COURT: Any objection? You said 120-B?

MR. MCDONALD: C.

THE COURT: C.

MR. MCDONALD: I just marked it.

THE COURT: Any objection?

MR. MAYBANK: No objection, Your Honor.

THE COURT: 120-C admitted without objection.

[Whereupon, Plaintiffs' Exhibit Number 120-C is admitted into evidence by the Court]

Q. [Mr. McDonald] All right, sir. Have you had an occasion -- your original deed was from --

THE COURT: Can I look at the pictures?

MR. MCDONALD: Certainly, Your Honor.

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

Q. [Mr. McDonald] Your original deed was to you and your wife individually; correct?

A. Yes.

Q. And you -- have you since transferred it into a family trust, of which you-all are the --

A. We have.

Q. -- trustees?

A. It's a living trust, which is typical of what

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you do with a -- you know, an estate and will-planning type attorney --

Q. So in the process of estate planning, you've transferred it into a trust?

A. Yes.

Q. Of which you are here as the proper representative today?

A. That's right. My wife and I are both trustees.

Q. Did you -- have you hired Mr. Donato, of Atlantic Appraisals, to do an appraisal for you on your unit?

A. I have.

Q. And are you relying on him to determine what damages you, individually may have sustained as a result of your purchase of The Oaks?

A. Yes.

Q. And do you have any out-of-pocket expenses, sir, that you've expended, that you are asking this Court to award you individually in your case?

A. Yes. I spent $2300 for the environmental testing and remediation, that I've described, right after we moved in. The water intrusion into our bathroom -- actually, we waited a while to make sure, you know, this wasn't going to happen continually and we -- but I spent $875 to make that repair.

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Q. And anything else, other than the 2300 for environmental testing and eight seventy-five for leak repairs?

A. I believe that's -- but let me just check any additional.

[Whereupon, the witness reviews documents]

A. I think the other -- any other expenses are part of the HOA case, and, you know, will be covered, you know, in terms of any repair internally that may be required during construction repairs and move-in, move-out, those types of things.

MR. MCDONALD: Your Honor, I beg the Court's indulgence for just one moment.

THE COURT: Yes, sir.

[Whereupon, Mr. McDonald reviews documents]

MR. MCDONALD: Thank you, Your Honor. That's all I have.

Mr. Pollard, please answer any questions that the defense counsel may have.

THE WITNESS: Okay.

THE COURT: All right. We'll adjourn for lunch and reconvene at -- you said y'all needed some extra time today?

MR. ALTMAN: 2:30 will work.

THE COURT: Will 2:30 work?

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MR. ALTMAN: Yes, sir.

THE COURT: Will that give you enough time to do what you need to do?

MR. ALTMAN: I believe so, yes, sir.

THE COURT: All right. We'll adjourn until 2:30.

MR. MCDONALD: Your Honor, can I -- I want to make sure I put 120-A into evidence, the deed. I believe I did. I just want to be sure.

THE COURT: You haven't yet.

MR. MCDONALD: I have not yet?

THE COURT: No.

MR. MCDONALD: May I move that into evidence at this time, Your Honor?

THE COURT: Any objection?

MR. MAYBANK: To the deed?

THE COURT: To the deed. Any objection to 120?

MR. MAYBANK: Is that the deed?

THE COURT: It's the deed.

MR. MAYBANK: No, sir.

THE COURT: All right. 120, without objection. 120-A, I believe it is.

MR. MCDONALD: Yes, I think it's 120-A, Your Honor.

[Whereupon, Plaintiffs' Exhibit Number 120-A is

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admitted into evidence by the Court]

[Whereupon, a recess is taken from 1:15 p.m. to 2:54 p.m.]

THE COURT: Let me see the attorneys up here just a second. Mr. McDonald?

MR. MCDONALD: Yes, sir.

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

[Off the record momentarily]

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STIPULATION

THE COURT: All right. Mr. Bundy, Mr. McDonald, Mr. Maybank and Mr. Altman, we had a conference prior to the lunch break and I asked the parties to see if there were some facts that they could stipulate to, because I understand each individual property owner has the same issues concerning noise attenuation and other problems, plus they have some individual issues, to see if there was something that we could agree on, as far as a factual stipulation, to cut down on the amount of testimony that they would offer. And I understand you have reached an agreement; is that correct?

MR. BUNDY: Yes, Your Honor.

THE COURT: Mr. Bundy, do you want to state the

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agreement?

MR. BUNDY: Yes, Your Honor. I'll try.

Your Honor, we have agreed that the following plaintiffs, if they took the stand -- and those plaintiffs are Maraziti, Barr, Cook, Nelson, Graham, Pekruhn, Severance and Jennings.

THE COURT: Cook, Nelson, Graham, who?

MR. MCDONALD: Cook, Maraziti.

THE COURT: Deen?

MR. MCDONALD: Maraziti. M-A-R-A-Z-I-T-I.

THE COURT: Okay.

MR. MCDONALD: Barr, B-A-R-R, Cook, Nelson, Graham, Pekruhn. Pekruhn is P-E-K-R-U-H-N, Severance, S-E-V-E-R-A-N-C-E, and Jennings.

MR. BUNDY: Your Honor, the stipulation is if these witnesses took the stand and took the oath, they would all testify consistent with the previous witnesses regarding the sound problems and their particular problems with the sound. All that testimony would be consistent. The defendants aren't agreeing that that's accurate, but that's what they would testify to and it would keep us from having to keep repeating the same testimony over and over again.

The other thing is we have agreed that all the deeds into and out of, to the extent there are deeds

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out of these people, would also be admitted into evidence without objection.

We've also agreed that these individuals, to the extent they hired Mr. Donato -- and all of them did except Mr. Pekruhn. Is that correct? All the plaintiffs hired Mr. Donato to present their damages or losses, except for Mr. Pekruhn. And so we all stipulate that Mr. Donato -- they're not going to have to take the stand and testify they hired Mr. Donato to do that. That's just the stipulation. Donato can take the stand and testify as to each and every one.

With regard to the individual damages -- and by that I mean lost-rent claims and these other smaller claims that we've had -- we've agreed that we're going to provide to the defendants a list of those numbers and that that will be what they would testify to if they took the stand.

THE COURT: Not that it's truthful numbers, but that's what they would testify to?

MR. BUNDY: That would be their sworn testimony. That is correct.

The other is, Your Honor, regarding --

[Whereupon, Mr. Bundy and Mr. McDonald confer]

MR. BUNDY: Yeah. Southeastern is going to testify to the floor repairs on 2-A and 2-B. That's

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so that the individuals don't have to do that.

[Whereupon, Mr. Bundy and Mr. McDonald confer]

MR. BUNDY: We're going to have to -- with regard to whether an individual or individuals attempted to sell their unit, we're just going to have to deal with that on an individual basis. We may have to put up a witness to testify that they tried to sell it so that they can cross-examine. So we're not going to be able to completely eliminate the testimony but we think we can cut it down drastically, the length of it.

And I think that's it. That is it. That's it, Your Honor.

THE COURT: Is that the agreement? From Mr. Maybank and Mr. Altman?

MR. MAYBANK: It is, Your Honor.

MR. ALTMAN: It is, Your Honor.

THE COURT: The rest of the witnesses, as far as the individual condominium owners, will operate under that stipulation.

Anything else y'all want to add concerning the stipulation?

Let me put in the record that the parties did this at the Court's request. Thank you so very much.

MR. MCDONALD: Thank you, Your Honor.

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MR. BUNDY: Thank you, Your Honor.

THE COURT: All right. I believe cross-examination.

MR. MAYBANK: Thank you, Your Honor.

Good afternoon, Mr. Pollard. How are you, sir?

THE WITNESS: Doing well. Thank you.

CROSS-EXAMINATION

BY MR. MAYBANK:

Q. You and I know each other, don't we?

A. We do.

Q. How do we know each other?

A. Well, as I mentioned previously, we had rented the third floor at Laurens Place upon arriving in Charleston and it turns out that your mother and stepfather kicked us out of there.

Q. You mean they bought the unit?

A. They bought the unit --

Q. That's right.

A. -- and we were offered the opportunity to go one floor down, and we did that, and we came to a good arrangement on that, so we were neighbors for a period of time with your mother and stepfather.

Q. Yes, you were.

Now, the Laurens Place, do you know if that is a concrete building or a stick building?

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A. My understanding, it's concrete.

Q. Did you do any investigation into whether or not a stick-built sound attenuation versus a concrete sound attenuation would be different than each other?

A. I did not.

Q. Do you know if The Oaks development is a stick-built or a concrete-built development?

A. My understanding, it was stick-built.

Q. And I know you're not a contractor. I'm just using wood frame versus concrete, is what I'm referring to.

A. Yes. And, I mean, I became aware of that after the fact.

Q. Would knowing that ahead of time have made any kind of difference in your decision to purchase the unit?

A. If I felt there were going to be long-term issues, regardless -- particularly if the so-called soundproofing remediation was not really going to do much, that would have made a difference, yes.

Q. My understanding is before you moved in in your unit, you had it inspected by a company called Sherlock Holmes Inspections; is that correct?

A. That's correct.

Q. And in that inspection process, did you have the inspector limited in any way in terms of the inspection

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that they did on your unit?

A. Well, my understanding is that that was a typical pre-closing type inspection where you're looking to make sure there are no, you know, obvious cracks in the walls, that the appliances are working, that, you know, the right kind of airflow is occurring in the heating and ventilation system, and all of that. I do not believe it included anything, really, about the structural integrity of the building or the ethicacy of, you know, the sound remediation. The --

Q. So it didn't get -- I'm sorry. Go ahead. Sorry.

A. The only thing is that the inspector did tell us that he was there when they were dropping the ceilings and he observed them doing the work.

Q. So was there anything in his report, that he provided to you, that gave you any concern as to why you should not purchase a unit at The Oaks?

A. No.

Q. All right. And you purchased your unit from Ms. and Mr. William B. Wright?

A. Yes.

Q. And you paid $870,000 for your unit?

A. Yes.

Q. Are you aware that about twelve months before

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that, Mr. and Ms. Wright bought their unit for about $650,000?

A. Yes.

Q. So they made about $200,000 on their unit in less -- in about a year; is that about right?

A. That's about right.

Q. Did you expect that the price would continue to go up, at that type of rate, on an annual basis?

A. No. I think -- the way I describe it, we don't own other real estate. This is a full-time residence for us and we put a large part of our lifetime savings into securing this particular property. We were not looking at the short term of whether it would go up or go down. We were looking to find the right place in Charleston that would fit, you know, our lifestyle and provide, you know, a good home for us.

Q. Would you agree -- in what business were you in again? I forgot.

A. The biggest core of my career was in various management and executive positions at AT&T. And then I followed that in the call-center outsourcing service provider type business for eleven years.

Q. Would you agree with Mr. Chiovarou's testimony that the extent of the economic downturn was something that was an extreme event in 2008, 2009, 2010?

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A. Yes. I think by all evidence from the national economy, as well as, you know, things that happened locally, it was severe.

Q. Are you aware of what percentage the values of real estate on Daniel Island dropped during those three or four timing -- those three or four years -- '07 to '10?

A. I don't know the exact number for Daniel Island, but I would say it's something in the forty-percent range. And just a point of reference, ours -- you know, the unit next door to our that sold last year would represent a seventy-three percent reduction over what I paid.

Q. Are you aware of units at The Oaks selling in the last three to four years where there was a residential real estate disclosure that failed to disclose the existence of this litigation?

A. I'm not aware of what's been in their disclosures, no.

Q. Would you agree with me that if units were sold without the disclosure, the price would be the market price? the price it sold for would be the market price dictated by economics, not necessarily by construction defect?

A. I don't know, because I don't know the impact of the word of mouth. And, you know, I just can't say what -- to tell you the truth, I'm a bit suspicious about

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real estate agents, so I really don't know what's going on in some of these transactions.

Q. I understand.

MR. MAYBANK: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

Q. [Mr. Maybank] If you would, this is Exhibit 5 to your deposition.

A. Uh-huh.

Q. Can you tell me what that is, Mr. Pollard?

[Whereupon, the witness reviews documents]

A. The real estate disclosure statement.

Q. [Mr. Maybank] Statement from the Wrights to you?

A. That appears that's what it is.

Q. And that is sometime in 2007?

A. Yeah. We closed on November 1st. This is dated February, February 25th, of '07.

Q. But you didn't close until March?

A. November.

Q. Pardon me. November.

A. Yes.

Q. Look at item number 20 on that report. If I may? I think -- let me look. I think it's 20. Yes, sir. Can you read that into the record?

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A. Number 20 says law suits, foreclosures, bankruptcy, tenancies, judgments, tax, other liens, proposed assessments, notice from any government agencies, that can affect title to the property. The response is no.

Q. Do you believe that the Wrights disclosed to you fully the condition of your property at the time you purchased it?

A. That is difficult for me to say, and let me explain why. I don't think they lived in the unit, as I described earlier. They used it as an office. But I think they cleared out entirely after the remediation. So if they were not there at all, I'm not sure at the time that we closed on the property that they were aware of anything. In February of '07, I would say they might have known that there were noise issues. That was disclosed to us. But as I said earlier, the multiple listing sheet in the agent notes describe soundproofing. So we were relying on and they were relying, I believe, on the builder's, you know, effort for soundproofing.

Q. How about for odor?

A. I just don't know. It's possible they might have known something was there and took similar remediation action that we did. I don't know.

Q. How about windows and doors?

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A. They knew there were some issues with windows and doors, at least my knowledge is. I believe, in fact, there were some letters from Carriage Hill, even as earlier as 2007, that described some issues with windows. There was one area of moisture, near a window at one of the spare bedrooms of the unit, kind of in the front of the building where the brick is -- the brick front is in the front of the building, and that was in the -- that was in the report that we got.

Q. So it's your testimony that the Wrights fully disclosed everything to you and you bought after an inspection by your own inspector without any problems that weren't either fixed by the Wrights or remediated by my clients?

A. Yes.

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

Q. [Mr. Maybank] Mr. Pollard, one other thing. And you kind of laughed. You and I have met personally at the Laurens Place, didn't we?

A. Yes.

Q. You came upstairs, didn't you, to my parents' unit?

A. I did.

Q. Do you remember why you came upstairs?

A. Yes.

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Q. Why did you come upstairs?

A. It was -- I believe it was around Christmastime or New Years, right around one of the holidays. My wife and I, I believe, were both sick. We were really having a tough time. And there was some noise from above, which we had never heard before in all the time that your mother and stepfather were up there. So --

Q. My mother -- you know she was in a wheelchair?

A. Yes, we know that.

Q. So she wasn't walking around.

A. No. I believe it was children doing something very aggressive up there, but -- so I came up and explained that, you know, we were sick and not feeling good and it was, you know, a bit troublesome, that, you know, we needed a little more quiet.

Q. Three kids. Three kids. Thank you.

A. Okay.

THE COURT: Redirect?

MR. MCDONALD: No redirect, Your Honor.

THE COURT: You may step down. Thank you so very much.

[Whereupon, Mr. Pollard is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. MCDONALD: The plaintiff would call

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Mr. Charlie Maraziti.

[Whereupon, Mr. Maraziti comes forward]

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

THE WITNESS: Yes, I do.

THE CLERK OF COURT: State your full name and spell your last name.

[Whereupon, Mr. Maraziti takes the witness stand]

THE WITNESS: My name is Charles Maraziti. M-A-R-A-Z-I-T-I.

MR. MCDONALD: Mr. Maraziti, how are you doing today?

THE WITNESS: Very well, thank you.

- - - - -

CHARLES MARAZITI,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCDONALD:

Q. You, sir, were in the courtroom when the stipulations were just made?

A. Yes, sir.

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Q. So this is going to be relative to those things that we're not stipulating to, so we'll move through it quickly. Okay?

A. Yes.

Q. All right. Mr. Maraziti, when did you -- where are you from?

A. Baytown, New Jersey.

Q. And where do you live?

A. Currently live in Buton, New Jersey. That's our home residence.

Q. And how did you come to purchase your unit at The Oaks at Rivers Edge?

A. In 2003, we started looking for a place to retire. We went to Florida, Georgia, came up to Charleston, fell in love with Charleston, bought a home on Daniel Island, a modest home on Daniel Island. And then in 2007, when the bank I had worked for for forty years merged with an international bank, I retired. And at that point we decided we had enough of cutting grass and painting houses, and all the repair work that was needed for a home, and decided we would come down to Daniel Island, meet with our realtor who sold us the home, Sally Castengara, and look at condos. And the plan was to sell our house in New Jersey, sell our house on Daniel Island, and move into the condo.

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Q. And how did that -- how did the plan go? Did you sell your house in New Jersey and --

A. No. We were going -- I'm sorry.

Q. No. Go ahead.

A. Excuse me.

We were looking first to purchase the condo by taking out a loan on our New Jersey home and then taking funds from our retirement account, retirement savings, purchase the condo, and then go through the process of selling both properties -- so we had a place to move into first -- and then sell the other properties.

Q. Okay. So you were going to live in The Oaks when you moved -- your plan was to retire and live in The Oaks?

A. Correct.

Q. Now, and you bought in November 20th of 2006; correct?

A. That's when we closed. We actually signed the purchase contract May 19th of 2006 and closed on October the 18th.

Q. And have you ever actually lived at The Oaks?

A. No, never spent a night there.

Q. And why the change? Why the change from you're going to retire down here to where you didn't actually move in?

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A. It's a long story. I'll make it short.

Q. Thank you.

A. We had the walkthrough on October 18th. We were not allowed in the unit prior to that, and I have a memo to that effect from our realtor saying that the builder wouldn't allow anyone into the property prior to the walkthrough.

We walked through, created a -- with Curtis, I don't know his last name, from Carriage Hill. Created a punch list with twenty-two items on it. The following morning we had a home-inspection report completed by Sherlock Holmes and they came up with twenty-two, plus a couple of other items. That morning -- we actually purchased the unit from Angela Black. Her name was mentioned previously. And she closed in the morning of the 18th, we closed on the afternoon.

Q. And who did Ms. Black buy it from?

A. Ms. Black bought it from -- Ms. Black bought it from Carriage Hill.

So that afternoon we closed. And immediately the next morning, we went to see Lee McManus at Carriage Hill to talk about the twenty-two items that were on the list to see if they could be fixed.

Q. And did Ms. McManus express to you that she was going to have those items addressed and fixed?

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A. Yes. Curtis mentioned that and Lee mentioned that. And we were handed the warranty claim forms to fill out for all of those items, even though they were already on the list.

Q. And walk me through that process. Were the items on the punch list ultimately taken care of?

A. No, they were not.

Q. And what, if anything, did that have to do with why you didn't move into the unit for it to be your retirement home?

A. We were looking for, again, a carefree -- as carefree as possible -- living, and we started off with items such as a stove that the glass was shattered on the door and it was not operable. And this is a high-end piece of equipment. We had a wine cooler that would throw out hot air. Would not cool the wine, it would heat it. We had a refrigerator that did not work. We had tile in the bathroom that was mismatched. It was marble tile from two different batches and it just didn't look right at all.

Q. And these, along with other issues, were the ones that you brought to Carriage Hill's attention?

A. Yes.

Q. And they did nothing about it?

A. They did nothing about that for three and a

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half months. And I have letters back and forth, e-mails back and forth, and actually a registered letter to Mr. Behringer, signed by him that he received it, with all these items on it and stating that if this was not resolved, we would take legal action.

Q. And what did -- how did that process make you feel? Were you frustrated?

A. Frustrated. And we decided that our dream condo turned into an economic and emotional nightmare, and we wanted out at that point. We just had enough.

Q. And this would have been when? In early 2007?

A. It was the -- February 7th, we actually listed the unit for sale. We purchased it for eight eighty-nine nine and put it on the market for eight seventy-nine, taking a 10,000-dollar loss, possibly, plus $40,000 in commission, so we were willing to accept that loss to get out.

Q. And at this time, other than the defect -- other than the punch-list items, were you aware of the other significant construction issues?

A. Not until -- as I said, we listed the unit on February 7th. And the end of March, we received a letter from Carriage Hill stating they were going to do sound remediation. And so at that point we felt we had to take the unit off the sales market because there were defects

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that would decrease the value. We didn't want to be involved in selling a property that had defects, so we removed the unit from the sales market pending the remediation.

Q. And did they ultimately come in and perform the so-called remediation?

A. Yes, they did. They changed the schedule four times on us. It was finally done the end of August. We had Sherlock Holmes come back in, do another home-inspection report. There were a number of issues, things on the wall, scratches in cabinets, whatever, floors that were scratched. Took another two weeks for them to repair that. And then we put the unit back on the market November 30th.

Q. Of 2007?

A. Of 2007.

Q. And what was the list price then?

A. Same price. Eight seventy-nine.

Q. And at that point, you felt they had -- at least the sound issue had been remediated?

A. Correct.

Q. And what happened? Were you able to sell it when you put it on the market?

A. No. No offers at all. We did receive one communication back from a realtor to say that -- and I

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don't have the name of the individual that looked at the property, but they decided not to go farther because of the sound issues. They talked to other individuals in the condo and learned that there were still sound issues.

Q. And did you ultimately take it off the market, at some point, as a result of that?

A. We took it off the market February of 2008 when the other issues with The Oaks, the water intrusion issues and others, were -- became more evident. And we felt that what we would do is put the unit on the rental market for a year or two, at the most, figuring that Carriage Hill would step up to the plate, do the right thing, and fix all the problems, and we could then sell it.

Q. And you haven't been able to sell since then, have you?

A. Correct.

Q. And you've hired Mr. Donato, have you not --

A. Yes, sir.

Q. -- to assess what damages you may have sustained individually?

A. Yes, sir.

Q. And in addition to that, you've had some problem with your floors, have you not?

A. Yes. We have warped floors. If you look at the floors from the end of the hallway, it looks like you're

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looking on the Wando River with waves.

Q. And I've got Plaintiffs' Exhibit 119-M. Do you recognize that picture?

A. Yes, I do.

Q. Is that in your unit?

A. Yes, it is.

MR. MCDONALD: I would offer 119-M into evidence.

THE COURT: Any objection?

MR. MAYBANK: We need to find it, Your Honor.

[Whereupon, Mr. Maybank reviews documents]

THE COURT: What's that? a picture of the floor?

MR. MCDONALD: Yes, sir.

A. The floors are actually worse than that now.

THE COURT: Any objection to 119-M? I believe it's a picture.

MR. MAYBANK: Trying to find it --

THE COURT: Okay.

A. That was last August.

Q. [Mr. McDonald] When was this picture taken?

A. Last August.

THE COURT: All right. Let me see if they have any objection first. You can just lay it up here. Let me see if they've got an objection.

[Whereupon, Mr. McDonald proffers documents to

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the Court]

MR. MAYBANK: No objection, Your Honor.

THE COURT: All right. 119-M admitted without objection.

[Whereupon, Plaintiffs' Exhibit Number 119-M is admitted into evidence by the Court]

MR. MCDONALD: And I'm wrapping up here with you, Mr. Maraziti.

Q. [Mr. McDonald] And you're unit 2-A?

A. Correct.

Q. Which is on the second floor above the garage?

A. Yes. In unit number -- in building two.

Q. All right, sir. And you're not claiming any lost rent, are you, sir?

A. No, sir.

Q. And no -- you haven't had any out-of-pocket expenses that you're claiming here today?

A. No, not that I'm claiming.

MR. MCDONALD: Thank you very much, Mr. Maraziti.

THE WITNESS: You're welcome.

MR. MCDONALD: Please answer any questions the Court or these gentlemen may have.

THE WITNESS: Yes, sir.

THE COURT: Cross-examination.

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MR. MAYBANK: Yes, Your Honor. It should be brief.

Mr. Maraziti, good afternoon. My name is Roy Maybank.

THE WITNESS: Good afternoon.

CROSS-EXAMINATION

BY MR. MAYBANK:

Q. You would understand why you wouldn't be allowed into that unit, wouldn't you, by Carriage Hill Associates? You didn't buy the unit from them, did you?

A. No. But the realtor, Sally Castengara, who is the top sales person on Daniel Island for the last eleven years, wrote to me, I have the memo, saying that absolutely no one was allowed into the property that they purchased until the walkthrough.

Q. My question is, sir, to you, is --

A. Yes.

Q. -- you didn't buy your unit from our clients, did you?

A. Correct. I did not.

Q. So they couldn't keep you in or out of the unit because they --

A. No. No.

Q. -- didn't have the deed to that unit; correct?

A. Yes, sir.

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Let me just go a little farther. Angela Black, who was a realtor, also, at Daniel Island Real Estate, could not get in there with us. We asked her to intervene on our behalf so we could take a look, and she said the same thing, that --

Q. You're not Angela Black, are you?

A. I'm not Angela Black.

MR. MAYBANK: I would ask the Court to strike that.

And what I would ask you to do is just to answer the question.

THE WITNESS: Yes, sir.

Q. [Mr. Maybank] You didn't buy the unit from my clients, did you?

A. I did not.

Q. Do you know if Ms. Black was the original purchaser of that unit --

A. Yes, sir.

Q. -- from Daniel Island?

A. I do, sir.

Q. Do you know how much she paid for it?

A. Yes. She paid seven sixty-nine.

Q. And then without even moving in or taking physical possession of that unit, you then -- I don't believe she ever -- did she ever move into the unit?

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A. No. We both closed the same day on the unit. She bought in the morning, we bought -- or closed in the afternoon. I'm sorry. She closed in the morning of the 18th, we closed the afternoon of October 18th.

Q. Were y'all both there at the closing at the same time?

A. In the same attorney's office --

Q. Yes, sir.

A. -- no. She was there in the morning, we were there in the afternoon.

Q. Is that referred to as a double-blind closing? Do you know?

A. I'm not really sure.

Q. What bank did you work for?

A. I worked for -- the last bank I worked for was Independence Community Bank in Brooklyn.

Q. And what other banks have you worked for in the past?

A. United Jersey Banks in New Jersey, which was a bank holding company eventually bought out by Bank of America.

Q. And you were in the banking industry for thirty-plus years?

A. Yes, sir.

Q. How much did you buy your home on Daniel Island

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for?

A. $330,000.

Q. And how much did you sell it for?

A. We have not sold it yet.

Q. Have you attempted to sell the home?

A. No, because we are going to hold on to the home and sell the condo instead. We don't want to move into the condo.

Q. I apologize. I was mistaken. Maybe I didn't hear your testimony. I thought that you said that you bought a modest home on Daniel Island --

A. Correct.

Q. -- and you had a place in New Jersey --

A. Correct.

Q. -- and you were going to sell both of those.

A. The plan was -- yes. The plan was to purchase the condo, move into the condo, sell the New Jersey home and sell the Daniel Island home and only end up with one home, which would be the condo.

Q. Currently, you own the Daniel Island home?

A. We own the Daniel Island home and the New Jersey home. We're stuck with three homes now.

Q. Okay. How old are you, sir?

A. Sixty-seven, sir.

Q. And you purchased, from Ms. Black, your home for

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almost $900,000?

A. Yes, sir. And put another 10,000 into it to prepare it for the rental market by putting up plantation shutters and other items.

Q. And if I'm not mistaken, then, Ms. Black made about $110,000 on a home she never took possession of?

A. Absolutely.

Q. Being in the banking industry, would you agree with me that the last few years have been some of the worst financial of record in the history of the United States?

A. I agree with you one hundred percent.

And if I may state that we placed our unit on the market in 2007 when the market was doing very well. The market didn't start to drop until the beginning of mid 2008.

Q. I understand that.

And you also understand that there were a lot of speculators on Daniel Island during that time, don't you?

A. I don't know that.

Q. Would you believe that Ms. Black's investment was a speculation, or do you think --

A. No, I don't.

Q. You thought it was a long-term investment on her behalf?

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A. Yes, sir, I did, for personal reasons. I cannot -- I would be speculating if I gave you anymore information than that.

Q. Since 2008, have you tried to sell your condo?

A. No, sir.

If I may, also: being in banking, I understand that because of the issues at The Oaks, certainly with the defects, the prices would have dropped. and also with litigation. There's no bank in their right mind would give anyone a mortgage on a property like that, so you would have to sell for cash.

Q. Really?

A. Yes.

Q. Did you hear Mr. Jung testify earlier about buying a condominium covered in construction --

A. I'm just speaking from my experience in New Jersey, with the banks in New York and New Jersey --

Q. In New Jersey?

A. -- that I worked with. That if there's litigation, they will not grant the mortgage.

MR. MAYBANK: Thank you, sir.

THE WITNESS: You're welcome.

THE COURT: Any redirect?

MR. MCDONALD: No, Your Honor.

THE COURT: You may step down. Thank you very

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much.

THE WITNESS: Thank you, Your Honor.

[Whereupon, Mr. Maraziti is excused and exits the witness stand]

MR. MCDONALD: Plaintiffs' call Ms. Brenda Cook.

[Whereupon, Ms. Cook comes forward]

THE CLERK OF COURT: Raise your right hand. Please raise your hand.

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

THE WITNESS: I do.

THE CLERK OF COURT: Please be seated.

[Whereupon, Ms. Cook takes the witness stand]

THE CLERK OF COURT: State your full name and spell your last name.

MR. MCDONALD: Hi, Ms. Cook. Would you state your full name and spell your last name.

THE WITNESS: My full name is Brenda Johnson Cook. My last name is spelled C-O-O-K.

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BRENDA COOK,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCDONALD:

Q. What is your current address?

A. My current address is I live in The Oaks. It is 144, unit 3-B.

Q. And you were in the courtroom, were you not, Ms. Cook, when the stipulations were read?

A. Yes.

Q. So this is going to be somewhat brief, but I'm going to move through it with you. Okay?

A. Okay. That's fine.

Q. Where are you originally from, Ms. Cook?

A. I grew up on a farm in South Georgia in Shellman, Georgia.

Q. And were you born and raised there?

A. I was.

Q. And how did you come to Charleston?

A. Our boys went to the Citadel, both of our boys did, one in '81 and one in '91. So when my husband retired from Delta, we came back to Charleston.

Q. And what is your husband's name?

A. Peyton Cook.

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Q. Okay. And when was that? When did you come -- when did your husband retire from Delta and you come to Charleston?

A. My husband retired in 2000 and we came to Charleston in 2002.

Q. And were your sons still at the Citadel at that point, or it was after they graduated?

A. No. They both had graduated.

Q. How did you come -- in this case, how did you come to get involved with The Oaks project?

A. When we came to Charleston -- I had been in real estate since 1973 and my husband said, why don't you activate your license and go to work selling here on Daniel Island. So I did, in fact, do that. Fortunately, or unfortunately, I got in at the real good time when things were really, really moving up, invested in several properties and was just doing really, really well with sales. And so when The Oaks came along, I could just tell from being in real estate for forty years that that was going to be a good investment, so I purchased two of those.

Q. So there were two Oaks units that you got?

A. Yes.

Q. And one of those units was in your name; is that right?

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A. Yes, that's right.

Q. And one of the units that was purchased was in the name of your husband; correct?

A. Yes, it was. The first one I bought myself, and I encouraged him to buy one because I felt like it was a good investment. All the years we had been married, I had never lost money on real estate. I had always been very frugal and very wise with investing. And so I encouraged him to do that.

Q. I'm not trying to get personal here, Ms. Cook --

A. That's fine.

Q. -- but my question to you is this: you encouraged him. So did he have his own money that he was going to invest and you had your own money?

A. Yes, he did. When my husband retired from Delta, he got a large lump sum. At the time, he gave me half of it, which I managed, and he managed the other half. So from that time forward, when he retired I became independent and he let me just do my own thing.

Q. Are you talking about the same bank account? Or you-all had different bank accounts?

A. We had different bank accounts.

Q. And he did whatever he did with his money and you --

A. Right.

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Q. -- did whatever you did with your money?

A. Exactly.

Q. So you bought a unit and your -- you encouraged your husband to buy a unit?

A. Right.

Q. And, in fact, did your husband buy the unit on your advice?

A. He just put the down payment down. I told him if he would put the down payment down, I would get the mortgage and I would take care of it, because I was making a lot of money. And so that's why he did that.

Q. And so you actually signed and took on, as a personal debt, the mortgage?

A. I did, with NBSC.

Q. And do you still -- at some point, was that unit conveyed from your husband into your name?

A. Not until very late in the process.

Q. And why was that done?

A. Because I was selling it at a short sale and the bank was going to give me a deficiency judgment. So my husband, Heather Gilbert [phonetic], put the unit in my name because the whole time, the mortgage had been in my name and I had paid it as long as I could.

Q. Okay. And the only unit that's the subject of this lawsuit is the one that you encouraged your husband

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to buy --

A. Right.

Q. -- and you took the mortgage out on?

A. That's right.

Q. And you bought that on September 12th, 2006; correct?

A. Let me make sure about that date.

[Whereupon, the witness reviews documents]

A. I wrote the contract in January of 2006. Yes.

Q. [Mr. McDonald] Just to refresh your recollection --

A. Okay.

Q. -- the deed here was recorded on September 12th, 2006; correct?

A. Okay. Okay. I wrote the -- no. I wrote -- I'm sorry.

Q. That's all right.

A. I got the dates wrong there.

Q. And when -- after you purchased the unit at The Oaks, or put it in your husband's name and you took the mortgage out on it, did you try and sell it?

A. Yes, I surely did. As soon as they finished it, I put it on the market to sell. That was right at the top of the market, when the market was just starting to go down. And there were a lot of us real estate agents who

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had done the same thing. A lot of girls in my office had done the same thing. Angela Black, Lynn Borrow, Sally Castengara, and a lot of us had done the same thing. We had bought those as investments, as we had done all over the island.

Q. And were you able to sell it at the end of 2006, beginning of 2007?

A. No. It stayed on the market and I kept it on the market and I thought, well, I'm being real smart, I'll go in and do some additions inside. I went in and redid the floors, painted the inside, put some upgrades in it, thinking that I would be able to sell it. Well, I couldn't sell it. So in the beginning of I think it was 2008 to 2010, I decided I had to rent it. So I did that. And still trying to sell it.

But let me kind of regress here. Because when the sound remediation was done, Mr. Behringer called me and asked me if I would be the first one, since my unit was vacant, for them to do the remediation. And I agreed that it would be fine. It took them six months to remediate my unit.

Q. And this was in 2007?

A. That's right.

And, you know, during the time, I'm still trying to sell it and do all this -- do all these things. But in

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2000 and -- I think it was the beginning of 2010, I didn't have a renter in it at that time and I got two offers. I had lowered it down. I had quit making the payments and I got two offers on my unit and both of them backed out because of the lawsuit and all the conditions. And I disclosed everything. Anybody that wanted to see any paperwork that I had, I gave it to them.

Q. And between 2008 and 2010, were you actively trying to sell the unit --

A. Yes.

Q. -- as well?

A. Yes.

Q. And, ultimately, were you able to sell the unit?

A. Yes, I was.

Q. And was that in a short sale?

A. Yes, it was.

Q. I hand you what's been marked as Plaintiffs' Exhibit 114-C.

A. Okay.

Q. Do you recognize that document?

A. I do.

Q. And what do you recognize it to be?

[Whereupon, the witness reviews documents]

A. It's when I sold it and I disclosed to the buyer everything that was going on.

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Q. [Mr. McDonald] And this document is called a disclosure and acknowledgment of pending litigation?

A. Right.

MR. MCDONALD: I would move 114-C into evidence.

THE COURT: Any objection?

MR. ALTMAN: No objection, Your Honor.

THE COURT: All right. 114-C admitted without objection.

[Whereupon, Plaintiffs' Exhibit Number 114-C is admitted into evidence by the Court]

Q. [Mr. McDonald] And in the short sale, it was certainly that. You had a sales price of --

Do you remember what your sale price was in the short sale?

A. It was -- it was -- in the short sale, I sold it for three fifty.

Q. And but you had more than that on the mortgage that you had taken out; right?

A. Yes. It was pretty close to eight -- well, in the seventies.

Q. I'll hand you what's been marked as Exhibit 114-D.

A. Okay.

Q. Do you recognize that document?

A. Yes. Very much.

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Q. And what do you recognize it to be?
A. It's a deficiency judgment.
Q. It's a confession of judgment for $400,000?
A. Right.
Q. To the bank; correct?
A. Yes. Yes.
Q. And do you --
MR. MCDONALD: I would move 114-D into evidence.
THE COURT: Any objection?
MR. ALTMAN: This is not -- or, yeah, it's recorded. Has this been recorded? It doesn't show it has been.
MR. MCDONALD: About to get into that.
MR. ALTMAN: Well, unless it's recorded, we object to it.
MR. MCDONALD: Okay.
Q. [Mr. McDonald] Did you sign a confession of judgment here --
MR. MCDONALD: I'll lay some foundation, Judge.
Q. [Mr. McDonald] You signed a confession of judgment here for $400,000; correct?
A. Right. I did.
Q. But you got an agreement with the bank?
A. With the bank, yes. And they --
Q. And what is that agreement?

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A. That agreement is if I -- $250,000, and I pay them $250 a month. I was supposed to go up to $1,000 a month, but I have not been able to yet.

Q. But you pay them the $250 a month?

A. Yes. And I pay them religiously.

Q. So really what you owe the bank, assuming that you make those two hundred -- what happens if you don't make those 250-dollar payments?

A. They will claim the whole thing.

Q. And you're going to make those 250-dollar payments --

A. Yeah.

Q. -- because you undertook that obligation --

A. Right.

Q. -- correct?

A. Right. I've never been able -- not able to pay my bills before.

Q. So what -- are you asking this Court for the $400,000 or are you asking this Court for the $250,000 because you're going to pay your bills over time?

A. The two hundred and fifty. And I've paid about five on that so far.

MR. MCDONALD: So at this time, I would move Exhibit 114-D into evidence.

MR. ALTMAN: We object. Your Honor, we would

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like to see the agreement that she has for two fifty that says it's been recorded.

MR. MCDONALD: I draw his attention to Exhibit 114-C --

THE COURT: Hold on a second.

MR. MCDONALD: -- that's into evidence --

THE COURT: Hold on. Hold on a second.

All right. What's your objection to the confession of judgment, 114-D?

MR. ALTMAN: The confession, Judge, it has not been filed. We don't understand -- we don't have the documentation of the exact terms.

MR. MCDONALD: Yeah. 114-C, that's already into evidence.

THE COURT: What's the -- which one did you go into about the bank agreement?

MR. MCDONALD: It's 114-C, Your Honor.

THE COURT: 114-C?

MR. MCDONALD: Or D.

THE COURT: Okay.

MR. MCDONALD: And it's page 2. It's actually the fourth page of 114-C.

THE COURT: That's the letter from Smith Cox and Associates?

MR. MCDONALD: Yes.

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THE COURT: So you're offering C and D; is that correct?

MR. MCDONALD: Yes.

And, actually, the confession of judgment, though not recorded, is already a portion of 114-C, but I didn't realize that, so --

THE COURT: Do you have any objections to offering 114-C and D together, which I think explains the confession? The letter does, anyhow.

MR. ALTMAN: Not realizing that this is -- 114-C was more than one document --

THE COURT: We'll consolidate them, if you want to, into 114-C.

MR. ALTMAN: 114-C is called a settlement agreement and all we have is one page. It's not executed. It's not executed by the bank to show if there's an agreement, so we would object to it.

THE COURT: Well, it's the seller here, there's a purchaser. That's the listing, I guess, for something else. Let me see. There's a settlement agreement that's signed. Later on in, a settlement agreement and confession of judgment. The settlement agreement lays out the proceeds and it's signed by Ms. Cook and it looks like it's witnessed by someone else.

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I'll admit C and D together --

MR. MCDONALD: Thank you, Your Honor.

THE COURT: -- with objection.

[Whereupon, Plaintiffs' Exhibit Number 114-C is admitted into evidence by the Court]

[Whereupon, Plaintiff's Exhibit Number 114-D is admitted into evidence by the Court]

Q. [Mr. McDonald] And is that what you're claiming here today from this Court --

A. Yes.

Q. -- is the $250,000?

A. Yes. Yes.

Q. Okay. And have you, in fact, incurred out-of-pocket expenses along the way, small out-of-pocket expenses?

A. I have, but I'm not claiming that.

Q. That's not part of --

A. No.

Q. -- part of your claim, is it?

A. No.

MR. MCDONALD: That's all I have, Ms. Cook. Please answer any questions these other lawyers may have.

THE COURT: Cross-examination.

MR. ALTMAN: Just a moment, Your Honor.

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CROSS-EXAMINATION

BY MR. ALTMAN:

Q. Ms. Cook, how many pieces of property did you speculate on on Daniel Island?

MR. MCDONALD: Objection, Your Honor.

THE COURT: What's your legal objection?

MR. MCDONALD: Objection --

THE COURT: Pardon?

MR. MCDONALD: Characterization of how many pieces of property did you speculate on on Daniel Island.

THE COURT: Overruled. If she doesn't know, she doesn't know. If she does, she can answer it.

Go ahead.

A. I do know, and I don't mind answering. With my personal home, it was five.

Q. [Mr. Altman] And you said you made money on all the others; right?

A. No. No, no. I made money on one. I sold one in foreclosure. I did two in short sale.

Q. Why did you decide to short sale the others? Not the Daniel Island -- not The Oaks property, but the others. Why did you --

A. I couldn't make the payments. I was making about seventy-five percent of what I had been making the

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year before. I just overinvested. And, you know, not only did I lose that, I almost lost my marriage. My husband left me for two years during this time because I spent so much money investing. And I'm sorry to be so emotional.

Q. I understand. I'm just trying to understand --

A. I understand what you're saying. But I have been able, thanks to my husband, to be completely debt free now except for this that I owe the bank. And I would like to have that money to pay them.

Q. On these other properties that you sold --

A. Yes.

Q. -- in short sale --

A. Yes.

[Off the record momentarily]

Q. [Mr. Altman] On the other properties that you sold at short sale, you didn't have to have a deficiency judgment --

A. No --

Q. -- taken --

A. I did not. They were smaller condos and Chase did not give me a deficiency judgment. And one I just let go to foreclosure. I was -- and that's the first one I did. And if I had known what I know now, I could have done a short sale and wouldn't be -- my credit is really

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messed up.

MR. ALTMAN: I have nothing further, Your Honor.

THE WITNESS: Thank you.

THE COURT: Any redirect?

MR. MCDONALD: No redirect, Your Honor.

THE COURT: You may step down. Thank you very much.

THE WITNESS: Thank you.

[Whereupon, Ms. Cook is excused and exits the witness stand]

THE COURT: Next witness.

MR. MCDONALD: The plaintiffs call Karen Nelson.

[Whereupon, Ms. Nelson comes forward]

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

THE WITNESS: I do.

THE CLERK OF COURT: State your full name and spell your last name.

[Whereupon, Ms. Nelson takes the witness stand]

THE WITNESS: My name is Karen Nelson. Last name is spelled N-E-L-S-O-N.

MR. MCDONALD: How are you doing today, Ms. Nelson?

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THE WITNESS: Good.

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KAREN NELSON,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCDONALD:

Q. Let's go ahead and clear this up. You have since taken your husband's name; correct?

A. I have.

Q. You are in the process of changing your name to Eland?

A. Correct.

Q. But I'm going to call you Ms. Nelson because I've called you Ms. Nelson for as long as I've known you. Okay?

A. And that's fine with me. I might not answer to the other.

Q. Thank you very much.

Where are you from, Ms. Nelson?

A. I'm from Chicago, Illinois.

Q. And were you born and raised in Chicago?

A. I was.

Q. And on what occasion did you have to move down to Charleston?

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A. John and I were looking for places to retire to. We did the old research down the east coast, Florida, and settled on Charleston.

Q. And when did you move to Charleston?

A. Full time I moved here, myself, in 2009. Snowbird. We did -- I did a couple of winters down here prior to that.

Q. And where did you live at in -- where did you live at when you first moved down here?

A. At 136 Durbanks Oaks Alley.

Q. So at some point, you had a time to come to purchase a unit at The Oaks?

A. Yes.

Q. Okay. And were you involved in the lottery system?

A. We did not.

Q. You purchased directly from Daniel Island Riverside Developers?

A. We did.

Q. And where is your unit? What unit?

A. Our unit was 2-B, which was the first floor of residential.

Q. 2-B in what building?

A. Building four.

Q. And how did you come to decide on purchasing at

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The Oaks?

A. We had actually put our name in on lottery for another condominium and we did not win that. Angela Black, who was our realtor, suggested that there was another unit available at The Oaks. We were essentially taking the place of someone that had won the lottery, and so we put a contract in on it and it was accepted.

Q. And you were, in fact, presented with certain marketing materials?

A. Yes.

Q. Your 115-B; correct?

A. Yes.

Q. And that's already into evidence.

And your purchase price of your unit was $686,000; correct?

A. Correct.

Q. And did you actually move there, you and your husband?

A. Yes, we did.

Q. And so you lived at The Oaks?

A. Yes.

Q. And what was your intent when you moved in? Was it to stay there, was it to --

A. The intent was, in the beginning, that it would be a part-time residence for us, long-term retirement.

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Q. Okay. And did you have occasion to serve on the board of --

A. I did.

Q. And when did you get on the board?

A. I think that would be January of 2011 to February of 2012.

Q. And so that would have been after this lawsuit started?

A. Correct.

Q. And did you spend a certain amount of time on dealing with the issues related to the building?

A. It was not a major focus at that time, but we did have some issues, construction problems, that we did have to deal with.

Q. And who was on the board with you?

A. On the board was Jeff Secalla [phonetic] and Joan Moran [phonetic].

Q. Okay. And you have since sold your unit; correct?

A. That's correct.

Q. And what was the sales price of your unit when you sold it?

A. $330,000.

Q. And you sold it on March 29th of 2012?

A. That is when we closed, yes.

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Q. And was it a short sale?

A. According to the bank it wasn't. But the purchase price was less than what we owed on the mortgage. And so what we chose to do to preserve our credit rating was to take a loan out against a home that we were living in at the time. And so we funded our own short sale.

Q. And why did you sell the unit for 330,000 and have to fund it?

A. To preserve our credit rating is why we chose to fund our own short sale.

Q. Well, why did you sell the unit? Why did you decide --

A. Why did we sell it?

Q. -- to sell the unit? Yes.

A. Because it was an environment that we were not interested in living in any longer because of the sound issues.

Q. And have you hired Mr. Donato?

A. Yes.

Q. And you're relying on him to determine what your individual damages, if any, may be?

A. Correct.

Q. And are you asking the Court for any lost rent?

A. No.

Q. Are you asking the Court for any out-of-pocket

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expenses?

A. No.

MR. MCDONALD: That's all I've got. Thank you very much.

THE COURT: How much did you fund it for?

THE WITNESS: It was a little over $90,000.

THE COURT: Approximately 90,000 you borrowed --

THE WITNESS: Approximately. Yeah.

THE COURT: -- to give to the bank on the sale?

THE WITNESS: Say again?

THE COURT: To give to the bank when you sold it?

THE WITNESS: Yeah.

THE COURT: Had to take that to the closing table?

THE WITNESS: Yes.

THE COURT: Okay. Thank you.

THE WITNESS: Uh-huh.

THE COURT: Cross-examination.

MR. MAYBANK: Yes, Your Honor. Thank you. I'm sorry. What was your name again?

THE WITNESS: Karen Nelson.

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CROSS-EXAMINATION

BY MR. MAYBANK:

Q. Ms. Nelson, would you -- what do you do for a living?

A. I am retired.

Q. What did you do for a living?

A. I worked for Allstate Insurance Company in their technology department.

Q. Would you agree that the condominium that you lived in was an elegant brick and stucco condominium situated among spectacular and natural scenery?

A. Yes.

Q. Would you agree that it offers high-quality interior finishes, the best of both worlds?

A. There were parts of the construction on the inside that I wouldn't say was spectacular.

Q. No, no. Answer the question. Did it offer high-quality interior finishes in the best of both worlds? A highly-desirable residence or address in a magnificent natural environment and access to the pleasures and conveniences of Daniel Island's downtown?

A. Yes.

Q. Did it offer magnificent views of the Wando River?

A. Yes.

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Q. Did it offer a gourmet kitchen with granite counter tops, a large island, and beautiful cabinetry and stainless-steel appliances?

A. Yes.

Q. Did that also include a six-burner gas range?

A. Yes.

Q. Two ovens and a microwave?

A. Yes.

Q. It sounds luxurious, doesn't it?

A. It sounds nice.

Q. Sounds very nice.

Have you seen the listing on your condominium?

A. At one point, yes.

Q. Do you agree with what is contained in the listing of your condominium from when you sold it?

A. I am sure at the time I did, yes.

Q. I mean, you just sold it. Closed on it 3/21/2012, didn't you?

A. Uh-huh.

Q. That wasn't that long ago, was it?

A. It is what it is. I don't know what long or short. But, yes.

Q. I am looking in this remarks because you stated and testified that you sold your unit because of the sound problems, and I don't see a single mention in your listing

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of any of the sound problems. And I can understand that you're not the agent that put this information in there, are you?

A. Correct.

Q. Did you discuss with your real estate agent the type and description of the unit that you were trying to sell?

A. I don't actually believe we gave her any input on the description.

Q. Is she lying, then, to the general public on your behalf? Or do you believe what was put in this -- in your listing?

A. I believe what was in the listing.

Q. I do, too. I think on that we can all agree. At least you and I can.

I don't see anywhere in the remarks or the agent notes in the listing anything about this litigation. Do you know whether or not it was put in the actually publically -- into the MLS listing itself any remarks about the litigation on these units?

A. I do not know.

Q. Please don't misunderstand me. I understand you're not the agent that's putting this in there.

Now, I understand that you did fill out a residential property condition disclosure statement,

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didn't you?

A. Yes.

Q. You signed it I believe on January 15th -- January 5th, 2012. And your name is Karen A. Nelson?

A. Correct.

Q. And your husband's name is John W. Edelen?

A. Correct.

Q. Now, you did note in here that -- you checked no on lawsuits, foreclosures, bankruptcy, tenancies, judgment, tax or other liens under section 20. Do you recall doing that?

A. I don't know if I did it or whether John did it, but --

Q. All right. Now, I did note under that there's a little star. Says, does not affect tile. I don't know what that means. But it does indicate there is a lawsuit against builder-developer for water intrusions at rails and balusters on porches. And I'm going to show you what I have, and tell me if you can identify this as the listing -- if you know if this is the MLS to your unit -- you've seen that before -- and/or the South Carolina residential property disclosure form.

A. So if I've seen it?

Q. Yes, ma'am. If you've ever seen that. It's your unit. I assume you may have seen it, but I could

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certainly be wrong.

[Whereupon, the witness reviews documents]

Q. [Mr. Maybank] I apologize. The stapling is not very good.

A. Okay. So what I don't ever remember seeing are these first two pages, which I think they're referring to as the MLS listing.

Q. Yes, ma'am. That's correct.

A. I don't remember seeing that. I do remember seeing this document.

Q. Which is titled the residential property condition --

A. Property condition disclosure statement.

I remember standing there filling it out with the real estate agent.

Q. Okay.

A. Okay?

Q. Is this your signature on the back?

A. That is.

Q. Is this your handwriting that has filled this out, or is the realtor's handwriting?

A. This is John's handwriting.

Q. Your husband's?

A. Yes.

Q. Were you there when he filed this --

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A. I was --

Q. -- this section out?

A. -- standing there, yes. And he filled it out, based on input from the realtor.

Q. Have you had a chance to review it for content?

A. I don't -- no.

Q. I'll ask this question. Maybe it will shorthand it. Do you see anything in here about sound problems or sound attenuation issues being disclosed to a subsequent purchaser?

A. I did not just now, no.

Q. You would agree with me that, based on your claim, it would be a material issue as to why you did not -- are not no longer living there; correct?

A. Could you ask again?

Q. Sure.

That was the reason y'all left. You short-sold the unit was because of the sound problems; right?

A. [No response]

Q. So yet, according to the information that you filled out and your husband filled out, that was never disclosed to the subsequent purchaser, was it?

A. No.

MR. MAYBANK: At this time, Your Honor, I would like to move into evidence the South Carolina

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residential property condition disclosure statement, as well as the MLS listing on the home, for Ms. Nelson.

THE COURT: What number?

MR. MAYBANK: It would be -- it's actually not been listed as an exhibit, so it would be Number 230. 231, Your Honor.

THE COURT: All right. Any objection to 231?

MR. MCDONALD: No objection, Your Honor.

THE COURT: All right. Defendants' Exhibit 231 admitted without objection.

THE COURT REPORTER: Can I mark it?

MR. MAYBANK: Yes, ma'am. Let's do that now so I don't forget.

[Whereupon, Defendants' Exhibit Number 231 is marked by the court reporter]

[Whereupon, Defendants' Exhibit Number 231 is admitted into evidence by the Court]

Q. [Mr. Maybank] Other than this sale, have you had any other short sale of real estate before?

A. No.

Q. Ever been involved in any other construction litigation?

A. No.

Q. Ms. Nelson, can you look at this and tell me if,

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in fact -- I see it's signed. I believe -- is this your signature?

A. It is.

Q. If you would take a look at that document and tell me if you've ever seen that document before.

[Whereupon, the witness reviews documents]

A. Yes, I have.

Q. [Mr. Maybank] All right. If I may, may I take that back?

A. You may.

Q. Unfortunately, I don't have more than one copy. But if you need to refer to it, please ask me and I'll be more than happy to give it back to you.

I'm holding 231, which is the MLS listing and the property disclosure. In this information that you provided us, as a result of this litigation, you listed in here the concern of the noise, the sound attenuation. And that was dated March 7th, 2010. Did you see that date on here?

A. I did not notice the date.

Q. I apologize.

[Whereupon, Mr. Maybank proffers documents to the witness]

Q. [Mr. Maybank] When did you sign this document?

A. March 7th, 2010.

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Q. And in this document, you would agree with me that you were complaining about the sound issues at that time?

A. Yes.

Q. All right. And you did not list your house until 2011; correct?

A. Correct.

Q. And at that time -- and you did not sell it until 2012; correct?

A. Correct.

Q. And as I further read in here, that this was not a short sale and it was not a banker foreclosure, was it?

A. Correct.

Q. This is just -- and I'm quoting -- an incredible deal offered by a real homeowner. Is that right?

A. That's what's in the MLS listing, which I have not seen but --

Q. Did you approve any of the information that was put in here?

A. I don't remember that.

MR. MAYBANK: Your Honor, at this time I would like to move into evidence -- it would be Exhibit Number 232. It is the information provided by the plaintiff, Ms. Cook [phonetic], and her husband, in this litigation as to complaints about significant

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complaints about the unit.

THE COURT: Any objection?

MR. MCDONALD: No objection.

THE COURT: 232 admitted without objection.

MR. MAYBANK: Thank you, Your Honor.

[Whereupon, Defendants' Exhibit Number 232 is marked by the court reporter]

[Whereupon, Defendants' Exhibit Number 232 is admitted into evidence by the Court]

MR. MAYBANK: Thank you very much, ma'am. Answer any questions they may have.

THE COURT: Redirect?

MR. MCDONALD: I'm fine, Your Honor. Thank you very much.

THE COURT: You may step down. Thank you very much, Ms. Nelson.

Call your next witness.

MR. MCDONALD: Your Honor, the plaintiffs call Mr. Robert Graham.

[Whereupon, Mr. Graham comes forward]

THE CLERK OF COURT: Raise your right hand.

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

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THE WITNESS: Yes, I do.

THE CLERK OF COURT: State your full name and spell your last name.

[Whereupon, Mr. Graham takes the witness stand]

THE WITNESS: My full name is Robert, middle initial J, Graham. G-R-A-H-A-M.

MR. MCDONALD: Mr. Graham, how are you doing this afternoon?

THE WITNESS: Very well. Thank you.

MR. MCDONALD: Good.

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ROBERT GRAHAM,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCDONALD:

Q. Mr. Graham, where are you from?

A. I was born in New Jersey and lived in Connecticut for thirty years before moving to Charleston eight years ago.

Q. And what brought you down to Charleston eight years ago?

A. The weather, medical care, the friendliness of most of the people that I have met here, and a desire to live on Daniel Island.

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Q. And did you retire down here?

A. Yes, I did.

Q. And what did you retire from?

A. I had a one-man executive-search firm in Westport, Connecticut. I specialized in human resource executives.

Q. Is the term headhunter kosher? Is that --

A. It would be appropriate, yes.

Q. So a headhunter.

A. Or a body snatcher sometimes.

Q. Sir, did you have occasion, when you moved down here, to look around to decide -- you said just Daniel Island -- decide on where you wanted to live?

A. Once we discovered Daniel Island, we were certain we wanted to live on Daniel Island.

Q. Okay. And that's you and your wife, Maureen; correct?

A. Of thirty-nine years.

Q. And at that time -- at that time frame -- you said eight years ago. So that would have been about 2005; correct?

A. April 15th, 2005.

Q. And you were in the courtroom earlier when you heard the various stipulations; correct?

A. Yes, I have [phonetic].

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Q. So I'm moving through this with you, sir. But the -- did you come to purchase a unit at The Oaks?

A. I had previously purchased, with my wife, a town home at Daniel Island Park.

Q. And how did you -- and did you actually move into that town home?

A. On April 15th, 2005.

Q. And how did you come from living in that town home on April 15, 2005, to purchasing The Oaks?

A. Well, we're still in that town home.

Q. Okay.

A. Okay. Since April 15th, 2005.

We spoke with the realtor, Angie Johnson, who had sole us the town home. And my wife is disabled. She has both visual problems and mobility problems and she can't drive. And The Oaks looked very appealing to us because at some point we're going to have to be all on one floor. So the intent in buying The Oaks was for it to be our permanent residence, but not short term.

Q. And were -- did you, in fact, purchase a unit at The Oaks?

A. Yes, we did.

Q. And did you -- and you never moved into that unit, did you?

A. Correct.

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Q. And what brought that about, why you decided not to move into the unit at The Oaks?

A. For one thing, we're very comfortable in the town home and there's no immediate need for us to be all on one floor.

Q. So the purchase of the unit at The Oaks was kind of in the future with regard to medical issues that may or may not arise?

A. Yeah. We're pretty sure they're going to but hope -- maybe they won't.

Q. I'm an optimist.

In the -- did you try and rent it after you purchased it?

A. We rented it within sixty days of purchasing it.

Q. And you purchased it from Daniel Island Riverside Developers on April 5th of 2006; correct?

A. I think the closing date was a different date, like April maybe 29th, 27th. I think that's what the --

Q. So in April of 2006?

A. That's correct.

Q. And you were able to rent it you said within sixty days of closing?

A. That's right.

Q. And what happened? Were you able to rent it continuously?

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A. Well, we were able to rent it for $2900 a month, because it's a top-floor unit, from July 1st of 2006 through August 30th, 2007, to the same couple.

Q. Okay. From July 1st, 2006 to August 30th of 2007?

A. That's correct.

Q. And what happened? Why did that couple move out? Do you know?

A. Yeah. They had a home that was being built for them in Mount Pleasant.

Q. And did you try to find a new renter?

A. No, I did not.

Q. Okay. And why not?

A. Well, because at that time there was near hysteria amongst the owners of The Oaks about mold. And I hired a mold specialist, a Mr. Gould, and paid him $450 to inspect my unit. And when I read his report, I was very concerned about the morality of renting that unit so I took it off the market. In other words, I did not seek another tenant because of the content of Mr. Gould's report.

Q. And that would have been in August of 2007?

A. It was September, after the unit was vacated by the tenant. That's when Mr. Gould did his work.

Q. And were you ever able to ultimately rent it

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again?

A. Yeah. I was able to rent it, quite surreptitiously, about a year later, just for two months, to a government employee that was in for a short-term assignment. And that involved renting furniture, et cetera, et cetera. So that was a short-term rental.

And in April of 2010, I put it on the market because at that point there had been absolutely no evidence of mold, decay, bad smells, rotting walls. The apartment looked like it had survived the chaos that was surrounding us in building six. And soon after putting it on the market, we rented it until we sold it. So we rented it beginning May 1st, 2010, and we sold it in February of 2012.

Q. And you sold it for?

A. $330,000.

Q. And you paid 667,000?

A. -- six hundred -- well, a little bit more because we had some extras. It was like six seventy-five.

Q. Some of the options.

All right. And why did you sell it in March of 2012?

A. We could no longer carry it. We were getting about $2300 a month, less ten percent to a broker. I had been retired for eight years. We have no income other

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than investment income and social security. It was bleeding me dry.

Q. And have you hired Mr. Donato to determine what your individual damages may be?

A. Absolutely.

Q. And other than the damages which you hired Mr. Donato to determine, have you -- are you asking this Court for any other damages?

A. I'm asking for loss of rental income and --

Q. Why are you asking for loss of rental income?

A. Because I had to take it off the market because of the problems we had with the building -- buildings.

Q. Okay. How much lost rent are you asking this Court for?

A. I believe the number is approximately $43,000.

Q. And do you have any out-of-pocket expenses?

A. Approximately $2,000 for repairs that were absolutely necessary, plus the fee to Mr. Gould, the mold man.

MR. MCDONALD: Beg the Court's indulgence.

Mr. Graham, please answer any questions the defense may have of you.

THE WITNESS: Certainly.

THE COURT: Cross-examination?

MR. MAYBANK: Yes, Your Honor.

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Good afternoon, Mr. Graham.

THE WITNESS: Hello, Mr. Maybank.

MR. MAYBANK: How are you today?

THE WITNESS: Fine. Thank you.

MR. MAYBANK: Good.

CROSS-EXAMINATION

BY MR. MAYBANK:

Q. The town home: where on Daniel Island is that?

A. It's in Daniel Island Park, Rose Lane.

Q. Is it a part of a group of town homes?

A. Yes, it is.

Q. Was that built by Trammell Crow?

A. No, thank goodness. It was built by Donnie Smith. J.D. Smith.

Q. Why do you say, no, thank goodness, it wasn't built by Trammell Crow?

A. Because I should have said more correctly, I'm very happy to say Donnie Smith built it. He's a terrific builder.

Q. But why did you say you're glad that it wasn't a Trammell Crow development?

A. Because I'm happy that Donnie Smith built it.

Q. Do you know anything about Trammell Crow?

A. Hardly anything.

Q. Do you know that they've been in litigation on

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Daniel Island?

A. No, I do not.

Q. So on August of 2007, Mr. Gould did a mold report for you?

A. Actually, it was September of 2007, Mr. Maybank.

Q. Did you give that report to the Daniel Island Riverside Developers representative?

A. No.

Q. Did you give that report to anybody at Daniel Island or Carriage Hill?

A. No, I did not.

Q. What steps, other than getting that report, did you take to address the mold issue?

A. None, other than keeping the place vacant.

Q. Did the -- and at some point in 2010, your morality then turned and you put it back on the market, as you no longer saw evidence of mold decay?

A. Correct.

Q. So you're asking this Court to award you $43,000 in lost rents on a unit that you voluntarily withdrew from a rental program on a medical or some type of an investigative report that you did not share with my clients?

A. That's correct.

Q. If you were the builder or developer and

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somebody had a problem that you are now claiming $43,000 for lost rents, wouldn't you want to know that that person was having that problem?

A. If I were the builder, I would want to know.

Q. So wouldn't you think it would have been the more prudent thing to advise Carriage Hill or Daniel Island of the problem?

A. Not in light of the lack of responsiveness that many of my friends and neighbors had encountered.

Q. No. That's not asking about them. I'm asking about you.

A. Maybe you should ask me again, please.

Q. Sure.

You're asking for $43,000 on a problem you never even told my clients about; correct?

A. That's correct.

Q. On a unit that you could no longer carry that was bleeding you dry; correct?

A. Correct.

Q. And you would agree with me that the reason why you could no longer carry it and you sold it when you did is because you, as you said, didn't have the income to afford it?

A. That's also correct.

Q. When the first renters left, they left not

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because of the mold problem; correct?

A. That's correct.

Q. All right. And each time you have put it on the market you have been able to rent it successfully; correct?

A. On the two occasions that I did, yes.

Q. When you sold your unit, did you sell it as a short sale?

A. Yes, I did.

Q. Did you disclose to the subsequent purchaser the litigation problems through a --

A. I'm quite sure we did, yes.

Q. Do you have a copy of the South Carolina residential disclosure form?

A. No, I do not.

Q. Do you recall filling one out?

A. I'm quite certain I did because the agent we've dealt with, we've dealt with for three years and she was very familiar with the issues at The Oaks.

Q. And who is that agent?

A. Angie Johnson.

Q. I thought you were going to say Angela Black.

A. No.

Q. If, in fact, that information is out there, would you expect it to be in the MLS -- in the MLS?

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A. I would certainly hope so.

Q. Do you know who purchased your unit?

A. I believe a couple from Seabrook Island named Jones [phonetic].

Q. Did the bank file any type of deficiency judgment against you?

A. No.

Q. Was the difference in what you paid versus what you owed forgiven? And you don't have to --

A. Yes. I got a 1099.

Q. So they wrote that off?

A. Yes, they did.

Q. Did you pay taxes on the outstanding balance?

A. Well, I haven't filed my return for 2012 yet.

Q. Can you tell me what that 1099 value was?

A. It was close to $150,000.

Q. Okay. And with no income, as I believe you said you were retired -- is that correct?

A. Investment income, social security.

Q. Do you know what percentage or what amount of taxes that you will be required to pay on that 150,000?

A. My loses have been so significant that when I checked with my accountant, he assured me that we would have limited tax liability.

Q. I hate to say this, but I'm not an expert in --

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I don't know exactly what that means.

A. Well, it means the loses that we've incurred, many of which are carry-over loses, will offset the 1099.

Q. I see. And those are loses on other investments?

A. Correct.

Q. Not on this one?

A. I'm not exactly sure, because we haven't filed the return.

MR. MAYBANK: Thank you, sir.

THE WITNESS: You're welcome, sir.

MR. MCDONALD: Plaintiffs call Mr. Wallace Barr.

THE COURT: Hold on a second.

Sir, let me ask you one question. Did you have to take some money to the closing?

THE WITNESS: No, sir.

THE COURT: Okay. Thank you very much.

[Whereupon, Mr. Graham exits the witness stand]

THE COURT: We're going to -- how long is the next witness going to take?

MR. MCDONALD: I can -- my understanding of the stipulation, I can put him up in less than five minutes.

THE COURT: Okay. Bring him on.

MR. MCDONALD: The plaintiffs call Mr. Wallace

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Barr.

[Whereupon, Mr. Barr comes forward]

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

THE WITNESS: I do.

THE CLERK OF COURT: State your full name and spell your last name.

THE WITNESS: Edward Wallace Barr, III. The address is 2068 Ion Avenue [phonetic], Sullivans Island, 2940 --

MR. MCDONALD: Mr. Barr, you were in the courtroom earlier when the stipulation was made?

THE WITNESS: Yes.

MR. MCDONALD: We're going to move through this.

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EDWARD WALLACE BARR, III,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCDONALD:

Q. You, sir, where are you from?

A. Bowling Green, Kentucky.

Q. And how did you come to Charleston?

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A. We used to come to the beach when I was a child. And then moved to Nashville, Atlanta, and Camden -- I'm in the music business -- promoting several large touring acts across the southeast. And being in Camden, being close to Charleston, it just seemed like a natural -- come back here when I went out and started selling real estate.

Q. And you had an occasion to buy a unit at The Oaks at Rivers Edge, did you not?

A. I bought one myself and sold three to three other clients.

Q. And you're a real estate agent?

A. Yes.

Q. So when you say sold them: to a real estate agent?

A. I was representing the buyer side and Angela Black was representing the seller.

Q. And your business partner is named Thomas Keane?

A. Correct.

Q. And you-all purchased a unit in building three?

A. Building three, two -- I think we signed the contract on August 24 of '04, and it was finished two years later, and we closed on it on September 4 of '06.

Q. And are you on the second floor or the third floor?

A. Second floor.

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Q. And after purchasing at The Oaks in 2007 and 2008, did you have occasion to list your unit? I'll hand you what's been marked as 112-G. If you would take a look at 112-G.

A. Yes. And I had the listing -- the listing is here. The first time I listed it was on 1/19/07 and we withdrew it on 8/1/07. So it was listed for eight months. Listed for eight forty-seven five.

Q. And when did you list it in 2008?

A. I listed it on 9/30/08 and, let's see, it was withdrawn on 6/1/12. So I --

Q. And you had dropped the price in 2008 to seven forty-nine nine; correct?

A. It started out -- well, I started out at seven forty-nine nine, dropped it as low as five fifty-five and no takers.

Q. And you tried to sell it in 2008?

A. '07, '08, '09, '10, '11 and '12, and then gave up.

Q. And you hired Mr. Donato to determine what your individual damage may be in this lawsuit; correct?

A. Correct.

MR. MCDONALD: That's all I have, Your Honor.

THE COURT: How much did you pay for the unit?

THE WITNESS: Right under 700. Like six ninety-

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seven five, something of that nature.

THE COURT: How long is your cross?

MR. MAYBANK: Brief, Your Honor.

THE COURT: Brief? About five minutes?

MR. MAYBANK: I'll try to be, yes, sir.

THE COURT: Well, in about seven we're going to stop talking and leave. Okay?

MR. MAYBANK: I understand.

THE COURT: If you can finish, great. If not, we're leaving.

MR. MAYBANK: I'll end up talking to myself.

Mr. Barr, my name is Roy Maybank. I represent Daniel Island Riverside Developers and Carriage Hill. How are you?

THE WITNESS: Fine. How are you?

MR. MAYBANK: I am well. Thank you.

CROSS-EXAMINATION

BY MR. MAYBANK:

Q. You currently live on Sullivans Island?

A. Correct. In a rental property.

Q. You have a -- you rent?

A. Yes.

Q. Is it your property or are you renting from someone?

A. I'm renting from Kenneth Jones.

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Q. And who is Kenneth Jones?

A. He owns the property. He and his wife own Jones Real Estate.

Q. Got you.

How much do you pay a month on Sullivans Island?

A. Sixteen fifty.

Q. $1,650?

A. Correct.

Q. That residence that you're renting, is that a single-bedroom apartment?

A. It's an old house built in 1920. I've got the downstairs, and then the upstairs is a separate apartment.

Q. Do you have a kitchen?

A. Yes.

Q. Do you have a bathroom?

A. Yes.

Q. Do you have a shower?

A. Yes.

Q. And you're getting all that on Sullivans at $1650 a month?

A. I should be paying about $1,000 more.

Q. That's not what I'm asking.

A. Yes. I'm paying --

Q. I asked you if you were paying $1650 a month.

A. Exactly.

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Q. Now, you sold three units; is that correct?

A. Three other units to clients. I bought one myself. Tom Keane and I bought one. And then I sold three of the units to three other real estate clients.

Q. When did you sell those units to those clients?

A. We all contracted about the same time. I really don't know exactly what the contract dates were. They bought in buildings one and two, I believe, so they probably went up earlier. I believe building two started first, because there were some issues with the concrete construction and building one was supposed to be -- as a matter of fact, all of the units, when I first saw these I was told by John Behringer, were going to be concrete buildings. And I asked the agent, Angela Black, I said, how do you they do this. And she said, well, let's go out to the trailer and find out. So we marched out to the little trailer. And John basically said they were going to pour the sides of the building out of concrete and stand them up with a crane like this [indicates], attach them together, and then do concrete floors. Based on that I figured, you know, hotels are built that way, hotels are quiet, these ought to be quiet. I've been in hundreds.

Q. I just ask you when you bought the three units. I didn't --

A. I understand.

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Q. -- say anything about --

A. Well, it's about -- it's about that time. The -- I only bought one myself.

Q. But then you sold the other three?

A. Well, I was the buyer's agency -- agent for the other three buyers.

Q. And at some point, you would go out there and look at construction?

A. Early on, yes. I had pretty much free access to the building. I knew where a key was in the construction trailer, so I was allowed to go in there when I had other clients coming out.

And then towards the end, it tightened up. I went out there with clients one afternoon -- I think it was on a Sunday. The armed whatever was there, would not let me in. I said, look, I'm a real estate agent, I want to show -- these people want to see what the units look like. He said we couldn't go. I said, is the street -- I said, is this not a public street. He said, don't push me, you don't want to go there. So obviously we didn't drive in.

Q. And so at some point before you sold those three units, you knew that they were going to be stick-built. Did you ever look at a set of the plans?

A. I never knew they were going to be stick-built

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because they were -- I didn't see the plans, no. I did not know they were going to be stick-built. I was told by Behringer they were going to be concrete. And shortly after the deals were ratified and I already got these people under contract, that they began to build number two, which is a stick-built building, as well as the rest of them were. Number one, my understanding, was going to be built first.

Q. Do you know which plans were submitted to the County for approval?

A. I don't know which plans were submitted to the County. But I --

Q. Did you go down to the County?

A. -- but I do know what I was told by John Behringer.

Q. Did you go down to the County and look?

A. No.

Q. Did you go down and look at the master deed when it was filed?

A. No.

Q. Certainly, as a unit owner, you would think that you would have some responsibility to go down there and do that, wouldn't you?

A. No. I had --

Q. Okay.

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A. I had done probably 200 real estate transactions. Nor to my knowledge have any of my buyers or sellers done that.

Q. Now, you purchased your unit sometime in '06; is that correct?

A. Early -- it closed I think on the 4th of September of '06.

Q. So September you bought it for 697?

A. Ballpark. Yes.

Q. October, November, December. January you popped that baby back on the sales market for $847,000?

A. Correct.

Q. I mean, was it Los Vegas out there on Daniel Island? I mean, these -- I hear -- all the testimony I've heard, there was a lot of speculation going on out there, wasn't it?

A. I don't know if you would consider it a lot of speculation. Daniel Island was very hot at that time. It was brand new, people were moving out there with the population and housing moving up further up 17 North. You know, it kind of won. It got to be a very hot spot, by default of its location, because everything else was so far away.

Q. Are you -- you haven't sold your unit yet, have you?

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A. No, not --

Q. Do you still own it?

A. I still own it.

Q. I'm looking at your -- did you get back -- how much did you put down on this unit; do you know?

A. I think we put down either five or ten percent.

Q. All right. Do you recall --

A. I think we put down ten. I don't know. Five or ten.

Q. And did you get back money at closing?

A. If we put down ten percent, then we probably did a ninety-five percent financing and took back -- I think that's what we did. I'm not positive. We took back -- we financed -- we put down ten percent, which means we had to come up with a ninety-percent loan. I think we came up with a ninety-five percent loan, took my commission, threw it into the pot, took the extra five percent and threw that in the pot to make the mortgage payments for a year with the idea of either I was going to consider buying it from the corporation within a year or we were going to sell it within a year.

Q. All right. Did you make money on the three units you sold?

A. I made a commission off of them, yes.

Q. And did you give that commission back to

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anybody?

A. No.

Q. So it looks to me like, from your closing statement, you received back $30,000 of the 69,000 you put down. Is that about right?

A. That came back to the two of us to our LLC.

Q. So y'all financed ninety-five percent and you have no out-of-pocket actual loss. And you understand that the property values on Daniel Island have plummeted rather precipitously over the last five years?

A. I do have out-of-pocket loses.

Q. What were those, sir?

A. The cost --

MR. MAYBANK: Were those agreed to in stipulation?

MR. MCDONALD: They're on the chart.

MR. MAYBANK: Has he got some on the chart? I didn't see. I apologize.

[Whereupon, Mr. McDonald reviews documents]

THE COURT: All right. The Court will see you in the morning.

MR. MAYBANK: Thank you, Your Honor.

THE COURT: All right. We'll recess until 9:30 in the morning.

[BENCH TRIAL ADJOURNS AT 4:32 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 Tuesday, April 9, 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

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

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 3 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

FORM C-100 - LASER REPORTERS PAPER & MFG. CO 800-626-6313

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 10, 2013, Commencing at 9:51 a.m.

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APPEARANCES OF COUNSEL

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INDEX TO EXHIBITS

[Exhibits pre-marked by counsel unless otherwise noted in the transcript]

MARKED/ADMITTED

PLAINTIFFS'

Plaintiffs' Exhibit Number 31-A / 764
[Cost Estimate - Southeast Construction]

Plaintiffs' Exhibit Number 31-B / 775
[Palmetto Proposal]

Plaintiffs' Exhibit Number 49 / 722
[Field Report - Padgett]

Plaintiffs' Exhibit Number 90 / 656
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Plaintiffs' Exhibit Number 92 / 656
[Appraisal]

Plaintiffs' Exhibit Number 93 / 656
[Appraisal]

Plaintiffs' Exhibit Number 94 / 656
[Appraisal]

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[Appraisal]

Plaintiffs' Exhibit Number 96 / 656
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[Appraisal]

Plaintiffs' Exhibit Number 98 / 656
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[Appraisal]

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MARKED/ADMITTED

PLAINTIFFS'

Plaintiffs' Exhibit Number 100 [Appraisal] / 656

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Plaintiffs' Exhibit Number 101-A [Appraisals] / 656

Plaintiffs' Exhibit Number 109 [Marketing Material] / 656

Plaintiffs' Exhibit Number 122-E [Warranty Claim Form] / 608

Plaintiffs' Exhibit Number 122-F [Warranty Claim Form] / 608

Plaintiffs' Exhibit Number 122-J [Warranty Claim Form] / 608

Plaintiffs' Exhibit Number 122-N [Market Record] / 614

Plaintiffs' Exhibit Number 122-Q [Photograph] / 622

Plaintiffs' Exhibit Number 122-U [Photograph] / 622

Plaintiffs' Exhibit Number 122-V [Photograph] / 622

Plaintiffs' Exhibit Number 122-W [Photograph] / 622

Plaintiffs' Exhibit Number 138 [E-mail dated 9/10/08] / 617

Plaintiffs' Exhibit Number 139 [E-mail dated 9/18/08] / 618

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Plaintiffs' Exhibit Number 182 [Hardwood Floor Remediation]	/ 776
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Defendants' Exhibit Number 173 [Curriculum Vitae - Stewart]	/ 844
Defendants' Exhibit Number 174 [Report - Stewart]	/ 844
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Defendants' Exhibit Number 176 [Report - Stewart]	/ 844
Defendants' Exhibit Number 177 [Report - Stewart]	/ 844
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Defendants' Exhibit Number 184 [Report - Stewart]	/ 844
Defendants' Exhibit Number 187 [Report - Stewart]	/ 844
Defendant's Exhibit Number 233 [MLS Listing	/ 694, 711
Defendants' Exhibit Number 234 [MLS]	/ 711
Defendants' Exhibit Number 235 [MLS]	/ 711
Defendants' Exhibit Number 236 [Photograph]	810 / 811

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PROCEEDINGS

THE COURT: What were we on? Cross, I believe?

MR. MAYBANK: We were, Your Honor. At this time, we are done with Mr. Barr.

THE COURT: You don't have any further questions?

MR. MAYBANK: No, Your Honor.

THE COURT: Any redirect?

MR. MCDONALD: No redirect, Your Honor.

THE COURT: Mr. Barr, you may step down. Thank you very much.

[Whereupon, Mr. Barr is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. MCDONALD: Your Honor, Brent McDonald, may it please the Court, on behalf of the plaintiffs.

The plaintiffs call Ms. Ashley Severance.

[Whereupon, Ms. Severance comes forward]

THE CLERK OF COURT: Stand here and raise your right hand.

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

THE WITNESS: I do.

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THE CLERK OF COURT: State your full name and spell your last.

[Whereupon, Ms. Severance takes the witness stand]

THE WITNESS: Full name is Elizabeth Ashley Phillips Severance. Last name is spelled S-E-V-E-R-A-N-C-E.

MR. MCDONALD: Good morning, Ms. Severance. How are you doing?

THE WITNESS: Good morning.

- - - - -

ELIZABETH A. SEVERANCE,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCDONALD:

Q. Could you please state your address for the record, as well?

A. 124 Fairbanks Oaks Alley, Unit 2-D.

Q. Ms. Severance, where are you originally from?

A. Lakeland, Florida.

Q. And how did you wind up in Charleston?

A. My husband was offered a job and so we moved here in 2004. Spring of 2004.

Q. And did you look for a home?

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A. We did.

Q. And where did you look for a home?

A. We looked in several areas. My husband wanted to be on the water, or near the water, and I wanted to be downtown in the city. And we wanted to renovate and so we found a home that we could renovate. It's a three-bedroom home. And so we bought it downtown.

Q. With the intention of renovating; correct?

A. That's right. That's right.

Q. So where did you-all -- were you able to live in the home while you were renovating it?

A. No. It was going to be a major renovation. We bought an as-is, a fixer-upper and -- but we lived -- we knew we were going to live in it for a period of time because we needed to save for the renovation and plan for it. So we bought -- we bought and moved in with the intent to renovate a couple years down the road.

Q. And did you, in fact, start those renovations?

A. We did. It was a year-long renovation.

Q. And what did you do? If you couldn't live there, what were you going to do?

A. Well, we were thinking about renting a place in Daniel Island, and then I started to try to talk my husband into maybe buying a place. I thought it might be a good idea to pay somebody else rent -- to own a place

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and then to sell it.

Q. Okay. And is this how you got involved with The Oaks project?

A. That's right.

Q. And how did you come to find out about The Oaks?

A. Lynn Barker was a real estate agent, at Daniel Island Real Estate, and she told us about it.

Q. And did you, in fact -- I'll hand you what's been marked as Plaintiffs' Exhibit 122-B. Do you recognize that document?

A. That's right.

Q. What do you recognize it to be?

A. That was the mockup of what was going to be built.

Q. Were these the marketing materials that you received for The Oaks project?

A. It was.

Q. And did you ultimately sign a contract in order to purchase --

A. We did.

Q. -- a unit at The Oaks?

A. We did.

Q. And you --

A. 2004.

Q. And you signed that contract in 2004; correct?

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A. We did.

Q. And the purchase price in 2004 was $753,176; right?

A. That's correct.

Q. Okay. And the buildings were not constructed at that time; correct?

A. They were not constructed.

Q. And did you ultimately close on the unit?

A. We did.

Q. And you closed somewhere around December of 2006; correct?

A. October of 2006.

Q. October of 2006. Okay.

And what did you do after you closed on the unit?

A. We moved in right away because we were ready to start the renovation.

Q. And was it just you and your husband? Did you have any children at that time?

A. We had two children and I was pregnant with my third child.

Q. And where is your unit? You're in unit --

A. 2.

Q. -- 2-A -- 2-B in building?

A. Building two, second floor, B.

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Q. So you're on the second floor?

A. That's right.

Q. And what was the experience upon moving into The Oaks?

A. Well, it was a good experience initially. They're beautiful condos from the exterior and the views were fantastic. We had a water view. I finally got my husband a water view that he had wanted. And so the experience was good initially.

Q. And what happened? You said it was good initially. What happened next?

A. Right. Well, we began to have trouble with the floors. They were buckling and cupping. And it was challenging because they would come in and fix them, but they used this glue that was really strong and I had to -- by this time, I had actually moved in and had my third child like a week later. By that time, I had an infant and two children. And so we had to move out during this process. It happened like maybe five, six, seven times, where we had to like leave for a day or two because the strong was really -- the smell was really strong.

Q. Where they were -- where the developer was attempting to fix your floors?

A. That's right.

Q. I'll hand you what's been marked as Plaintiffs'

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Exhibit 122-E, 122-R, and 122-J and ask if you recognize those documents.

A. I do.

Q. Are those warranty claim forms that you filled out and submitted to the developer after moving in?

A. They are.

MR. MCDONALD: I would move those into evidence, Your Honor.

THE COURT: Any objection?

MR. ALTMAN: No objection.

THE COURT: 122. You say E, F and J? Is that right?

MR. MCDONALD: I believe so. Let me just double-check.

THE COURT: Admitted without objection.

MR. MCDONALD: E, F and J. You are correct. Thank you, Your Honor.

[Whereupon, Plaintiffs' Exhibit Number 122-E is admitted into evidence by the Court]

[Whereupon, Plaintiffs' Exhibit Number 122- F is admitted into evidence by the Court]

[Whereupon, Plaintiffs' Exhibit Number 122-J is admitted into evidence by the Court]

Q. [Mr. McDonald] So you actually filled out the warranty claim forms and tried to have the developer come

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out and perform the repairs?

A. That's correct.

Q. And at least on the floors, it took many times for them to get it done?

A. Many, many time. I remember leaving five or six times, but they came more than five or six times to fix the floors.

Q. Okay. And is it -- are the floors fixed today?

A. No.

Q. And other than -- so you filled out the warranty items. And what was your next experience with The Oaks?

A. Well, the insulation problems were discussed, and we had the same problem. On this warranty form I wrote -- this is 12/19/06 -- no insulation between our ceiling and the floor of the unit above us; it sounds like drums when there are people walking upstairs; sometimes it's hard to carry on a conversation because of the loudness.

Q. Okay. And so that -- so you brought the sound issue to their attention?

A. That's right. That was in December of 2006, about two months after.

Q. And what did they tell you they were going to do with the sound issue?

A. They said they were addressing it.

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Q. Did they say that they were going to fix the problems, with the sound, that you brought to their attention?

A. That's what I was led to believe.

Q. And did they ultimately perform a remediation on your unit?

A. They did.

Q. Okay.

A. Yeah.

Q. And were you still living there when they performed the remediation?

A. Well, we were not. We knew our renovation was going to last a year. And they came -- I can't remember the exact timing but when they came up with the plan to remediate, it was close to our move-out date. And at the time, I had two small children. I had a two-year-old, a one-year-old and -- actually, a three-year-old, a two-year-old and an almost one-year-old and I was pregnant with my fourth child. And so we knew we wanted to get out. It was not something we could stay in for. So we waited until we moved back to our primary home to have the remediation.

Q. Were you trying to sell the home at this time while they were doing the sound remediation?

A. No. I couldn't sell the home that way. I

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wanted to sell the home. I actually wanted to list the home much earlier than we even moved out, but I couldn't.

Q. So you were waiting on them to fix the sound problems they told you they were going to fix?

A. That's right. That's right.

Q. And did they ultimately perform the remediation on your unit?

A. Yes, they did. They were supposed to do it right after we moved out but for some reason there was a delay. And I became very anxious about it because I knew that listing -- I wanted to list the home. Each month that passed was another mortgage I had to pay. I wanted to list the home and sell it.

Q. And after they told you that the sound remediation had been fixed, did you try to put it on the market?

A. We did. It took three months -- three and a half months to finish the sound remediation, and that put us into the holidays.

Q. In the holidays of 2007; correct?

A. In the holidays of 2007.

We listed it in 2008, January of 2008, right after the remediation was completed.

Q. And were you able to sell it at that time?

A. No. And January is a terrible time to try to

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sell a home. Right before the holidays is a terrible time to sell a home.

But, no, we were not able to sell it. We had buyers started looking in mid -- in the January time frame, we had a very interested buyer that came back three times. And I had had conversations with the realtor, the selling realtor, the realtor that represented the buyer, and they were going to put a contract down and we had discussed verbally what that price would probably be and what the contingencies would be.

Q. What was your understanding of the price?

A. That it would be about eight forty-nine.

Q. Okay. And did that buyer ultimately close on your unit?

A. No. It was really sad. Just so frustrated. The buyer came back, for the third visit, with their spouse. And they were walking the grounds. They had already been in the unit, evidently. And they were walking the grounds and they ran into a disgruntle renter in building number three -- we were in building number two -- and the renter just went off on The Oaks and all the problems.

And some of these problems that at the time I -- I weren't even -- I wasn't even aware of, because our building was one of the last to be completed and so these

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problems hadn't shown up at the time. The only problems I had known about were the wood floors and the sound, the remediation. So, ultimately, the buyer decided that they would not buy and they walked.

Q. And the problems that you had brought to the attention of the developer through your warranty claim process, whatever that was?

A. What was that?

Q. And whatever problems, you brought to the attention of the developer --

A. That's right. That's right.

Q. -- on the warranty problems?

All right. So what did you do next after you lost that buyer in 2008? Did you keep trying to sell it?

A. I did. We needed -- well, I got -- I was nervous, so I took it off the market and I just -- I was scared, I didn't know what was going on, so I took it off the market and then put it back on the market a couple of weeks later.

Q. Okay. And what happened after that?

A. Well, we couldn't sell it. We -- you know, nobody was interested in a defective product.

Q. And I'll hand you what's been marked as Plaintiffs' 122-N and ask you if you recognize that document.

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A. Yes.

Q. And is that the document that lists when you tried to sell it and the sales prices you listed it for?

A. That's right. It's a market record.

MR. MCDONALD: And I would move 122-N into evidence.

THE COURT: Any objection?

MR. ALTMAN: No objection.

THE COURT: 122-N admitted without objection.

[Whereupon, Plaintiffs' Exhibit Number 122-N is admitted into evidence by the Court]

Q. [Mr. McDonald] And so after all these issues, did you have an occasion to go back to the developer and discuss a potential option that you presented to them?

A. That's right. I did.

Q. What did you do, Ms. Severance?

A. I went to the developer and I asked them if they would buy it back for the price that I had bought. Not even worried about the improvements we had made, the California closets, all -- just buy it back for the price that I bought it for.

Q. And that would have been the price you contracted for, back in 2004, with them?

A. That's right.

Q. And the price you paid them for the unit?

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A. The price I paid for the unit.

Q. You offered the developer, listen, I don't want the cheese, I just want out of the trap, okay, and here's --

A. That's right.

Q. -- you take the money back; right?

A. That's right. I did.

Q. I'll hand you Plaintiffs' Exhibit 138 and ask if you've ever seen that document before.

[Whereupon, the witness reviews documents]

A. Yes, I have.

Q. [Mr. McDonald] And what do you recognize that document to be?

A. It's an e-mail correspondence from Meggan Crocker.

Q. To who?

A. To Rich Behringer.

Q. Okay. And what is the substance of that e-mail correspondence?

A. Well, it's in regards to her following up with him. I had called so many times. I had been in the trailer to ask them if they would be -- to entertain us, and nobody was getting back to me. And I continued to call Meggan Crocker. She said, I will connect with him today. And so this is her message to Rich Behringer:

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Ashley Severance followed up with me again today to ask whether you, they, have come to a decision about buying back their home as indicated in my e-mail below. She said that she just wanted to know either way so she could move on, sell her home. Also, the second part is related to it.

Q. So to that e-mail is an e-mail from Meggan Crocker to Rich Behringer talking about your proposal to sell it back to them --

A. That's right.

Q. -- for $749,000?

A. That's right.

Q. Which was your purchase price?

A. Uh-huh.

Q. And significantly lower than what you had an offer to purchase it at?

A. That's right.

And in the other e-mail, she explains my situation, how I was devastated at the loss of the sale.

MR. MCDONALD: I would move 138 into evidence, Your Honor.

THE COURT: Any objection?

MR. ALTMAN: No objection.

Q. [Mr. McDonald] Hand you what's been marked as --

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THE COURT: Admitted without objection.

[Whereupon, Plaintiffs' Exhibit Number 138 is admitted into evidence by the Court]

Q. [Mr. McDonald] Hand you what's been marked as Plaintiffs' Exhibit 139.

[Whereupon, the witness reviews documents]

Q. [Mr. McDonald] Do you recognize that document?

A. I do.

Q. What do you recognize it to be?

A. It's an e-mail from Meggan Crocker to me.

Q. And what's the date of it?

A. The date is August 18th, 2008.

Q. You mean September 18th, 2008?

A. I'm sorry. September.

Q. And what is the substance of that email?

A. The substance of the e-mail is basically Meggan telling me that they were not interested in buying back the unit.

Q. At the price that they had sold it to you?

A. At the price they sold it to me.

Q. Did they tell you why they weren't interested in buying the unit?

A. No.

MR. MCDONALD: I would move Exhibit 139 into evidence, Your Honor.

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THE COURT: Any objection?

MR. ALTMAN: No objection.

THE COURT: 139 admitted without objection.

[Whereupon, Plaintiffs' Exhibit Number 139 is admitted into evidence by the Court]

Q. [Mr. McDonald] Ms. Severance, have you hired Mr. Donato in this case to determine what your individual damage would be relative to the --

A. Yes, I have.

Q. -- appraisal?

A. Uh-huh.

Q. And in addition to that, have you sustained any loss of rent or any inability to rent at market price?

A. Yes, I have.

Q. And what is that number for your lost rent?

A. The lost rent is $23,400.

Q. Okay. And have you incurred any out-of-pocket expenses?

A. I have.

Q. And what is the number on those out-of-pocket expenses?

A. $235 for floors we had to fix, and $850 for a leak, a pipe leak, that we had to fix, which I think is eleven five -- eleven thirty-five.

Q. Say those numbers again, Ms. Severance.

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A. Two thirty-five plus eight fifty.

Q. $10,085 -- excuse me. $1,085?

A. That's right.

Q. Okay. Just to follow up on the wood-floor issues: have your wood floors -- you're on the second floor?

A. That's right.

THE COURT: How much did you say -- you said lost rent is --

THE WITNESS: Loss of rent is $23,400.

THE COURT: 22,000 what?

THE WITNESS: $23,400.

THE COURT: Thank you very much. Go ahead.

MR. MCDONALD: And I misspoke, Your Honor. It was 1,085, not 10,085, on the out-of-pocket expenses.

Q. [Mr. McDonald] And just as regards to the wood floor, I'll hand you what's been marked as Plaintiffs' Exhibit --

THE COURT: You corrected your math?

MR. MCDONALD: Excuse me?

THE COURT: You corrected your math?

MR. MCDONALD: Yes, sir.

THE COURT: Okay.

MR. MCDONALD: It's 1,085, yes, sir, out-of-pocket.

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Q. [Mr. McDonald] I'll hand you what's been marked as Plaintiffs' Exhibit 122-Q, 122-U, 122-V and 122-W and ask if you recognize those photographs.

A. Yes, I do recognize those photographs.

Q. And are those photographs of your floor in your unit?

A. They are.

Q. Who took those photographs?

A. I did.

Q. And when did you take them?

A. Those were taken when we were living in the unit.

Q. And why did you -- why did you take those photographs?

A. Because of I wanted to give Carriage Hill an idea of what we were experiencing so that they would come in and fix it.

Q. And as you testified earlier, they tried to fix it and it's still not fixed?

A. That's right.

Q. And there's somebody holding a book on that, just so you could explain --

A. Yeah. That's actually my grandmother. She fell. She's fine. But she fell and she was telling me, you've got to do something about this cupping, because it

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was uneven terrain. And so that's a magazine to show how the floor is not even.

Q. Ms. Severance, let me ask you this, going back to the sound remediation. When they -- you had a discussion with the developer about the performing sound remediation in your unit; correct?

A. That's correct.

Q. Did you propose to the developer that you would just have them do it for the next owner?

A. Yeah, that's right. But it was only offered for a specific time, for current owners, and so I felt like I had to take the option.

Q. And so they told you if you sold it, they weren't going to do the sound remediation?

A. That's right.

Q. So you had to do it, as a current owner, and according to their terms?

A. That's right.

MR. MCDONALD: Ms. Severance, I appreciate your time here today, and please answer any questions these --

I would move those final pictures into evidence, Your Honor.

THE COURT: Which ones? What number?

MR. MCDONALD: Plaintiffs' Exhibit --

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THE WITNESS: 122-V, U and Q.

MR. MCDONALD: -- 122-V, 122-U, 122-Q and 122-W.

THE COURT: Any objection?

MR. ALTMAN: No objection.

THE COURT: Okay. 122-V, U, Q and W admitted without objection.

[Whereupon, Plaintiffs' Exhibit Numbers 122-Q, 122-U, 122-V, and 122-W are admitted into evidence by the Court]

MR. MCDONALD: Ms. Severance, please answer any questions these gentlemen may have for you.

THE COURT: Cross-examination.

MR. ALTMAN: Yes, sir.

Ms. Severance, I'm Charles Altman. I represent Daniel Island Riverside and Carriage Hill of Charleston.

CROSS-EXAMINATION

BY MR. ALTMAN:

Q. Do you have any listing agreements where you were trying to sell the property?

A. I listed my property because I had a real estate license.

Q. And you identified Exhibit 122-N I believe as your listing prices?

A. Just give me a second here. There's a lot of

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paper.

[Whereupon, the witness reviews documents]

A. Okay. Yes. It's in here.

Q. [Mr. Altman] And the first price you -- the first date you have on here in January 16, 2008?

A. That's right.

Q. And how much were you trying to sell it for at that time?

A. 879,000.

Q. And the most recent date you have is January 14th -- no, excuse me -- March 1st, 2009?

A. I'm sorry. Say that date again.

Q. March 1st, 2009.

A. March --

Q. It's at the very top.

A. That's right.

Q. How much were you trying to sell it for then?

A. Seven ninety-nine.

Q. Did you put the unit into the MLS? Multiple Listing Service.

A. I did.

Q. Did you list any of the problems and the fact that there was a lawsuit pending?

A. You know, it's been a long time and it was my first listing, actually, my only listing, you know,

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buyer's agent. I don't typically list homes but since it was mine, I listed it.

But I believe I filled out something called a seller's disclosure. And I don't remember what I wrote in it, but I imagine that I would have written that there was sound remediation done.

Q. But you were still looking for a price greater than what you paid for it; correct?

A. Well, that was what the market price would be, based on the comps that were done.

Q. Even though you said that there were some deficiencies in the unit? in the development?

A. Well, this is based -- the amount, the seven -- the eight seventy-nine was based on comps. You know, a realtor, what they typically will do, will run a query and then that's how they set the price. And so that's what I did.

Q. But as of March, 2009, you were still looking for more than what you had paid for it? paid for the unit?

A. That's right.

Q. And you were complaining of deficiencies in the unit; correct?

A. Yeah. There were a lot of deficiencies that were not known at that time. Actually, the majority of them.

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Q. The majority of them?

A. Yeah. For instance --

Q. Do you --

A. -- for instance, there's significant water intrusion in my windows right now, and the renter that we have there has to caulk pretty routinely. I never saw that when I was in the unit. I never saw the fogging. Our building was one of the last to be built and so a lot of the issues just didn't present themselves until later.

Q. You didn't know about the water problems with the windows in 2009?

A. No. No, I did not. I didn't know about that. I think it was -- it's hard to -- you know, it's -- it was a while ago. I believe it maybe was towards the end of 2009 that I was made aware of that. We weren't living there, so we didn't interact with many people, didn't -- you know, with four children, I didn't really have time to go to the meetings and so I just -- I didn't know about that until later.

Q. And so when you went to list it, you didn't investigate to see what exactly the problems were, did you?

A. You know, in my unit, yeah, I had a conversation with the realtor -- I can't remember his name, Jason, Jeremy -- the person that was representing the buyer that

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was very interested in our home. I had a conversation with him about the sound remediation and that it had been done, we had had problems and we had had the sound remediation done but I had not lived in the unit after the sound remediation was done, so I suggested that they check that out because I knew I was liable for that.

Also, the wood floors, I had a conversation with him about that. They had -- Carriage Hill had come in and fixed them, done a big fix, I believe when we had moved out. So they were fixed. But I had shared that with him. The water infiltration that we had had, that you see on Exhibit 122-J, that had been fixed.

So the things that I knew about, I disclosed to the agent. There are a lot of things that, you know, that we know now, the balusters that we see them splitting, the water that's coming in, I just didn't know or see at that time.

Q. You didn't go look, either, did you?

A. Well, you know, you don't know what to look for. You know what I'm saying? Like you can't -- you look at the balusters, they look great, you look at -- you know, it's hard to know. When something on the exterior looks fine, it's hard to know the interior is not right.

Q. Where is your real estate license? Who's it with? Which company?

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A. Atlantic Properties.

Q. Did you talk to any of the other realtors who were selling on Daniel Island?

A. Well, you see, it's quite small, Atlantic Properties. I'm a partner with one other person, and they do it part time. So it's fairly small. I have -- I work outside of my home doing something else, and my real estate is very small, on the side.

Q. You identified Exhibit 139 as being an e-mail from Meggan Crocker to you?

A. That's right.

Q. And Mr. McDonald asked you a question that alluded to the fact that Daniel Island did not buy it back from you for the price -- wouldn't buy it back from you for the price. Did they make a counteroffer to you?

A. No, they did not.

Q. They just said they weren't interested in buying it back?

A. They just said they weren't interested.

Q. So it had nothing to do with the price?

A. No.

MR. ALTMAN: Bear with me one moment, please.

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

Q. [Mr. Altman] Is the property currently listed for sale?

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Q. Has it been rented since then?

A. Yes. There's been some times here and there when we haven't had a renter, but for the most part it's been rented.

Q. Okay. And you testified that there was a fairly significant amount of lost rent that you were asking for?

A. That's right. We had to drop our price significantly to get a renter.

Q. What were you trying to rent it for?

A. The exact number each year?

Q. Yes, ma'am.

A. Okay. So the first -- in 2008, we rented it for twenty-four fifty, I believe.

Can I check my notes?

Q. Please.

A. Okay.

[Whereupon, the witness reviews documents]

A. Okay. I have a lot of rental contracts here.

Twenty-four fifty. So I was correct. And the next year, it was 2200. The following year it was 2400. And then we just renewed, started May 1, 2500.

Our unit overlooks the Wando River. It's a really gorgeous view. You look underneath oaks and you see the Wando.

We've made several upgrades. When we moved in,

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we installed California closets, with the paneling. We did a lot of things that we thought would help the value and from, you know, a design standpoint, make it attractive to sell.

And so I believe that we should have gotten more rental money each time. When we looked at the comparables at places like the Tides, Renaissance, other units that were similar with similar square footage, they were getting over $3,000 for those type of views. And so that's where our rental loss is, as well as our months we didn't get rent.

Q. Are any of those other units overlooking the Wando River?

A. They are looking at -- yes, they are looking at the river.

Q. I said are any of the other units looking at the Wando River.

A. Can you be -- which other units? The units at The Oaks?

Q. You said the -- you said The tides. Is that overlooking the Wando?

A. They are looking at the Cooper River, I believe.

Q. Does it overlook the Wando River?

A. No.

Q. Does it have trees in front of the Tides? Does

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it have trees to look at, Oak trees?

A. Not as many. Not as many, no.

Q. Isn't it overlooking the industrial area, the Tides? the industrial area over the Cooper River and the Wando?

A. I don't -- the units I was comparing to didn't look at the industrial portion of the river.

Q. Were you here yesterday and the day before --

A. I was here Monday --

Q. -- the discussion about rent?

A. I was here Monday, but yesterday I had to work and so I could not be here.

Q. Did you hear the testimony about how much rent was being obtained for other units at The Oaks?

A. I don't know if I did. I don't remember that.

MR. ALTMAN: That's all. Thank you.

A. Can I say one other thing?

Q. [Mr. Altman] Sure.

A. You know, recently I took my four children to Harris-Tetter and we bought a coconut. And we got home -- we bought a lot of other things, but one of the things was a coconut. We got home, we opened it up, and it was black inside. And we were disappointed. I said, gosh, we really have to tell them, we've got to tell Harris-Teeter, it might be a bad bunch. And we took it back and they

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said, we are so sorry for your inconvenience, would you like another coconut or would you like your money back.

Q. So how much did that coconut cost you? How much?

A. It's just good business.

Q. How much did the coconut cost you?

A. Oh, I don't know. I don't know how much.

Q. You don't know how much it cost you the other day --

A. I believe --

Q. -- the other day, but you --

A. -- in the neighborhood of --

Q. -- the other day, but you --

A. -- two or three dollars.

Q. -- know everything about what's gone in the past at The Oaks; right?

A. [No response]

MR. ALTMAN: Thank you, ma'am.

THE COURT: Any redirect?

MR. MCDONALD: No redirect, Your Honor.

THE COURT: You may step down. Thank you very much.

[Whereupon, Ms. Severance is excused and exits the witness stand]

MR. MCDONALD: The plaintiffs call Dr. Pekruhn.

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[Whereupon, Dr. Pekruhn comes forward]

THE CLERK OF COURT: Raise your right hand.

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

THE WITNESS: I do.

THE CLERK OF COURT: State your full name and spell your last name.

THE WITNESS: First name Richard, last name Pekruhn. P-E-K-R-U-H-N.

[Whereupon, Dr. Pekruhn takes the witness stand]

THE WITNESS: P-E-K-R-U-H-N.

MR. MCDONALD: Dr. Pekruhn, how are you doing this morning?

THE WITNESS: I'm well. Thank you.

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RICHARD PEKRUHN,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCDONALD:

Q. Have you been in the courtroom when the various stipulations have been made?

A. I have, indeed.

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Q. So we'll run through this. Okay?
Dr. Pekruhn, where are you originally from?
A. I'm from Steubenville, Ohio.
Q. And how did you wind up down in Charleston?
A. We retired here in 1995.
THE COURT: I'm sorry. What's his name?
MR. MCDONALD: Dr. Richard Pekruhn.
THE COURT: Okay. Thank you.
Q. [Mr. McDonald] You retired here in 1995?
A. That's correct.
Q. And where did you move when you retired here?
A. We moved to Kiawah Island.
Q. And did you -- did you have a house there?
A. We had a house, yes.
Q. And what is your current address now?
A. 136 Fairbanks Oak Alley, unit 4-B.
Q. And that's at The Oaks; right?
A. That is correct.
Q. And 4-B, that's a top unit; correct?
A. That is correct.
Q. And how did you come to move from Kiawah to The Oaks?
THE COURT: What building is he in?
THE WITNESS: Building four, Your Honor.
THE COURT: Thank you.

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A. We had lived on Kiawah for a number of years, and my wife had some medical conditions that required more rigorous attention and we felt that driving from Kiawah into Charleston for medical care was going to be an issue. Secondly, as we had gotten older, we were getting tired of taking care of a house and all that that entailed. We thought that condominium living would something -- would be something and if we could find a place that was close to Charleston, that was in our best interest.

Q. And did you look on Daniel Island?

A. We did. We looked initially on Daniel Island and there were no properties that we found at the time that were commensurate with our desires.

Q. [Mr. McDonald] And that's because -- when were you looking on Daniel Island?

A. This was in 2003.

Q. So that was before The Oaks was constructed?

A. That's correct.

Q. How did you come to find out about The Oaks?

A. The realtor that we used in our property search, initially, brought to our attention that a new condominium project was being built and that we might find it interesting.

Q. And did you receive the marketing materials that have been talked about?

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A. We did.

Q. And in addition to the marketing materials that have been talked about in this process, I'll hand you what's been marked as Plaintiffs' Exhibit 109, sir, and ask if this was another document in which you received during the marketing process.

A. That is correct.

MR. MCDONALD: I would move Exhibit 109 into evidence.

THE COURT: Any objection?

MR. ALTMAN: No objection.

THE COURT: All right. 109 admitted without objection.

[Whereupon, Plaintiffs' Exhibit Number 109 is admitted into evidence by the Court]

Q. [Mr. McDonald] And did you ultimately sign a contract with --

A. We did.

Q. And that was in 2004?

A. That was in -- yeah, in the spring of 2004.

Q. And during the time after you signed the construction -- after you signed your contract, the construction commenced; correct?

A. That is correct.

Q. And then you ultimately bought -- or closed on

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the unit from Daniel Island Riverside Developers on or about May of 2006?

A. That is correct.

Q. And you, sir, paid 746,300; correct?

A. Let me amend that. The total costs, with upgrades and closing costs, was 752,000.

Q. So you received the options booklet?

A. We did.

Q. And you made certain selections during the construction process?

A. That's correct.

Q. And did you move into The Oaks immediately?

A. We moved into The Oaks immediately.

Q. And was it your intention, at the time you moved in, to live there?

A. It was always our intention to live there full time. That is correct.

Q. And what -- when the -- what problems started occurring as you moved into The Oaks?

A. I think it might be useful to walk through a couple of things that occurred.

At the closing, Rich Behringer was present and we had a conversation and he said, and I quote, we left a lot of money on the table. And I responded, Rich, this is my home; for you, this is a deal; for me, it's my home and

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that is important.

He then took us for our walkthrough. Long delay, but we did have our walkthrough. At the time I walked into the building -- I had been promised what was a grand residence. I walked into the building and saw a drainpipe running through the lobby. I saw cheap construction stairs. I saw carpentry in which the wall and the stair risers did not meet. There was a half-inch caulk joint. I saw a storage cabinet in the basement that was an open-mesh container in which dust and mold and mildew could accumulate. The carpeting on the stairway was cheap carpeting.

Q. And then as you continued to live at The Oaks, did you experience additional problems?

A. We did. Punch list was generated and it was our expectation that the items on the punch list would be fulfilled.

Q. Did you also fill out warranty claim forms?

A. I did. I think it might be worthwhile to point out that some of the warranty claim forms were filled out by me, other warranty claim forms were filled out in the Carriage Hill office.

Now, we had some problems. We had leaks in our windows -- or around our windows, I should say -- because our carpet in the front bedrooms was wet. Just to walk

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through you -- walk through with you for a moment on that: we brought this to their attention. There were numerous meetings in which the issues were not really addressed and we had to go, first of all, to the person who sold the windows, which was Muhler. And ultimately --

THE COURT: We don't need to get into all that. Okay?

THE WITNESS: Okay. Yeah.

THE COURT: I don't want to hear about the windows. That portion of this case --

THE WITNESS: Got you.

THE COURT: -- has settled. Okay?

Q. [Mr. McDonald] So at some point, based upon the problems that you had --

It was your intention to live in this unit; correct?

A. It was always our intention to live there.

Q. And at some point, based on the problems you had, did you decide that you were going to sell it?

A. We did.

Q. And did you put it on the market?

A. We did.

Q. Were you able to sell it?

A. We were not.

Q. And you, sir, have not hired Mr. Donato to do an

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appraisal --

A. That is correct.

Q. -- for you; correct?

You hired a gentleman by the name of Mr. Sorrels [phonetic]; correct?

A. That is correct.

Q. And do you have an opinion on what your unit would have been worth without defects when you tried to sell it?

A. When we tried to sell it, okay, we had no offers. Even if I were willing to accept basically the price that I had paid, plus my upgrades, it would have been roughly $800,000. Mr. Sorrels appraised the property at 600,000.

Q. And that's the -- so what you're asking this Court for is the difference between the 800,000 and the 600,000?

A. That is correct.

Q. And Mr. Sorrels appraised the property at 600,000 -- what's your understanding? without defect?

A. That was without defects.

Q. In 2001; correct?

A. Correct.

Q. And do you have any lost rent?

A. I have none.

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Q. Because you live there; correct?
A. Correct.
Q. And did you have any out-of-pocket expenses?
A. We have out-of-pocket expenses of approximately $3200.

THE COURT: I'm sorry. How much?

THE WITNESS: 3200, Your Honor.

THE COURT: Thank you, sir.

MR. MCDONALD: Mr. Pekruhn, please answer any questions they may have for you.

THE WITNESS: Thank you.

MR. ALTMAN: I have no questions, Your Honor.

THE COURT: No questions?

MR. MCDONALD: Thank you very much, Dr. Pekruhn.

[Whereupon, Mr. Pekruhn is excused and exits the witness stand]

MR. MCDONALD: Plaintiffs call Mr. Hayden Jennings.

[Whereupon, Mr. Jennings comes forward]

THE CLERK OF COURT: Raise your right hand.

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

THE WITNESS: I do.

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THE CLERK OF COURT: State your full name and spell your last name.

THE WITNESS: Hayden Leonard Jennings. J-E-N-N-I-N-G-S.

[Whereupon, Mr. Jennings takes the witness stand]

MR. MCDONALD: Good morning, Mr. Jennings.

- - - - -

HAYDEN JENNINGS,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCDONALD:

Q. What is your current address?

A. 117 Ashley Avenue.

Q. And where are you originally from?

A. Hickory, North Carolina.

Q. And what brought you to Charleston?

A. I got married and moved to Charleston.

Q. And your mother actually owns the unit that we're here about today?

A. That's correct.

Q. And what involvement do you have with that unit?

A. She rarely comes to Charleston and I've been the defacto property manager for her, helping her manage the

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property in different aspects.

Q. So are you the most knowledgeable person about the unit?

A. Yes. I've been in more than anyone.

Q. All right, sir. And your unit is located in what building?

A. It's building six, unit 4-A.

Q. And that's the top floor; correct?

A. Yes.

Q. And have you recently -- tell the Court recently what's gone on in your unit. We'll start there.

A. The latest event has been in the last couple of weeks where the master shower was leaking to the unit below, which was also having the same experience, I was told from that unit's property manager. So the shower was removed fully. And in the course of that, there was a lot of soft wood and rot and potential mold discovered, so the tenants actually moved out. They have a one-year-old baby and they have asked to not pay April's rent and they are not staying in the unit anymore.

Q. Why have they moved out? Because of the mold?

A. They're concerned for mold and the health of their baby.

Q. And what were they paying in rent?

A. 2200 a month.

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Q. And are you aware, sir, that the repairs need to be made project-wide to the shower pans? Is that your understanding?

A. That's my understanding.

Q. But you've incurred costs -- I'll hand you what's been marked as Plaintiffs' 113-C. You've incurred out-of-pocket costs associated with that event; correct?

A. That's correct. This invoice has been paid.

Q. And what's the amount of that invoice?

A. $6,640.

Q. Okay, sir. And the renters have moved out. So have you experienced any lost rent?

A. We have as of this month and then going forward. And in discussions with the property -- it's a potential twelve months of renovations through the project, which will make it extremely difficult to rent, and that would be a total of 26,400 in addition to the past repair conditions of the property that have kept it from being able to be rented.

Q. So you've lost rent with this tenant but you've lost rent in the past, too?

A. I have. There was a time in between tenants where the porch had a section of two-by-fours instead of actual porch railing and every time I tried to show that, nobody felt safe using that porch and renting the

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property.

Q. Okay, sir. And you and your mother have, in fact, hired Mr. Donato to determine what other individual damages you may have; correct?

A. That's right.

MR. MCDONALD: Thank you very much, Mr. Jennings. Please answer any questions these gentlemen may have.

THE COURT: You paid 850,000 [eight hundred for it; is that correct?

THE WITNESS: That's correct.

THE COURT: Thank you very much.

MR. MAYBANK: Mr. Jennings, I just have a few questions for you. My name is Roy Maybank. I represent Daniel Island and Carriage Hill.

CROSS-EXAMINATION

BY MR. MAYBANK:

Q. You put up a figure of 26,400 [twenty-six thousand four hundred]. Those are -- that's future rent you're claiming?

A. That's a twelve-month period at $2200 [twenty-two hundred dollars] a month.

Q. When was that period? Or has it not come yet?

A. It begins April 1st of this month when they are not going to pay rent for April.

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Q. But you're asking the Court to award you damages in the future that haven't existed today; correct?

A. That's correct. In addition to the period in 2009 that it was not able to be rented. That was ten months at 2200 a month, so that would be another 22,000 that we would ask for.

Q. I understand that. But my question is simple. You're asking this Court to award you future damages on damages you don't even have yet?

A. That's correct. The damages are really unknown.

Q. That's -- exactly. Thank you.

You bought the unit for how much?

A. My mother purchased the unit for approximately 850,000. I believe that was --

Q. Did she buy it originally from Daniel Island or Carriage Hill?

A. She purchased it from -- it was a re-sale -- from Brenda Cook.

Q. Brenda Cook --

A. Brenda Cook was an agent who also had a contract to purchase that, and my mother purchased it from her.

Q. Yes. Ms. Cook took the stand yesterday. She said that she had some units. My understanding is is that she did not even move into that unit, she just sold your mother the contract?

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A. That's -- no. She closed on it and sold it. If I understand correctly, she actually took possession of it. I don't think she had sold the contract for that.

Q. She never moved into the unit, did she?

A. She never lived in the unit. It had never been occupied.

Q. So y'all did a paper sale, in essence.

Do you know how much she paid for it originally?

A. I do not remember.

Q. So if you paid eight forty and she paid seven fifty, you don't know?

A. I don't know.

Q. That's all right.

The leak that you found was six to seven years after you purchased the unit?

A. We actually had leaks the first --

Q. I apologize. You're correct.

The leaks that you're talking about out-of-pocket is $6600?

A. That actually happened two weeks ago.

Q. Two weeks ago. Okay.

Did you have your pan on your shower replaced at that time?

A. We had it -- the entire shower had to be taken out. In taking the pan out, there was extensive wood rot

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and potential mold so the building manager, Steve Sutterland, called and said stop the work, take everything out and stop the work and let my people come in here and look and see what's going on.

Q. So your bathroom has been fixed and remediated?

A. No. The bathroom actually has not been fixed. They haven't given us permission to go back in there and do the work.

Q. What did you pay $6600 for?

A. For the work that is to occur for purchasing of tile. We are prepaid for the work. It's a workman -- I'm very comfortable with that situation.

Q. Pardon me?

A. I'm very comfortable with prepaying for this repair.

Q. And that repair -- you've already paid for a repair that has not yet occurred and you're asking this Court for money on damages that you have not occurred, as well; correct?

A. The repair -- there is a hole where the shower used to be --

Q. I'm just asking you, sir, a simple question.

A. Right. There's been time and materials spent in deconstructing the shower. There has been money spent in ordering the tile for reconstructing the shower. But

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according to the building manager, we are not able to complete that yet. It is a job to be completed.

Q. At a cost of $6600?

A. Yes, sir.

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

Q. [Mr. Maybank] When did -- I apologize. I didn't write it down. When did you say you closed on your unit?

A. I don't have the date in front of me.

Q. What year did your mother close on the unit?

A. It's in the records. I don't know, right off the top of my head.

Q. My understanding is Ms. Cook paid $670,000 for this unit. Do you know if that's correct?

A. The court records, the deeds, would be correct. If that's what the deeds say, then that's correct.

Q. And I believe she closed on this sometime in 2006. But you don't know when your own mother closed on her unit?

A. I do not remember the exact date. But, again, it's --

Q. I'll just take a year.

A. I believe 2007. Or 2008, potentially. I don't remember.

MR. MAYBANK: May I approach the witness, Your

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Honor?

THE COURT: Yes, sir.

Q. [Mr. Maybank] I would like for you to take a look at that, that data up at the very top.

[Whereupon, the witness reviews documents]

Q. [Mr. Maybank] Does that help refresh your memory about when you may have closed on the unit? Took possession of it?

A. Sure. 28th of June, 2006.

Q. 2006. And I believe Ms. Cook closed on it three months earlier. So in four months, Ms. Cook made $150,000 from selling the unit to your mother. Would that be about right?

A. If that's what the records show, it's correct.

MR. MAYBANK: Thank you. No further questions, Your Honor.

THE COURT: Mr. Jennings, let me just ask you one question.

Referring to this DiMarzio's bill: he's already torn it out; right?

THE WITNESS: Yes, sir.

THE COURT: And he's got to come back and saw the cement board, the tile walls and the floor?

THE WITNESS: Yes, sir.

THE COURT: Have you paid him the total 6,640 or

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did you just pay him for work that's already been completed?

THE WITNESS: We paid him the entire bill at the time that the invoice was submitted.

THE COURT: So you've paid him for the work that he's done, plus the future work to put it back together?

Yes, sir.

THE COURT: Okay. Thank you very much.

Any questions?

MR. MCDONALD: No redirect, Your Honor.

THE COURT: All right. Thank you.

[Whereupon, Mr. Jennings is excused and exits the witness stand]

MR. BUNDY: The plaintiff calls Christopher Donato, Your Honor.

THE COURT: What number -- do you have any exhibits for him? What number are they?

[Whereupon, Mr. Donato comes forward]

THE CLERK OF COURT: Raise your right hand.

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

THE WITNESS: I do.

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THE CLERK OF COURT: Please be seated.

[Whereupon, Mr. Donato takes the witness stand]

THE CLERK OF COURT: State your full name and spell your last name.

MR. BUNDY: His exhibits are 90 through --

THE COURT: 90?

MR. BUNDY: Ninety. 9-0 -- 90 through 101-A.

THE COURT: All right. 90.

[Whereupon, the Court reviews documents]

THE WITNESS: I'm Christopher Daniel Donato.

THE COURT: All right. We're talking about 90 through what, now?

MR. BUNDY: 101-A.

THE COURT: 101-A.

MR. BUNDY: Yes, Your Honor.

THE COURT: Now, is this -- do you have a summary of his appraisals for the various units?

MR. BUNDY: We have a -- we have a -- Your Honor, he is prepared --

THE COURT: Have you got something small I could look at?

MR. BUNDY: -- a demonstrative exhibit.

THE COURT: Let me see it. I can read that. I can't read it that far away, though.

MR. BUNDY: Don't have anything small. I think

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maybe he --

THE COURT: It's a duplicate of this?

[Off the record momentarily]

- - - - -

CHRISTOPHER DONATO,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BUNDY:

Q. Mr. Donato, where are you employed?

A. I'm employed with Parker and Valdridge]phonetic] Property Advisers/Atlantic Appraisals, LLC.

Q. And what is the business --

MR. ALTMAN: Your Honor, if I may, we'll acknowledge he's an MAI appraiser as an expert. We don't --

THE COURT: MAI? Okay.

MR. BUNDY: Okay. We concede -- y'all concede Mr. Donato is an expert?

THE COURT: I'll find that he's an MAI appraisal expert. Okay?

MR. BUNDY: Okay.

Q. [Mr. Bundy] Mr. Donato, what were you asked to do in this case?

A. I was asked to prepare three appraisals. The

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first appraisal was to be a March, 2008 date, an estimate of the value of the properties that I was appraising, without any defects.

Q. And why was that date selected?

A. Well, it's my understanding that's the date that the homeowner, as well as the property owners, received a letter from Carriage Hill Associates, the developer, which stated publically about all of the defects and the problems that they were having. And of course at that point in time, then it becomes -- the onus becomes on the property owner to have to disclose all that information, if, in fact, they try to sell their property.

Q. So that's the date of public notice of defects?

A. Yes, sir.

Q. And what was the second appraisal date, Mr. Donato?

A. It was in December, 2011, which happened to be the time period in which I was making these appraisals, that you asked for a current appraisal at that time without any defects.

THE COURT: I'm sorry. What?

THE WITNESS: December, 2011, without defects.

THE COURT: Without defects. Okay.

Q. [Mr. Bundy] And do you know why the December 2011 date was selected?

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A. Well, it was simply the period of time that I was working on the job. I thought, and I think you thought, the trial was going to be a little bit sooner but obviously it hasn't been.

Q. In fact, December was the original date for the trial of this case?

A. That's right.

Q. Or one of the original dates. It's had several original dates.

And what were -- and is there another appraisal date?

A. On that same December 2011 date, I was asked to estimate the value of the units with defects.

Q. And since that time, have some units actually been sold?

A. Yes, sir. And those are actual comparables we used to make that estimate.

THE COURT: You used the comparables with the defects?

THE WITNESS: There was enough units, sir, within --

THE COURT: For your comparables?

THE WITNESS: -- for comparables within --

THE COURT: That's with the defects?

THE WITNESS: With the defects.

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THE COURT: Okay.

Q. [Mr. Bundy] And you appraised each and every unit, correct, that you were hired to appraise?

A. I was hired to appraise fifteen units.

Q. And those would be found in Plaintiffs' Exhibits 90 through 101-A?

MR. BUNDY: Which I would move to introduce into evidence.

THE COURT: Any objection to 90 through 101-A?

MR. ALTMAN: No objection, Your Honor.

THE COURT: 90 through 101-A admitted without objection.

[Plaintiffs' Exhibit Numbers 90 through 101-A are admitted into evidence by the Court]

Q. [Mr. Bundy] Now, based upon your opinions contained in the various appraisals 90 through 101-A, have you compiled for the Court's convenience a chart of the basic information that you needed to arrive at your opinions of fact?

A. I have, sir.

Q. And would that be found in this chart right here entitled The Oaks at Rivers Edge, Fairbanks Oaks, summary of all values?

A. That's correct, sir.

Q. And this is just simply a larger version of your

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work product; correct?

A. Yes.

MR. BUNDY: Your Honor, do you want to wait for the chart to come back?

THE COURT: Well, I'm like Mr. Jung, you're going to have to move that close if you want me to see it. Otherwise, I'll wait for the smaller one to look at.

MR. BUNDY: Since I like my numbers, my vantage numbers, in big numbers --

THE COURT: Pardon?

MR. BUNDY: -- I'm going to put it right over here for you.

THE COURT: Well, that's fine. You either have to move it closer or give me --

MR. ALTMAN: Your Honor, could we ask that he wait? We would like to see it, too. I don't think --

THE COURT: Well, just come on up here and join me and we'll share it.

Move it out here in the middle somewhere and he can stand here and look at it. I'm not going to waste time waiting on that.

MR. ALTMAN: Your Honor, I agree --

THE COURT: Just put it right out here in the middle and I'll tell you when I can't see it any

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longer.

[Whereupon, Mr. Bundy complies]

THE COURT: And y'all can stand right here and look at it.

All right. That's fine right there. Just stand right here and look at it.

Thank you very much.

MR. BUNDY: Everybody happy? Okay.

Q. [Mr. Bundy] All right, sir. Looking at the chart: the owners that you -- and I'm just going to, for the record -- you did the following: 2-A, 2-B, 2-A, 2-B. I guess we've got --

A. The chart is segregated into owners that currently still own their units and those that have sold their units.

Q. All right, sir. Let's talk about the owners who've sold first. Explain your analysis to the Court on how you -- before going into actual numbers, explain your opinion and your analysis as to how you arrived at a number and why.

A. Well, the three numbers were arrived at through comparable sales. In the 2008 scenario, we used sales from Pier View condominiums, which is on Daniel Island, also, from Island Park Drive condominiums, also on Daniel Island, and from the Tides. They believed -- I believed

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that they all had the same quality as the subject, at least without defects.

Q. And these are all generally characterized as luxury condominiums?

A. Generally characterized as luxury condominiums, most of them multiple stories, all at least four stories.

THE COURT: Let me ask you one question so I'll understand what we're looking at when he made these appraisals with the defects. Does that include the defects that the owners have been talking about, plus the water from the windows? Both?

MR. BUNDY: Yes, sir.

Q. [Mr. Bundy] Go ahead, Mr. Donato.

A. So those comparables, of course, were not exactly alike, was not exactly like Fairbanks Oaks, so we had to make adjustments to those comparables to come up with what we call indications of value and then we correlated into an estimate value. Obviously, I can't see it, and I don't have my sheet, but --

Q. And the details of each individual appraisals, the comps and et cetera, are all contained in each one of those exhibits that relate to each individual unit; is that correct?

A. That's correct.

Q. So without going through each and every one, the

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analysis of how you got to that number is found in your appraisal?

A. Right. The important thing is --

Q. What I want to talk about is the conclusions.

A. I'm sorry. The important thing is we had a comparable date from other projects, outside of the subject, for 2008 and 2011 without defects. We had excellent data within Fairbanks Oaks that gave us an indication of what a person was willing to pay for the property, understanding all of the defects that it had.

Q. So as it related to the owners who sold, which would be Nelson, Graham, Reece and Johnson, have you come to an opinion to a reasonable degree of certainty and within your profession as to what they lost in those sales as a result of defective condominium units as opposed to the decline in the market or the uptake in the market? It really wouldn't matter whether the market was going up or down, would it?

A. Probably not, no, sir.

Q. So how did you arrive -- tell the Court what your analysis was. How did you go through the analysis?

A. Well, the individuals that sold, they -- on 2011, they had an estimated value, without defects, that show in my chart, and this is what -- if there were no defects, they should have been able to sell for that

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price. However, there was defects and we found out that the defects probably created another discount of about thirty to forty percent.

THE COURT: How much?

THE WITNESS: Thirty to forty percent.

THE COURT: Thirty to forty percent.

A. So you can see, also, on the owners who sold, the -- are 2011 estimates of value with defects.

Q. [Mr. Bundy] Let's go through them. As to the Nelsons, to a reasonable degree of certainty what do you think they -- what is your opinion as to what they lost as a result of these defective condominiums?

A. Well, it's the delta between the 2011 with the no defects and the 2011 with defect, and that would be $275,000.

Q. All right. To a reasonable degree of certainty, what is your opinion as it relates to the Grahams?

A. $280,000.

Q. To a reasonable degree of certainty, what is it as it relates to the Reeces?

A. $280,000.

Q. And, finally, to the Johnsons?

A. 290,000.

Q. Now, the value with the fix, the 2011 value with the fix, some of those numbers changed a little bit from

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your appraisal, did they not, because of the actual sales price?

A. Some of the sales were a little bit different, but very close to what we had.

Q. Some of them were -- some of them were right on the money, weren't they?

A. Some of them were right on the money.

Q. All right. Now, let's talk about the people who still own the units. What is the analysis there?

A. The people who still own the units, they had sort of a barrier to the entry to the market. And the reason why they had this barrier is because they had to disclose all of the problems associated with this unit, so they were not capable of selling their property for market value. They had two horrible choices: one, ride the Titanic to the bottom, or, two, sell at these extraordinary discounts to get the market interested in buying a piece of property with defects. So my analysis of their damage is the loss in value between the 2008 value without defects and the 2011 value without defects.

Q. Now, in this instance, the truth, in fact, the market was going down?

A. It was.

Q. And so what you're saying is that notwithstanding the fact that the market was going down,

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they were denied entry into the market; is that correct?

A. They were denied access to market value.

Q. Okay. And they had been able -- they had had access to market, in your opinion, to a reasonable degree of certainly, in 2008 the values with no defects would have been as shown on your chart; correct?

A. That's correct.

MR. BUNDY: It might be helpful to move -- to put this in evidence at this point just so we'll have one exhibit that has it all. And I would like to put a sticker on this, if that's okay with you. Or do you want to put it on the piece of paper?

THE COURT: Well, it's hard for the clerk to keep it. Why don't we put the paper copy? Mark the paper copy.

[Whereupon, counsel confer]

THE COURT: What number would that be, Mr. McDonald?

MR. MCDONALD: Your Honor, I believe that would be Exhibit -- Plaintiffs' Exhibit 179.

THE COURT: Plaintiffs' Exhibit 179, which is a summary of all the values by Mr. Donato. Any objections?

MR. MAYBANK: We would object to the entry of these at this time, Your Honor, as the damages are

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speculative, not --

THE COURT: Well, we can argue about the damages later. But do you have any objections to his presentation? I'm not saying these are the actual damages.

MR. MAYBANK: Sure.

THE COURT: We're going to talk about that today sometime, okay --

MR. MAYBANK: Okay.

THE COURT: -- from a legal standpoint.

MR. MAYBANK: Your Honor, there is a creation. He's may have -- he's the expert, was qualified --

THE COURT: Right. And, I mean, I think if he prepared it, he's the expert, I think it's admissible. Now, whether it's proper or not, legally, that's a different story and we're going to talk about that later today when we get a chance. Okay?

MR. MAYBANK: Thank you, Your Honor.

THE COURT: All right. Go ahead.

MR. BUNDY: In without objection?

THE COURT: In without objection.

MR. BUNDY: Thank you, Your Honor. Exhibit 179, for the record.

[Whereupon, Plaintiffs' Exhibit Number 179 is admitted into evidence by the Court]

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Q. [Mr. Bundy] All right, sir. So as it relates to the people who still own, you established a value in 2008 with no defects; is that correct?

A. I did, sir.

Q. All right. Now, let's just run through these individuals one at a time and give me your opinion to a reasonable degree of certainty what you think their loss was by virtue of their inability to enter the market.

A. Yes, sir.

Q. All right. Maraziti?

A. 235,000.

Q. Severance?

A. $245,000.

Q. Keane?

A. Two thirty-five.

Q. Pollard?

A. 235,000.

Q. Chiovarou?

A. 235,000.

Q. Jung?

A. 245,000.

Q. Strandquist?

A. 245,000.

Q. Ruvo?

A. 240,000.

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Q. Jennings?

A. 290,000.

Q. Now, you do not opine as to Mr. Pekruhn because he didn't hire you; right?

A. That's correct.

Q. But you -- I note here that you have a Sorrels [phonetic] appraisal?

A. I did put Mr. Sorrels numbers in.

Q. Okay. Do you know Mr. Sorrels?

A. I do, sir. He used to work for me.

MR. BUNDY: The witness is with you.

MR. MAYBANK: I'm sorry, Bill. What did you say? Oh. I apologize.

THE COURT: Your witness.

MR. MAYBANK: I'm sorry, Your Honor. I was reading something.

[Off the record momentarily]

MR. MAYBANK: Mr. Donato, my name is Roy Maybank. I represent the Carriage Hill folks.

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CROSS-EXAMINATION

BY MR. MAYBANK:

Q. My understanding is is that you have done work on my client's behalf; correct?

A. I have done work on your client's behalf. Actually -- yes, for an estate that one of his partners -- one of his partners passed away and it was his partner's estate.

Q. All right. My understanding from your testimony is that if, in fact, the units are repaired, these numbers are gone; correct? The defect numbers are gone, according to the testimony that you gave back on April 5th of 2012?

A. If the defects are repaired, then the value should return to whatever that value is on that date.

Q. All right. So if back in 2011 the value repairs were made -- and I'm looking at the column under 2011, no defects. If the repairs were done at that time, this value lost in this far right column would be zero all the way down; correct?

A. That's if the repairs were made.

Q. Yeah. Back in 2011, there would be no lost value; correct?

A. Right.

Q. So there would be --

THE COURT: Are you talking about the seven or

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eight, now? You keep saying seven.

MR. MAYBANK: Sorry, Your Honor.

THE COURT: It says eight up here.

MR. MAYBANK: No. 2011 is what I'm talking about.

THE COURT: You're talking about 2011. Okay.

MR. MAYBANK: Yes, sir.

THE COURT: All right. I'm sorry. Go ahead.

MR. MAYBANK: Just to be clear for the Court, the understanding is if the --

THE COURT: I understand. If the defects are fixed and he's got a value for defects aren't fixed, he's got a value and he's taken the value lost. Now, we can talk about double recovery down the road, okay?

MR. MAYBANK: Right. But what he's saying --

THE COURT: But that's going to be a legal question we've got to address. Okay?

MR. MAYBANK: That's correct, Your Honor. I just wanted to establish that there is no value lost if the units were repaired.

THE COURT: That's correct.

MR. MAYBANK: Okay.

THE COURT: If the defects are done properly.

MR. MAYBANK: That's correct. If they're fixed.

THE COURT: And that's -- you know, I'm sure

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with these folks out here, that's probably very speculative in their minds.

MR. MAYBANK: I understand, Your Honor.

Q. [Mr. Maybank] Of that defect cost, did you pare out what the economic loss --

THE COURT: Let me ask one question.

I guess, Mr. Bundy, am I going to hear from some expert about these floors and the noise attenuation, putting a dollar value of repair to this whole complex?

MR. BUNDY: Yes, Your Honor.

THE COURT: Now, I know that will come from the association, as far as damages are concerned.

MR. BUNDY: Yes, sir. There's going to be a -- there's going be a number introduced into evidence what it's going to take to fix these floors, the soundproofing, and everything else.

THE COURT: Okay. All right. Go ahead.

Let me ask you one more question. How about the tub damages? Apparently --

MR. BUNDY: Yes, sir.

THE COURT: -- there's a tub-pan damage throughout the complex?

MR. BUNDY: Yes, sir.

THE COURT: What else is throughout the complex

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that I can expect to hear from?

MR. BUNDY: Your Honor, you will hear about the complex, the following damages. These are just heads of damages: the stucco facade on the rear wall, no damages regarding windows, then you will hear damages regarding remove and replace all the stucco, remove and replace all brick, replace the exterior trim, paint trim and for ceilings, replace guardrails is not going to be heard because that's already been taken care of, the wall insulation, brick-entry steps, garage-slab repair, repair of the wall, returns, French-drain system, acoustic floor modifications, acoustic ceiling repairs, shower waterproofing, trim and paint, Gypsum-board remediation, mold remediation, HVAC in lobby, carpet or stairs to garage, upper landing repairs, project photographs. That number will total, for all buildings, seven million nine thirty-four seven zero four.

THE COURT: I'm sorry. What?

MR. BUNDY: Seven million nine thirty-four seven zero four point zero six. And on top of that is the engineering fee of ten percent, and the move-out costs.

THE COURT: All right. And, theoretically, that would put the project back to where it should have

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been in the beginning?

MR. BUNDY: Yes, sir.

THE COURT: Okay. Now, let me just ask you a question. I'm not trying to cut off your cross.

MR. MAYBANK: I understand, Your Honor.

THE COURT: Do you have any questions about his appraisals, per se?

MR. MAYBANK: I do.

THE COURT: Okay. Because at some point in time, we're going to have to talk about damages because if you start dealing in this area, plus the 7.9 mil, it's going to be a double recovery. At some point in time, we've got to decide where we're headed. And I'm going to listen to y'alls argument on that at some point in time.

MR. MAYBANK: All right.

THE COURT: Okay? Now, I'm not saying you've got to elect, but --

MR. BUNDY: I'm hoping I'm going to be able to convince you it's not a double recovery. That would be the first thing.

THE COURT: Well, that's very prevalent in my mind right now and I need --

MR. BUNDY: I understand.

THE COURT: -- I would like to address it,

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because I think it may change the scope of his argument -- or, excuse me, his cross.

Would it, or would it not?

MR. MAYBANK: Probably so, Your Honor, because it's either A or B, I guess.

MR. BUNDY: Well, if I may, I think it's a little bit --

THE COURT: Let me hear you. I mean, because, I mean, if I give all these owners --

Now, obviously, this is not all the owners in the units; right?

MR. MAYBANK: Right.

MR. BUNDY: Correct.

THE COURT: It's just the people that are parties to this lawsuit?

MR. BUNDY: That's correct.

THE COURT: So there's other people that aren't parties. And it's not a class action.

MR. BUNDY: No, it's not.

THE COURT: So we're not dealing with a class, we're dealing with these individual plaintiffs on their individual units. So tell me why, if I award them just what the appraisal has said, value lost, plus the 7.9 million three hundred and four -- thirty-four seven hundred and four dollars, why would that

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not be a double recovery? Because, theoretically, you're putting it back to the 2011 value for no defects, which I'm assuming that figure is the fair-market value at that time. So why wouldn't that be a double recovery for these particular people?

MR. BUNDY: Well, let's start with the people who sold. The people who sold are not going to get the benefit of any of --

THE COURT: Okay. I'll concede that. Let's talk about -- I'll concede that to you, okay? You don't even need to make that argument.

MR. BUNDY: Thank you, sir.

THE COURT: All right. But tell me about the, let me see, one, two, three, four, five, six, seven, eight, nine, ten people, or ten units, I should say, we're speaking of.

MR. BUNDY: As you'll recall yesterday from Mr. Jung's cross-examination, Mr. Maybank properly pointed out, astutely pointed out, that Mr. Jung -- and he bought a Renaissance unit -- paid the full value. Because when he went down there, it was being repaired by the developer. Okay? It was being repaired. It was draped in whatever it was draped in. He paid full market value because the purchasers knew those defects were being repaired.

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Our position is is that these defendants had an obligation, under law, to repair those units at or about 2008 and begin repair. It is that breach of their duty of implied habitability, their breach of contract, and their duty -- breach of fiduciary duty, that damaged my client at that point. They were unable to sell their units.

Now, if this were a simple house case wherein and whereby my house is messed up, I get it repaired and I'm returned to the status quo and the house is worth whatever it's worth, that's a pretty easy analysis. In a condominium case, however, you've got a dual ownership situation. The entity, the LLC, which is responsible for the repair and maintenance of this entity which is entitled to all of these monies for the repair of the common elements, is distinctly different from, an entirely different legal entity, than the individuals who own these units. These individuals sustained --

THE COURT: Let me interrupt you for just a second, for my -- and it doesn't have anything what we're talking about [phonetic], but if I don't ask you now I'll forget it later.

MR. BUNDY: All right, sir.

THE COURT: We've got the association that's

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going to get this large amount of money. Theoretically, they're going to repair the building.

MR. BUNDY: Right.

THE COURT: And some of that is going to be inside individual condominiums. Okay?

MR. BUNDY: Right.

THE COURT: So when this money is distributed to the homeowners association after attorneys fees and costs, and they start their repairs, some of it is common area and some of it's not, how are we going to be assured that this, say, 144 Fairbanks 3-A, that money is used to fix the tubs, fix the water, fix the floors, fix the noise attenuation, since that's not really common area, without a court order ordering the homeowners association to do it? In other words, they can pocket that money, go sell it for $310,000 --

MR. BUNDY: The sound attenuation --

THE COURT: -- is my question, as sort of a procedural how we're going to deal with this down the road to make sure these repairs are done. Because it's not fair for one unit to pocket a portion of that money, sell at a reduced price, and not do the repairs, because it affects the whole project.

Yes, sir.

MR. BUNDY: The money that's going to be

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obtained -- hopefully all seven, eight or nine million dollars -- is all going -- it's all the HOA's claim. It is not the claim of the individuals. Okay? These individuals are not going to get any of that money. These individuals are not going to get any of that money. That's an HOA claim because the sound attenuation is, in fact, a common element because it's the structure between floors. And the association owns --

[Off the record momentarily]

MR. BUNDY: But the fact of the matter is is that it is common elements. The Board has the obligation to repair --

THE COURT: Shower tub is not.

MR. BUNDY: It is because --

THE COURT: Or the shower pan, I should say.

MR. BUNDY: -- it's damaging other units. Okay?

THE COURT: I understand that.

MR. BUNDY: And before -- just like a window leak. Okay? It's just like a window leak. When the HVAC goes down to another guy, the HOA is responsible for that, or can accept responsibility for it. There's nothing that says an HOA board, okay, can't accept these funds and under their -- and it's the better place for them to go, because they have a

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fiduciary obligation to fix everything. What I'm talking about is the distinct damage.

THE COURT: All right. Go ahead and go on with your damage argument. Okay?

MR. BUNDY: The distinct damage, which has been sustained by these individuals for their inability to be able to unload and get rid of this property at that time --

THE COURT: The ones that wanted to sell.

MR. BUNDY: Yes, sir.

THE COURT: What if you award the ones that didn't want to sell their rents?

MR. BUNDY: If the ones that --

THE COURT: The ones that want rents can't very well -- you can't award them again for the loss in value.

MR. BUNDY: All right, sir. I agree with you. And I --

THE COURT: Okay.

MR. BUNDY: And I think it's a -- I think the toughest argument. I think I can make it. But I think the toughest argument to grasp is someone -- and these are the people in the worst situation, really, is they never sold and they just wanted to live there and be done with it. And Mr. Pollard is a fine

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example. Okay? But I think he's still entitled to damages, because they were negligent. And he's entitled at least I think some damage from you, Your Honor --

THE COURT: Well, I mean --

MR. BUNDY: -- for inconvenience and loss of --

THE COURT: I'll concede these, for lack of a better word, in a personal injury case, pain and suffering, so to speak.

MR. BUNDY: Exactly. Exactly.

THE COURT: It's not pain and suffering. But inconvenience and other damages that were caused for the inconvenience and the living conditions he lived in.

MR. BUNDY: Exactly.

THE COURT: But that's not necessarily what we're talking about here. That would be an arbitrary figure that the finder of the fact would award.

MR. BUNDY: Right. Right.

But as to those people who actually tried to sell, okay, they were denied market access. That was 300-and-some-odd -- let's see -- $270,000 that Ms. Severance, just to pick an attractive witness, said that she lost because she was unable to sell her unit because the developer failed to do what he was

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supposed to do.

THE COURT: But then you come up and you bring it up to the standard and she sells it for the market value --

MR. BUNDY: But she's now --

THE COURT: -- and she's got it twice.

MR. BUNDY: She's now selling in a different market. The market she's now selling in is farther down. It's farther down. In other words, that market was falling. If it was worth it here and if they had stepped up to the plate, she could have gotten rid of it and gotten her $275,000.

THE COURT: So your argument is the Court should award the figure between the 2008 no defects and the value with no defects of 2011 which he's testified to. Is that your argument, basically?

MR. BUNDY: That's my argument.

THE COURT: And that's basically what he's put down on the sheet.

MR. BUNDY: Right. And he's actually better at explaining it than I am, from an appraisal standpoint, to be honest with you.

THE COURT: Right.

MR. BUNDY: I will say to you this is a unique argument.

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THE COURT: Well, I mean, doesn't the law pretty well say that, as you have pointed out on a house, it's the value of the house --

MR. BUNDY: That's correct.

THE COURT: -- as it is, or value if it had been repaired, the difference in the two?

MR. BUNDY: And that's -- but this isn't a house. They own the air space. They just own the air space.

I would draw Your Honor's attention to the Ledwood Bull [phonetic], which I took to the Supreme Court and reversed the notion that we couldn't have lost profits for a new business. And what the Supreme Court basically recognized was there are certain situations where people lose profits or lose money, even though it's a brand new business or a brand-new enterprise.

And so in an unusual situation, I think you have to fashion a remedy to protect these people, because they are not -- they have lost that money. That money is gone. It'll never come back. And as long as this market is on the way down -- these people put them in this situation. My clients are blameless. There's not going to be anything in this courtroom that blames my client for buying or anything. They're blameless.

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They're in breach, my clients sustained damages at that time and they'll never get it back, even if the building is repaired by the HOA, which we hope it will be on a full verdict of $9,000,000, we're going to fix it all. And, yes, their building will be back. But they would have still lost that money, because their unit is worth whatever it's worth now. But back then, when they had the ability to do the right thing, they failed to do it.

MR. MAYBANK: Certainly, we take a --

THE COURT: Be glad to hear from you. I'm sorry --

MR. MAYBANK: -- totally different --

THE COURT: -- I'm sorry, Mr. Bundy. I didn't mean to cut you off. Are you finished?

MR. BUNDY: I'm finished. Thank you very much.

MR. MAYBANK: Your Honor, I think you pointed it out right. I mean, we can go down this argument of damages right now, but it's a double recovery. I mean, that's -- you put them back in the position as if it were repaired. Once you do that, there are no damages. They haven't sold the unit --

THE COURT: Well, do you think that -- I mean, his argument is sort of unique because a condominium complex is unique and we probably need some -- we're

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in the first phase of condominiums in South Carolina, but not in twenty years, with the upgrade -- but that's neither here or there.

Under the common law, you don't think it should be a difference in a condominium versus your private home or my private home?

MR. MAYBANK: I do not.

THE COURT: Why not?

MR. MAYBANK: It is one and the same, other than the fact that --

THE COURT: Because on my private home, you and I can go mitigate damages a whole lot easier than they can.

MR. MAYBANK: Well, they can act through their board. That's what the board is there to do. The board is there to make the fixes, through the homeowners association, as to the common elements.

THE COURT: So you don't think it should be a change because of the type of ownership?

MR. MAYBANK: No, not at all, Your Honor. I think -- you know, and that is the duty under Goddard and under Dunes West is that if there's a defect, then it is to be put back in the condition -- in good, like condition, because you have so many different people.

What Mr. Pollard says is allowed may not be what

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Mr. Maybank says is allowed. You've got so many different competing interests and positions when you're dealing in a condominium that it is a very general term that the Supreme Court has used, and that is that these are to be put in, quote, unquote, good condition. That has not been defined. I believe that the Court would interpret this to say that if you are going to give them a value of repair and it is to put them back and make them whole, then to compensate them on top of that is making them doubly whole. I think that -- I just don't think that the Supreme Court would take that position that Mr. Bundy is trying to push today.

THE COURT: All right. Mr. Bundy, rebuttal?

MR. BUNDY: With all due respect, the Dunes West case -- that was also my case. And what they said was that is a remedy, that's the duty at that time. It did not exclude other damages for breach of contract and other actions on behalf of the developer.

THE COURT: Well, see, I think those damages can be addressed in, for lack of a better term, the inconvenience and the hardship that they suffered during the period of the breach, i.e., not having a conversation sitting at the table because of the noise or having to walk around in your socks so you don't

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bother your neighbor, those type of conveniences. Shouldn't that be addressed in that context, not in fair-market value?

MR. BUNDY: No, Your Honor, not in my humble opinion.

THE COURT: Tell me -- simplify it for me why you feel that way, because I'm not sure I agree with you. Okay?

MR. BUNDY: I know you don't, but that's fine.

The developer, when they go out and decide to develop a condominium with a Horizontal Property Regime Act, accept and acknowledge the dual nature of this ownership. And so it is foreseeable -- they obviously owe a duty. It is foreseeable that if they fail to meet their duty, that damages will be sustained not only by the HOA, which has a duty to repair and maintain, but also the individuals.

It is my position, very simply, that that duty was breached and proximately resulted in these individuals being injured. Specifically, it's easier to understand the ones who sold, because that's pretty straightforward. Those people had to sell. They sold at a reduced value. And they'll never see the benefit of any of this money. The money that these people would have gotten had they been able to enter the

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market -- and there's no -- you know, they say don't have appraisals.

Maybe we'll argue about the values. But the testimony right now is if they had been able to get it in the market at that time, they would have not lost $235,000. We would still be here, we would still be here, arguing about the HOA's claims for common elements. Okay? But those people would have not lost that much money. They had an opportunity. There's a lost opportunity. It's almost like a lost opportunity that was taken away from them. Because you always should have an opportunity to be able to sell your property.

THE COURT: Do you make that argument under a negligence theory or a contract theory?

MR. BUNDY: Both. Negligence.

THE COURT: Negligence?

MR. BUNDY: Yes, sir.

MR. MAYBANK: Well, I mean, the problem that we've got, you know, is that these units -- what Mr. Donato is testifying to, he looks in the four corners of the unit, what is the square footage, what's the price, what's the comparables going. He's not taking into account the socks, he's not taking into account those issues, because he's looking at the

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Tides. Unless he went in there and talked to sock-wearing, Tides-walking people, that shouldn't be a part of these damages.

These are strictly the value of the units with and without defects that he's testifying to. It's got nothing to do with an individual owner's arguments. And this value that goes from the '08 value --

THE COURT: Well, his argument, under these conditions, that it's a lost opportunity, that they could have bailed back in '08 if the building had been built the way it was supposed to have been built. And that's his argument, lost opportunity.

MR. MAYBANK: And I think that's speculative, at best, looking back after the worst recession that this country has gone through since the great depression, if not worse than that, to say that all that value is merely construction.

THE COURT: Well, isn't the actual market, whatever they sell it for, that's going to affect that? if the price is down, it's going to affect the whatever they sell it for?

MR. MAYBANK: Exactly. And I've got some comps that I was going to ask Mr. Donato about that I haven't been able to ask him yet --

THE COURT: I understand.

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MR. MAYBANK: -- about --

THE COURT: But wouldn't that address your argument?

MR. MAYBANK: I don't believe so, because I don't believe that what he has listed as comparables, Tides on one side, developed by Richard Cohen through four bankruptcies now and maybe into a fifth bankruptcy, I believe --

THE COURT: It's built like a fortress --

MR. MAYBANK: It is built like a fortress.

THE COURT: -- it's concrete. It's built like -- it'll be there forever.

MR. MAYBANK: But the prices, that's what killed them. These prices.

THE COURT: It's probably overbuilt. But that's neither here or there.

MR. MAYBANK: And that's part of the market conditions, absolutely.

And I think that's -- you're making very valid points as to why these entire damages, as listed, are speculative. Please -- you know, any other -- I mean, and that's the problem with this. That's the problem with this evaluation, under the value lost, is there are so many different elements that are factored into this, not just, you know, what they paid for it defect

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wise or non-defect wise.

THE COURT: All right.

MR. BUNDY: One more thing, if you might --

THE COURT: Yes, sir. Be glad to hear you.

MR. BUNDY: -- if you would indulge me.

Three points. One, I'm not required to prove my damages to a mathematical certainty.

THE COURT: Yes, sir.

MR. BUNDY: Two --

THE COURT: I understand that.

MR. BUNDY: Two, it's not that they didn't have it repaired in 2008, it's that they weren't in the process or made no effort to do it. The best example in this case is the Renaissance. If these people had done what their obligation was in 2008, Chris Donato would not be testifying, because they would have sold for full market value at that time.

As a matter of public policy, a developer should not be able to do what this developer did, which is to make all this money, sell these things to my client, and then blame all the subcontractors, the window people, and everybody, and refuse to step up to the plate and do the right thing like they did at the Renaissance. That is the breach, that is the negligence, that proximately resulted in these

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damages.

And with all due respect to opposing counsel, these, in fact, are the values on those units. They're owned in joint tenancy. You just buy -- that's what the air space is worth over there. And you become a joint tenant in common, you own shares in the LLC. So to me, to not allow these claims to go forward and to not make these people pay for what they've done to my clients simply allows his behavior to go on without any ramifications.

If developers understand, if they understand, that in South Carolina if you sell a defective product you just can't say, well, it's defective, I'm sorry, I'm going to figure it out with the window people, and be bulletproof and not have to face the consequences of that decision, then there's no incentive for them to do the right thing. If they know at the end of the day, at the end of the day, all they've got to do is pay for what it costs to get it fixed -- and they know that you've got to pay lawyers and everybody else -- they're never going to do the right thing ever.

MR. MAYBANK: I did not know we were doing the closing arguments at this time, but --

THE COURT: That's fine. You can make yours, if you want.

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When -- is it Mr. Lizzi, New York?

MR. BUNDY: Lizzi. Yes, sir.

THE COURT: Lizzi? When did he die?

MR. BUNDY: About three or four -- five or six months ago.

THE COURT: Oh. Five or six months ago?

MR. BUNDY: No.

MR. ALTMAN: July will be two years, Your Honor.

THE COURT: July will be two years ago?

MR. ALTMAN: Yes, sir.

THE COURT: All right.

MR. MAYBANK: I mean, Your Honor --

THE COURT: I appreciate the argument. I wanted to hear your thoughts on it. Please proceed on your cross. And I understand it's not time for him to make his motion to strike these damages, but we'll address that at the time.

MR. BUNDY: Thank you --

THE COURT: I'll make my decision then.

MR. BUNDY: -- thank you, Your Honor.

THE COURT: But thank you very much for your arguments.

MR. MAYBANK: Thank you, Your Honor.

THE COURT: At least I know where we're coming from, where you're coming from, while I'm listening to

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his testimony. Okay?

MR. BUNDY: And I apologize. I'm usually talking to juries and so I get sort of wired up.

THE COURT: That's all right. You're welcome to be a preacher. I don't mind. I appreciate your animation.

CONTINUED CROSS-EXAMINATION

BY MR. MAYBANK:

Q. Mr. Donato, I just handed you an MLS listing. Have you ever -- are you familiar with MLS listings?

A. Yes, sir, I am, sir.

Q. All right. Can you look on that and tell me what that MLS listing is for?

A. What the list price is for?

Q. No. What is that? Is that a unit at The Oaks?

A. Oh. It's 124-2-4A Fairbanks Oaks.

Q. All right. And is that a unit at The Oaks, the same development we're here about?

A. That's correct, sir.

Q. And if you would, could you tell me what the sales price on that unit was?

A. $360,000.

Q. What's the list price?

A. 420,000.

Q. And when was it listed?

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A. The list date, September 6, 2011.

Q. Would you think that that would be a good comparable, or comp, as they say in your industry, as to what was being -- what is being sold there at The Oaks, and the market price, as you have said?

A. Well, this is a comparable with defects.

Q. Okay. Very good.

All right. Now, if you would, I looked on this and I couldn't find where any listing of any defects were noted. I noted that it said in the remarks, and I'll hold this -- and I'll give this back to you. Can you tell who the listing agent was on that?

[Whereupon, the witness reviews documents]

A. Brian Connolly.

Q. [Mr. Maybank] Do you know Mr. Connolly?

A. I do, sir.

Q. Do you believe him to be a reputable real estate agent in the community?

A. Yes, sir.

Q. All right. So if you would look for me under remarks, what's the first word on that that Mr. Connolly has put on there?

A. Luxurious.

Q. Luxurious brick and stucco. So in 2011, realtors in Charleston and sellers at The Oaks are

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marketing their property as luxurious; is that correct?

A. That's what these were supposed to be.

Q. I'm not asking what they were supposed to be. On that remark, does it say luxurious?

A. It does say luxurious. And, Mr. Maybank, it's a typical fluff real estate listing. You wouldn't expect him to say inexpensive-don't-come condo.

Q. But it's marketing; correct?

A. It's marketing.

Q. All right. Very good.

THE COURT: We'll concede there's fluff in the marketing.

MR. MAYBANK: Thank you, Your Honor.

THE COURT: Okay?

Q. [Mr. Maybank] If you would --

THE COURT: If he said it's cheap construction, nobody would buy it; right?

MR. MAYBANK: Well, it sold.

THE COURT: Okay.

Q. [Mr. Maybank] If you would, can you tell me on that form, anywhere under the realtor remarks or agent notes, where it says that the property is being disclosed as being defective in any way?

A. I don't see anything on this MLS listing. But then it -- there has to be --

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Q. Seller disclosure.

A. -- some seller disclosure.

Q. Absolutely. It does. I'm going to hand this to you.

A. All right, sir.

MR. MAYBANK: All right. I would like to move this into evidence, Your Honor.

THE COURT: Okay. What number?

MR. MAYBANK: It would be 233.

MR. BUNDY: No objection.

THE COURT: Defendants' 233, without objection.

[Whereupon, Defendants' Exhibit Number 233 is admitted into evidence by the Court]

THE COURT: What is it? MLS what?

MR. MAYBANK: It's an MLS listing from 2011.

THE COURT: On what?

MR. MAYBANK: On unit 124 -- 4-A at the Fairbanks Oaks.

Q. [Mr. Maybank] Now, that's the top floor, isn't it?

A. Four?

Q. Yes, sir.

A. Yes, it is.

Q. Top unit. Views over the Wando; right?

A. 124 had -- building had good views. Yes, sir.

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Q. Here is the accompanying seller disclosure form. Take a look at that for me.

[Whereupon, the witness reviews documents]

MR. MAYBANK: Your Honor, if I may?

THE COURT: Yes, sir. That was the MLS on unit 4-A; is that right?

MR. MAYBANK: It's this one right here, Your Honor. Here it is, the seller's disclosure form.

Q. [Mr. Maybank] Did you have a chance to read the seller's disclosure form?

A. Yes, sir.

Q. Now, on the seller's disclosure form --

And this is dated September 1st, 2011; correct?

A. Yes, sir.

Q. -- anywhere on there does it disclose any construction defects that you're aware of?

A. It does list balusters are rotting.

Q. Okay. Anything else?

A. That's the only thing I read.

Q. It doesn't have anything about sound attenuation or noise problems; correct?

A. I didn't read anything about that, no, sir.

Q. It doesn't have anything about construction defects, does it?

A. Well, it's certainly not written down in the

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seller disclosure, which I would agree that it should have been. But --

Q. All right. So if we take the documents for what they are, and that is a sale in 2011 listing at four twenty, selling at three sixty, no disclosure as to any construction defects noted in either the MLS listing or the residential property disclosure, would you agree with me, wouldn't you, that this would be a fair-market representation in 2011 as to what the actual value of a unit at The Oaks was, based on market conditions?

A. Well, we don't know what went on between Mr. Connolly and the other agent.

Q. I'm not asking you to guess. I'm asking you --

A. Well, I know Mr. Connolly, and I know he's a reputable agent. And I've had several conversations with him about this particular project and it was his analysis, which I agree with, that when these unit reached a certain price, people were willing to pay for them, warts and all. So everybody, including that 360,000 that was paid for it, they knew about these defects but they thought they were getting a good buy so they --

Q. Mr. Donato --

A. -- were willing to accept it.

Q. -- I didn't ask you what you thought other people thought. I'm asking you to simply look at the MLS

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disclosure and the seller's sheet that they filled out and signed in September of 2011. Is there any mention anywhere, other than luxurious condominiums, about any sound problem or attenuation problem?

A. Mr. Maybank, there's nothing written on those things. But if all I looked at were those documents, then I wouldn't be doing my job, which is why I talked with Mr. Connolly and the other agents involved.

Q. Well, let me ask you this, then. Shouldn't the general public be able to rely on the information put into the Multiple Listing Service?

A. I think the general public knows that a Multiple Listing Service is marketing information. You really still need to go look at a piece of property. You need to evaluate. You need to talk to other people, you need to talk to agents.

Q. Mr. Donato, I'm simply asking you a question, that if we take for fact, for truth, what is in these documents, which is nothing disclosing -- no information disclosing any construction defects as it relates to the buildings themselves or to the sound problems, would you agree with me that this would be a good indication of an economic value of the units in 2011?

A. No, sir. I don't think it's economic value. It's value with defects.

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THE COURT: Let me ask -- let me ask a question. Are disclosure statements listed on an MLS?

MR. MAYBANK: Yes, they are, sir.

THE COURT: All right. Go ahead.

MR. MAYBANK: They are. They're in the remarks, Your Honor.

Q. [Mr. Maybank] All right. Here's another one.

MR. MAYBANK: Oh. And I would like to move, if I could, Your Honor, the disclosure from that sale into evidence, as well.

THE COURT: Did this unit sell?

MR. MAYBANK: Yes, it did, Your Honor.

THE COURT: What did it sell for?

MR. MAYBANK: $360,000.

If you turn the page, Your Honor.

THE COURT: Where?

MR. MAYBANK: To the second page at the very, very top. Right there.

THE COURT: Sold for -- all right. I got you.

MR. MAYBANK: I've attached the seller disclosure for Exhibit 233 to the MLS listing.

THE COURT: Well, he said that's also part of the MLS, so that's fine.

MR. MAYBANK: Yes, sir. That is in the MLS, as well.

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Q. [Mr. Maybank] All right. Here's another one, Mr. Donato, I would like to hand you. If you could take a look at this for me.

[Whereupon, the witness reviews documents]

Q. [Mr. Maybank] Is that a report from the Multiple Listing Service, as well?

A. Yes, it is, sir.

Q. And when is that one dated?

A. The list date?

Q. Yes, sir.

A. August 5th, 2011.

Q. So this is another 2011 sale; correct?

A. Yes, sir.

Q. Did you use either of the two that I've handed you so far as a comp?

A. I did use the first one, yes.

Q. Okay. Do you see any disclosure on that MLS form about any litigation having to do with The Oaks development?

A. No, I don't, sir.

Q. I'm going to hand you the accompanying State of South Carolina residential property condition disclosure statement. Is that condition disclosure statement required by law?

A. Yes, sir, it is.

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Q. And it is required that the seller, whoever that person may or may not -- may be, or she, to fully -- to the best of their ability answer those questions and disclose to a potential buyer the known condition of the property?

A. That's their obligation, yes, sir.

THE COURT: Is there any obligation on the real estate agent?

MR. MAYBANK: Well, that's a good question.

Q. [Mr. Maybank] Is there any obligation on the real estate agent?

A. Absolutely.

THE COURT: You know, if the Real Estate Commission would put some teeth in it, they might have more honest disclosures. I'll give you an example. I took a guilty plea of a real estate agent for stealing money out of trust. Pled guilty, grand larceny. The real estate commission didn't even revoke his license. Condition of probation, I made him surrender his license.

MR. MAYBANK: Well, I believe that --

THE COURT: I mean, that's how absurd it's gotten -- or it is.

MR. MAYBANK: If you look at the -- I believe there's a recent case law that came out that says you

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don't have a right to rely on that real estate agent because they're not there to tell you everything and if they fail to disclose, so be it.

THE COURT: Well, I understand. That's what I said. They need some teeth in the process.

MR. MAYBANK: I couldn't agree more with Your Honor.

Q. [Mr. Maybank] Under that seller disclosure statement -- and that's dated 2011; is that correct?

A. I didn't look at the date.

Q. July?

A. It's July 14th, 2011.

Q. So this is another unit at The Oaks. And this was on unit 3-A in building 130. And this was sold by Lynn Barber [phonetic]. And can you tell me who the selling agent was on this project?

A. Merrill Crumby.

Q. And who does Merrill work for? Is it on there?

[Whereupon, the witness reviews documents]

A. Daniel Island Real Estate.

[Whereupon, the witness reviews documents]

Q. [Mr. Maybank] And in this sale listing of three ninety-nine, it actually sold for more than it listed for, didn't it? It sold for four zero five?

A. It sold for four zero five.

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Q. Did you see, in either the listing agreement or the MLS, any information disclosing to any subsequent purchaser the existence of any construction defects?

A. I did not. No, sir.

Q. The sound attenuation problems, either; correct?

A. I didn't read anything about construction defects or litigation.

Q. So these are now two units that have sold in 2011 listed at three ninety-nine. On this one, it sold for four zero five. Would you agree with me on this one that based upon the information that we have out of the MLS, at least as far as we can tell there was no disclosure as to any construction defects of the actual value of the unit? On July 11th -- on July of 2011 is the value of the market price that it sold at?

A. No, I don't agree. We verified the first sale that you gave me, so I know from conversations with Brian Connolly that he discussed the litigation and the construction defects with the agent representing the buyer. And now what you have --

MR. MAYBANK: Your Honor, I would --

A. -- Mr. Maybank --

MR. MAYBANK: One moment.

I would move to strike that testimony, Your Honor. He's bringing in third-party discussions that

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have no foundation.

THE WITNESS: May I respond?

THE COURT: Well, he's just testifying how he arrived at his opinions. I think he can do that as an expert.

THE WITNESS: Thank you.

MR. MAYBANK: Thank you, Your Honor.

THE COURT: You know, experts can consider hearsay in arriving at their opinion.

A. Now, Mr. Maybank --

THE COURT: Sir --

THE WITNESS: I'm sorry. I hadn't finished my question.

THE COURT: -- be quiet, please.

All right. Mr. Maybank, your motion is overruled.

MR. MAYBANK: Thank you, Your Honor.

THE COURT: But please be responsive to the questions, please, sir, if you would. Okay?

THE WITNESS: Yes, sir.

Q. [Mr. Maybank] Mr. Donato, I'm simply asking you that on now two sales to which we have no disclosure, at least on paper, no disclosure by the seller, either, as to the construction defects, the unit sold. And wouldn't you agree with me that that is a reflection of strictly the

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market condition of Daniel Island?

A. No, sir.

THE WITNESS: Do you want me to explain, Your Honor?

MR. MAYBANK: I don't think --

THE COURT: Yes, sir. You can explain whatever you want to explain --

THE WITNESS: Sure.

THE COURT: -- as far as your answer, yes, sir.

A. Again, I know the first sale that you handed me, Mr. Maybank, that Mr. Connolly informed everybody -- he discussed that with me when I was verifying the transaction with him.

The second sale occurred late in 2012. Now you have a history of all these low sales out there that everybody else is relying on as being the market value with these defects.

Q. [Mr. Maybank] I understand that.

But you're assuming that that's what they're thinking, you don't know for sure, of all these purchasers, do you? You didn't talk to them, did you?

A. I didn't talk to the last one you gave me because that was so late in 2012 and I did my work at the end of 2011.

Q. Let me ask you this. Here is another one.

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[Whereupon, Mr. Maybank reviews documents]

Q. [Mr. Maybank] Here is another one. This is 130 unit 2-B. And this has the Welford [phonetic] listing. And this is a third unit. Can you take a look at that one for me?

A. Yes, sir.

Q. Is that also an MLS listing?

A. Yes, sir.

Q. And when is the date of that listing?

A. November 9th, 2010.

Q. All right. So this is before your evaluation?

A. The listing. Yes, sir.

Q. What was the listing for? The amount. I'm sorry.

A. $490,000.

Q. All right. In the remarks, what does the first line say?

A. Luxurious brick-and-stucco condominiums situated among spectacular natural scenery along the marshes of the Wando River.

Q. And if you would, is there, on that 2010 listing, a disclosure in the agent's notes of construction defect or litigation?

A. No, sir.

Q. Behind that is a seller disclosure form. If you

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would, could you tell me the date that that disclosure form has been listed?

A. October 25th, 2010.

Q. When did the unit actually sell? Can you tell by the MLS?

A. Yes, sir. August 12, 2011, for 325,000.

Q. August 12th, 2011. So now we've got three sales in 2011, of which we've got no disclosure and the MLS --

MR. BUNDY: Objection. Misstates the facts in the record.

THE COURT: I'm sorry. What?

MR. BUNDY: I object. He's misstating the facts that are in the record.

THE COURT: All right. Go ahead.

MR. MAYBANK: Thank you, Your Honor.

Q. [Mr. Maybank] As to the MLS listing, there were no listed defects on this listing; correct?

A. That's correct.

Q. And you've read the date that the seller signed the seller disclosure form, didn't you?

A. I did, sir.

Q. All right. I would ask you to look at the seller disclosure form and ask -- and tell me: did the seller disclose in this listing in 2011 for a sale in 2011 whether or not that unit was involved in any litigation?

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[Whereupon, the witness reviews documents]

A. I see nothing in the seller disclosure.

Q. [Mr. Maybank] All right. I will ask you once again, then, Mr. Donato: we've not got three units, no disclosure, all units being sold with market conditions in play. You would agree with me that the sale or the price that the unit sold for, which is $325,000, in August of 2011, that price reflects the proper market value of the units in the economy at that time?

A. No, sir. This is the second property that you've given me, that I also used as a comparable, which we verified and we know that everybody was informed about the defects.

Q. This is -- I don't understand it. If everybody was informed, there's no disclosure on any of the forms. I thought you had to physically write the disclosure on these forms. Is this information kind of on an as-is-needed basis?

A. I can't speak for who filled out those forms, Mr. Maybank, but they should have put it in there.

MR. MAYBANK: If I could, Your Honor, I would like to move this --

THE COURT: What number?

MR. MAYBANK: This will be 235. Along with the --

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THE COURT: 235?

MR. MAYBANK: Yes, sir. Along with the -- it will be the MLS listing, as well as the South Carolina residential property disclosure statement.

THE COURT: What was 234?

MR. MAYBANK: 234 was the -- that is the sale list price, three ninety-nine, of 3-A, unit 130, 3-A, Fairbanks. These are three -- 233 was the --

THE COURT: 4-A. What is 235?

MR. MAYBANK: This is 2-B.

THE COURT: 2-B. What was the sales price?

MR. MAYBANK: List price was four ninety. Sale price on August 12th, 2011, was $325,000.

THE COURT: Okay. What about 3-A? What was the list on that?

MR. MAYBANK: 3-A the list was three ninety-nine nine hundred. The sale price was four zero five. And that sold on October 30th of 2012.

THE COURT: So that guy won the lottery, too, huh?

MR. MAYBANK: He did.

And then the other one -- did you get 4-A, Your Honor?

THE COURT: Yes. That sold for three sixty. I didn't get the list. What was the list?

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MR. MAYBANK: This was four twenty, Your Honor.

THE COURT: Four twenty. Okay. Thank you very much.

Q. [Mr. Maybank] Yesterday, we marked as an exhibit 231.

THE COURT: On your sheet that shows site plans.

MR. MAYBANK: Then that is probably not my sheet.

THE COURT: You introduced --

MR. MAYBANK: Yes, Your Honor. I believe I --

THE COURT: You introduced -- no, that's Plaintiffs'. Let me find --

MR. MAYBANK: I think we may need to look at the exhibit.

THE COURT: Review our numbers?

MR. MAYBANK: Yes, sir.

THE COURT: All right. Let me find it.

MR. MAYBANK: I may have inadvertently --

THE COURT: You did introduce something yesterday.

MR. MAYBANK: I did.

THE COURT: Let me see. I'll find it for you.

[Off the record momentarily]

MR. MAYBANK: 229. Yes, ma'am. It started with Quietly Making Noise. I think we may have jumped in

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front of those last two because I think they were put on there at the last minute, Your Honor, and I may have messed the numbers up. But I can certainly redo that.

THE COURT: 231 was some kind of MLS and a disclosure.

MR. MAYBANK: That is correct, Your Honor.

THE COURT: So this first one this morning will be 232, then; right? You can get them straight later. Okay? Just make sure we get them straight.

MR. MAYBANK: 233 was the first one this morning, Your Honor.

THE COURT: 233 was the first one? Okay.

MR. MAYBANK: Yes, sir.

THE COURT: You introduced a 231 yesterday.

MR. MAYBANK: I did.

THE COURT: That was a disclosure form.

MR. MAYBANK: That is correct. That was Ms. Nelson's.

THE COURT: Right.

MR. MAYBANK: And then the damages was 232 for her. And then we've just introduced three MLS listings.

THE COURT: So if you put those site plans in, you'll have to change the number. Okay?

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MR. MAYBANK: We will do that, Your Honor.

THE COURT: We'll keep these the same, 233, 234 and 235.

[Whereupon, Defendants' Exhibit Numbers 233, 234 and 235 are admitted into evidence by the Court]

Mia, why don't you mark on your sheet the site plans, if he puts them in, is -- we'll make it 231-A. Okay?

THE COURT REPORTER: All right.

THE COURT: And then we've got a 231, which is an MLS, disclosure, on Plaintiff Nelson.

All right. Go ahead.

Q. [Mr. Maybank] As to your valuations, Mr. Donato, my understanding is -- well, first, you don't agree with me, on any of the three exhibits that I have entered, that they reflect the actual market condition and pricing strictly as it relates to the market value, do you?

A. No, sir. I believe they reflect the market value of those units with the current defects.

Q. And none of -- and in each instance, either the MLS nor the seller disclosure form indicated any litigation or any problems with any of the units that we're here in this courtroom today about; correct?

A. That's correct.

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Q. All right. If the units are repaired, I believe you testified that if they are repaired, then the value would revert back to what market value would be; is that correct?

A. At the time they are repaired. Yes, sir, that is correct.

Q. So if they're repaired next year, whatever the market value is, that's what the value of each unit would be?

A. That's correct.

Q. And you would expect, over time, the value of those units to increase, wouldn't you?

A. After they're repaired?

Q. Correct.

A. After they are repaired, I would expect their value to follow the market. And that could be up or down.

Q. Exactly.

Speculative, isn't it, to look at the future of what the market will hold?

A. Well, that's sometimes what we have to do.

Q. But it speculative in nature, isn't it?

A. Well, not as an appraiser, no, sir. In the appraisal business, value is the present worth of future value. So --

Q. Present value -- and if I look at those

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three exhibits that I entered, that's the value on those dates? what those units were worth?

A. That's my estimate of the value on those dates, with and without defects.

Q. The loss of this value is a temporary condition, isn't it?

A. Which loss are you talking about, sir?

Q. The current loss that you've got on this board. That's a temporary loss until they are repaired; correct?

A. Well, the repairs have to happen.

Q. I understand that. But I'm just looking at your testimony. You testified in the past that that is a temporary loss, that it will be -- that value will be brought back into the units once they are repaired?

A. Once they are repaired.

Q. And I believe you testified that if the problems are fixed, the loss of value goes away, doesn't it?

A. I did testify to that, yes, sir.

Q. Since 2011, would this -- is it a fair statement to say that the values of properties in Charleston County have gone up?

A. When you say Charleston County, you open yourself up to all kinds of different problems.

Q. Let me ask you this. I read in --

THE COURT: Why don't you just limit it to

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Daniel Island --

MR. MAYBANK: I'm about to do that.

Q. [Mr. Maybank] I read in the Charleston Business Journal about three weeks ago that the values on Daniel Island have been going up rapidly.

A. There are some values that are going up, mostly in the lower price tiers. Other values are -- commercial values are still down, commercial rents are still down.

And I think the luxury condominium market is very static right there. There's still not a tremendous amount of demand out there for those units. And you still have places like the Tides and Anson Arms, I think, Anson House --

Q. Is that Mr. Jervis' [phonetic] development?

A. Mr. Jervis' development. They're coming on the market and they're at liquidation-type prices.

Q. Exactly. And that hurts the overall condominium market, doesn't it?

A. It does.

Q. Because it floods the market with lower-priced units below market value; right?

A. That's why I believe the value of these units have been held down and they've just been static and they haven't risen yet.

Q. Because of these condominiums that are being

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liquidated and sold at fire-sale prices?

A. Yes.

MR. MAYBANK: Thanks, Mr. Donato.

THE COURT: Any redirect?

MR. BUNDY: Just a little, Your Honor.

REDIRECT EXAMINATION

BY MR. BUNDY:

Q. Mr. Donato, will the opportunity that was lost by my clients in 2008 be returned to them when these units are fixed, if they ever are?

A. No, sir.

Q. So that opportunity, the ability to not loose 270,000, 330,000, whatever that number is, that train has pulled out of the station; correct?

A. Yes, sir.

When you and I were feeling the effects of the current real estate recession, we had the opportunity to get out.

Q. Now, this litigation was filed in 2009. You're aware of that; right?

A. Yes, sir. I am, sir.

Q. And do you have any experience with lawyers doing closings on behalf of buyers and sellers?

A. I do, sir.

Q. Do you think a decent lawyer would go look in

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the courthouse and see if there was any pending litigation over a condominium that his client was getting ready to buy?

MR. MAYBANK: Your Honor, we would object. That's all speculation.

THE COURT: Overruled.

A. I would expect that to happen, yes, sir.

Q. [Mr. Bundy] And if you, as an appraiser, were asked to appraise something -- and let's suppose that you saw this MLS listing that didn't have any disclosure on it, you were representing the buyer and the buyer's lawyer calls you up and says, you know, Chris, I got a forty-page complaint alleging fraud, hundreds of thousands, millions, of dollars worth of damages and it wasn't disclosed, but since it wasn't on the disclosure report, we're just going to figure it's all been fixed. Do you think that would be pretty good advice all the way around?

A. No, sir.

Q. Now, so every sale that you were discussed with on the cross-examination was after 2009, wasn't it?

A. It was, sir.

Q. So assuming that these people got a halfway competent lawyer who went down --

Do they list mortgages on the disclosure form?

A. Yes, sir.

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Q. So if a halfway competent lawyer went down there, it would have been a matter of public record; right?

A. It would have been a matter of public --

Q. This lawsuit has all been a matter of public record since 2009, okay -- and there are some pretty serious allegations about how poor and badly these buildings were constructed, is it not?

THE COURT: Was a les pendens filed?

MR. BUNDY: Sir?

THE COURT: Was there a les pendens filed?

MR. BUNDY: No, sir.

THE COURT: How would you find that, if you were to examine the titles, since this hadn't been reduced to judgment?

MR. BUNDY: I would assume you would find it by looking at the condominiums, looking through it -- down there and looking through it. I don't know. I'm no title searcher.

THE COURT: Pardon?

MR. BUNDY: I'm no title searcher, Judge.

THE COURT: Well, I mean, unless there's a les pendens --

MR. BUNDY: Unless it's in the chain of title.

THE COURT: -- it's not much in the public

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record, so they would show it in the lawsuits actually pending. Now, if there's a les pendens filed, that's a different story.

MR. BUNDY: Point taken. Point well taken.

Q. [Mr. Bundy] Let's talk about your research. When you went to determine what the value of the defects were, did you actually discuss with the people who were involved in the transactions -- that Mr. Maybank has discussed with those people involved -- whether they knew or did not know of the defects?

A. We either discussed with the party -- with a party to the transaction. And a lot of times that party to the transaction could be an agent who is representing neither the buyer nor the seller. So in the two or three instances that Mr. Maybank handed me comparables that we actually used, we discussed whether or not they were informed about the litigation, and we were informed that they were through the agents that were representing the buyers and the sellers.

Q. Given your experience on Daniel Island and real estate transactions in Charleston County -- how much doubt do you have that these purchasers, that Mr. Maybank referred to in those transactions, knew or should have known about these defects?

A. I don't think there was any doubt. I think they

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knew about the defects.

Q. If you went out and walked around the property during that period of time, would you have seen scaffolding and all kind of repairs going on?

A. No, sir.

MR. BUNDY: Thank you, sir.

THE COURT: Recross?

MR. MAYBANK: No, Your Honor.

THE COURT: Pardon?

MR. MAYBANK: No, sir.

THE COURT: Thank you so very much. Appreciate your being here.

THE WITNESS: Thank you, sir.

THE COURT: Any reason he can't be excused?

MR. BUNDY: None, Your Honor.

THE COURT: You may be excused. Thank you so very much.

THE WITNESS: Thank you, Your Honor.

[Whereupon, Mr. Donato is excused and exits the witness stand]

THE COURT: We're going to take about a ten- or fifteen-minute recess.

MR. BUNDY: Thank you, Your Honor.

MR. MAYBANK: Thank you, Your Honor.

[Whereupon, a recess is taken from 11:58 a.m. to

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12:30 p.m.]

[Whereupon, Plaintiffs' Exhibit Number 180 is marked by the court reporter]

[Whereupon, Plaintiffs' Exhibit Number 181 is marked by the court reporter]

THE COURT: What are we doing?

MR. BUNDY: Next witness, Your Honor. We have a Power Point slide show to show you.

THE COURT: Okay. That's fine.

MR. BUNDY: The plaintiff calls Theodore Padgett, Your Honor.

THE COURT: Theodore Padgett. This is the noise man?

MR. BUNDY: No, Your Honor. This is my engineer who designed -- who did the investigation of the buildings. He's going to explain all the defects, explain the scope of work.

THE COURT: Is he a design engineer?

MR. BUNDY: He's a professional engineer, Your Honor, a structural engineer --

THE COURT: Structural engineer?

MR. BUNDY: Sir?

THE COURT: Structural?

MR. BUNDY: Yes, sir, structural. He's also -- I'm going to qualify him in several areas.

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THE COURT: Okay.

[Whereupon, Mr. Padgett comes forward]

THE CLERK OF COURT: Raise your right hand.

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

THE WITNESS: I do.

THE CLERK OF COURT: If you would be seated.

[Whereupon, Mr. Padgett takes the witness stand]

THE CLERK OF COURT: If you would state your full name and spell your last name, please.

THE WITNESS: Theodore Glen Padgett, Jr.

THE COURT: Can y'all agree to his stipulation, I mean, to his qualifications? If you --

MR. BUNDY: Your Honor, I think it might be helpful for me to go over a little bit of background, because I'm going to -- I would like for you to understand his qualifications.

THE COURT: Well, I will. But will they agree to his qualifications? Because I don't really care about where he went to school and everything. I would like to hear a little bit about his qualifications.

MR. MAYBANK: I think to the extent he's an engineer, we certainly can't disagree with that. He's

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been in just about every case I've got in Charleston County.

THE COURT: All right. Go ahead.

MR. BUNDY: Fair enough.

Your Honor, just a little housekeeping, if I may, just to move things along.

Plaintiffs' Exhibit 181, which is in by consent, Your Honor --

THE COURT: 181?

MR. BUNDY: Yes, Your Honor.

-- and what 181 is is a list of all the slides you're going to see and all -- it's not in your book.

THE COURT: Okay.

MR. BUNDY: And all the -- so you can look at them here or look at them here, whichever you prefer.

[Off the record momentarily]

MR. BUNDY: Your Honor, Exhibit 49, without objection. Plaintiffs' Exhibit 49, without objection. And that is the estimate done by Southeastern Construction. I'm not going to be going through it but I think defense counsel will be asking questions so we went ahead and agree to put it in now for ease.

THE COURT: All right. Plaintiffs' Number 49, without objection; is that correct?

MR. MAYBANK: Correct, Your Honor.

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THE COURT: 49 admitted without objection.

[Whereupon, Plaintiffs' Exhibit Number 49 is admitted into evidence by the Court]

MR. BUNDY: Your Honor, Plaintiffs' Exhibit 180. This is the estimate that was prepared by Southeastern Construction. Of course, they'll be here later to discuss their estimate in detail. It made it easier to examine Mr. Padgett by going through the estimate so we could sort of go through details --

THE COURT: Plaintiffs' Exhibit 180?

MR. BUNDY: Yes, Your Honor.

THE COURT: Any objection to 180?

MR. MAYBANK: No, sir.

THE COURT: All right. Plaintiffs' 180, without objection.

[Whereupon, Plaintiffs' Exhibit Number 180 admitted into evidence by the Court]

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THEODORE G. PADGETT, JR.,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BUNDY:

Q. All right. Mr. Padgett, you are a licensed professional engineer in the state of South Carolina?

A. I am.

Q. And how long have you been so?

A. I was registered by the state of South Carolina in 1980.

Q. And how many -- do you have any particular areas of concentration or expertise under the auspices of your professional engineering degree?

A. Degrees.

Q. Degrees. Whatever degrees do you have?

A. I have a bachelors in civil engineering in 1974, a masters of engineering and structure of mechanics from 1975.

Q. Any particular areas of expertise based on your experience?

A. Yes, sir. I started designing new condominiums in 1984, starting investigating the repairing of condominiums in 1985, and I've been doing that kind of work ever since then.

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Q. So you have expertise in design and water-intrusion investigation and that sort of stuff?

A. Yes, sir.

Q. Now, do you also have expertise in analyzing the quality of construction in place, whether or not it's -- whether or not it was good and workmanlike?

A. Yes.

Q. Do you have experience to determine whether or not work-in-place meets the plans and specifications?

A. Yes, sir.

Q. All right, sir. Mr. Padgett, when did you first, and how did you first, get involved with The Oaks?

A. My very first involvement with The Oaks occurred in 2007. The people at Carriage Hill had contacted me regarding a problem they had found with the windows. It seems the manufacturer had driven nails through the corners of the glass, and they asked me to represent them as a local engineer and get through that process.

Q. All right. And subsequent to that time, did you become engaged by the plaintiff, the HOA, in this case to look at these buildings to determine what, if anything, was wrong with them, how to repair it, and your opinion as to why it was in that situation?

A. Yes, sir.

Q. Okay. Would --

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A. I was contacted by Ravenel Associates in May of -- excuse me -- April of 2008. When I did a walkthrough -- Ravenel was a client of mine I've worked with since 1988, by the way. When I did a walkthrough, told them it looked like we had some major problems, scheduled an investigation, performed this investigation in May of 2008.

Q. And did you issue a report in May of 2008?

A. I did.

Q. And was the -- was your -- were your conclusions and observations ended up in Plaintiffs' Exhibit 32?

A. That's correct.

Q. Very briefly -- because the judge clearly can read it for himself later. But I would like you to at least give the judge just a very brief outline of what it was you did and what it was you discovered during that time period. But as it relates to windows, there's no reason to go into the windows --

A. I understand.

Q. -- or the balusters or anything like that; do you understand?

A. Right.

THE WITNESS: Could I have my first slide, please?

MR. BUNDY: Sure.

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[Off the record momentarily]

A. This first slide -- excuse me.

Q. [Mr. Bundy] Before we start -- before we start, just to lay some foundation: you took all these photographs?

A. I took all these photographs.

Q. And they are dated?

A. I have dates here, on my slide list, and where they were taken.

Q. All right. And do they accurately depict what you saw through the camera lens?

A. Yes, sir.

Q. All right. Go ahead.

A. This is -- the first picture I will show you is really the first problem that we discovered over there. This material here is the roof structure for the -- above the balcony and on this side over here is the wall, the end wall, of the building. All this is rotting, wet, OSB strand-board wall sheathing.

This is lower down at that same location. All the stains in the Tyvek indicate all this OSB is wet and rotted.

And here, another location.

This is the soffit of Mr. Chiovarou's unit. And we saw this brown crack in the stucco right here. This is

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what is referred to as a horizontal stucco return -- horizontal soffit return. I'm sorry. So I cut this open and it's black with water damage and rot.

Q. Now, let me ask you when you took this. When did you take these photographs? The date.

A. That was May 8th, 2008.

Q. So the buildings were how old at that time?

A. Three years.

Q. Would you expect to see that deterioration in three years?

A. Advanced, very advanced, for what you would expect.

As we continued around the back side of the buildings, we started finding -- it's really kind of hard to see in this, but all of this is wet and rotted wall-sheathing materials. Here, again, you can see -- you can see the little fingers of the fungi growing into the back of the Tyvek. More of the same. Wet to the touch. Saturated moisture content. My meter.

And then we came -- we got to this point. What had happened up to this point -- all of those photographs, the previous photographs, were taken in May of 2008. This one was taken on November 17th, 2008.

Q. And the photograph number is?

A. This is number 11.

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MR. BUNDY: The number is on the back, Your Honor.

A. Prior to this, Carriage Hill had gotten back involved in this project. They had hired Mike Parker, they had hired a contractor, and started repairing the first problem, which was the roof-wall intersection problem.

Q. [Mr. Bundy] All right. Who is Mike Parker?

A. Mike Parker is an engineer from North Carolina. He's here in the courtroom.

So up until this was discovered, Carriage Hill was in the process of making repairs to the stucco problems on building five, at least, and on the other roof-wall intersections of the other buildings.

Q. Who was paying you to do this work?

A. Who was paying who?

Q. Who was paying you.

A. The homeowners association was paying me.

Q. So Carriage Hill wasn't paying you to investigate and determine what was wrong with these buildings?

A. No, sir.

Q. They were paying Mr. Parker?

A. Parker. Right.

Q. And Mr. Parker didn't discover this, you did?

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A. I think Mr. Parker actually discovered this. This is on the front of building five, I believe it is.

And this just shows -- the next two photographs show up-close damage of this second photograph, first on the right-hand side. That's wood in the advanced state of deterioration.

Q. Do you have an opinion, as a structural engineer, whether that's safe?

A. That's not worth saving right there. It's gone. All that material has had it.

And this is, you know, the type of wall-stud damage and so forth we found on the left-hand side of that same building.

It was at this point that I believe that Carriage Hill realized not only they had some problems but realized they had big problems. And, of course, this portends at least some window involvement.

This one is of damage to the wood sill after a window was removed.

More exterior stucco damage above the windows.

This one is a previous repair that was -- I can't tell whether that was 15 or 16.

THE COURT: 16.

A. 16. Okay. That was taken in January of 2012. This is also on building five. And these deteriorating

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conditions were actually the subject of a 2008 repair by Carriage Hill.

Q. [Mr. Bundy] So let me make sure I understand. In 2008, that's when that brighter piece of strand board was replaced?

A. That's correct.

Q. But the rest of it was not?

A. That's correct.

Q. Do you have an opinion as to whether or not that was an adequate repair?

A. Well, when we opened it up, there was no -- I mean, it was wet. There had been water damage to it. So it was not adequate.

Q. So in 2008, the repair done by Carriage Hill was not adequate?

A. Correct.

Q. It was not good and workmanlike?

A. Yes, that's correct.

Q. Okay.

A. This photograph was taken at building four. These are the load-bearing studs. The stuff that looks like charred wood here in the middle of the picture is what's left of the load-bearing studs supporting a beam, a large beam, that spans across the back of this building. It carries two floors of exterior wall and part of the

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roof structure. Well, these are shot. These are gone. Structurally, this was unsafe, the condition that I found it in. We immediately, I'm talking about that afternoon, shored this up to make sure nothing was going to fall down.

Q. What's the date of that photograph?

A. That date is January 5th, 2012.

Q. So at that point, the buildings are six years old?

A. Yes.

Q. Roughly?

A. Yes.

Q. And do you have an opinion as to whether or not these buildings should be in this state after six years?

A. They should -- obviously, they should not be in that state.

Q. Should they ever be in this state?

A. No. No, sir.

Q. I mean, a properly-constructed building should not be in this state --

A. No.

Q. -- at any point in time?

A. That's correct.

Q. And you, as a licensed professional engineer, in the state of South Carolina, required as a matter of law

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to protect the life and safety and health and welfare of South Carolinians, stopped what was going on and made them fix it --

A. That's correct.

Q. -- correct?

A. That's right.

This is some more damage we discovered during 2012. And here, again, that's the same stuff.

And as a result of stucco investigations that I performed, I identified a number of defects.

Q. Let's talk about the stucco. What's wrong with the stucco?

A. Well, the first thing is that there's no head flashing at any of the windows or doors. The second is there's no drainage feature provided at the bottom of -- at the bottom of any wall that I found. And those are important because stucco is considered to be a wet material; that is, it's going to absorb moisture from the atmosphere and it's going to be wet on the back side. What you have to do is provide an avenue for that water to get out of the wall cross section. Those are code requirements. Both of those are code requirements.

Q. So those two situations violated the building codes?

A. Yes, sir, they did.

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Q. And by definition, then, are not good and workmanlike?

A. That's correct.

We also found an inadequate number of control joints. That's a violation of code. We found that there were -- the control joints that were installed were installed incorrectly, which is a violation of code.

These buildings use paperback lath. What that is is a Kraft-type paper that the metal lath is glued to the face of it and when you join the two you're supposed to take it apart so the paper goes against the paper and the lath against the lath. At The Oaks, that was not the way it was done. It was paper to lath -- paper to lath, paper and lath, paper to lath, which is, again, another code violation. Now, the paperbacked lath was installed vertically, which is a violation of code because that stucco is meant to stand horizontally between the studs.

Q. Do you have an opinion to a reasonable degree of engineering certainty whether or not the stucco on this building, all of it, needs to be removed?

A. I do.

Q. And what is that opinion?

A. It needs to be removed.

Q. Now, hypothetically, I would like to ask you to assume that the windows were put in properly, that the

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windows were great windows, that they were properly caulked, and everything regarding the windows, the balustrades, and everything else on this building was absolutely perfect. Do you have an opinion to a reasonable degree of engineering certainty whether or not this stucco would still have to come off?

A. Yes, sir.

Q. Why is that?

A. You've got all this proliferation of installation defects, code violations. The lack of drainage is not -- drainage is not provided. There would be damage otherwise. And the rest of these, the installation of life goes to long-term performance in things like wind, windstorms. So in order to get what they were supposed to have, all the stucco has got to go.

Q. As a result, do you have an opinion to a reasonable degree of engineering certainty whether or not this defective stucco installation caused damage to other products and materials and/or resulting damage to the building?

A. There was damage to sheathing, to studs. There was damage to insulation. And there were a couple more codes, but there were a couple more violations associated with the stucco, Mr. Bundy.

Q. Do you have an opinion to a reasonable degree of

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certainty whether or not at least part of the reason for this defective installation was failure of the general contractor or the construction manager to properly supervise the installers of this material?

A. That would be my opinion, yes.

Q. Because you found these problems to be widespread?

A. Yes, sir.

You know, while we started investigating stucco in May of 2008, the stucco has been subject to investigation by me, by Mark, and others, off an on for five years now. I see the same defects every time walls get opened.

Q. Do you have an opinion to a reasonable degree of certainty whether or not a properly qualified general contractor, building six individual buildings one right after the other, should have seen these things at some point in time?

A. They should have seen them, yes.

Q. Did you see any evidence at any time in any of your investigations that the subcontractors, the general contractor, or the construction manager ever got any better at building these buildings?

A. No, sir.

Q. So instead of having experience of building six

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buildings, they just had six experiences one -- the same experience six times; right?

A. That's what it looks like, yes.

Q. Do you think they learned anything over the six buildings?

A. I couldn't tell you that, Mr. Bundy.

Q. Continue.

A. Okay. Brick veneer: the next four pictures I have of brick veneer. In November of 2008, I investigated portions of brick veneer in conjunction with Mr. Gary Freeman, an architect. And that big knife is Mr. Freeman's knife.

Q. It must be a pretty sharp knife to cut through mortar.

A. Well, it didn't have to cut through. The joists were open. And --

Q. Do you find that to be good and workmanlike?

A. Absolutely not.

You could lift the brick out. This didn't take any effort. This is the way we found it. And the reason this is not bonded is because this brick is laying here on this silver peel-and-stick, just metal -- silvery-metal flashing material. There's no bond that's going to happen there. But that's the way we found it.

Q. Do you know if the plans -- was that detailed in

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the plans, or do you know?

A. I don't remember.

Q. That's not good and workmanlike, is it, that previous --

A. No, sir. That represents a violation of the building code. I mean, you simply should not be able to handpick the brick off the side --

Q. How high off --

A. -- of the building.

Q. How high up off the ground is that?

A. That is at the juncture of the third and fourth floors, right at the fourth-floor level.

Q. What sort of wind load or seismic event would it take to pull that brick off of there and fall down on the ground?

A. It would take, you know, a wind probably up in the ninety-, hundred-mile-an-hour range. A very low-magnitude earthquake.

The next picture -- the next two pictures are the window-heads and the brick. And what they've done here is you could see -- you could see the sag that's in this flashing.

Q. What's missing from this picture, Mr. Padgett?

A. Well, what they did was they -- the steel angle, which is nothing more than a piece of metal that's shaped

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like an L, the toe of it was too short so they had the brick sitting off the end of it.

Q. By toe you mean the --

A. Right off the toe --

Q. -- horizontal leg?

A. That's right.

And it gives that ugly appearance that you see here and again here. It might be a little bit more dramatic in that one.

Q. Is that structurally adequate?

A. I don't believe it is. You've basically got the brick sitting off on the very end of the angle so it maybe sits an inch off of the edge at seal angle.

Q. Would you -- let me ask you this. You've inspected construction projects, you've worked with architects and engineers; have you not?

A. Yes, sir.

Q. During a normal pay request, architects come out and look and see if things are done right for payment purposes; right?

A. That's correct.

Q. Would you expect a competent architect to have accepted that work that was open and obvious?

A. I can't imagine that happening.

Q. Do you think it would make any difference if the

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architect was unlicensed? I mean, would you expect less of an unlicensed architect than one that maybe was?

A. Probably so, yeah.

Q. Okay. What else?

A. Well, there's two other problems that I found with the brick veneer. These are code issues. When we opened up the brick in numerous locations we did not find any horizontal joint reinforcement. What that is is a small, nine-gauge diameter wire that provides some measure of ductility and it's got to be installed between the bricks and the mortar joint and no more than eighteen inches vertically.

Q. How much did you find on this job?

A. I didn't find any.

Q. Is it a code requirement?

A. Code requirement.

Q. Is that the sort of thing you would expect an architect or a construction manager or a general contractor to be looking for?

A. Yes. If they knew -- if they knew they had to put it in, yes, they would have.

Q. Is it in the plans?

A. That's an earthquake-engineering aspect of these buildings. There's too many times we see engineers from out of state come in and design projects and they're not

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all that familiar with the earthquake stuff because they don't do it every day like we do here. This engineer actually had the wire-joint reinforcement specified. We didn't find it out here anywhere. The second --

Q. Do you have -- do you know who was supposed to provide the accessories as it related to the mason versus the general contractor or the owner on this job?

A. I don't know.

Q. That would be an accessory, would it not, typically referred to?

A. Yeah. That, in conjunction with things like brick ties and those kinds of --

Q. In your experience, do masons working by the hour typically provide those accessories? Or are they typically provided by the general contractor?

A. Typically those are provided by the general contractor, and masons provide only labor.

Q. Is it your experience that if you don't have it there when it's time to put it in, the masons are going to keep laying brick?

A. They're going to lay brick. That's right.

Q. They get paid by the brick; correct?

A. Correct. That's right. Per the thousand.

The other code violation associated with the brick veneer is you are required, under the earthquake

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provision of ACI-530, to support the brick --

Q. That's the American Concrete Institute?

A. American Concrete Institute.

-- to support the brick at each floor -- the reason for that is so when there's an earthquake, you don't lose the entire brick wall, you might lose portions of it. That was -- these buildings were not done that way. So what you would see is a steel angle, a shelf at each floor.

Q. And they don't have it?

A. It's just not there.

Q. Is that dangerous?

A. It would be in an earthquake.

Q. So these buildings clearly don't meet the earthquake requirements?

A. That's right.

Q. But they're supposed to?

A. They should, yes.

Q. So in an earthquake, these buildings would be unsafe and uninhabitable?

A. They would be inhabitable after an earthquake.

Q. So if the developer were able to predict earthquakes, he could tell these people when to leave?

A. Well, that's true. But it still represents violations of the building code, Mr. Bundy.

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Q. All right. Next?

A. The next issue I have to show you is -- has to do with the porch waterproofing.

Q. The porch waterproofing. Okay.

A. The balconies. What you're looking at here is this -- this is the horizontal bottom rail fo the guardrail on the porches. And this is a two-by-four that's used to provide support for it. And here it is once we took the rail off. This is raw concrete, because this is actually on the second floor. These porches were waterproofed -- the handrails were put on these porches before they were waterproofed. I mean, that is just -- it's unbelievable that anybody could think that's acceptable.

Q. Well, that relates to sequence of operations, doesn't it?

A. That's correct.

Q. And isn't that exactly what a construction manager is supposed to do? sequence the operations of the various subcontractors?

A. That's correct.

Q. And isn't that exactly what a general contractor is supposed to do?

A. That's what a general contractor earns his money doing.

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Q. And the only way to get the waterproofing underneath the support magically is to pour the waterproofing before you put the support up?

A. Got to do it.

Q. Does that give you evidence of just a basic misunderstanding of construction?

A. Yes, sir.

Q. Is it more evidence of lack of supervision?

A. It could be both.

Q. Any excuse for it?

A. There's none.

Q. I mean, have you ever seen it before in your experience?

A. I've not seen this before, no.

The next one, this is number 26. This photograph was taken in 2008. And what you're looking at here is up at the top, this is the top plate, this is the second-third floor line --

Q. I hate to interrupt you, but let me -- I need to close a few things up here.

As it relates to the brick --

A. Okay.

Q. -- do you have an opinion to a reasonable degree of engineering certainty whether or not all the bricks on all these buildings need to come off?

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A. Yes, sir.

Q. And that is what?

A. They need to be replaced.

Q. Okay. And they need to be replaced because they violate the building code in numerous particulars and are unsafe?

A. Yes, sir.

Q. So let me ask you this. Assuming that there was nothing else wrong with this building but the brick -- windows were put in right, everything was done, the stucco was right, perfect job except the brick that's out there was put in exactly like it is -- do you have an opinion to a reasonable degree of engineering certainty whether or not the brick would still have to come off?

A. Yes, sir. All the problems I just described to you don't depend on anything else, so, yes, it would still have to come off.

Q. Okay. Go ahead.

A. The wall insulation was actually -- is actually missing. This is the exterior. This is building five -- building five taken in November of 2008. Up here is the -- this is the fourth floor, third, fourth floor, and this is the lower floor. Anyway, this is the floor truss and you can see there's insulation here, which is like six-inch batt insulation.

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Q. Okay. So is this where the sound is going, from the top of this picture to the bottom of this picture?

A. I'm sorry. The what?

Q. The sound problem. That sound we've had problems with emanates from the top and goes down; is that --

A. Yes.

Q. So this is that flooring between that we're looking at; right?

A. This is the floor structure, yes.

Q. And looking straight in the middle, that's that truss --

A. That's right.

Q. -- that runs all the way out of the picture that way?

A. That's right.

Q. And to the left is another truss, to the right is another truss; correct?

A. Right.

Q. And all that's in there is what? Tell me what's in that cavity.

A. Six inches of batt insulation.

Q. And how big is the cavity?

A. Fourteen inches.

So you have -- this space here, you have an

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uninsulated wall.

Q. Where is the concrete floor in this picture?

A. There's no concrete on this floor.

Q. Where's the Gyp-Crete in this picture?

A. There's no Gyp-Crete.

Q. Do you have an opinion to a reasonable degree of engineering certainty, based on your thirty years of experience, whether or not this floor should have either been solid concrete or have Gyp-Crete on it?

A. Thirty-six years experience, Mr. Bundy.

Q. Excuse me. You're older than you look, or younger than you look. One or the other.

A. Thank you. You're awfully kind.

This is the first condominium project I have ever seen that did not have a concrete floor top.

Q. The first?

A. The first. And I've been involved with probably 150 over the last twenty-eight years or so.

Q. And just out of curiosity, why would you want to put a concrete floor in a luxury condominium or, if you were too cheap to do that, at least put Gyp-Crete on the floor? Why would you want to do that?

A. For sound. I mean, those floor toppings, Gyp-Crete, light-weight concrete, are standard in this industry. And they even put this stuff in moderately-

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priced apartments. So you go to Kiawah, you go to Isle of Palms, you always see -- they always have floor toppings.

Q. And during your investigation, did you ever have an opportunity to meet with the developer or any of its representatives, architects, or otherwise?

A. Yes, sir.

Q. Do you know a gentleman named Rumplick?

A. Yes, I do.

Q. He's in the courtroom?

A. Yes, sir.

Q. Do you recall attending or being in Mr. Rumplick's presence when he made a comment or any comments about this lack of Gyp-Crete and the sound problems?

A. I do.

Q. And what did he say?

A. Well, Mr. Rich Behringer asked him --

Q. And Rich Behringer is one of the developers?

A. He's with Carriage Hill.

-- asked Jerry why didn't we put the Gyp-Crete.

Q. And we would be who?

A. Carriage Hill.

Q. And Jerry is at least an architect licensed in New York?

A. Yes.

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Q. Y'all were talking in South Carolina; correct?
A. I'm sorry?
Q. Y'all weren't in New York when you were talking, you were in South Carolina?
A. We were in South Carolina, yes.
Q. So when y'all were discussing this job in South Carolina with this New York architect, and it came up why didn't we put Gyp-Crete, what was the response from the architect?
A. Jerry said that they had never done a building like this and they didn't know it was required, didn't know it was needed.
Q. Didn't know it was needed. But it was needed, wasn't it?
A. It's very definitely needed.
Q. Sort of like the -- is it as basic as the water-proofing underneath that post?
A. Yes, sir, it is.
Q. To somebody who actually practices in this area?
A. It is.
Q. Is it as basic as putting the mortar in the brick so they don't fall on people's head?
A. The reinforcing wire in the brick joints. Yes.
Q. All right. So what's the problem with this picture?

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A. The walls are uninsulated for this ten-inch section.

Q. So there should have been at least insulation at the end of there?

A. That's right. But you have to take the stucco off and the brick off to get at this. You can't even touch it.

Q. So even if the brick and stucco were put on right, you would still have to pull them off, at least in this area, to insulate?

A. That's right.

Q. Is that a code violation?

A. It would be a code violation.

Q. And it also results in increased heating and cooling costs, doesn't it?

A. It does. Absolutely.

Q. All right. Next picture.

A. This next section has to do with the brick stairs built out there. This is just a typical what the entries look like. And there's all these nasty little cracks right along the edge. And here you see it again right through here. The reason --

Q. Back up one picture. Is that -- does that mortar joint meet the ACI standards?

A. You mean the thickness?

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Q. Thickness? Variability? Anything.

A. It certainly isn't very good workmanship, Mr. Bundy.

Q. It's not very workmanlike, is it?

A. It's not neat. I mean, you can see this. That looks like a cold joint there and another one here. That might even be a patch. I'm not certain.

The front wall of the stairs, the one that you actually see when you walk up to it, is here on the left. That's this part of it. And that front wall is actually more or less a brick veneer wall. It sits right on the footing. Then on the right-hand side, these bricks of the stairs themselves are actually supported by a caster-placed reinforced concrete structure and you can see that the brick supported by the concrete structure has moved down relative to the one that's supported directly off the foundation. And there you get this little -- nasty little crack. And all of them are constructed that way.

And since there is no drainage provided in any shape, form or fashion for these brick veneer -- for these brick stairs, they just stay wet and they grow all this black stuff and this green mold and all that kind of mess.

Q. Do those need to be repaired, replaced?

A. They do indeed.

Q. All right.

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A. Also a part of my investigation with Mr. Freeman in November of 2008, we got up on the roof. And this is what I refer to as a parapet return wall. This is a wall that just sits right on top of the roof deck, the plywood roof deck, with no other structural considerations given. Now, Mr. Freeman is not the smallest guy in the world, but he's able to move this parapet wall with a moderate amount of pressure, hand pressure. And as a structural engineer, I can tell you if you move -- able to move your building structure with your hand, it's not going to stand up to 130-mile-an-hour wind load.

Q. So this would be a code violation?

A. Yes, sir.

Q. Is that just purely decorative, or does it have a function other than just to be up there?

A. I think it's just decorative in nature.

Q. Do you know what -- do you know what it's constructed of or how it's constructed inside?

A. It's constructed of two-by-fours and plywood sheathing and it's covered with Tyvek and stucco on one side and the roofing membrane runs on the side.

Q. Would you be surprised if that structure became airborne during a hurricane?

A. I would not, no.

Q. Along with the brick?

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A. Absolutely not.

The next issue has to do with the pop-outs of the concrete. There's a lot of concrete at The Oaks that have contaminates in it and this is typically what you see. This is a normal-sized pop-out. It's about, oh, an inch and a half or so across. This looks like one that was previously redid.

This next slide is a -- basically a map of the slab of building two. And all the little green dots you see here, concrete pop-outs of an inch -- roughly an inch in diameter. So by my count, that's fifty-seven pop-outs.

Q. And that's just in this one building?

A. That's in that one building.

Q. All right, sir. Does that need to be repaired?

A. It does, indeed. And the simplest way I found to repair stuff like that is just to take the concrete out, take the concrete slab out, and replace it.

We talked about the acoustics a good bit since I've been sitting in this room for the last day. This is the ceiling from a unit in building four that had to be taken out and repaired because of the fire-sprinkler leak. And you can see --

Q. You're in unit -- what unit are you in here? Three? A three? A third-floor unit?

A. This is a fourth-floor -- third-floor unit.

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Q. Okay. So you're looking at -- this is the ceiling of the third floor, floor of the fourth-floor; correct?

A. Correct.

Q. Okay. All right.

A. All right. And the lower elevations of Sheetrock you see here on the remediated ceiling, the lower ceiling --

Q. So this is after remediation?

A. After remediation.

And then up here you see elements of where -- of the original ceiling. Okay?

The next slide is a closeup looking --

Q. Let me stop you a second.

This is the result of a leak; is that correct?

A. Having the fire sprinkler --

Q. The fire sprinkler. But what I want to ask you is this. I noticed that the metal channels from which the remediated ceiling are hanging are on straps that appear to be nailed to or otherwise attached to the trusses; is that correct?

A. Correct.

Q. It looks like holes were drilled in the --

A. Sheetrock.

Q. -- Sheetrock. But the Sheetrock has been

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removed to the right of that hole. Was that removed because of the sprinkler?

A. That's right.

Q. Just so I -- just so we understand. If that had not happened, what you would be seeing would be a strap coming down through a hole. But the original Gyp-Crete is still attached to the original ceiling in this remediated repair?

A. Right.

Q. And the original ceiling was attached to -- those are hat channels, aren't they?

A. I was going to show you that, Mr. Bundy. Here it is right here.

Q. All right. What is a hat channel?

A. Well, a hat channel is a piece of light-gauge metal. You can see it right here. It's shaped like a hat. It's got two flanges that come up and it has a flat top. That's actually -- actually, that's upside down. But at any rate, there's -- these -- the hat channels are not acoustical hangers. Typically, those are referred to as resilient channels because they only have -- you can only connect those with one flange on the side.

Q. And why is that?

A. So that it actually suspends the Sheetrock from the -- don't have it jammed, you know --

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Q. So in a drum analogy, this would be the strings on a snare drum?

A. Right.

Q. These hat channels would be the -- what they created was a drum, wasn't it?

A. Right.

Q. So now we're looking at the strings on a snare drum?

A. Right, sir.

Q. Okay. Go ahead.

A. And what you see here is -- again, I mean, this is the hat channel right here and it's been hard-nailed to the truss here and there. What that does is that gives you direct sound transmission from the floor above right down through the ceiling. And they would have needed to take all of this hat-channel system out in order to properly acoustically treat this ceiling.

Q. Well, that would be the beginning thing to do.

A. Yes.

Q. You would at least have to get rid of it to start with.

A. Yeah.

Q. That ain't going to solve the problem.

A. It would -- if you take it out -- I think you're going to have to take out the existing -- the original

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ceiling and hat-channel system to be able to properly acoustically support this -- a proper ceiling.

Q. Right. And then you've got to go to work on the floor upstairs and put the Gyp-Crete in?

A. That's right.

Q. All right. What's next?

A. Then in 2010 --

Q. Let me ask you this. Do you have an opinion to a reasonable degree of engineering certainty whether or not the original design was adequate for soundproofing?

A. I don't believe it was, no.

Q. Do you have an opinion to a reasonable degree of engineering certainty whether the remediation was adequate for adequate soundproofing?

A. It was not.

Q. Is it your opinion to a reasonable degree of engineering certainty that at a minimum, at a minimum, this condominium should have had a Gyp-Crete floor and the appropriate acoustical hanging ceiling?

A. Yes, sir.

Q. And in your opinion, to a reasonable degree of engineering certainty, can that be achieved any way now other than what you have proposed in your fix?

A. No, sir.

Q. Okay. Go ahead.

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A. Building one, June 2010, we discovered a mess in the elevator pit. And what you see here is a conglomeration of groundwater, infiltrating groundwater, oil, grease, and hydraulic oil. And this was caused because there were no water-stops provided between cast-in-place-concrete foundation, the foundation wall, and precast-concrete panels that were used as the elevator shaft.

Q. Well, water-stops are pretty -- that's pretty recent, isn't it, in the construction industry? using water-stops?

A. No, sir. This goes back a long time.

Q. Do you think they would have had those available in 2004?

A. Yes.

Q. Nothing particularly magic about that?

A. No, sir, it's not. It's just something that was not done.

Q. Is that the sort of thing a general contractor, construction manager ought to pick up on?

A. Yes, sir.

Q. Because they could be two different trades, and somebody's got to figure out that intersection between those two trades?

A. They do, indeed.

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Q. Sort of what a general contractor does, isn't it?

A. I think so.

Q. Sort of what a construction manager does?

A. That's correct.

Q. An architect is supposed to see that stuff, isn't he?

A. They should know that water-stops are needed, yes.

Q. Is there any reason why the developer couldn't have fixed this back in 2010?

THE COURT: Let me ask him a question.

Explain to me what a water-stop is and where it would go in this picture.

THE WITNESS: Well, Your Honor, you can't see it in this picture. But what you have --

THE COURT: Well, just explain to me what --

THE WITNESS: -- what you have here is a precast panel. Precast concrete is made in a plant offsite somewhere and it's brought in and set down on a cast-in-place-concrete footing that's been preprepared. There are ways to waterproof that with dentonite type plugs that go between the two pieces of concrete and expand once water comes in contact. Typically what's done, cast-in-place concrete, a physical water-stop is

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a plastic accessory that is placed in the construction joint between the footing and the walls, for example. Okay?

THE COURT: Okay.

Q. [Mr. Bundy] So sort of like a key-way or something?

A. Something like a key-way. That's exactly -- what you do is you actually -- in this application with key-way in there and you precast concrete, what you actually do is you put a key-way in there and you would fill that with the dentonite.

Q. Or when you pour the cast-in-place slab, you can put a key-way at the edge of the slab, couldn't you?

A. That's right.

Q. That's nothing but a two-by-four cut with a little channel on it; right?

A. That's right.

Q. That's pretty complicated, isn't it?

A. That's not hard to do at all.

Q. All right. What's next?

A. The last thing we found was the tile, the shower problem. Initially, in December of 2011, these are taken from showers in building five. And what you're looking at is that the tile, of course, is the white-and-gray material, has been removed to expose the damaged OSB

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wall -- excuse me -- there, and again here. All of this, all of what you see, is damaged OSB that's been pulled out and laying down here on the ground.

What they did not do in the shower is -- what they had was the tile with the setting bed placed right directly against a cement board. Neither of those two are water proof. They all absorb water. The only water-resistant aspect of the installation was they actually have a piece of tape over the joints of the backer board.

Q. Is that good and workmanlike?

A. You've got to have a waterproof layer.

Q. Does it meet industry standards?

A. No, sir.

Q. Does it meet the code?

A. No.

Q. Any excuse for this? Any explanation for it?

A. I don't have an explanation for it.

Q. You ever seen it, in your career, come this way?

A. I haven't seen it like this before.

Q. Would you expect to pay $700,000 for a unit that -- to expect to have it done like this?

A. I would not.

Q. Well, this is really as a result and lack of a homeowner maintaining his unit, isn't it? I mean, isn't the homeowner supposed to maintain to prevent this from

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happening?

A. There's no maintenance that you could do.

Not only that, in building five in 2011, and here just recently in building six, we've discovered a second occurrence. There is no outward appearance of a problem on the fourth floor, let's say. If you're on the fourth-floor unit, you wouldn't see anything wrong. The only time it starts becoming an issue is when you start seeing it on the third floor, and then you have to go and -- we found the fourth-floor floor was unsafe. And I think the gentleman testified this morning it was actually his mother's unit. I told the people that they didn't need to use that bathroom. They subsequently moved out.

Q. I would like to show you Exhibit 31-A and ask you if you could identify this.

A. Yes, sir. This is a cost-estimate proposal from Carolina Builders and Reconstruction for cleaning the elevator shaft, elevator pit, in building one. That cost is $1850.

THE COURT: What number is that?

MR. BUNDY: 31-A, Your Honor. Is that it?

THE WITNESS: 31-A.

MR. BUNDY: We're going back to -- it was on that -- since we were on that picture, I wanted to put it in now.

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Q. [Mr. Bundy] This relates to that picture of the elevator; right?

A. Yes.

Q. And what else is in there?

A. The second one is a proposal from Palmetto Gunnite Construction to come in and inject this elevator shaft with urethanes in order to reduce, stop the water. And that amount of -- is $7500.

Q. Okay. To a reasonable degree of engineering certainty, it needs to be done?

A. It does.

Q. And it was done because it was defectively done to start out with?

A. That's correct.

Q. And it can be fixed for, as of April, 2013, for roughly seventy-five, eighty-five, maybe under $10,000?

A. Almost. There's still about 10,000-dollars worth of elevator-equipment repairs to be done because of this water.

Q. I got you. Okay

Any reason why the developer couldn't have fixed that?

A. No.

Q. Nothing to prevent -- I mean, there's nothing in the way to get it done; right?

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A. No, there's nothing to prevent them to get it done.

MR. BUNDY: Your Honor, at this time I would move to introduce Exhibit 31-A into evidence.

THE COURT: Any objection?

MR. MAYBANK: No objection, Your Honor.

THE COURT: All right. 31-A admitted without objection.

[Whereupon, Plaintiffs' Exhibit Number 31-A is admitted into evidence by the Court]

Q. [Mr. Bundy] Mr. Padgett, are you done with the pictures?

A. Yes, sir.

Q. What I would like to do now is direct your attention to the estimate by Southeastern Construction. Do you have that in front of you?

A. I do.

Q. And the exhibit number, please?

A. [No response]

Q. Exhibit number?

A. Exhibit number 180.

Q. 180.

MR. BUNDY: Exhibit number 180, Your Honor.

Q. [Mr. Bundy] Who is Southeastern Construction?

A. General contractor.

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Q. And have you ever done any work with them before?

A. I have.

Q. And what's your experience with them?

A. I find them to be a very competent general contractor.

Q. And this appears to be, and is, I believe, an estimate titled cost estimate by building, revised date April 2, 2013; is that correct?

A. Correct.

Q. And do you believe it to be based on your scope of work repairing these buildings?

A. Yes.

Q. And how did you convey -- Davis Willis is the one who runs the company; right?

A. That's right. David Willis.

Q. How did you convey to Mr. Willis what it was you wanted done in order to repair these buildings? You've already gone over why. Now I want to know what you want to do and how you want to fix it.

A. I wrote a scope of work back in 2010, I believe it was.

Q. 2010. That would be --

[Whereupon, Mr. Bundy reviews documents]

MR. MCDONALD: I believe it was April.

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MR. BUNDY: What is it?

THE COURT: That's number --

MR. MCDONALD: April of 2010.

MR. BUNDY: April of 2010.

One minute, Your Honor. I apologize. We'll find it in a second.

[Whereupon, Mr. Bundy reviews documents]

Q. [Mr. Bundy] At any rate, there is a document that you created, a scope of work document, for Mr. Willis to price; is that correct?

A. Yes, sir.

Q. And in addition to pricing it, giving him the scope of work in writing, I assume you also discussed it with him?

A. Yes.

Q. Are you satisfied, based upon your discussions with him, that he adequately understands what it is he's bidding?

A. Yes.

Q. Okay. And estimating?

A. Yes.

Q. And do you understand he's willing to do the work for this amount of money?

A. I do.

Q. Now, notwithstanding that you have a scope of

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work, is that enough to get the necessary permits and documents that will be necessary in order to repair this building?

A. We still need some plans.

Q. And who's going to prepare those?

A. Design professionals like myself.

MR. BUNDY: It's Exhibit Number 36, Your Honor, is the Padgett repair scope.

THE COURT: Any objection to 36?

MR. MCDONALD: Your Honor, I believe it's already in evidence.

MR. BUNDY: It's already in evidence?

MR. MCDONALD: Yes, Your Honor.

THE COURT: All right.

Q. [Mr. Bundy] Now, in addition to you or another design professionals in conjunction with the preparing the necessary plans, specifications, the details, et cetera, et cetera, will there also be construction administration involved?

A. Sure.

Q. Is construction administration different on a restoration or a repair job than it is on new construction?

A. No. You still have supervision. That's right.

Q. But, I mean, is it more intensive? Is it more

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work involved?

A. Repairing things is usually more complicated, so, yeah, it becomes a little more intense.

Q. Well, does it also require multiple site visits when a contractor opens a wall up and needs to have a structural engineer tell me how much of the stud wall do I need to take out; right?

A. Or how to shore it.

Q. Or how to shore it.

A. How many shores to put in or when to run, yes.

Q. Because the contractor is not going to make that decision. He's going to call you and make you responsible?

A. That's right.

Q. All right. And it's the same thing through when you try to draw the drawings and repair drawings? They're more detailed, complicated, than a new construction would be?

A. That's right.

Q. And is that because you're working on somebody else's work?

A. That's absolutely correct. You have to take into account the existing conditions and go back to what's good and start from there and do it right. That's what you have to do.

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Q. You also have to make a determination as to whether or not what was on these plans, wherever they are for the construction, were actually followed by anybody?

A. Yeah.

Q. Because you can't rely on these plans if that's what's out there, can you?

A. That's right.

Q. Because have you seen any incidents in the last seven years of deviation in the plans and specifications and the actual construction as-built condition?

A. Yeah. Here's one right here. I mean, there were two sets of structural plans: one for cast-in-place built first-floor structure; the second one was post tension, which is just a different form. And this is precast. So that's a complete deviation. You know, it's not necessarily an unacceptable substitute, but there's no plans -- there's no precast shown in the plan.

Q. Is it fair to say that when you open up a wall at The Oaks condominiums, you don't know what you're going to find?

A. Well, that's -- it's been interesting, to say the least.

Q. And you're certainly not going to find what was called for in the plans and specifications? Or you might?

A. You might.

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Q. Now, what -- is there a fee you charge for your work?

A. Most of my work is done hourly.

Q. Is there a fee associated on a percentage basis with work of this type for drawing plans, specifications, construction administrative, particularly in work of this quality and type and difficulty?

A. Yes, sir. Generally that's around ten percent.

Q. Okay. So to this number, whatever the last number is for the construction that Mr. Willis is going to charge, we need to add ten percent of that amount; correct?

A. Correct.

Q. To pay for the various engineers, architects, et cetera, that need to be employed?

A. That's correct.

Q. Because apparently the last time they built this building it didn't work too well with the ones they had, so we need to get some different ones this time?

A. We're going to do it differently this time.

Q. Let's go to the item one that's on the second page. It's item one, wall repair at rear stucco facade. Now, describe for the judge this condition and how it might be different from just a total stucco repair, if you can.

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THE COURT: Let me ask you one question before we get to that.

Going back to your pictures on the stucco and the water damage and the rot and the mold: I know you testified that the moisture collects behind the stucco, you've got to have a way for it to drain out, et cetera, et cetera. How much can you attribute to that, versus the water coming in from the windows, as far as the stucco is concerned? Or can that be ascertained?

THE WITNESS: You cannot really ascertain it. I mean, contribution from the windows are generally in and around the window areas. There are other places that we have damage. It's pretty hard to separate. These buildings have multiple sources of water intrusion.

THE COURT: What are some of the sources, other than the windows?

THE WITNESS: Water gets behind the stucco and it's allowed -- since there's no drainage, Your Honor, there's no way for it to get out. It's able to get around the various pieces of tape --

THE COURT: I mean, it's got to come in from the windows or roof or improper insulation, doesn't it? The water itself.

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THE WITNESS: Well, the stucco is a material that's always considered wet on the back side.

THE COURT: Okay.

THE WITNESS: Okay. And when you -- you have things like building felt, fifteen-pound felt, used as --

THE COURT: What should they attach the stucco to? I think you said they had felt here. What should they have attached it to?

THE WITNESS: Let me finish and then I'll come back to you.

THE COURT: Okay. All right.

A. What I was going to say is, I didn't get to mention earlier, is we found places where the felt -- building felt was used as a weather-resistant barrier, but it was all vertical, which --

THE COURT: Was that the --

THE WITNESS: -- does not make it waterproof. Sir?

THE COURT: That was the kind -- what was used? You know, they've got that black felt and they've got some that's waterproof.

THE WITNESS: These buildings they mostly used the Tyvek.

THE COURT: Okay. Is that proper or --

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THE WITNESS: Yes. Tyvek is fine.

THE COURT: Okay.

Q. [Mr. Bundy] But you have to use it horizontally?

A. You have to install it -- if you have vertical joints of Tyvek, you have the same problem. What it is is you're going to have the building felt.

THE COURT: You've got to make the joints run in the opposite direction?

THE WITNESS: Right.

THE COURT: What other sources of water would be behind the stucco causing the problems, other than the windows?

THE WITNESS: You can get water around -- through the stucco. Talked about the cracks in stucco. You get water through brick veneer. Same type of thing. You can get water around sealant joints, through the sealant joint, because they're never perfect and they shrink and crack and all those kinds of things.

THE COURT: So the bottom line, you've just got to have some way for it to get out?

THE WITNESS: You've got to have some way to get it out.

THE COURT: Okay.

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Q. [Mr. Bundy] Was there a proper water-management system installed in these buildings?

A. No.

Q. And is it presumed, when you design a building, that water is going to get through the brick and through the stucco?

A. Yes, it is.

Q. And so you have to have a secondary drainage plane to collect and have the water exit out; correct?

A. That's right.

Q. And you didn't find that?

A. That's not there.

Q. Even if the windows hadn't leaked, you would still have had all this water in this building or some amount of it?

A. You would have some amount of it, yes, sir.

Q. Okay. Thank you.

THE COURT: Let me see. It's 1:30. Why don't we take a break at this time. Okay? What time do you want to start back?

MR. BUNDY: That's at your pleasure.

THE COURT: Well, what time --

MR. BUNDY: I'm always ready to go.

MR. MAYBANK: We would like to --

THE COURT: Pardon?

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MR. MAYBANK: -- I guess try to push it along somewhat. We do have witnesses we would like to get out of here.

THE COURT: How about 2:30?

MR. MAYBANK: That's more than fine, Your Honor.

THE COURT: We'll adjourn until 2:30. See you then.

[Whereupon, a recess is taken from 1:27 p.m. to 2:32 p.m.]

THE COURT: Ready to proceed?

MR. BUNDY: Yes, Your Honor. Thank you very much.

Your Honor, just a couple of housekeeping matters. I inadvertently left out asking you to admit 31-B. I think there's no objection.

MR. MAYBANK: What is it?

THE COURT: Pardon?

MR. BUNDY: It's the rest of the proposal to fix the elevator pit. It just had a letter on top as A, and B was behind it. I neglected to --

[Off the record momentarily]

THE COURT: All right. 31-B admitted without objection.

MR. BUNDY: Thank you, Your Honor.

[Whereupon, Plaintiffs' Exhibit Number 31-B is

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admitted into evidence by the Court]

MR. BUNDY: Additionally, Your Honor, there's a new exhibit, 182, which is the cost from Southeastern Construction to replace the unit -- the floors in the units 2-A and 2-B.

THE COURT: What's the number?

MR. BUNDY: It will be Plaintiffs' Exhibit Number 182.

THE COURT: Any objection?

MR. MAYBANK: Your Honor, not at this point. Pardon me. Not at this time. I believe he'll have someone testify about it. We'll take it up at the damages portion.

THE COURT: 182 without objection.

[Whereupon, Plaintiffs' Exhibit Number 182 is admitted into evidence by the Court]

THE COURT: That's the flooring?

MR. BUNDY: Yes, Your Honor. This is the floors where there's no acoustical problem because they're above the -- they're above the garage. But these are the floors that are popping up.

THE COURT: The floors that are coming up?

MR. BUNDY: Off the concrete where it's bare concrete. And it's just to those units --

THE COURT: Above the garage.

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MR. BUNDY: Right. Yes, Your Honor.

Q. [Mr. Bundy] Mr. Padgett, I believe where we were -- because we were going to go through, quickly, the Southeastern estimate, which has previously been marked and I believe --

What is that number again, please, for the record?

A. 180.

Q. 180. The first page of the estimate is just simply the contractor general overhead and markup and that sort of thing.

So let's move on to the wall repair at rear stucco facade. Can you explain why that work needs to be done and briefly explain the scope of work, please?

THE COURT: Is this all of the buildings, or is it broken down by building?

MR. BUNDY: What this is, Your Honor, is he did it by one building and then they multiply it by six. And then some of the buildings -- like one building has a different repair than another in the bottom and so it's a little bit different when we get to the back.

THE COURT: Okay.

MR. BUNDY: Thank you.

Q. [Mr. Bundy] If you would, sir.

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A. This item one refers to the rear diningroom walls. These are stucco walls, that I showed you pictures of, that have the extreme damage associated with them. And this repair is one-hundred percent replacement of sheathing, wall sheathing, and fifty percent of the studs.

Q. And that's just an estimate, fifty percent; right?

A. That's right. It's just a guess, guesstimate.

Q. Based upon what your experience has been?

A. Yes.

Q. Mr. Padgett, since you started working on this project, how many hours have you spent on the site investigating or trying to determine how to fix things?

A. I know you asked me to add all that up but I -- unfortunately, Mr. Bundy, I didn't have time to do that.

Q. Well, just give me an approximation. If you could just give me the approximate number of hours you've spent on this job since you started working on it.

A. Hundreds of hours.

Q. So you feel like you're fairly familiar with the project?

A. I'm very familiar with the project.

Q. On a firsthand basis?

A. Yes, sir.

Q. And you're also familiar, are you not, based on

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your experience with pricing of contractors, whether prices are reasonable and within the reasonable range; is that correct?

A. Yes.

Q. And, in fact, part of what people in your profession do is while they may not estimate jobs, they do give probable statements of construction costs so that the owner-representatives know the contractor is not too far out of line?

A. That's right.

Q. And even before you bid jobs sometimes you'll give an estimate as to what you think it ought to cost --

A. That's right.

Q. -- within reason?

You've had a chance to review this estimate?

A. I have.

Q. Do you find it to be within a reasonable range of estimates for the work that is involved in this case?

A. I do, yes.

Q. All right, sir. So this first item, is there anything else you can say about that?

A. No.

And item number three basically entailed the removal and replacement of all the stucco.

Q. Right.

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A. The difference in item number three is where we don't expect the advance stage of deterioration of the wall structure.

Q. So you think that the rear-stucco facade is the worse facade on all buildings?

A. No question.

Q. All right. Now, we move through the estimate because what was in this estimate is no longer in this estimate, which is replace all windows and exterior doors, not in estimate, not in scope. I guess that's -- NIS is not in scope?

A. Right.

Q. So we now turn to page six, item three. That's what you were just discussing, removal and replacement of all stucco?

A. That's right.

Q. And, briefly, just tell the judge what it is involved in this.

A. Well, what you have to do is you have to strip the walls. You have to put scaffolding up, strip the walls down, replace all the damaged wood, new weather-resistant barrier, new lathe, new stucco accessories, and three coats of plaster.

Q. Is this what should have been done to start out with?

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A. Yes.

Q. So it's not any different from what they should have had to start out with?

A. It's really no different, except we're not going to mess up the lathe paper joints and we're going to put proper control joints in and we're going to --

Q. You're going to do it right?

A. We're going to do it the right way.

We're going to provide drainage at the bottom of the walls.

Q. The next one is remove and replace the brick. I think we discussed that.

A. We did.

Q. And you're just simply going to put it up like it ought to be put up --

A. That's right.

Q. -- with the appropriate accessories and seismic accessories --

A. That's right.

Q. -- is that correct?

A. That's correct.

Q. Replace the exterior trim. What's the nature of that?

A. Item five, paint trim, paint porch ceilings, those items are all associated with the fact that you're

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going to declad and reclad these buildings and, you know, you're just going to mess up the trim.

Q. So when you do all this work, you're going to go back and paint it all over?

A. That's right.

Q. The guardrails are not in the scope; correct?

A. Correct.

Q. Item number nine, wall insulation, what's that about?

A. That was that eight-inch section of wall that occurs at each floor, all the way around these buildings, where there's no wall insulation.

Q. Brick entry steps?

A. Yes, sir.

Q. And we talked about that --

A. Yes, sir.

Q. -- and the rationale. And all these things in your opinion need to be done to a reasonable degree of engineering certainty?

A. They do.

Q. Garage slab repairs?

A. Garage slab repair is for building two only.

Q. And that's that note under item eleven which says, note, item eleven occurs at building two only?

A. That's correct.

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MR. BUNDY: And that, Your Honor, is one of the reasons you'll see different numbers at the end for the cost of these buildings, some of them.

Q. [Mr. Bundy] Mr. Padgett, let me ask you. Have you recently discovered or determined that some of the work that was done by Carriage Hill early on to repair deficiencies has once again failed?

A. Yes. In the last three weeks or so, we discovered another shower problem in building six. A-stack, I believe it is. And you heard the gentleman testify this morning about that was his mother's unit. They had to take the tile out. He had his contractor take the tile out so the homeowners association contractor could make all the structural repairs. During that process, the ceiling was removed and we discovered that we had roof damage above the shower unrelated to the shower problems themselves. And that is a location where the balcony roofs tie into the exterior building walls, which was the subject of a 2008 repair by Carriage Hill. Scaffolding is going up over there this week to take care of that.

Q. So 2008, repair by Carriage Hill has once again failed?

A. Yes, sir.

Q. The next one is the parapet-wall returns.

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A. Right.

Q. What was that?

A. That was the picture you saw of Mr. Freeman pushing on the walls that were just sitting on top of the roof deck. They had to put some braces in there to rework the roofing to make that --

Q. Item thirteen is the French drain system. Why is that necessary?

A. Well, if you've been on the site after it's rained, there's a lot of part you really can't walk around. I mean, you will sink in the clay up to your tops of your shoes. What they've done is they're created a perched-water condition. That's where you have an impervious layer of soil sitting over the free-draining soil, the sandy type of soil, so when it rains, water goes through the sod and it just sits there. So it's always mushy around those buildings.

Q. Is that a function of the way the site was originally grubbed and cleared?

A. That's right.

Q. So it wasn't done properly?

A. No question. That's right.

Q. They removed all the topsoil and never put it back, basically?

A. Yeah. Right. Yeah.

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Q. And that's a 3,000-dollar item?

A. Yes, sir.

Q. The next item is the item fourteen, which is the acoustic modifications to the floors. And I noticed that fifteen is the acoustic ceiling repair. So there are two aspects to this sound remediation or sound correction, I guess?

A. That's right.

Q. Let's talk about the modifications to the floors, first, if you will. I believe you've already testified you believe it would be necessary?

A. Yes.

Q. Tell me what is involved in repairing these floors from above for purposes of sound.

A. The floors you're asking about?

Q. Yes.

A. What you have to do is you have to of course strip off the finished floor, whatever it is that's there. You have to get to every corner of these units to be able to adequately do this, which means kitchen cabinets have to come out, refrigerators have to come out, all the furniture has to come out, base trim has to come off the walls, you have to expose the floors right down to the structural wood.

Q. And I believe these items 14.1 through 14.20

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outline those things that have to be removed?

A. That's right.

And then you're going to be adding an inch and a half of Gyp-Crete, and probably an acoustical underlayment board, so you're raising the floor. So now your back-splashes on your kitchen counters have to be raised. All the doors have to be undercut to actually fit in there again.

Q. And none of this would have been necessary had Mr. Rumplick realized -- or had known that it was needed?

A. Correct.

Q. It could have been done in the normal sequence of events?

A. Right.

Q. You wouldn't do this like they did the porch?

A. Right.

Q. Right?

A. That's correct.

Q. All right, sir. Now, during this period of time I assume you wouldn't be able to live there, would you?

A. You can't because you've got no facilities. You can't cook, you can't use the bathrooms, you've got to --

Q. So you're going to have to hire a mover to come get your furniture and store it?

A. That's right.

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Q. Bring it back when you're done and find a place to live while it's going on?

A. That's right.

Q. Now, in terms of the repair, are they going to be able to do -- or do you know whether the plan is to do it all at one time, all six buildings?

A. Reasonably, you would want to do them sequentially. But I would not want to go start and do them all right at one time.

Q. Well, would there be --

A. So you would go building by building.

Q. Would there be enough staging area to stage a construction project redoing six buildings at one time?

A. That would be hard to do.

Q. Now, when you perform this repair that you have provided the scope of work for, what building code will be required to be followed?

A. It would be the building code in effect when we start the work.

Q. Let's assume you start before July of this year. What would it be?

A. 2006 IBC.

Q. And you have designed it for that?

A. Yes. None of this would change.

Q. And if it's after that time, it will be what?

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A. It will go -- after July of this year, it will go to the 2012 IBC.

Q. Have you had a chance to review that code to see if it --

A. Not as yet.

Q. But your assumption is that there are not going to be any changes that would increase the cost?

A. Yes, sir. That's correct.

Q. Is it your experience that the code ever gets less strict as time goes on?

A. I've never seen that happen. When I first started in this business back in the late '70s, the building code was a little small book about an inch, inch and a half thick, about this size. Now it's --

Q. We saw the code --

A. -- 15,000 pages. And if you had to print all the performance specifications of all the ASTMs, it would be more papers than you have in this room.

Q. So it's reasonable to assume that the cost of construction is not going to go down under the new code?

A. It's not going to go down.

Q. It's possible it could go up, but it's certainly not going to go down?

A. It's not going to go down.

Q. Now, there's been some discussion about what

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code applied to these buildings when they were constructed. Okay? Your code analysis here today related to the brick, stucco, et cetera, all the code opinions you have given. Does it matter, for purposes of your opinion, whether the code was the 2000 IBC or the 2003 or whichever one it was?

A. No, because when I did this work I did it for the 2000 and the 2003.

Q. So under either code, 2000, 2003, violates the code?

A. Yes, sir.

Q. And it probably violates previous codes, doesn't it?

A. I would have to think about that a little bit, but I'm almost certain most -- ninety-nine percent of what we talked about would have been in a previous --

Q. Let's go to item fifteen, the acoustical ceiling repairs, the other half of the sound remediation correction. What's involved in that?

A. Well, again, I mean, you have to get -- you have to clean the ceilings up all the way to the underside of the original roof -- the floor trusses. And so that means taking the ceilings down, the grids down, taking all that stuff out of there. Have to take the crown molding from around the side of the rooms and all those kinds of

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things. Light fixtures. Everything.

Q. So you take out the remediation done by Carriage Hill --

A. Right.

Q. -- and you even go further and take out the Gyp-Crete, which is mechanically affixed to the trusses, and the hat channels; correct?

A. That's right.

Q. None of which was done in the remediation by Carriage Hill?

A. [No response]

Q. Those things were not removed by Carriage Hill?

A. They were not removed, no.

Q. They should have been removed?

A. They should have been removed.

Q. All right. And then what do you do after you take all that out and get back to where you should have been?

A. Well, then you put in the new grid, hang the grid from the existing structures, install the acoustic insulation, lower the sprinkler heads, put in the new Sheetrock, light fixtures, all those things, all those -- just basically putting everything back, and paint it.

Q. Put aside the issue of the Gypsum a minute. Is it fair to say that the minimal sound remediation should

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have been done -- or certainly the only correct sound remediation that should have been done by Carriage Hill to the ceiling would be what's outlined in this exhibit?

A. Exactly.

Q. What they did was just wrong?

A. It really didn't -- you heard the testimony. I mean, it really didn't help much.

Q. In fact, I think Ms. Severance referred to it in one of her complaints as a drum, it sounded like someone was beating on a drum?

A. I think I heard her say that.

Q. Item sixteen, shower waterproofing. Let's talk about that.

A. Yes, sir. Basically, what you've got to do is you've got to take the glass doors off the showers, remove all the tile, remove the backer-board that's there, replace whatever damaged wood structured is inside behind the tile that you can't see, and you basically come back out again. New waterproofing system, new backer boards, new tile --

Q. And all you --

A. -- and new shower pan.

Q. And all you end up with is what you should have had in the first place?

A. That's right.

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Q. Okay. Trim and paint?

A. Yes, sir. Reinstall the doors.

Q. Gypsum remediation, B.D. remediation. What is that?

A. I think this -- I think what they were referring to here is the mold issue that we have seen where we've taken the tile out of these showers. The one I was in in building six a few weeks ago, I mean, I walked in there, everything is black, I get a headache. I mean, it's -- you just can't do that. I mean, you've got to close these things off and have mold remediation protocol with the plastic and the zipper doors and have negative air machines going and air scrubbers and all that kind of stuff.

Q. Do you expect to a reasonable degree of engineering certainty, based on what you've seen in your experience, that's going to be necessary in every one of these units?

A. There'll be seventy-two -- there were seventy-two showers all together, yes.

Q. But all of them are going to have to have this same care --

A. Yes.

Q. -- taken; correct?

A. Yes.

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Q. Window treatments are not in the scope.

HVAC in lobby. What's that about?

A. Well, there's I guess what they call a package unit, the HVAC unit that cools and heats the stair towers.

Q. This is part of the common elements?

A. Yes. You walk in the brick stairs through glass doors and you come to the stairs. In the summertime it might be sixty-eight, seventy degrees at the top -- at the bottom level. By the time you get up to the top level, it's like ninety or ninety-two degrees. And that's just not what you expect in buildings like that.

Q. Well, the space -- it's an interior space, isn't it?

A. Yes, it's an interior space.

Q. And it should be properly heated and air-conditioned?

A. That's right.

Q. In your opinion, is it?

A. It's not.

Q. And what needs to be done to fix it?

A. Well, you've got to hire a mechanical engineer, somebody that knows a lot more about air-conditioning than I do, to fix that problem.

Q. The next one is carpet of stairs to garage.

A. Yes, sir. That's a set of wood stairs that goes

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from that same stair lobby downstairs into the garage. It's just made out of raw wood. That's incompatible with the style of buildings these are supposed to be.

Q. Upper landing repairs?

A. Upper landings: we had so many problems with the roofs back in the day. Before those were fixed, so many people up and down the ladders that the carpet on those fourth floors right at the base of those ladders were in very poor shape, so we were asking that those be replaced.

Q. And then there's project photographs. What's the necessity of that? Why do you need project photographs?

A. Documentation. These owners are going to have to disclose what's been done to their buildings later on, so you need to get photographic records of what's done.

Q. So when you make a disclosure, try to sell, you'll be able to give your perspective purchaser not only Ted Padgett's certificate that it was done properly but these are photographs of what was done?

A. Absolutely.

Q. Then we have a summary, I believe, that follows, for the various buildings; is that correct?

A. Yes, sir.

Q. Okay. We don't need to go through all of that.

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And then we have two -- then me finish up with the -- thank you, Mr. Padgett. That's all I have on that issue.

MR. BUNDY: I believe that's all I have, Your Honor. Thank you very much. The witness is with you.

THE COURT: Okay. Cross-examination.

MR. MAYBANK: Good afternoon, Mr. Padgett.

THE WITNESS: Mr. Maybank.

MR. MAYBANK: How are you today?

THE WITNESS: Wonderful.

CROSS-EXAMINATION

BY MR. MAYBANK:

Q. This elevator shaft problem, what building was that in?

A. Building one.

Q. That's the only building that had a problem with that?

A. Yes, sir.

Q. So that's not systemwide, that's just a singular incident in that elevator shaft?

A. Yeah. Building one was the only one that I've seen that was constructed with precast wall panels.

Q. The other buildings were fine?

A. Yes, sir.

Q. I understand you're an engineer?

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A. That's correct.

Q. What type of engineer are you?

A. I'm a structural engineer.

Q. Are you a member of -- you've given opinions as to the acoustical issues as they exist on this project; correct?

A. I have.

Q. And your opinions have been that the acoustical issues, as built, does not meet what, specifically?

A. Well, we had -- of course, we had an acoustical engineer run tests.

Q. Were you there for those tests?

A. I was not there for the tests but I do have a copy of the report. And --

Q. Let me ask you this. When you say we had an acoustical engineer, are you talking about the acoustical engineer hired by the homeowners association or by Carriage Hill Associates?

A. Homeowners association.

Q. And that is the --

A. Lisa Schott.

Q. Lisa Schott out of Florida?

A. That's correct.

Q. And are you relying on her report and the conclusions in that report to form your opinion as to the

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acoustical soundness of this project?

A. Understanding your questions: only peripherally. Her work was specific. Do the test, make the comparison, code analysis, so on.

I have never seen this as a code issue. You know, if the installation met or did not meet a very low code requirement, that would be completely inconsistent with the type of buildings these are supposed to be.

Q. I don't understand what you mean by low-code compliant, because the gentleman from the City got up there and said, here's the code. Didn't say high code, low code, medium code, or any code, just said here's the code. And my understanding is in that IBC building, there are a couple of paragraphs regarding the standards by which you have to design and build these buildings from an acoustical perspective; correct?

A. That's right.

Q. And other than that, that's it. No more mention in that code about the acoustical levels that you have to have in that project.

A. I was trying to explain that.

Again, the acoustics only made it into the code, fairly recent development. It's not been -- they don't go back forty years or anything like that. As things go into the code, they generally come in at very basic low levels.

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They're not going to all of a sudden spring this requirement -- the code writer is not going to spring this requirement on the construction industry and expect them to change everything overnight. So as I said, these are very recent additions to the code, maybe as little as ten years or so possibly. So what you're -- what the code requirements are are minimum necessities.

Q. Well, you testified today nothing but to code, whether it be the brick, the stucco. All that's to that minimum code. But all of a sudden you've got a different definition of code as a minimum as it relates to acoustical issue

A. I explained that to you. I was trying to get to the end of it.

What Ms. Schott found was that from impact standpoint, the buildings didn't meet that code, didn't meet it as they were constructed, And I'm of the opinion --

Q. I'm sorry. They did not meet as constructed defect?

A. That's right.

Q. I don't think we disagree there.

A. Yeah.

Q. I don't -- and that's why the buildings were remediated, isn't it?

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A. Yeah. And, you know, we're going to split some very fine hairs here, which is fine with me. But she detected a level of forty-nine. The actual code is fifty. Although if you test it, the allowable code requirements would be reduced to forty-five.

Q. In the field.

A. In the field. I understand.

But, you know, the physical characterization of what you're hearing is it barely -- it didn't -- still didn't meet what the original code required. Now, all --

MR. BUNDY: Your Honor --

Q. [Mr. Maybank] Wouldn't --

A. One second.

MR. BUNDY: -- he's interrupting the witness. If he would let him finish, I think he could get you through this thing.

MR. MAYBANK: I thought he was finished. I apologize.

THE COURT: Okay. Go ahead. Finish your answer.

THE WITNESS: I'm trying to, Your Honor.

A. Now, as far as I'm concerned, in my experience with these style condominiums, this is the only one that's ever had this problem.

Q. [Mr. Maybank] Have you ever been retained by

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any developers to design acoustical portions of their plans?

A. No.

Q. Are you a member of the Technical Committee on Architectural Acoustics?

A. I am not.

Q. Are you a member of the Acoustical Society of America?

A. No.

Q. Are you a member of the Technical Committee on Noise?

A. No.

Q. Are you on the Council of Acoustical Consultants?

A. No.

Q. Have you ever designed, for any building, acoustical standards from an engineering perspective?

A. No.

Q. Are you, or have been, a member of the Institute of Noise Control Engineering?

A. No.

Q. Have you had any papers, any review, any peer review, on any writings, as it relates to acoustical construction in buildings?

A. No.

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Q. I apologize. I think I'm going to ask the same question, because I can't remember what I asked you.

Have you been peer-reviewed by any engineers in South Carolina, or nationally, as to your opinions as they relate to whether or not a building has been acoustically built in a sound manner?

A. No.

Q. We'll get back to the acoustical issue. Okay?

MR. MAYBANK: At this time I would ask the Court to strike any testimony Mr. Padgett has offered as an acoustical -- from an acoustical perspective as not being qualified in the field of acoustical technology, drafting, and installation on any buildings.

THE COURT: Mr. Maybank, I think he testified as to what type of construction should be appropriate between floors and ceiling between apartments, not as to the sound in the apartments. Now, I'm not sure where we're -- you're drawing the line between acoustical and actual what is standard in the industry in preventing some sound between apartments. I thought he testified that this is what was needed to prevent sound and normal in the industry when he testified earlier. Now you're trying to move it over to noise level.

MR. MAYBANK: Well, acoustical. I will go with

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either one.

THE COURT: I mean, what's the standard in the industry? That's what the question is, not what the decibel levels are or not. I understand where you're coming from, but I don't think he testified to that, so your motion is denied.

MR. MAYBANK: Thank you, Your Honor.

Q. [Mr. Maybank] Is there a difference between airborne and impact noise?

A. Yes, sir.

Q. And as these buildings stand today, do they meet or exceed the code for airborne noise?

A. I think they're okay for that.

Q. And as they exist today, do they meet and exceed the code for impact noise?

A. Not -- no, sir.

Q. Can you specifically point out to me what report shows that -- well, let me ask you this. What portion of the unit fails to meet the impact-noise criteria under the code guidelines?

THE COURT: Let me ask one question so I can understand the next motion. Is it the defense's position that the code itself is industry standard, period?

MR. MAYBANK: It will be the defense --

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THE COURT: Or is it just one thing that you look at when you determine an industry standard? I never have thought that an industry standard has got to actually be the code. Is that correct or incorrect?

MR. MAYBANK: I will let my expert speak to that, Your Honor, as it relates to --

THE COURT: Well, what do you say legally? I'm asking you legally.

MR. MAYBANK: I believe that you have to probably comply with the code.

THE COURT: Right. As a minimal level. Then there can be an industry standard different from that. Is that correct or incorrect, legally?

MR. MAYBANK: You know, I don't know, because I don't know every industry and I don't know under the acoustical. I mean, I can certainly ask.

But I certainly think you have to at least meet code and then --

THE COURT: That's fair enough.

MR. MAYBANK: -- and then you can go from there. I say that -- well, that's a beginning point, yes, Your Honor.

THE COURT: A beginning. That sounds better for you. Bare minimum sounds better for the plaintiff.

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MR. MAYBANK: I understand.

THE COURT: Okay. Thank you very much.

MR. MAYBANK: Thank you, Your Honor.

Q. [Mr. Maybank] Were you able to find in the report -- and where in the units is the code not compliant for impact noise?

A. It would be the -- make sure I get this right -- the floors, the third floor and the fourth floor. Those two floors would be subject to impact violations, if you want to call them that.

Q. And are you taking your opinion, and through your interpretation of that report, to mean that every floor for all surface areas between the third and fourth floor is not meeting the impact rating as required by code?

A. Let me make sure I understand what you're asking, Mr. Maybank. Are you suggesting that maybe if the machines were put at point A and it didn't meet, is there a point B that they can be placed in that room and would meet it? Is that what you're asking me?

Q. Yes.

A. I don't think so. But, I mean, I wasn't there for the test so I don't know that.

Q. So it's possible that that is correct and that there are areas that do meet the code?

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A. That's your statement. I'm not saying that at all. I'm saying it's possible that you might be able to test it in that fashion. But I don't know that fact.

Q. But your testimony, then, today, is the entire floor surface, ceiling surface, between the third and fourth floor just doesn't meet the code?

A. That is similar, yes.

Q. How about in the rooms that have carpet?

A. I don't think there's any testing done there. I don't know.

Q. All right. Fair answer.

You were asked a pretty pointed question by the judge and I would like to follow up on it. In your estimate, on the estimate done by Mr. Willis that you've now reviewed with the plaintiff, you have pulling out all of the windows; correct?

A. Yeah.

Q. And all of the doors?

A. Yes.

Q. My understanding is is that the windows and doors on this project were inherently defective and manufactured in an incorrect way; is that correct?

A. Yes, sir.

Q. And that manufacturing and defect allowed water to penetrate from around --

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MR. MAYBANK: I shouldn't touch this --

THE WITNESS: You shouldn't hijack my presentation.

Q. [Mr. Maybank] But what I'm trying to figure out is does the -- with the water coming in from around the brick mold -- is that where it was coming in into these windows?

A. There's a lot of water penetration around the brick mold. That's correct.

Q. I agree with that. There is a lot of water penetration around the brick mold. And my understanding is is that there's also a lot of water coming in around the French doors, false French doors?

A. Correct.

Q. And as I look at those buildings in the background --

MR. MAYBANK: And, frankly, I don't know if the judge can see that.

Q. [Mr. Maybank] -- but I'm looking at the removal and replacement of most of the -- if all the windows and doors are coming out, I'm looking at the square -- just the square area on those buildings. What percentage of the square area on these buildings, when you remove the windows and the doors, will that consist of?

A. You're asking me if you take a window and door

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out, what are you -- how much are you left with?

Q. That's right.

A. It's probably in the order of seventy-five percent.

Q. And then if you are to remove the windows and the -- if you're to remove the stucco around the windows and doors, as shown in this clip from the damage that looks like is a result of the water coming down the windows getting into the substrate, once you remove then that additional brick and stucco, what are you left with?

A. Well, obviously you would be left with less percentage but probably more than you -- my point is this. When you take -- when you take one of these French doors out of the third floor, let's say, you've got -- or the second floor, you've got to remove a lot of brick above that, simply because there's not enough brick there to be able to arch over the opening. You take a window out of the brick wall on the third floor, you have to take all the brick all the way up to the fourth-floor level. So, you know, you have to take a lot of wall out to be able to get these windows and doors out.

Q. They're big, aren't they?

A. It's a pretty good size.

Q. You and I were out there when they took what I believe -- I don't see Mr. Reece. Didn't we take one out

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of Mr. Reece's unit?

A. It was Mr. Moran's [phonetic] unit, was it not?

Q. I can't remember. But it was large.

A. No. You're talking about Mr. Bill Jung's.

Q. Maybe that's who it was.

A. Yeah.

Q. So if you're taking out this specific French-door combination here, you're going to have to take out the brick below it and then you're going -- and since you're going all the way up that building, you're taking all the brick off above it, too; right? All this has to come out?

A. Well, what you have to do is you have to take off the sill, of course, below this window to be able to -- this French door right here.

Q. Sure. That's gone.

A. And then you have to take the band between the two doors out. You've got to take enough off each jamb to physically get them out.

Q. Yes.

A. And then if you went up, you would have to take the brick above that.

Q. I agree.

A. Okay.

Q. So when we take out all these windows and all

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these doors, we're taking a heck of a lot of this cladding off the side of these buildings, aren't we?

A. Yes.

Q. And we're taking all that off because of the water penetration from the improperly manufactured and designed Weather Shield windows; correct?

A. Yes.

Q. All right.

THE COURT: And you said that would be what percentage of the total brick?

THE WITNESS: I don't know, Your Honor. I would be guessing, but, I mean --

THE COURT: I understand it's a guess, but --

THE WITNESS: You're probably --

THE COURT: -- your educated guess is better than mine.

THE WITNESS: Well, you're probably still left with seventy-five percent.

THE COURT: So it'll take out twenty-five percent of --

THE WITNESS: Yes.

THE COURT: -- the total brick?

THE WITNESS: Yes, sir.

Q. [Mr. Maybank] How about -- so you're telling me -- just so I understand. So if I look at these

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buildings back here, you're telling me -- and I'll get that --

THE COURT: Why don't you make it a big picture so we can all see it?

MR. MAYBANK: I don't know how to do that. I've been trying to do that.

THE COURT: Get with Mr. McDonald. Somebody over there can figure it out.

THE WITNESS: Do you want the pictures out of the front of my notebook?

MR. MAYBANK: Well, that would be great.

[Off the record momentarily]

[Whereupon, Mr. Maybank proffers documents to the Court]

MR. MAYBANK: All right. I've handed the judge the photograph that you have. Can we mark that, Ted? Do you mind?

THE WITNESS: Yes. I have more copies of that.

THE COURT: What number? 236?

THE COURT REPORTER: 236.

[Whereupon, Defendants' Exhibit Number 236 is marked by the court reporter]

MR. MAYBANK: 236, Your Honor.

THE COURT: Any objections?

MR. BUNDY: [No response]

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THE COURT: Any objections?

MR. BUNDY: No objection.

THE COURT: All right. 236 admitted without objection.

[Whereupon, Defendants' Exhibit Number 236 is admitted into evidence by the Court]

THE COURT: That's a picture of the front of -- what building is that? Or does it matter? Are they all the same front?

MR. MAYBANK: I don't think they -- I think they've all got the same front, Your Honor.

THE COURT: Same front? Okay.

Q. [Mr. Maybank] So if you were to take on this -- on page 236 -- and I've got the French doors on four separate planes going up three stories; correct?

A. Right.

Q. You would have to take the brick between each one of these; correct?

A. Right.

Q. Then you would have to take the stucco around this French-door window, as well; correct?

A. Right.

Q. So you would literally be left with nothing on these four vertical --

A. Well, what you just said is true. But you also

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have to understand the return wall's here, here. And as you go around the side of the building, you can see in this picture here there are large areas of wall without any windows in it. So it's not like these buildings are windows with a little bit of brick and stucco around them.

THE COURT: Have you got any pictures of the side and the front?

MR. MAYBANK: We do. We've got those through another expert, Your Honor. We'll bring those in.

Q. [Mr. Maybank] So, then, is it your testimony, then, if we were to listen and take as truth what you're saying, Mr. Padgett, that seventy percent of the skin would still be on there? Would that be seventy percent of the brick, or seventy percent of the stucco, or everything together?

A. Well, something like that. It would be, you know, seventy percent of the exterior skin would still be there, sixty-five, seventy, something like that. I don't know. I haven't sat down and tried to go through the whole thing like that.

Q. So if somebody else had a different opinion on that, who has looked at that, you would defer to that person?

A. If somebody's actually sat down to take it off, yeah.

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Q. And as a result of the water penetration, then, on these numbers, as we've been going through them, you would then have to defer -- or cost would then be shifted off of these problems and onto the windows and doors; correct? And by that, I mean the brick -- you say all the brick has got to come off, all the stucco has got to come off. And my understanding is is irrespective of the windows, you gave the opinion that it was going to have to come off because of the code violations?

A. It would have to come off anyway, yeah.

Q. Would you agree with me that it's got to come off anyway because of the water and door problems?

A. You have to replace the doors and windows because of the problems they created. No --

Q. I understand. So let's --

A. You've got it -- you've got it both ways, counselor. If you want it, you've got it. The windows have to be replaced and the exterior cladding has to be replaced.

Q. Do the -- does the exterior cladding have to be replaced because of the improperly manufactured windows and doors?

A. No.

Q. And that's your opinion?

A. That's my opinion. You were here. I saw you

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sitting here when I went through the code violations in the stucco and in the brick.

Q. I understand that.

And I'm going to do the flip side of what Mr. Bundy did. Let's assume --

A. I understand.

Q. -- there were no violations, code violations, in the stucco and in the brick and that the only thing we're dealing with are improperly manufactured windows, doors, that are allowing large amounts of water, as you testified, to come into these buildings. Would you agree with me that because of that, that may be just as good enough reason why the stucco and the brick has to come off?

A. No code violations in the stucco, no code violations in the brick, you would only have to take out the parts to get the windows out.

Q. Is it cheaper to strip and reclad this building, if that was the problem, or is it easier to match the brick that you're going to be putting back, or is that not an issue?

A. Well, surgical repairs in stucco are very difficult.

Q. Uh-huh.

A. Surgical repairs in brick become a matching

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problem.

Q. Yes.

A. The economical way to deal with this problem is reclad.

Q. I agree.

So that I bring that full statement all the way around: if we're going to remove the windows, remove the doors, instead of surgically trying to chip away each brick, wipe it clean and let's do it all over again?

A. We'll do it right this time.

Q. But is the answer yes?

A. Yes.

Q. You've been -- you were originally hired by my clients; correct?

A. Yes.

Q. What were you hired to do, Ted?

A. I was to be their local professional engineer, consulting with them on this cracked-glass problem.

Q. And that was the initial problems that we had at The Oaks were these manufacturing defects in the windows?

A. Yeah. They drove nails through the edge of the glass.

Q. The manufacturer did; correct?

A. The manufacturer did.

Q. And that led to glass breaking and water

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intrusion into the units?

A. Cracked glass. I think the water intrusion was a different issue, we came to find out later.

Q. At all times when my clients became aware of these problems, did they express concerns to you about trying to fix the problems for the homeowners?

A. I'm not quite sure how to answer that. I mean, Carriage Hill, Rich Behringer, and Jerry, they met with us -- met with the homeowners for, I don't know, almost two years. And there were repairs. Repairs were started out there on the roof-wall intersections, the initial catastrophic damages the building were receiving at that time. But all that stopped in November of 2008 when they realized there were bigger issues, mostly associated with windows and window installations and so on.

Q. Did they hide any of those findings from you?

A. Pretty hard to hide them. I mean, I was out there on the site when their people, Mike Parker and his company, were doing the investigations.

Q. Everything that they found, did they -- as far as you know, they disclosed to you through Mr. Parker?

A. I'm not aware of anything that was hidden from me, if that's what you're asking.

Q. It is. I want to -- I want to make sure that as far as you dealt with in dealing with my clients, when

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they were going involving -- investigating they either hired you, or through Mr. Parker, let the homeowners association know what they were finding?

A. As far as I know, yes.

Q. My understanding on the roof, Derek Hodgen -- do you know Mr. Hodgen?

A. I do.

Q. He's with Construction Science Engineering?

A. That's correct.

Q. And Mr. Hodgen came out there after Mr. Parker designed a retrofix for the problems with the roof, didn't he?

THE COURT: Is the roof a part of this?

MR. MAYBANK: I don't think it -- I didn't think it was, until --

THE COURT: The only thing he talked about with the roof, that wall was about to fall.

THE WITNESS: That's right. It's not a roofing issue, per se.

THE COURT: That wasn't a roofing issue, that was just a structure --

MR. MAYBANK: Was that the parapet?

THE COURT: Yeah. That's the only thing he talked about on the roof, that he needs to stabilize that so it won't blow off. Is that right or wrong?

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THE WITNESS: That's correct, Your Honor.

MR. MAYBANK: I think that's correct.

THE COURT: I mean, that's the only thing I heard about the roof. So, I mean, why are we on the roof?

MR. MAYBANK: We're not. I thought that he had found water intrusion recently from a --

THE WITNESS: I have, yes.

MR. MAYBANK: -- repair he did.

THE WITNESS: I have. I found it.

Q. [Mr. Maybank] And is that from the roof-wall intersection repairs that were originally a problem out there?

A. Yes, sir. That's what it looks like to me.

MR. MAYBANK: And this is where I'm going with that, Your Honor, because my understanding is the fix that was done was under the direction of Derek Hodgen, who was hired by the homeowners association.

A. That's wrong. August, 2008, Sutton-Kennerly came on site, Mike Parker and his company. It wasn't until October of 2008 that Derek Hodgen come in to do -- but Hodgen's work was only associated with the roofing membrane and it's superfluous. It had nothing to do with the stucco wall-roof problem that we've already addressed.

Q. [Mr. Maybank] Are you sure about that, Ted?

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A. Yeah, I'm pretty sure.

Q. If that's different from what Mr. Parker recalls in interacting with Mr. Hodgen, would you defer to Mr. Parker on that?

A. Let me make sure we know -- that I understand what you're talking about. Mr. Hodgen was not involved in the repair design for this original stucco problem.

Q. Not the stucco, Ted. The roof, the wall, intersection area.

A. The balcony roofs --

Q. No, sir.

A. -- as they intersect at the building walls?

Q. Yes. In the corners.

A. Yes.

THE COURT: Mr. Bundy, let me interrupt for a second. Is there anything on this estimate on this recently-found problem that's -- I don't even think that's a part of this.

MR. BUNDY: No. No, Your Honor. It's hard to keep the estimate --

THE COURT: I understand what you're saying. I remember seeing the picture where it split. But there's nothing there in -- that I've heard so far concerning that, at least from this witness.

MR. MAYBANK: As far as I know -- I thought it

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had all been repaired. That's why when he brought it back up, I wanted to clear it up. But it's nothing being claimed.

THE COURT: Well, if they're not asking for money on it, why do you care?

MR. BUNDY: I can try to get you an estimate this afternoon.

MR. MAYBANK: I appreciate that.

THE COURT: I'm sure he can come in in the morning with an estimate for you, if you want.

MR. MAYBANK: I'm sure he will.

Q. [Mr. Maybank] Did you participate in the remediation of buildings four and five?

A. Building five I -- the rear of building five Carriage Hill repaired. And I did not participate in the design or anything. I observed some of the repairs. There was a shower problem in building five, which we did participate in.

Q. I apologize. I should have said the exterior --

A. Yes, sir.

Q. -- window problems on building four or five. Did you participate in that?

A. Again, the rear of building five, the stucco-diningroom areas, that was Carriage Hill and Parker on that. The shower issues, exterior cladding in those

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areas, was also a problem, window leaks, so on and so forth, we did those repairs. Back of building four, we did the repairs, including window replacement, stucco replacement, back of building four.

Q. How much of the brick and stucco did you leave on the back of building five -- four when you remediated that work?

A. Well, that's only a stucco wall. We --

Q. Okay. How much of the stucco --

A. -- we didn't leave any of it. We went all the way -- you know, from the exposed wall, all the way around the corners, to be able to do that one -- do that one.

Q. And that would be the same type of removal and remediation you would need to do for each building as you're replacing and repairing these windows?

A. You would do stucco complete.

Q. The weather barrier around the buildings: my understanding is it's a two-part weather-barrier system; is that correct?

A. The original weather barrier is Tyvek. Stucco also is applied with paperback lathe.

Q. So if I've got the stucco, the paperback lathe and the Tyvek and then the substraight, is that the order of the barrier that I've got up?

A. Stucco, paperback lathe, Tyvek, wood. Yes.

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Q. And would that be a double weather-barrier system on that -- in that design?

A. Well, in some ways of looking at it. But the code also requires a certain level of vapor transmission resistance under stucco. It generally requires more than one layer. But, yes.

Q. Yes, what?

A. It would in some respects, yes.

Q. Be a double weather-barrier system?

A. Yes.

Q. Exceeding code; correct?

A. Not necessarily. Meeting code, if it was installed properly, which it's not.

Q. Did you design the acoustical repair estimate for this building?

A. No.

Q. Who did that?

A. Mr. Willis.

Q. In terms of the design of the acoustical springs to hang on the ceilings, who designed that? Do you know?

A. I don't remember whether I pulled those out or whether John Dumah [phonetic], who's an architect that works on David's staff -- it could have been him.

Q. Do you believe that that is a requirement if the floor system is properly installed?

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A. To have -- are you asking whether those hangers have to be there?

Q. That's right.

A. Some form of acoustical hanger, yes.

Q. You think that's required if the floor is properly installed?

A. If the floor is properly installed?

Q. Yes, sir.

A. Yes. I think you still have to have an acoustical ceiling hanger, yes.

Q. Using these springs to hang the ceiling?

A. Yes, sir.

Q. Is that often -- do you often see that in construction?

A. There's different ways to do it. Usually you see what's called a resilient channel. That's typically used in buildings. A resilient channel is like half a hat channel, like taking a hat channel and cutting it in half.

Q. Are you using a resilient channel in this design -- or is it a hat channel?

A. We're taking the hat channels out. We're using an acoustical hanger here.

Q. Are you familiar with the acoustical hangers that were used in the retrofix of this project?

A. I saw them. Otherwise, I'm not familiar with

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them.

THE COURT: What does an acoustical hanger do?

THE WITNESS: It basically is a spring that allows -- prevents sound transmission going through. For hard surfaces.

THE COURT: I mean, it's a -- what is it made -- I mean, what's it made of?

THE WITNESS: It's physically metal.

THE COURT: Metal?

THE WITNESS: Yes, sir.

THE COURT: Is it a solid piece of metal or --

THE WITNESS: There's a part that connects to the wood structure and it has like a spiral and then a --

THE COURT: Is it supposed to absorb the noise?

THE WITNESS: It's supposed -- what it's supposed to do is provide a spring support for the Sheetrock ceiling so the sound=pressure waves aren't transmitted directly through --

THE COURT: Transmitted directly into the Sheetrock into the place it was?

THE WITNESS: Exactly. That's right.

Q. [Mr. Maybank] All right. Well, let me ask you this. Is it possible, then, to eliminate all noise between units, based on your retrofix?

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A. You're not going to eliminate all of it. You're not going to soundproof these buildings with this. This would only get -- this will only get you to the normal level that you -- I'm used to seeing in buildings like this.

Q. In your opinion, is it possible to soundproof a building between floors?

A. No, sir.

Q. So no matter what's going to be done, impact noise will be heard between the units?

A. You're going to be able to hear something, yes.

THE COURT: Does that go to concrete buildings, also?

THE WITNESS: Even with concrete buildings and hard finishes, tile and things like that, in a typical condominium construction you can hear things. If you had a real --

THE COURT: Depends on the thickness of the concrete?

THE WITNESS: It does.

And a lot of times, in a lot of modern structures they use post tension, which is the more economical way to do it. You have thinner concrete sections and you can hear through those. The old typical reinforced, where you have an eight- or ten-

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inch floor slab, you're not going to be able to hear much through those. But those are uneconomical for these kinds of structures.

THE COURT: Right.

Q. [Mr. Maybank] Ted, I've looked through these photographs. I don't see any pictures of any damage behind the brick area that shows that there was any rot or damage other than around the window area. Do you have any photographs of that?

A. Well, there's -- there were high-up photographs, in my file, adjacent to some of these French doors.

Q. Adjacent? Around the window area?

A. Right. Yeah.

Q. And as well as the stucco, the area that is damaged around these windows is where most of that is? Because I've looked at these photographs and it goes back to the window issue, I think, where most of the water came through the -- into these buildings; correct?

A. Obviously, we have experienced significant water intrusion associated with these windows.

MR. MAYBANK: I don't have any further questions, Your Honor.

THE COURT: You're through?

[Off the record momentarily]

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REDIRECT EXAMINATION

BY MR. BUNDY:

Q. Mr. Padgett, is it your opinion to a reasonable degree of engineering certainty that the floors as constructed did not meet industry standards?

A. Yes, it is.

Q. Is it your opinion to a reasonable degree of engineering certainty that the floors as remediated by Carriage Hill did not meet industry standards?

A. Yes.

Q. Is it your opinion to a reasonable degree of engineering certainty that the brick, all the brick, on this building needs to come out because it was installed contrary to the building code?

A. Yes, sir.

Q. Is it your opinion all the stucco needs to come off because it was installed contrary to the building code?

A. Yes, sir.

MR. BUNDY: Thank you very much.

THE COURT: How do you determine industry standards when you answer his question in the affirmative?

THE WITNESS: Well, Your Honor, this is not the first condo. And dating back to the '80s, condos at

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Kiawah, Isle of Palms, other -- Hilton Head, all were constructed in the fashion which I'm talking about: Gyp-Crete, floor toppings, acoustical ceilings. That's really all I'm talking about in that regard.

THE COURT: Any party have a question, based upon the Court's question?

MR. MAYBANK: Not from the defense, Your Honor.

MR. BUNDY: None from the plaintiff, Your Honor.

THE COURT: Pardon?

MR. BUNDY: None from the plaintiff.

MR. MAYBANK: And, Your Honor, nothing from the defendant.

THE COURT: Do you want him excused or do you want him under subpoena?

MR. BUNDY: With your permission, that will be fine.

THE COURT: Thank you so very much.

THE WITNESS: Thank you.

THE COURT: Do you want to keep him under subpoena for redirect if you need him?

MR. BUNDY: That's okay. I think we're okay.

THE COURT: All right. Thank you very much.

THE WITNESS: Thank you.

[Whereupon, Mr. Padgett is excused and exits the witness stand]

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MR. BUNDY: Your Honor, we have -- Mr. Maybank wants to call a witness out of order because his witness needs to leave.

THE COURT: That's fine.

MR. BUNDY: We have agreed between and among ourselves, with your permission, that since we're doing it this way, we're going to reserve all motions for directed verdict until the end of the case when all the evidence goes in, since he's putting a witness in --

THE COURT: Both sides?

MR. MAYBANK: Yes.

MR. BUNDY: On both sides. Without anybody waiving any rights --

THE COURT: That's fine.

MR. BUNDY: -- but since he's putting witnesses in in my case --

THE COURT: That's fine.

MR. BUNDY: -- I don't figure --

THE COURT: That's fine.

MR. BUNDY: Thank you, Your Honor.

MR. MAYBANK: Thank you, Your Honor.

Your Honor, the defense would call Dr. Noral Stewart to the stand.

THE COURT: Who? I'm sorry.

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MR. MAYBANK: Noral, N-O-R-A-L, Stewart, S-T-E-W-A-R-T.

[Whereupon, Mr. Stewart comes forward]

THE CLERK OF COURT: Place your left hand here and raise your right hand.

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

THE WITNESS: I do.

THE CLERK OF COURT: Please have a seat.

[Off the record momentarily]

THE CLERK OF COURT: Please have a seat.

[Whereupon, Mr. Stewart takes the witness stand]

THE CLERK OF COURT: State your full name, spelling your last name for the record.

THE WITNESS: Okay. Noral Garner Stewart. S-T-E-W-A-R-T.

[Whereupon, Mr. Stewart takes the witness stand]

MR. MAYBANK: Good afternoon, Dr. Stewart. How are you today?

THE WITNESS: Doing good.

MR. MAYBANK: As you know, my name is Roy Maybank. I represent Carriage Hill Associates and Daniel Island Real Estate in this construction defect

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case.

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NORAL STEWART,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MAYBANK:

Q. Dr. Stewart, if you would, can you tell the Court a little bit about who you are and your background?

A. I am a consultant in acoustics and noise control. Have been for over thirty-two years. Thirty-two years full time, and part time before that. Have degrees through a doctorate in the mechanical engineering department at North Carolina State University with specialization in acoustics and noise control. Member of the Acoustical -- fellow of the Acoustical Society of America, a member of the Institute of Noise Control Engineering, a fellow of ASTM International, the standards writing organization, vice chairman of the committee that writes these standards for acoustical ratings and tests in buildings and so forth, and past president of the National Council of Acoustical Consultants.

Q. Are you a member of the --

THE COURT: What are you going to offer him for?

MR. MAYBANK: We're going to offer him as an

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expert, but I haven't finished that yet. I can --

THE COURT: What type of expert?

MR. MAYBANK: Expert in acoustical noise.

THE COURT: Okay. Do you agree?

MR. BUNDY: I agree.

THE COURT: The Court so finds.

Now, I'm not trying to cut you off from introducing him, because I would like to hear a little bit about his background in acoustics, construction.

MR. MAYBANK: Sure.

Q. [Mr. Maybank] And that leads me, then, I guess to the question that the judge would like to hear your background on acoustics and construction, if you would.

A. Well, as I said, I've been consulting for -- full time for thirty-two years. In our firm the majority of the work that we do does involve buildings, building acoustics, noise control, in buildings of various kinds. The remainder of the work is environmental community noise type work and a little bit of work in industrial plants for hearing protection.

Historically, most of our architectural acoustics in building noise has not been residential over the long period of time that we've been in business. It's been mostly schools, churches, courthouses, government buildings of various kinds, commercial buildings. But

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over the last several years, there's been increased emphasis on residential multifamily residential construction.

Q. Is that shift in the recent --

MR. BUNDY: May I voir dire the witness one question?

THE COURT: Yes, sir. Yeah. Please do. You've already said he's an expert, but I'll let you voir dire him.

MR. BUNDY: Well, he's an expert, but we went into the construction. The construction aspect is what I want to clear up a little bit.

THE COURT: Okay.

VOIR DIRE EXAMINATION

BY MR. BUNDY:

Q. Are you -- do you consider yourself qualified to give an opinion, to a reasonable degree of certainty, as to the industry standards for floor construction in this locale?

A. Specifically, I can talk about, among acoustical consultants, what our standard is, what we would normally recommend.

Q. Standard in the industry in this locale.

A. But in Charleston I have not made a study of what's done in Charleston, what historically has been

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done, what is here now, so I can't really with a lot of knowledge say what is present in this location.

Q. Nor can you testify to what the industry standard is as to condominium construction between floors in Charleston County or in this area?

A. Not from knowledge of a large number of condominiums. I have a limited --

Q. Thank you very much.

A. -- I have a knowledge of a few, but not a large number.

MR. BUNDY: Thank you very much.

CONTINUED DIRECT EXAMINATION

BY MR. MAYBANK:

Q. And that information would be based on the 2003 International Building Code? Can you testify as to what's found in the code and what is expected in general construction?

A. I can testify as to what's regarding the code, yes.

Q. Can you tell me a little bit of the history and background of acoustical requirements that are in the International Building Code?

A. Well, to my knowledge, those originated in the 1970s. And back in those days there were three or four different competing codes around the country and at least

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one or two of them began to include requirements like that in them. Those requirements were not in the codes that were adopted in North Carolina, for instance, back in those days. I don't know the history of South Carolina that well. But I know that until the decade of the 2000s, they had these three or four different codes, around the country, competing. They all got together and decided to make one code. They put these acoustical requirements in that code and all the states started adopting that code. So at that time North Carolina adopted that code -- I presume South Carolina did, too -- and we started seeing greater interest in acoustical performance in residential structures.

THE COURT: Let me interrupt you just a second. I've got to talk to this gentleman.

MR. MAYBANK: Please go ahead.

[Off the record momentarily]

THE COURT: Okay. Whenever you're ready.

Q. [Mr. Maybank] You were giving the history of the code -- of the requirements in the International Building Code. Would those requirements have been in the code in 2003?

A. I do not know specifically what was in the South Carolina code. I know that they were in the International Building Code, had been in the model code.

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Q. So if Charleston had adopted the --

A. Yes.

Q. -- International Building Code in 2003, you would expect it to have been in there?

A. If they had adopted it without modification, without taking them out or anything, yes, they would have been there.

Q. Your history on this project: when did you first become involved in this project?

A. In January of 2007. I may have been contacted in December of 2006, I'm not sure. But my first real involvement, January of 2007, I was asked to come down and inspect the situation with regard to the floor-ceilings, isolation between units vertically, and to do some initial tests of where we stood, and discuss options for improvement.

Q. Who called you?

A. I believe it was Rich Behringer.

Q. And he was with Carriage Hill?

A. Yes.

Q. And did he voice concern to you that there were complaints by homeowners that they were having noise problems between the units?

A. Yes. He was concerned. There appeared to be problems and he described the construction to me, and

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based on that description I told him I suspect there were problems.

Q. And did you hold yourself out as somebody who could come down to Charleston, test the units, and give them an opinion as to what the problems were and a possible solution to the problems?

A. Yes.

Q. Okay. Did they have a right to rely on you, Dr. Stewart, in retaining your services specifically for this retrofix?

A. A right to rely upon me --

Q. Yes.

A. -- to give them proper advice and so forth?

Q. Absolutely.

A. Yes.

Q. And you came down. Did you come down and do an initial diagnostic test?

A. Yes. We did some initial testing just to verify what the situation was. I did some limited airborne testing. That's the testing of sound such as speech or television going through a floor-ceiling. Did more extensive testing of the impact sound because that's where the more serious problem was expected. And we documented, and it was like we expected.

Q. And over what period of time did you run the

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the design meets what is called the STC and the IIC for impact and airborne noise and sound?

A. Yes. The STC is the airborne methods.

Q. STC is the airborne. STC is what you measure in a laboratory for a wall. In the field, we call it the apparent STC. It's apparent because the actual STC is not supposed to include any sound that passes between spaces by any route other than through the partition, whereas when you're in the field, you know some sound gets around it in some ways. So you call that the apparent result.

There's also a metric we used back then and still use, for the airborne, called the noise isolation class. And that's all I actually measured for the airborne sound in the January test. I did not do reverberation times measurements and adjust it, I just measured noise isolation class, which is what you actually hear is you measure upstairs, you measure downstairs, you take the difference. That's what you've actually heard. The STC or the ASTC is a standardized metric that you are adjusting out the effects of room absorption, effects of the size of the partition, to get a more standardized number that originates from the laboratory test where you're trying to standardize everything.

Q. All right. And so my understanding is that you went into a unit and you tested the unit without and with

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testing?

A. Well, the initial testing in January was done on a one-day visit. I was here for one day to do the testing and discussions with them. As a result of that, we discussed some ideas and options for remediation. We came back in March to do some what you might call experimental testing, evaluation of ideas, and after that made decisions on the direction they were going to go. They implemented their remediaton in some units. We came back in I believe June and did more extensive further testing of the results of that remediation.

Q. All right. Can you explain to the Court exactly what it was that you -- the process by which you went through to come into the units to test the units and determine whether or not they met code at the time you initially came in?

A. The process used to do those tests --

If you want me to describe the tests?

Q. Please.

A. -- is to test according to the ASTM Standard E-1007. The test involves using a machine, called a tapping machine, which has little hammers on it and it sits there and goes [indicates] tapping on the floor. And you go downstairs and you measure the sound level down there. You take that resulting sound level and you also

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measure for some of the metrics that we use, including the one that's specified in the code. We have to measure, in the room downstairs, a measure of the sound absorption in the space; that is, is this space all hard and echoey or does it have a lot of carpet and acoustical ceiling or soft furniture in it that influences the sound that you're going to make. Because if you run that machine, what you're going to measure is going to be influenced by that condition. So we have to do as we call reverberation time measurement, which allows us to quantify that absorption in the space. And then from those measurements, we can calculate certain ratings. Back in those days, we only had one official rating available to us in the standard and the one that's used in the code, which was then called the FIIC or Field Impact Insulation Class. It's been renamed now as the Apparent Impact Insulation Class. So you see FIIC, AAIC, are the same thing. And that is adjusted. Once you make the measurement, you adjust the sound levels you measured for what they would have been if the room was very hard, had very little absorption in it. So you actually adjust those sound levels upwards and that causes the rating to come down. And the higher the rating, the better. So it's inverse to the sound level you hear.

Q. Let me ask you this. Are they testing to see if

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modifications --

A. Correct. We tested multiple units, in fact. At least two with several rooms in each.

Q. Who were you working in conjunction with at Carriage Hill? Was it Rich Behringer?

A. Rich was there. I believe on the very first visit Jerry was there, also.

Q. Jerry Rumplick?

A. Yes.

Q. And the three of y'all tried to work through -- well, based on your findings from your initial study did the buildings, as we're talking, meet code?

A. With regard to the impact sound, they definitely did not.

Q. It did not.

A. With regard to the airborne sound, I believe it did.

Q. So it was apparent from you from the beginning that there was a problem with the noise attenuation between the units?

A. Yes.

Q. Was that acknowledged, that problem acknowledged, by Carriage Hill?

A. Yes. They recognized they were having problems. There was no argument or anything. During that first

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visit that day I remember we went to lunch and sat down and talked about how can we fix this thing, or some of the ideas and options and things available to us that we can do, and sort of had a brainstorming session.

Q. And did you have multiple sessions in discussing the issues in how to fix the sound attenuation problems at this development?

A. We narrowed our discussions later, after that initial visit, and came up with a couple of ideas to try. And as I said, we came back in March and did some subsequent additional testing before they finalized the plan.

Q. Would you agree with me that each situation calls for a possible different solution? There is no one fix to any problem like this?

A. Certainly, when you have a situation where something was not done right in the first place and you've got to come back and fix it, you're always going to run into unique circumstances and things that have to be addressed.

Q. And that kind of dovetails into your prior testimony that this problem is a recent phenomenon that you are experiencing more and more in these condominium communities?

A. The experience that we have had, we started

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seeing two things, really. One was experience with condominiums that have been built to have problems, as well as architects beginning to call us and say, hey, we need help before we build another one type of thing. And this all started developing ten to twelve years ago as we started seeing that kind of activity that had not been there before, except maybe on a very sporadic basis.

Q. And so as it relates to the meetings that you had with the Carriage Hill folks, did you come up with what you believe was a solution to the acoustical problems at The Oaks?

A. We came up with a remediation plan to achieve a substantial improvement consistent with the type of thing I have seen done in other similar situations.

Q. If you would, could you explain to the Court what that was? Or would it be better for you to come down and draw a model of what you did? Or is it better to look at the photograph that we had up prior?

A. Well, the photograph might be useful, since it's cut away and shows some of the stuff that was there.

Q. If you would, could you move over to the jury box for me?

A. And it would be better than any attempt I would make at drawing. I'm not an architect.

[Off the record momentarily]

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MR. MAYBANK: While he's doing that, Your Honor, I would like to move, at this time, into evidence the reports created by Dr. Stewart that have been pre-marked as Exhibit 173, 174, 175, 176, 177, 178, 179, 180, 181, 183, 183, 184, and a letter, 187.

THE COURT: All right. 173 through 184, and 187. Any objections?

MR. BUNDY: None at all, Your Honor.

THE COURT: All right. 173 through 184 and 187 admitted without objection. Defense exhibits.

MR. MAYBANK: Thank you, Your Honor.

[Whereupon, Defendants' Exhibit Numbers 173 through 184 are admitted into evidence by the Court]

[Whereupon, Defendants' Exhibit Number 187 is admitted into evidence by the Court]

MR. MAYBANK: Thank you, Your Honor.

Q. [Mr. Maybank] So at the time that you came to the project, were the units already sold?

A. Some of them were, at least.

Q. Or at least moved into?

A. There were some occupied; some still unoccupied.

Q. But the interior was already up with the cabinets, the windows, and doors?

A. Yes.

Q. All right. So what plan did y'all devise in

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terms of remediating the sound impact noise as between the different units?

A. And this would also improve the airborne sound, too.

MR. MAYBANK: There's a pointer on here that's that --

THE WITNESS: Okay. Thank you. Thank you.

A. Well, as has been mentioned, one of the problems was that the ceiling had been installed with a hat channel. That is a common problem we see, either by design or by construction error.

Q. [Mr. Maybank] Let me ask you -- let me stop you there. Do you know if, as designed, a hat channel was called for in the original plans?

A. My understanding is the design actually called for a resilient channel.

Q. Which would have been the proper channel --

A. Correct.

Q. -- to use if installed that way?

A. Correct.

Q. But it was not built that way?

A. That is correct.

Q. Go ahead. I apologize.

A. So this resulted in a very poor situation, especially for the impact sound. It also influences the

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airborne sound. It has a greater effect on the impact sound because it's going to transmit directly through that hat channel, which is a relatively rigid element. The resilient channel, as has been mentioned, is more springlike. It's got one side connected to the truss and the gypboard is connected to the other side and it sort of acts as a three-leg spring. So we were faced with the problem -- and this is not the first time this has been faced. I've had other clients with the same problem and issue, including another one right here on Daniel Island -- where the gypsum is up there on the hat channel. It is --

Q. Now, let me stop you there so the Court can understand you. Gypsum on the hat channel: and that would be the ceiling --

A. The ceiling.

Q. -- of the floor underneath? Say if it's between the third and fourth floor, the ceiling of the third floor is what you're talking about?

A. Yes.

Q. Okay.

A. Okay? So if you're going to go in there and get rid of the hat channel and replace it with resilient channel, it means tearing the complete ceiling out, taking down the hat channel, putting in the resilient channel,

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putting the ceiling back. One problem with that is there's an awful lot of gypboard that somehow has to come out of the place and be taken somewhere, and that's no easy matter in itself. The other issue, as has been mentioned, is that the floors have some issues with them. So --

Q. And that would be the floor of the ceiling --

A. Unit above.

Q. -- above what you're talking about?

A. Right. We're going to talk about that some probably later.

But with the issues in the floors: to have just gone back with resilient channel probably would not have given enough improvement to be worth the effort hardly. It would have given improvement, but it would have not been what we would have wanted to do if we're not working on the floor. And we'll talk a little later about the floors. But if we're not going to work on the floor, we want to do something better.

And we have the problem of, well, we could take all this existing ceiling down but it's a lot of trouble. So the first thing that people usually say to me, and I think Rich or somebody said this, is can we not just put the resilient channel up on that gypsum and then put another layer of gypsum up there. People are always

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trying to do that. We call that the infamous resilient-channel sandwich. It don't work. You've got too small a space there. It just -- it resonates and it causes -- it just doesn't work. I can explain it in more detail, but I don't need to. I said, if we are going to leave that gypsum up there --

Q. And you're talking about the preexisting --

A. Preexisting --

Q. -- can you highlight -- can you put the pointer on that?

A. You can see this area here. Some of it's been taken down in this case, but this is what remains here. I said that, we're going to leave that there. And one of the things we had in this case was -- that we don't always have, is the existing ceilings were ten-feet high. They had room to possibly come down a little bit. I said, I need at least five inches there, five inches of space, if we're going to leave it there, or otherwise we're going to have problems.

And so how can we do all this. I think Rich or Jerry one came up with the idea of hanging it on wires. That's something that's been done in other types of buildings. I had not seen it done in wood-frame structures. And I said, yes, that can probably work but I would also add in there an acoustical isolator. And let

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me point that out. These devices right here are where -- I'm not sure about that one, but here's a couple of them. That is a spring-like device. It's made of rubber. It is what is called a double deflection neoprene isolator. It is similar to a spring but made of rubber.

And if you're going to do something like this, especially where there are issues with the floor upstairs, you do not want to use just a metal spring. You have to have some rubber in there to take care of higher frequencies because a metal spring will not take care of the higher frequencies where a lot of this initial problem is.

There are some spring systems that's been mentioned, but the -- some of those spring systems have a rubber element in them and in a situation like this, if you have some issues with the floor, you have to have that rubber element there.

Q. Did they install that element that you're referring to?

A. Yes. Yes. And that rubber element, with these wires, is superior to the typical resilient channel.

Q. Okay.

A. Okay? And then having the air space. And the other important thing is with this additional air space, they went back and put a -- we put additional batt

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insulation between the -- you can't see it here, but the existing original insulation is up here. And I believe it was typical low-density fiberglass in the cavity here between the two ceilings. I would have been pretty happy with the same thing, but Rich and company decided that they were going to use a higher-density memorable type insulation, which is a little bit superior. So we also took care around the perimeter where this is now hung on these spring-like devices --

Q. Let me ask you this. So there is actually two layers of insulation --

A. Yes.

Q. -- between the ceiling of say the third floor and the bottom of the fourth floor?

A. Yes. There's one between the two layers of gypsum and another above the original gypsum ceiling.

Q. And the other one that we see is the yellow --

A. Is the original one.

Q. Okay.

A. Okay? Another important factor when you do this -- and it's important, even with a resilient channel system or any resiliently-hung ceiling, is you have to be careful around the edges because if you just go in and after doing all this tie that ceiling directly to the wall, you're going to have some sound that can come down

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from above into that wall and then in the ceiling and come out here and then radiate from the ceiling. So you have to take care to leave a small gap between the ceiling and the wall. And then in this case it's covered with this crown molding, which is attached to the wall and not the ceiling, to cover that up, to preserve that performance of the ceiling.

Q. All right. So there is a bead of caulking that goes around --

A. Caulking or acoustical sealant around the perimeter.

Q. It's an acoustical sealant that goes around the perimeter of that dropped ceiling --

A. Yes.

Q. -- so that any noise, as it spreads from the fourth floor down, does not transmit through the walls?

A. It's transmitting from -- it keeps it from transmitting from the wall into the ceiling where it might be radiated back. It doesn't stop it from getting into the walls.

Q. And based on the design and the fix as created, was it implemented?

A. Yes. This is the fix that was implemented in, as far as I know, most of the units. I understand there may be one where it was not implemented.

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Q. To your knowledge, what was the result of this implementation of this retrofix to these units?

A. We achieved substantial improvements in both the impact isolation and the airborne isolation on the order of 10 dB or 10 points, bringing the average impact results from down around in the thirties or forty up to around the fifty or --

One of the things you have to understand, these tests, they're not absolutely repeatable the same thing everywhere every time. If I take exactly the same structure, what I think is nominally the same structure, and test it ten times, I'll get six or seven different results. And some of those may be significantly above or below a medium result. So it's not exactly precisely repeatable and predictable every time.

But we got some varying results. But for the impact sound in the wood areas, wood-floor areas, I believe the average was around fifty and the airborne ASTC was I think fifty-nine. It was on up there. It was really good on the airborne sound. But the impact sound we got a substantial improvement but not as good.

Q. And so in terms of the retrofix as designed, installed by Carriage Hill, as it sits there today in accordance with the International Building Code requirements, does the sound attenuation meet the code?

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A. In my opinion, it meets the code.

Q. Did you have a chance to review the report, as generated by the homeowners association, Quietly Making Noise?

A. Yes.

Q. And that report by their expert, did she or he have an opinion as to the retrofix and how that turned out?

A. Yes. It was her opinion, also, that it met the code.

Q. Do you know who she is?

A. Lisa Schott. Yes.

Q. And she is a colleague of yours in the acoustical industry?

A. Yes.

Q. And is your opinion, as we sit here today, as an engineer -- you're in the department of mechanical and aerospace engineering at North Carolina State University?

A. Well, that's where my degrees were from. I'm not a faculty member or anything in the department.

Q. As an engineer, to a reasonable degree of engineering --

THE COURT: Did you say aeronautical?

MR. MAYBANK: Yes, sir. Aerospace engineering.

THE COURT: Okay. All right.

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MR. MAYBANK: Pretty neat.

Q. [Mr. Maybank] So is your opinion to a reasonable degree of engineering specificity as to the retrofix, complying with the code as required by the International Building Code?

A. It's my opinion that it does comply with the code.

Q. Is there any way to totally soundproof this building?

A. Anytime -- well, no building is totally soundproof. All you can do -- and the word soundproof is sort of one I dislike. But all you can ever do is improve the sound isolation. You might improve it to the point that what sound comes through is covered up or masked by the other sound that's present in the space so you don't notice any sound coming through. Or it might get down below the threshold of hearing, but that's very rare.

What you're trying to do is to reduce it down to where it's very rarely a problem. And as a wood-frame structure you have an issue, in particular, with footstep sound that you never can totally eliminate a footstep sound from a wood-frame structure.

Q. The retrofix as designed and installed by you, Rich and Jerry, was that a reasonable fix to the problem that exists out there?

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A. In my experience, it's the kind of thing that is done. We worked on the ceiling. We encountered the situations where they're problems with the ceilings and the floors. And the common, normal thing is to work on the ceiling. I have never experienced a situation where anyone has chosen to work on the floors.

Q. And are your opinions to a reasonable degree of engineering certainty?

A. I hesitate to use the word engineering, only because I'm not a licensed engineer in the state of South Carolina.

Q. Okay. How about acoustical?

A. Within the standards of my profession, yes.

MR. MAYBANK: Dr. Stewart, if you'll give me one moment, please.

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

Q. [Mr. Maybank] My understanding, Dr. Stewart, is based on the retrofix as done, as it exists out there today, would you agree with me that not only does it meet code, it also exceeds code?

A. Yes.

Q. Did you hear Mr. Padgett's testimony about the fix that he would suggest be implemented?

A. Yes.

Q. Is there any -- if that proposal were adopted,

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would there be any significant increase --

THE COURT: Increase or decrease in the noise?

Q. [Mr. Maybank] Increase -- well, I guess decrease in the noise?

A. Increase in the ratings and the performance.

Q. That's right. That's -- yes, sir.

A. There were two parts I heard that he was suggesting. One was to do the ceiling a different way --

Q. Yes, sir.

A. -- and the other was work on the floors. And I would strongly disagree with anything different on the ceiling. That is, what we did here is about as good as you're going to do for the ceiling. And to start trying to take it down and redo it, even with springs, which he had in his estimate, my position would be that you're not going to get anything significantly better and could, in fact, run some risks of not getting as well.

So I would strongly disagree with any idea about trying -- any need for or idea about trying to redo the ceiling beyond what we have done.

Q. Let me ask you this. There was also -- in the initial phase of trying to remediate these problems, did you, in fact, try to go through the floor initially to see if that would improve the problem?

A. We looked at the floor. As has been discussed,

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there are major impediments in your way to try to work on the floors. We did, though, even knowing that, did some testing when we were there in March, on a small scale, sort of a mock-up session of the floors, to look at what improvement might be obtained if we just had a simple acoustical mat with a glue-down type of engineered wood floor, I believe it was, on top of that.

Q. Yes, sir.

A. And that, when tested by itself, did not give a very big improvement. And, in fact, if you were to just do something about that, without the Gyp-Crete that's been mentioned and so forth, you would not get a very great improvement even combined with a good ceiling and so forth. You would get some improvement.

The basic problems with the floor that's there in the wood areas is is that they put a mat down under the floor but they nailed through it, so the nails shorted through that mat or you would have had at least some degree of resilient isolation in the floor to cushion the impacts at that point. But they lost most of that with the nails that went through. So we could -- if we could eliminate the nail problem and still have a resilient mat with just the floor on top of it, in that case the mat has to be firmer than it would with Gyp-Crete, for instance, but you would get a little bit of improvement. But it's

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not -- certainly not worth the trouble with all of -- even with doing that, you would have a thickened floor. So it creates a lot of problems.

Q. Mr. Bundy had asked you earlier about whether or not you knew the building code or standard here in Charleston County. If, in fact, Charleston County adopted the 2003 IBC code and that code had a provision in there for acoustical standards and that was called for in the plans, you would agree with me that that standard is in effect in North Carolina, Georgia, or South Carolina --

MR. BUNDY: I object --

Q. [Mr. Maybank] -- you can testify to that?

MR. BUNDY: Objection. It's about fifteen questions in one and it misstates my objection. Thank you very much.

THE COURT: It was sort of a compound question. Go ahead and rephrase your question.

MR. MAYBANK: It was.

Q. [Mr. Maybank] If Charleston County -- are you familiar that in 2000 that this building may have been constructed under the 2003 International Building Code?

A. It may have been.

Q. And if, in fact, the 2003 International Building Code was adopted in Charleston County for buildings such as this, there was an acoustical component to that

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building code; correct?

A. Yes.

MR. BUNDY: Objection. Speculation. May have been and -- you know, I don't know how this --

THE COURT: Overruled. Go ahead.

Q. [Mr. Maybank] And if it was, in fact, adopted and implemented in 2003, that would have been the -- there would have been an acoustical component to the International Building Code at that point?

A. Yes.

Q. And so if the structure was designed to meet the 2003 International Building Code and the acoustical portion was called for, you could offer opinions as to that standard; correct?

A. Opinions as to whether or not the design would meet the code?

Q. Yes.

A. Yes. An opinion, yes, sir.

Q. And as well as for the retrofix that you --

A. Yes.

Q. -- have presented?

MR. MAYBANK: No further questions. If you would --

THE COURT: Cross-examination.

MR. MAYBANK: Could you move back to the jury

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box [sic].

Do you want him back over there or --

THE WITNESS: Just turn the light off out of my eyes.

[Whereupon, the witness retakes the witness stand]

CROSS-EXAMINATION

BY MR. BUNDY:

Q. Dr. Stewart --

A. Yes.

Q. -- you're not an architect?

A. No, sir.

Q. And you haven't been illegally practicing architecture in the state of South Carolina, have you?

A. Not to my knowledge.

Q. Well, have you designed anything in the state of South Carolina?

A. Not what I would call design in the context of the way it is used in the engineering and architectural worlds. We consult to architects and engineers who design buildings.

Q. So by that you are telling me that you have read the South Carolina architectural licensing requirement and you understand what the state of South Carolina's licencing requirements are and the definition of

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practicing architecture in the state of South Carolina? Have you done that?

A. No, I have not.

Q. So you, in fact, do not know what the practice of architecture is in the state of South Carolina as defined by the Architectural Review Board, do you?

A. Not with real firsthand knowledge with the state of South Carolina, no.

Q. You have no knowledge; correct?

A. Correct.

Q. So let's back up. You don't know whether you were practicing architecture in the state of South Carolina in this case or not without a license? You know you didn't have a license, but you don't know whether you were practicing architecture in the state without a license, do you? Or were you not? You can simply say you weren't.

A. In my opinion, I was not. I was practicing acoustical consulting, as all the members of the National Council of Acoustical Consultants do --

Q. Exactly.

A. -- in various states, typically all around the country. And I am not aware of anyone being challenged on it.

Q. Well, you understand the rules are different in

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different states?

A. Yes, they can be.

Q. Because apparently in New York they let you do a lot of different things they won't let you do in South Carolina. Are you aware of that?

A. May be. I am not sure.

Q. Who was the architect on this job?

A. I was not involved during the design phase, so I am not absolutely sure who was considered the architect of record. The one I have met is Mr. Rumplick.

Q. Well, is Mr. Rumplick the architect on this job or not?

A. I am not qualified to state that.

Q. As an engineer, a professional engineer, and a Ph.D., you can't tell me whether somebody was the architect on this job?

A. I have not seen the records to say -- you may have some records out there somewhere that say so-and-so is the architect of record for the job. He is the one that I know that was introduced to me, when I came down to visit, that I provided guidance to and talked to about the situation. I presumed he was the architect --

Q. There you go --

A. -- for the project.

Q. -- you presumed he was the architect, based upon

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what he told you; right? I'm the architect, I'm Jerry Rumplick?

MR. MAYBANK: Object to the form, Your Honor.

Q. [Mr. Bundy] Is that what he said?

MR. MAYBANK: Objection.

THE COURT: I'm sorry. What's your legal objection?

MR. MAYBANK: Yes, sir. Hearsay. He's talking about what Mr. Rumplick said. I don't know if Mr. Bundy knows what Mr. Rumplick said. He hasn't testified about that.

THE COURT: Well, he just said he presumed he was the architect.

MR. BUNDY: I'm asking him --

THE COURT: Hold on a second.

I'm not sure I understand your objection. Your witness just testified, I presume that he was the architect. That's all he said. What's objectable?

MR. MAYBANK: I believe it was what he testified Mr. Rumplick said to him, which is hearsay.

THE COURT: Well, isn't he one of your agents?

MR. MAYBANK: He is, Your Honor.

THE COURT: Well, then, why wouldn't it apply to you under the exception to hearsay rule? Declaration against interest, or whatever you want to refer to it.

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MR. MAYBANK: Statement against party interest, Your Honor.

THE COURT: Right. Is that correct or incorrect?

MR. MAYBANK: That is correct.

THE COURT: Objection overruled.

MR. MAYBANK: Thank you, Your Honor.

THE COURT: Please proceed.

Q. [Mr. Bundy] Mr. Rumplick told you he was the architect on this job, didn't he?

A. I do not know -- remember if he specifically said that. But when we met, my understanding was he was the architect involved in the project. Whether he was the main architect of record, I did not know. But I knew he was an architect involved in the project, who we were discussing it with.

Q. Do you know whether he was an architect with a license to practice architecture in the state of South Carolina?

A. I did not know that at the time or anything.

Q. Do you know as you sit here today?

A. Well, I understand there is some controversy about it, but I don't know the details.

Q. Well, tell me what you understand about the controversy surrounding Mr. Rumplick's practice of

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architecture in the state of South Carolina.

A. From what I have heard, he may not have had a South Carolina license until some point in time after these buildings were designed or something. I'm not sure exactly how that all came together.

Q. As a professional engineer being hired by these people to render an opinion, did it cause you any concern that you were meeting with people who allegedly have been practicing architecture without a license in the state of South Carolina?

A. Well, I had no idea when I met with them that there were any issues in that regard. Okay? It had never come up or any questions or anything.

Q. Does it concern you as you sit here today?

A. Well, it's something that apparently you're concerned with. It's not something -- and it's something you attribute to me that's not true. As you said, I was a professional engineer. I am not a registered professional engineer.

Q. I'm sorry.

A. Okay?

Q. I apologize. I was giving you more credit than you were due.

But you are a Ph.D.?

A. Yes.

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Q. At some point in time, though, you did become aware that Mr. Rumplick was not licensed?

A. Recently, as this litigation has come about, I have become aware that there were some questions raised about it.

Q. Does that cause you any concern now, that you were associated with and collaborating with an architect unlicensed to practice law [sic] in the state of South Carolina, to come up with a fix for the building these people built? Does that bother you as you sit here today?

MR. MAYBANK: Objection. Mischaracterization of the facts, Your Honor. Mr. Rumplick had an architectural license, at the time, in South Carolina.

THE COURT: Well, I'll -- I don't know. What's the relevancy of all this? Okay?

MR. BUNDY: I'll withdraw the question.

THE COURT: I mean --

MR. BUNDY: I'll withdraw the question.

THE COURT: -- I understand that was an issue in the trial, but we don't have a jury here and I'm not sure of the relevancy, as far as what he's testified to. Okay?

MR. BUNDY: Thank you.

Q. [Mr. Bundy] Did you ever meet Mr. Ed DiMarzio?

A. Not to my knowledge.

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Q. Okay. Have you ever reviewed the plans?

A. It may be that when I was here in that first visit in January, we may have looked at some of the drawings. But I have not had a copy of them in my flies or anything. Have not looked at them in great detail or anything.

Q. Did anybody represent to you or show you a set of plans that they represented were the sealed and signed documents? the building plans?

A. As I said, I believe we may have looked at some sheets of some of the drawings when I was here in that January visit, but I have not -- it was a brief cursory look at maybe a detail here or there or something, and I don't remember that detail as to what exactly was on those drawings.

Q. And the details you would have been interested in wouldn't have been the reinforcing in the brick and the stucco, you would have been interested in the details regarding what elements of the building --

A. The floors and the ceilings.

Q. The floors and the ceilings.

And did you form an opinion at that time as to the adequacy of the details in the floors and the ceilings in those plans that they showed you?

A. Whether it was based on the drawings or a

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combination of that and our discussions of what was there in the buildings, I did have an opinion at the time as to the situation.

Q. And what was that opinion?

A. That it was not adequate, would not meet code, would not meet expectations, and so forth.

Q. Well, it would fall below the average standard of care --

A. Yes.

Q. -- in the industry and be negligent, would it not?

MR. MAYBANK: Object to the form. It calls for a legal conclusion.

THE COURT: Rephrase your question.

Q. [Mr. Bundy] Would the plans and specifications that you saw, as it related to those elements in the building which you are interested in, in your opinion fall below the average standard of care in the industry?

A. They would fall below the average standard of care, well below the standard of care, in acoustical consultant, someone in my profession. I would not want to speak in terms of the standard of care for an architect.

Q. Okay.

A. Okay?

Q. Fair enough. Fair enough.

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In your testimony you said that your goal -- I believe, and you correct me if I'm wrong -- was to reduce the noise where it wouldn't be a problem? That was the goal?

A. Well, it was to achieve a substantial improvement, what we could achieve under the circumstances, and make it a substantial, noticeable improvement. I'm not going to say -- and I clearly said we could not achieve a point where you would not hear anything --

Q. That's not quite my --

A. -- you're going to hear some things.

Q. Nobody has contended, have they, that you were supposed to create a soundproof wall or ceiling or floor, have they? Has anybody asked you to do that?

A. No.

Q. Have you heard anybody in this courtroom make that contention that that's what my clients --

A. No.

Q. -- are entitled to?

A. No.

Q. So your goal, your charge, was to improve what was there; correct?

A. Yes.

Q. But was there a goal involved? Was there a

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finish line? In other words, when you play football you can run six yards and you're farther along than you were. But the goal is to get across the goal line and score some points; right?

A. Yes.

Q. Because if you don't do it within four plays, you lose the ball; right?

A. Yes.

Q. So with that analogy in mind, okay, where was the goal line when they hired you?

A. Well, the absolute goal was to meet the code.

Q. Okay. And that was it?

A. That was the primary goal.

Q. And if meeting that goad did not result in a sound situation that was liveable in this circumstance, or not very rarely a problem, to use your words, I believe, do you still think you achieved what needed to be achieved?

A. We achieved the kind of result that is typically achieved in these retrofit situations, not up to a new construction type of --

Q. Right.

A. -- goal.

Q. You were delivered a wrecked automobile and asked to fix it as best you could; right?

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A. Yes.

Q. Now, they sold my client a Ferrari. Did you give them a Ferrari when you fixed that wrecked automobile?

A. Well, no, I would not call it a Ferrari, not a -- not the absolute best that could be done under new construction type of situation.

Q. You did the best you could do; right? You're satisfied, Dr. Stewart, I did the best I could do, right, with what I was given?

A. With the situation you have in hand, with the limitations of working on the ceiling and not the floor, which is the common situation that's done in these retrofit situations, every one I have ever been involved in, that's been what the situation has been.

Q. Did you give them luxury? Have my clients got luxury in terms of soundproofing over there? They living in luxury?

A. Well, somebody would have to define the luxury standard.

Q. How long have you been in the courtroom? Just today?

A. Just today.

Q. So you didn't get to hear any of the plaintiffs' talk about what it's like living in the best you could do,

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did you?

A. No.

Q. I understand you've got a machine that goes bump, bump, bump, bump, and you've got all this fancy equipment, right, and you can give us a bunch of numbers. Did you ever think about moving in one of these condos and trying to live in one after your retrofit? Ever ask you to do that?

A. No. I've never thought about moving to Charleston.

Q. How would you like to be awoken every night when your neighbor gets home -- in a condominium you paid $700,000 for -- after your retrofit?

A. Well, I probably wouldn't enjoy it, if that was actually happening.

Q. Do you think you would bring a lawsuit if you had to go to bed when your neighbors went to bed, wake up when they went to bed, and you knew everything intimate about their life that made sound? Do you think that would be worth $700,000?

A. In my case it probably wouldn't be.

Q. You wouldn't want to live that way?

A. I would probably be looking for a little higher standard with regard to the impact sound. The airborne sound is quite good in these units.

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Q. We're very happy to hear it.

A. Yeah.

Q. Very happy.

A. And the impact sound is substantially better than what it was. It's not --

Q. The car --

A. -- may not be up to my normal standard of what I would try to achieve.

Q. The car that would not run at all now runs. That's basically what we've got. We can get from point A to point B. It's now at least liveable. And as long as you don't have anybody living above you or below you, it's a great place; right?

A. [No response]

Q. Now, you say that y'all met. Let me back up a second. Let's talk about some time frames here. You got hired in December of 2006; right?

A. December -- either then or January. I don't remember the exact date, but in that time frame.

Q. And then you issued your first report when?

A. Probably late January, 2007.

Q. Okay. Late January, 2007.

And before that time, who had you met with? What individuals had you met with?

A. When I came down in January, I met with Rich and

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Jerry. That's who I remember.

Q. Rich Behringer and Jerry Rumplick?

A. Right.

Q. And it was your feeling, based on the totality of the circumstances, that Mr. Rumplick was the architect; right?

A. Yes.

Q. And that would be the architect of record, as far as you knew?

A. As far as I knew.

Q. Sure. Sure.

And nobody talked about DiMarzio; right?

A. Not that I remember.

Q. Don't even remember his name, do you?

A. No.

Q. And Behringer: which Behringer was this?

A. This was Rich. I met Bob at some point along the way in one of these three trips. I don't remember which one. There's a chance that he may have been there in January. But I know Rich was. He was my primary contact most of the time.

Q. And what was Mr. Rich Behringer's title or job, or what was your understanding about his role in this process based on the totality of the circumstance? Or what did he tell you what he was?

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A. That he was -- my understanding was that he was one of the owners or partners of Carriage Hill Associates, the developer.

Q. Did he tell you what role he played in the construction?

A. I don't remember that we discussed it.

Q. Was the construction in place, that you saw, the same as the construction required in the documents you saw? Was the as-built the same as the as-planned?

A. My understanding and memory is that the design actually included the resilient channel, that the substitution of the hat channel was a construction issue.

Q. And did anybody have anybody to blame about that, or was there an explanation for that?

A. I don't remember any explanation or any finger-pointing, or where it came from, as to how it happened.

Q. Just one of those things on this job that happened. What was specified just didn't get done?

A. It's not the first time it's happened. It's happened --

Q. No, sir. It's happened multiple times.

A. It's happened before.

Q. Yes, sir. Yes, sir.

Now, what was the topic of discussion the first time? What did y'all discuss, the goals, what you -- what

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they wanted to get done?

A. Well, it was more discussing what are our options, what kinds of things can we do so we can start talking about what we might be able to do and how difficult it would be and how much improvement we could get and to make some decisions on directions we could go.

Q. Right. Right.

Did cost come into play, how much it was going to cost? Did they care how much it cost?

A. Well, I'm sure that was a concern. It always is.

Q. Now, was Gyp-Crete discussed and the cost of Gyp-Crete?

A. I am sure we discussed it at least briefly.

Q. Yeah. And was the general discussion it should have been put in but it's too expensive to put in now?

A. I'm sure my position would have been that, yes, I would have liked to have had -- excuse me -- had it there.

Q. Particularly if you had been living there.

A. Yeah.

Q. Yeah. There you go.

A. The -- but I remember we discussed the problems of trying to put it in basically as has been outlined earlier today. All the issues with the doors, the

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cabinets, and everything else, it is an extremely difficult situation.

Q. I don't know that it's necessarily difficult. It's just expensive; right?

A. Well, it goes forth hand and hand, difficult and expensive. So difficult.

Q. I don't know that the contractor is going to find it particularly difficult if you pay him.

A. If you pay enough, yes, you can do it. It's physically possible to do it.

Q. Let's just get down to it. Gyp-Crete, in the opinion of the people that hired you, was simply too expensive even though you understood at that time that's what should have been put in initially?

A. One, yes, I would have recommended it initially. And, two, we knew it would be extremely expensive to go back and do it at this stage.

Q. Because Gyp-Crete is standard in the industry if you don't have solid -- if you don't have solid concrete floors; right?

A. Right. And it's not the -- it's not the cost of the gypsum, it's the cost of everything else you've got to do to put it in, would have been the issue here.

Q. But let me see if I understand. You're talking about a retrofit?

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A. In a retrofit situation.

Q. I'm talking about original construction. I'm talking about original construction. In the original construction in this type of condominiums, this type of expense, this kind of price point, it's either solid concrete floors or gypsum over wood floors. That's just the standard in the industry, isn't it?

A. In terms of what I would recommend, in terms of what other acoustical consultants would recommend, yes, with --

Q. Absolutely.

A. -- with a resilient material --

Q. Absolutely.

And in all deference to you, it doesn't take a Ph.D. to know that, does it?

A. No. But it takes somebody who's got some knowledge in this stuff.

Q. Or an architect who knows what he's doing?

A. To be frank with you, it's the rare architect who really knows this stuff very well.

Q. Well, it's been my lifelong business. I can't disagree on that.

A. Okay.

Q. Now, at this meeting -- so cost was a factor?

A. I don't remember us trying to talk dollars or

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anything, but certainly it was recognized that if you're going to start modifying the floor --

Q. Right.

A. -- it's not necessarily the cost of the Gyp-Crete and other materials, it's the cost of the fact that it's a retrofit and you've got all these complications.

Q. Yeah. Because you put all the furniture and all the appliances and everything in before you put the Gyp-Crete down. It's always expensive to do things out of sequence, isn't it?

A. Yes.

Q. And after you've sold it, after people have moved in, telling them they were in luxury condominiums, of course it's going to be expensive.

Now, so you didn't have carte blanche, okay? As it relates to the Gyp-Crete, Mr. Rumplick told you that he just didn't -- had never done this before and he wished he had put it in, too, at the same time? Hindsight being what it is, he turned to you and said, you know, I probably should have put in Gyp-Crete?

A. That's possible he did that. I do not specifically remember the statement.

Q. Well, that would certainly be reasonable from a guy who led you to believe he was the architect; right?

A. Reasonable? I've worked with many architects

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who it would not have crossed their mind to have done it, so --

Q. Well, how many architects, how many cases have you been in, where they left the Gyp-Crete out entirely in this kind of a condominium in this kind of situation?

A. I don't have a real count, but I know -- I can think of one off the top of my head, and I'm sure there's others, where there was no Gyp-Crete involved in the floor.

Q. You mentioned that you had another case on Daniel Island?

A. Yes.

Q. What case was that?

A. It was the Trammell Crow case. Your firm may have been involved in it, too.

Q. No. That was stolen from us. We didn't get in on it.

A. Okay.

Q. So what was the problem there?

A. Similar situation. Somebody substituted hat channel for resilient channel and also made a substitution in the resilient mat that was used in the floor from what was originally specified.

Q. Did they use Gyp-Crete?

A. I believe the Gyp-Crete was there but it was --

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Q. At last Trammell Crow has got the sense to put Gyp-Crete in; right?

A. Yeah. But it just wasn't the right mat under it.

Q. I got you.

So they must have had the same guy over there at Trammell Crow. Even though they knew to put Gyp-Crete in, he was still driving nails through the mat; right?

A. No. Over there they did not have the problem with the -- to my knowledge, with the nails through the mat or anything.

Q. We learned in opening statement that some guy from Trammell Crow was actually the guy that built this thing. Do you know if it's the same guy that built these over --

A. I do not know.

Q. -- the other project?

A. I do not know.

Q. Now, did you have a sense when you were meeting with Mr. Behringer and Mr. Rumplick, Mr. Rumplick being the architect, that he was embarrassed by the notion that he had designed six condominiums in South Carolina and didn't have the good sense to put Gyp-Crete on wood floors?

A. I do not remember.

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Q. Would you have been embarrassed by that?

A. Well, I know -- I mean --

Q. You know better?

A. Yeah. But I've been in this business thirty years. I've known a lot of architects and it's not that unusual for architects not to know some of these things.

Q. You were in the phone book in 2004, weren't you? You were available for consulting?

A. Yeah.

Q. If these fine gentlemen had called you, you would have been available in 2004? When Mr. Rumplick was designing this building and had no experience with this type of construction, you would have been glad to have helped him if he had called; right?

A. Yes.

Q. Okay. And we're both pretty sure that's not what you would have recommended, what's over there in those drawings; right?

A. I am pretty sure I would have -- at that time I would have probably recommended the resilient channel -- that would have been an acceptable alternative to me -- for suspending the ceiling. I would have recommended Gyp-Crete, or some other material, over a resilient mat on the floors.

Q. Sure. And the reason you would have is so

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people, when they go to bed at night, don't have to wake up when their neighbors come home --

A. Well, even with that I couldn't guarantee you you wouldn't hear anything.

Q. Okay. Now, after this first meeting --

And another issue -- another cost issue. As I understand it --

Let me ask you this. Ideally, in your retrofit you would have removed all the existing gypsum; right?

A. Not necessarily.

Q. You don't think the existing gypsum creates additional sound that would not otherwise be -- or sound transmissions that would otherwise not be there --

A. Not with the way we did it with the five-inch airspace and so forth.

Q. So you --

A. If somebody had tried to go up there and put a half inch between it and a new layer of gypsum, yes, there would have been a serious problem. But with the five-inch airspace and the mineral wool [phonetic] in there, and the resilient hangers and the wires, I believe that retrofit is superior to having simply gypsum on resilient channel, which would have been the original ceiling.

Q. I apologize. That wasn't really my question.

My question is this: take exactly what you

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recommended and in addition to that, remove the gypsum that was existing on the hat channel, would you have gotten a different result?

A. What you would expect in that case is that you would have gotten, at low frequencies, a little better result. At high frequencies you would not have gotten as good a result.

Q. And the reason -- I thought the reason you said you didn't take it out was because it was going to be expensive and messy to get all that gypsum out --

A. Well, that was the reason not to take it out.

Q. Money?

A. And we believed we could do a reasonable job leaving it in there with a proper plan, if we had the space to give ourselves five inches between it and the new gypsum, and to properly suspend the new gypsum and everything. I really don't think it's a problem, what was left there.

Q. But the reason the gypsum wasn't put down was because of money and the reason the existing Sheetrock wasn't removed was because of money?

A. The -- yes, I guess so.

Q. Okay. All right. After the first meeting, what was your charge? What were you directed to do?

A. Well, the second thing was that we were going to

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come back and do some testing of some of the ideas we had and we would do that in March. And the next thing was once we had done that and they had made the -- Mr. Behringer, Mr. Rumplick, others involved in it, made their decision on okay, this is the retrofit we're going to do, they did that. And I was to come back and document those results in June.

Q. Who were the others besides Rumplick and --

A. The only three people that I remember meeting at various times in this were the two Behringer brothers, Rich and Bob --

Q. Bob?

A. -- and Mr. Rumplick.

Q. And explain to me -- was there ever a drawing created, or any document created, to specify what was going to be done?

A. If there was, I did not create it. There may -- I think there may have been one. I may have seen it. I do not -- no, I do not have a copy with me and I don't remember having a copy.

Q. Well, you wouldn't have created the document because that would have been the practice of the architecture [phonetic] in the state of South Carolina.

A. Well, to advise the architect that it's okay with me that this is what he's doing and that this is my

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advice to him.

Q. How much did all this cost? Got any idea?

A. Oh, let me think a moment, because I have not added it up. But I would say my total bills to them through the testing in June would have been probably somewhere on the order of $15,000.

Q. $15,000.

How much do you think it cost to do the construction? You got any idea?

A. I have no idea.

Q. How much did it cost to move the furniture and move people out?

A. I have no expertise in that.

Q. You didn't produce any drawings; right?

A. No.

Q. You didn't design -- you didn't design --

A. We normally do not produce any drawings.

Q. You didn't design anything?

A. We normally do not use the word design in what we do. We are advising the architects in their design.

Q. Pretty simple question. You did not design anything. Yes or no.

A. I'll say no.

Q. Because if you design something in the state of South Carolina, you would be practicing architecture

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without a license; right? We're right back where we started.

A. That's why I try not to use that word design, because I know in North Carolina --

Q. That's exactly right. And that's why we have an LLR to take care of the people that do design.

Now, when did you see the drawing that was the design that was going to be implemented?

A. If I saw a drawing, and I believe I may have but I'm not absolutely sure -- I know we discussed it and I understood what it was going to be from that discussion -- it would have been in probably March of 2007.

Q. 2007.

So the -- and that was done by Mr. Rumplick? He's the one who did the design; right?

A. Well, he's the one that I was working with, and, yes.

Q. He was the architect you were working with in the state of South Carolina and he designed this fix?

A. Yes.

Q. And did you get a building permit for all this work?

A. The contractor, building contractor, construction people, usually take care of building permits. Acoustical consultants never get involved in

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that.

Q. Was not your job?

A. Not my job, no.

Q. But you assumed that somebody was going to do all this work pretty -- it must have been at least over, what, a couple thousand dollars worth of work? I mean, it must have been a pretty substantial amount of work. Have you got any idea what it would be worth?

A. Well, yeah. It's more than that. As far as the building permits, I really do not know what the requirements there are.

Q. I'm not asking you about building permits. I'm asking you about cost again. How many units did you remediate? Twenty-something?

A. I do not know the full count.

Q. There are thirty-six units, eighteen of them -- twelve of them don't have to be remediated, so you've got twenty-four left. Six people did not get it done. So twenty-one units got done. Can we work with that, you and I?

A. Okay. I do not know that for a fact but --

Q. Do you anticipate it would cost at least $20,000 to do a unit, based upon Mr. Rumplick's design?

A. I could see that. I'm not an expert in general construction costs, so I really don't know --

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Q. Would you be --

A. -- and would not want to be --

Q. I apologize.

A. -- stating an expert opinion on that.

Q. I apologize. I didn't mean to interrupt you.

Would a building permit -- in North Carolina -- let's go to what you do know something about. Permitting. You know about permitting in North Carolina, don't you?

A. Not particularly, because I'm not involved in construction.

Q. I got you. Okay.

A. Construction contractors normally --

Q. I got you. You're not involved --

A. -- handle that, so that's not something that I normally have to worry about.

Q. One thing we do know: that Mr. Rumplick sometime between January of 2007 and April 1st, 2007, designed this fix for this remediation; correct? We know that.

A. Pretty much so. I'm not absolutely sure about April 1st. It may have been a little bit after before it was finalized. But somewhere in that range.

Q. Well, when was the last time you were on the job? You left and came back and tested it; right?

A. Well, I was down here in January and March and

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in June, three days.

Q. When you were here in March, was the work -- had you already seen the design by then?

A. We had some tentative ideas. We had not finalized for sure what the final decision was going to be.

Q. Was Mr. Rumplick's design ninety percent finished in March?

A. That's probably a good assumption. In other words, basically that's what we were testing was the ceiling part of the test that we did in March. And that's the option that was gone with so --

Q. He was certainly collaborating with you, as an architect, to create a design for this fix between January and April of 2007, without question; is that correct?

A. He was collaborating with me and I was working with him and Mr. Behringer and I was presuming he was the architect.

MR. BUNDY: Your Honor, I would like to turn to Defendants' Exhibit 217, please.

[Whereupon, the Court reviews documents]

Q. [Mr. Bundy] I have here an order before the South Carolina Board of Architectural Examiners, Defendants' Exhibit 217.

MR. MAYBANK: Your Honor, we would object to the

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use of this order in this proceeding.

MR. BUNDY: It's his exhibit, Your Honor. A Defendants' Exhibit.

THE COURT: I mean, it's your exhibit. I know you haven't offered it yet, but it's in your exhibit book. I'm not trying to --

MR. MAYBANK: I understand that, Your Honor.

THE COURT: Let me see the attorneys up here just a second.

Will y'all flick off that machine?

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

Q. [Mr. Bundy] Are you familiar with U.S. Gypsum?

A. Yes.

Q. What are they or what is it?

A. Well, it's a major manufacturer of gypsum products.

Q. And do they have any recommendations about soundproofing system for floors?

A. They, among others, probably do.

Q. There are places which a qualified architect can go to on the internet and see recognized assemblies for floors; right?

A. Yes.

Q. Just like they can find recognized assemblies

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for fire ratings and everything else; right?

A. Yes. I would caution some of that data is misleading. But it's out there.

Q. Nowhere in any recognized assembly do you find what was in these plans, do you?

A. You are speaking of our retrofit plans?

Q. Let's talk about the original plans first.

A. The original one?

MR. BUNDY: Sir?

THE COURT: Never mind. I was just talking to the law clerk.

[Off the record momentarily]

MR. BUNDY: That's all I have.

THE COURT: Anymore questions?

MR. BUNDY: No, Your Honor.

THE COURT: Do you have any redirect?

MR. MAYBANK: Briefly. Briefly. Briefly.

THE COURT: Make it very brief.

MR. MAYBANK: It is.

REDIRECT EXAMINATION

BY MR. MAYBANK:

Q. Dr. Stewart, I understand and heard all the questions Mr. Bundy asked you. But at the end of the day, the bottom line is is that the retrofix as designed, installed, and built, meets or exceeds the code in these

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units; correct?

A. Yes.

MR. MAYBANK: No further questions.

THE COURT: All right. I want to make sure I understand. First of all, do you have -- could somebody hand him a copy of Plaintiffs' Number 180? That is the cost estimate prepared by Southeastern. If somebody could hand him that, please. I want to ask him a couple of questions about it.

[Whereupon, Mr. Maybank proffers documents to the witness]

EXAMINATION

BY THE COURT:

Q. Mr. Stewart, would you look at page 11 where it has acoustical ceiling repairs, number 15. Do you find -- do you see that?

[Whereupon, the witness reviews documents]

A. Oh. Down at the very bottom?

Q. [The Court] At the very bottom. Okay. I just want to make --

First of all, explain -- I'm not quite sure I understand what you're talking about when you're talking about resilient-channel design versus hat channels --

A. Okay.

Q. -- versus, you know, for noise reduction.

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A. Okay. If I had a piece of paper, I could draw you a --

MR. MAYBANK: Your Honor, if I could -- if I could approach, I'll pull his easel out. Dr. Stewart can draw it for you pretty easy.

Q. [The Court] Well, just tell me. Okay?

A. If you can visualize, first of all, a hat channel. Visualize a hat channel --

Q. Well, that picture shows the hat channel; right?

A. It's got legs on each side, then it comes out. You fasten those legs on each side. It's relatively rigid; okay?

Q. And that transmits sound?

A. That'll transmit the sound, yes. Okay?

The resilient channel, if you can visualize cutting off the leg on one side that attaches to the truss so it only attaches on one side, and then it comes down and across and it does not go up and touch the truss on the other side --

Q. Okay.

A. Okay? Then, also, in the angled web portion that's coming down, we cut a bunch of slots in there so that it's not solid.

Q. Where it sort of absorbs the sound?

A. Yeah. So that when you cut it up properly, then

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those slots are put up against the joist and there's a slot wherever the joist is and a solid piece where there's not a joist, then it performs a spring-like function to help act as a spring to minimize the transmission of the sound and the impact sound.

MR. MAYBANK: The top is the resilient and the bottom is the hat channel.

THE COURT: Oh. Okay. Thank you.

Is this the way he drew it out for you?

MR. MAYBANK: It is, Your Honor. Yes, sir.

THE COURT: Okay.

MR. MAYBANK: It's confusing.

Q. [The Court] Now, if you would look at Plaintiffs' Exhibit Number 180, as I referred you to, at 15.1 through 15.12 --

A. Yes.

Q. -- would you review that?

A. Yes. I reviewed this an hour or so ago. Mr. Maybank handed it to me to look at.

Q. Take a few minutes to refresh. I want to ask you a couple of questions -- a couple of questions.

A. Okay.

[Whereupon, the witness reviews documents]

Q. [The Court] That design is not converting it to a resilient channel's design, is it?

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A. Correct. This is not a plan using resilient channel. This is a plan using what are called coiled springs. You know what a coiled spring is, sort of like a spring on your car that's coiled? There are a couple of companies that make systems to hang ceilings on a coiled-spring system. It's sort of the rarely-done ultimate, very rarely used, but that product is out there.

Q. Based upon the fix that you had -- I understand the hat channel are in there, you can't rip them out and that's impossible at this point in time. I assume that's correct. Is that incorrect or correct?

A. Well, the hat channels that are in the ceiling now --

Q. Right.

A. -- well, we would have to tear everything else out to take them out --

Q. Right.

A. -- and I don't see any real need to.

Q. So my question to you: based upon what Mr. Padgett has recommended the fix for the acoustical ceiling repairs versus what you have done, how much improvement do you think there would be in the air sound?

A. Airborne sound?

Q. Airborne sound.

A. I really don't think there would be any.

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Q. How about impact sound?

A. The bathrooms there would definitely be -- the smaller bedrooms and smaller rooms, I think it's unlikely there would be much improvement. There is a chance that in the big livingroom-diningroom-kitchen area there could be some -- maybe a little bit of improvement using this system, but not enough to justify tearing it out and redoing it or anything.

Q. Would it make a difference on the impact versus the airborne sounds?

A. The --

Q. The mod that they are recommending in 15, the acoustic --

A. Now, I -- I really would not recommend undoing what was done and doing this. I do not think that would make any significant improvement.

Q. In either sound, either airborne or impact?

A. Right. The isolators we used are made by the same company that makes these springs. They are a rubber isolator. And with the overall results we got and so forth, I just --

Q. I guess you --

A. -- I do not believe it would be worthwhile trying to do this.

Q. The only other thing I wanted to ask you, and

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Mr. Bundy asked you about it. The gypsum board that's attached -- the original gypsum board is attached to the original ceiling?

A. Yes.

Q. How much transmission of sound does that do, the board itself?

A. What is -- the situation you have there is that that board is, in terms of to some extent both the airborne and impact sound, it is providing some degree of benefit. It always did some degree of benefit. Okay? Where it would be detrimental, in particular, to have it left there if we had tried to put up a new gypsum ceiling just one inch from it or less, or even two inches or so, then the two layers of gypsum interacting with one another would create a problem, particularly down at the lower frequencies. And this is why I insisted on that space being at least five inches, because the -- having that extra layer of gypsum there is helping at high frequencies, but you have a potential problem --

Q. And when you say high frequencies --

A. I'm talking about --

Q. -- what type of noise are you talking -- I know what high frequencies is. But what type of noise generated are you talking about?

A. Well, that could either be the airborne sound,

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the higher pitches in your voice, the music, the higher treble sounds, the higher-frequency sounds, as opposed to the low base. Okay. And the same sort of thing happens with the impact sounds. You have a tap, tap and you have a thump, thump. Okay? The trapped air between -- and what we call the resonance effect, between those two layers of gypsum, you always --

Anytime you create a cavity, even in the original floor-ceiling structure where you had a cavity there, there is some frequency of which that cavity is resonant where the structure is somewhat weak. And we try to make that cavity deep enough that that frequency is way down low, where there's not much problem or issue.

When you start making that cavity smaller and smaller -- this is one reason why a common stud wall is three and a half inches thick. When you start getting much thinner, you start running into these problems. We need to have enough space there that any resonance between those two layers of gypsum is at low enough frequency that it's not a particularly bad problem. So this is where I insisted on the five inches.

In normal construction practice, new construction or anything, we try to avoid double cavities like that altogether and make a single cavity as big as we can so that we do not have any -- so we minimize this low-

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frequency situation. But in a situation like this where we're able to get five inches space there, I feel very comfortable with it that it is doing about as well as we could do.

Q. But, primarily, I think you testified earlier, that's just going to attenuate the airborne sound, not do much with impact?

A. The -- I don't see it as having much -- any effect one way or the other on the impact sound.

Q. Okay. All right.

THE COURT: Anybody have any questions based upon the questions the Court has asked? I was trying to get a clear understanding --

MR. BUNDY: I had one question.

THE COURT: -- of what he was saying.

MR. BUNDY: I have one question.

THE COURT: Either party can ask questions.

MR. BUNDY: Thank you. To follow up with His Honor.

FURTHER RECROSS-EXAMINATION

BY MR. BUNDY:

Q. Are you saying that if the decision had been made to remove that original gypsum, that my clients would not have lost nearly as much ceiling space? You could have moved that ceiling out --

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A. That is correct.

Q. So in order to save money, the developer left it up there and deprived my client of the ceilings they purchased, the height of the original purchase, and had they taken it out my client would have the original ceiling height?

A. They may have lost a little bit, but not the five inches.

MR. BUNDY: Thank you very much.

THE COURT: Mr. Maybank, anything you would like to ask?

MR. MAYBANK: Maybe I was confused on this, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. MAYBANK:

Q. As to the second ceiling, so to speak, there is a layer of insulation between the original ceiling and that ceiling and as is built, that has lowered the impact sound from one floor to another?

A. With the remediated design, we did add in the extra batts between the two layers of gypsum. That's good practice. Anytime you have a cavity issue, you want to put the batts in there to avoid risk of problems. And my belief is that the system we have now with the remediated ceiling with the airspace -- with the extra batts, the

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rubber isolator hangers, the original ceiling plus the new ceiling, it's my opinion that that is better than what the original designed ceiling would have been as a ceiling; that is, just a layer of gypsum on the resilient channel would not be as good as what we have now.

Q. What would have been -- with the isolation clip from the original design, how far down -- I guess if you were to go back up, would you, what, get back another three inches of height in the ceiling?

A. If we had taken down the original gypsum and been able -- and then installed a ceiling without that restriction of having to have five inches between two layers of gypsum, we would have gotten the -- we could have gotten the new ceiling at essentially where the original ceiling was. It might have varied a half inch one way the other, or something, but would have been essentially about that level.

MR. MAYBANK: Okay. Thank you.

MR. BUNDY: Nothing further, Your Honor.

THE COURT: Okay. Any reason he can't be excused --

MR. BUNDY: None.

THE COURT: -- and back to the triangle?

MR. BUNDY: No, Your Honor.

THE COURT: Okay. Thank you so very much.

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MR. MAYBANK: You've got to fight the traffic at this time of day.

THE COURT: You're going back tonight, Dr. Stewart? Have a safe --

THE WITNESS: Trying to get out of town.

THE COURT: Have a safe trip.

MR. BUNDY: Good to see you.

MR. MAYBANK: Thank you, Dr. Stewart.

[Whereupon, Dr. Stewart is excused and exits the witness stand]

THE COURT: Do you have any other witness you have to call today, Mr. Maybank? You said you have some flying in.

MR. MAYBANK: No, Your Honor. We were going to but it's just too --

THE COURT: Pardon?

MR. MAYBANK: No, Your Honor.

THE COURT: Do you?

MR. MAYBANK: No.

MR. BUNDY: Not that I have to call, no, Your Honor.

THE COURT: All right. See you at 9:30.

MR. BUNDY: Thank you, sir.

MR. MAYBANK: Thank you, Your Honor.

[BENCH TRIAL ADJOURNS AT 5:06 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 Wednesday, April 10, 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

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

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 REESE, 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 4 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

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

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 11th, 2013, Commencing at 10:16 a.m.

FORM C-100 - LASER REPORTERS PAPER & MFG CO. 800-626-6313

APPEARANCES OF COUNSEL

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[Exhibits pre-marked by counsel unless otherwise noted in the transcript]

MARKED/ADMITTED

PLAINTIFFS'

Plaintiffs' Exhibit Number 183 / 1027, 1038
[Mr. Parker's Plans]

Plaintiffs' Exhibit Number 184 / 1038
[Building Plans]

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Defendants' Exhibit Number 218 [Order against Rumplick]	/ 1040
Defendants' Exhibit Number 237 [Photograph]	975 /
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Defendants' Exhibit Number 251 [Photograph]	975 /
Defendant's Exhibit Number 252 [CV - Mr. Parker]	975 /
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COURT'S	
Court's Exhibit Number 1 [Memorandum of Settlement]	1042 /
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PROCEEDINGS

THE COURT: All right. Mr. Bundy, are you ready to call your next witness?

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

THE COURT: If you'll call your next witness.

MR. BUNDY: I call Davis Willis.

[Whereupon, Mr. Willis comes forward]

THE CLERK OF COURT: Raise your right hand. Raise your right hand.

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

THE WITNESS: I do.

THE CLERK OF COURT: State your full name and spell your last.

THE WITNESS: David Willis, Jr. W-I-L-L-I-S.

THE COURT: Please be seated.

[Whereupon, Mr. Willis takes the witness stand]

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- - -

- - -

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DAVID WILLIS, JR,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BUNDY:

Q. Mr. Willis, where do you live?

A. 141 Briarwood Lane, Summerville, South Carolina.

Q. Are you related by blood or marriage to anybody in this courtroom?

A. Related by marriage to Mr. McDonald.

Q. This gentleman here?

A. Yes, sir.

Q. So your sister picked him, not you?

A. That's correct. Thank you for the clarification.

Q. And have you ever done any business with me?

A. We have in the past. You represented my father years ago, and we've done some construction projects together over the years.

Q. How did you come to be engaged or hired by the HOA to provide the services you provided?

A. Mr. Padgett contacted me and asked me if we would be interested in pricing -- or providing a proposal to provide a cost estimate for some repair work at the site.

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Q. Do you have any reason to believe either myself or Mr. McDonald had anything to do with you getting this job?

A. No, sir.

Q. And did the fact -- does the fact that that's your brother-in-law, and I've done business with you and represented your father, does that affect your estimate in any way?

A. Not at all.

Q. You're still going to have to do the work to get paid; right?

A. That's correct.

Q. All right. Mr. Willis, just very briefly tell us what your work history is, your educational background.

A. I started with Southeastern Construction, which is a family company, when I was a child and worked up through the ranks, general labor, foreman, superintendent, project manager, during my schooling here in Charleston and then during the summer breaks and other college breaks when I attended USC. After I graduated from the University of South Carolina, I came back and --

Q. What year did you graduate?

A. 2001.

Q. How old were you?

A. -- came back and started in a project manager of

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project managers' role in the company, and then upon my father's death in 2002 assumed control of the company.

Q. All right. Are you licensed?

A. I am licensed with a B.D. 5 unlimited general contractor's license and a construction manager's license in the state of South Carolina.

Q. Are you bondable?

A. Yes, sir.

Q. Have you ever built any condominiums?

A. Yes, sir.

Q. Tell us which ones you built.

A. We built Belk Hall [phonetic] condominiums, the first phase of that project. It's an eighteen-unit building in Mount Pleasant.

Q. Have you ever done any large restoration jobs or repair jobs?

A. Yes, sir. We just completed the Barnwell County Administration repairs several months ago.

Q. Okay. And how much was that contract?

A. A little over $3,000,000.

Q. And what did that involve?

A. It's a complete stucco declad, window replacement, remove the entire wood frame group, replace that, made a number of structural repairs -- connection remediation, electrical repairs, and then all the

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subsequent fit and finishes that went back as collateral damage from the structural repairs.

Q. Did you do a cost estimate on that job?

A. I did.

Q. And then you did the work thereafter?

A. That's correct.

Q. How did your estimate compare with the cost of your work and final analysis?

A. Within five percent.

Q. And did you know a Mr. Steve Watkins?

A. I've met Mr. Watkins. I believe he was actually involved in the Barnwell case, as well.

Q. He's since passed away.

A. I was aware of it, yes, sir.

Q. Are you aware that he also did some estimating on this job?

A. Yes, sir.

Q. All right, sir. If we could, I would like to talk to you a minute about the licensing procedure. You are -- you hold an unlimited general contractor's license?

A. That's correct.

Q. Very briefly tell the judge what's involved in getting such a license.

A. It's actually from the State of South Carolina and requires that the qualifying party for the general

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contractor's license be -- have a work history requirement for the similar type of work that he is trying to be licensed for. Once that's been established, from a letter or some other kind of proof of employment, then said qualifier would need to pass a business-law exam with the State, which apprizes him of all the statutory regulations that the LLR has imposed upon a general contractor as far as what he's allowed to do legally.

Q. All right. Let's --

A. Once -- sir?

Q. Let's talk about the business-law exam. You have to take the business-law exam, before you take the exam, to determine whether you actually know how to build anything; right?

A. That's correct.

Q. And before you get to take the business-law exam, you have to have worked for somebody for how long?

A. I believe it's twelve months.

Q. Twelve months. Okay.

Now, the business-law exam is a take-home exam?

A. That's correct.

Q. So they give you the test and you go back and you look in the books, or whatever materials, and you fill out the exam and send it in; right?

A. That's correct.

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Q. Are there any questions on that business-law exam that relate to the law surrounding the requirement that the licensee, the person who takes the test, has to be on the job during construction?

A. It does. But the general contractor's license can be held by an entity or an individual. If it's held by an entity, then there's a qualifying party for that entity.

Q. And by entity you mean a corporation --

A. Correct.

Q. -- or LLC?

A. LLC.

That qualifying party is the responsible party for the contractor's license, regardless of who it's held by. So that individual is who's ultimately responsible. If there's any kind of issues with the construction that were regulatory or by code, or a failure thereof, that gentleman's or female's knowledge of building codes and the law, as it relates to the general contractor, would come into play. That particular fault-line party is responsible to supervise construction. And in order to supervise construction, one would have to be in the field; therefore, they would have to be present on the job site.

Q. Basically, the LLR wants to be able to go to a human being, not some -- not a corporation, and say, you

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are responsible for this work, you're the one who takes the test?

A. Correct. And that's who is subject to lose their license or be fined, based on the fine.

Q. And if the qualifying party loses their license, by definition, then the corporate entity they were working for would no longer be licensed?

A. Unless they had a second qualifying party.

Q. How does it -- what happens if a qualifying party dies, as it relates to the corporate entity?

A. If the qualifying party is no longer able to be the qualifying party for an entity, whether it's from dismissal or death --

Q. Or not being there?

A. Correct. Correct.

-- they no longer work for the entity, notification needs to be provided to the LLR within fifteen days of said event. Obviously, if someone has died, then notification would need to be given by the corporation. Typically, if it is just a departure between the employee and employer, the qualifying party would notify the LLR and the entity that holds the license would have to notify the LLR within fifteen days. If that was done, then there is a ninety-day grace period that allows the holder of the license to substitute a new qualifying

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party to make sure that the license stays in effect.

Q. And if that notification is not given, then the license is just void?

A. It's revoked.

Q. Okay. As a matter of --

A. As a matter of statute.

Q. -- matter of law. Statute. Okay.

Assuming that Mr. Paturalski was the qualifying party, came down from New York, took the test, became the qualifying party for Charleston -- Carriage Hill of Charleston, LLC, and then went back to New York and never came back to the job to supervise, would that -- as you understand the licensing law that you are governed by under the LLR, would that revoke that license?

MR. MAYBANK: Your Honor, we would object as to relevance and hearsay.

THE COURT: Overruled. Go ahead.

A. If he was not there to supervise it, then he's in breach of his obligation as a qualifying party. I don't know if it would automatically revoke the license, except for the fact that he is supposed to maintain a position in the area. I mean, if he's no longer the qualifying party of that entity and he's moved back to New York and there's no qualifying party, then, yes, the license is automatically revoked.

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Q. [Mr. Bundy] Now, let's assume that he moved, okay? And we've heard in opening statements that Carriage Hill of New York got somebody else who had a license under another name to come in and oversee the work. Would that qualify that person as the qualifying party for Carriage Hill of New York if they work for another entity?

A. The licensing requirements are very specific regarding the qualifying party's responsibilities of duty. You can have a qualifying party that can qualify for more than one entity, but there are regulations that go along with that. Both of the entities would have to be out of the same office or general location and the qualifying party would have to have a minimum of fifty percent interest in one of those two entities.

Q. Now, if -- another way to have done -- another way to do it would be if the qualified party leaves and you've got another guy who works for another construction company. You could go down and just replace that general contractor's name with the previous general contractor on the permit; right?

A. Yes. You can go down to the municipality that issued the building permit and substitute general contractors, as long as they're qualified to perform the scope.

MR. BUNDY: Your Honor, at this time I would

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offer Mr. Willis as an expert as a licensed general contractor and estimating in general contracting.

THE COURT: Any objection? Do you want to ask questions concerning his qualifications?

MR. MAYBANK: Let me ask a few questions, I guess, Your Honor.

THE COURT: Okay.

VOIR DIRE EXAMINATION

BY MR. MAYBANK:

Q. Mr. Willis, have you ever testified on behalf of the LLR before for licensing purposes?

A. I have not.

Q. Have you ever been asked to give any testimony, as to the standards of the Department of Labor and Licensing, regarding general contractor's licenses?

A. No, sir.

Q. All right. Have you ever given deposition testimony as to whether or not parties are qualified through the interpretation of the licensure process in South Carolina?

A. I have not.

Q. And how long have you been licensed?

A. Since 2002.

Q. Have you ever been appointed to be on the board or the rules-writing committee for the Department of Labor

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and Licensing for the construction division?

A. No, sir. My testimony is based on experience I went through to become a general contractor, and that is what I testified to. I have no other testimony past that point.

Q. So there could be other situations or operations in which maybe there's different routes in which the licensing can occur but you just don't know about it, you only know what you went through?

A. Well, I know how you become a contractor, and that's pretty spelled out in the LLR's regulations.

Q. Have you ever taught courses to general contractors on -- for people looking to get their general contractor's license, on how they are to do that and what they are to do?

A. No, sir.

Q. How about in dealing with out-of-state entities on how to go about becoming a licensed general contractor in South Carolina?

A. No, sir.

MR. MAYBANK: Your Honor, we would be asking that he be disqualified as any kind of expert in rendering testimony as to the credentialing and the process of becoming a licensed --

THE COURT: Well, let me find out specifically

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what he wants me --

What do you want me to find him an expert to do?

MR. BUNDY: An expert in estimating and general contracting and a licensed general contractor. That's it.

THE COURT: All right. I'll qualify him as an estimator, as a general contractor, and I'll also qualify him -- now, he can testify as to what he knows, of his own knowledge, that it takes to become a licensed -- not what the LLR would do or not do. Okay?

MR. MAYBANK: Thank you, Your Honor.

THE COURT: And so that's a partial sustaining your objection but also a partial overruling. Okay?

MR. MAYBANK: Thank you.

THE COURT: All right. Please proceed.

MR. BUNDY: Thank you.

CONTINUED DIRECT EXAMINATION

BY MR. BUNDY:

Q. And you also have a construction manager's license?

A. That's correct.

Q. And is that a separate license?

A. It is.

Q. What's the difference between a construction

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manager and a general contractor?

A. A construction manager is strictly a supervisory component of construction. They are there to observe, to coordinate, to help determine, which subcontractors will perform work. They can issue contracts to subcontractors. Typically, there is contract issues between subcontractors and owners under a multi-prime situation when a construction manager is involved. The definition of a construction manager, per the LLR, is that they manage and they don't actually perform work. If a construction manager self-performs work, then it's not a true construction management situation. So very seldom do we see that particular avenue taken with construction.

Q. You've obtained building permits before?

A. I have.

Q. And you've obtained building permits as both the general contractor and construction manager?

A. Only as a general contractor.

Q. Is there a difference between the permitting requirements, as you understand, and between obtaining a general contractor's permit to build a building, and a construction manager's?

A. Yes, sir.

Q. Can you tell us what that is?

A. Yes, sir. A general contractor's ability to

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pull a permit is based on his classification as a contractor and subsequent financial and testing procedures that he went through to get his license. The construction manager doesn't have to prove a value of his company and a construction manager can either be a licensed engineer, architect, or a contractor. So when a construction manager goes to get a permit, it's a multi-prime permit, which means every one of the subcontractors has to be licensed in his or her own trade. So you would have to have an electrician that would have an electrical license, you would have to have a plumber that would have a plumber license. And those are pretty standard, because they're a specialty license. But you would also have to have a framer with a framing license and a concrete contractor with a concrete license and a site contractor with a site license. And certain trades will fall under the egis of a general contractor's license because he could self-perform that work.

For example, you could have a specialty license from the state, or a business license, but that's not the same as a specific trade license for a subcontractor. So to clarify, in the event -- in the situation of a construction manager scenario, all of the subcontractors would have to be individually licensed with the State of South Carolina to perform their tasks. In the instance of

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a general contractor pulling the license, only particular subs would have to have that licensing.

Q. In a construction-manager situation, are those subcontractors listed with the building department?

A. They are with both. Yes. I mean, you're required to provide your list of subcontractors to the municipality that you obtained your permit and for primarily for business licensing and also for them to make sure that the subs you used are licensed to --

Q. And on the building permit it tells you whether the contractor was presenting itself as a construction manager or a general contractor, does it not?

A. That's correct.

Q. And they've got different numbers? All these licenses have different numbers; is that correct?

A. That's correct.

Q. And if someone was actually a construction manager and went down to get a license and that's the only license they had, that would be -- that would be what the permit said; right?

A. It would be the license of -- yes, sir.

Q. Okay. And they would have to have -- it would be -- in starting the job, they would have to have a license -- somebody listed with a license to pour the concrete, do the foundation work; right?

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A. That's correct.

Q. And everybody else? All the other trades that would normally be included under general contractor?

A. Yes, sir.

Q. And if you go in as a general contractor with an unlimited license, that takes care of everything except what? the electrical, mechanical, and plumbing?

A. Correct.

Q. So would be -- those are the separate ones no matter what?

A. No matter what.

Q. But a construction manager, since he's not really building anything, would have to list all the rest of them?

A. That's correct.

Q. Now, what were you asked to do in this case?

A. I was tasked to prepare a cost estimate that would reflect the costs associated with a scope of work that was prescribed by Ted Padgett.

Q. You've ever -- you've worked with Mr. Padgett before?

A. I have.

Q. And you didn't decide what needed to be done; right?

A. No, sir.

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Q. You just decided -- you just determined how much it was going to cost to do it?

A. Yes, sir.

Q. And you're willing and able to do the job for this price?

A. Yes, sir.

Q. Do you have a copy of the estimate with you?

A. Back at my seat.

Q. For the record, I'm going to hand you what's been marked and in evidence as Plaintiffs' Exhibit 180. Do you recognize that document?

A. Yes, sir.

Q. What I want to do is very briefly just go through these items, based upon what you understood Ted Padgett wanted scoped. Okay?

A. Yes, sir.

Q. First off, after the scope -- did you meet with Mr. Padgett after you got the written scope?

A. Met with Mr. Padgett several times.

Q. And you're satisfied this captures what he wanted done?

A. Yes, sir.

Q. Now, subsequent to this, when you get the job and go forward, he's going to have to prepare plans and specifications and all those things; right?

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A. That's correct.

Q. But you didn't need that in order to do this?

A. No, sir. We had -- yeah. No, sir.

Q. And this is similar to what you did in Barnwell; right?

A. Exactly what I did in Barnwell.

Q. Let's talk about division one. What is division one?

A. Division one is our general requirements for this project. And they are site-specific costs to the project that don't necessarily fall into any one architectural division.

Q. And then the next one is wall repair at rear stucco facade. Just very briefly tell the Court why you priced this separately and what's involved.

A. This is just an isolated area on the building and it was removal of a section of stucco replacing the sheathing behind it, re-waterproofing it, and reinstalling it.

Q. And you made an assumption here that you're going to have to remove fifty percent of the studs?

A. That was prescribed by Mr. Padgett's scope.

Q. Is there any contingency in your contract for unforeseen events?

A. There's a ten percent contingency buried in this

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cost estimate.

Q. So if it ended up being sixty percent, the contingency would be reduced by that amount?

A. Yes, sir. The contingency, in its nature, is ten percent of the global cost of the project. So unless every single item went over a hundred percent, it should cover it.

Q. All right. And do you find that to be a reasonable -- this is -- are these prices standard in the industry in this locale?

A. Yes, sir.

Q. Are they based upon your actual cost incurred in other projects of a similar nature?

A. Yes, sir.

Q. All right. The next thing is replace all windows and doors. That is not in this estimate; is that correct?

A. That is removed.

Q. So that's not damages being replaced in this case.

Let's move over to remove and replace all stucco. This is for the complete removal of all stucco?

A. Yes, sir.

Q. And, again, is that pricing consistent with pricing that you've actually experienced?

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A. Yes, sir.

Q. And, in fact, you just got through with a stucco job down in Barnwell; right?

A. Yes, sir.

Q. So is this based upon that actual experience?

A. It's actually less than what that is because of where it was. We have a declad job going on in West Ashley now and it's indicative of the cost there.

Q. So you're able to do work a little bit more efficiently and cheaper down here than you are in Barnwell based upon its rural nature; is that correct?

A. That and it's 200 miles away.

Q. Now, in your office you also have a full-time architect; is that correct?

A. That's correct.

Q. And did the full time -- let me -- and who is that? Mr. Duma?

A. John Duma. Yes, sir.

Q. And how long has he been in the business?

A. Thirty, forty years.

Q. Is he licensed in the state of South Carolina?

A. He's a licensed architect, yes, sir.

Q. And does he do work for governmental bodies?

A. All the time.

Q. Dorchester County, Charleston County?

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A. Yes, sir.

Q. Next is remove and replace the brick. Does this estimate remove and replace all of the brick?

A. No, sir.

Q. All right. How much does it remove and replace?

A. Removes and replaces 6,180 square feet of brick.

Q. And can you give me any idea of what percentage of the building -- the total brick that would be?

A. It's the majority of the brick. Seventy.

Q. Seventy percent?

A. Seventy, eighty percent, yeah.

Q. And that was what Mr. Padgett asked you to price?

A. Mr. Padgett's scope was a narrative, it wasn't a set of drawings or plans, so his scope terminology was replace the majority of the brick but replace all of the rowlocks and all the sill brick in its entirety. And then also to replace portions of brick needed for definistration.

Q. Okay. And what if you -- what if you run into brick that's not properly anchored that was not a part of this 6,000-square-foot of brick?

A. It was covered in the scope in the sense that he said if you encounter it, it will have to be removed. But we relied on the contingency for that.

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Q. So, again, you've got a contingency in there for that?

A. Yes, sir.

Q. And in these remediation type jobs which you've done before, that's not unusual to have a contingency, is it?

A. Ten percent is a pretty standard contingency for this type of work.

Q. What was your experience in the remediation in Barnwell, with regard to contingency, as estimated in the actual cost that's incurred?

A. We got into the contingency in Barnwell but I don't remember if we did use the whole thing.

Q. So the next one is exterior trim. Why are you replacing exterior trim, other than because Mr. Padgett wanted it? Is there a physical reason to do that?

A. Framing repairs and intersections with other veneers.

Q. And painting the trim and painting the porch ceiling, these are all functions of just things that are going to occur or can be damaged?

A. Collateral damages from the main repairs.

Q. I don't need -- we don't need to go through all of these, I don't think, if you're satisfied with the prices. But I would like to talk to you about the

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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

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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