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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
For the Court of Common Pleas

R. Lawton McIntosh, Judge for Tenth Judicial Circuit

Appeal Case No.: 2015-000647

Terry and Suzette Patton Appellant

v.

American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and
Anderson Brothers Concrete, LLC, Marcus Clinkscales a/k/a Marcus Anderson d/b/a Anderson
Brothers Concrete, LLC, and Scott Brown.....Respondents

RECORD ON APPEAL

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864-855-3446 (Facsimile)
Candy@UpstateLawGroup.com

ATTORNEY FOR APPELLANT

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Jeanmarie Tankersley, Esq.
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864-242-3199 (Facsimile)
tchase@mgclaw.com
jeanmarie.tankersley@mgclaw.com

ATTORNEYS FOR RESPONDENT

INDEX

ORDERS

Consent order of The Honorable Alexander Macaulay striking case pursuant to SCRC40(j), signed and clocked in August 26, 2013, stamped as a True Copy by the Clerk of Court on or about September 11, 2013, prepared by Clerk for sending to Counsel for both parties on September 12, 2013, post-marked and sent to counsel on September 18, 2013..... 1

Order of The Honorable R. Lawton McIntosh dated September 15, 2014, clocked in and stamped as a True Copy by the Clerk of Court on September 16, 2014, and postmarked September 17, 2014, restoring the case under SCRC40(j) . 5

Form 4 Order of The Honorable R. Lawton McIntosh dated December 18, 2014, clocked in on December 29, 2014, stamped as a True Copy by the Clerk of Court and postmarked December 30, 2014, vacating Order restoring the case under SCRC40(j) and ordering that it not be restored 8

Formal Order of The Honorable R. Lawton McIntosh dated February 6, 2015, clocked in and stamped as a True Copy by the Clerk of Court on February 20, 2015, and postmarked February 23, 2015, vacating Order restoring the case under SCRC40(j) and ordering that the case not be restored 12

PLEADINGS

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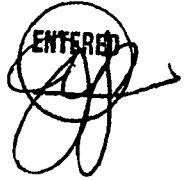
Argument on Motion to Reconsider Motion to Restore 220

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
Terry and Suzette Patton,)
)
Plaintiffs,)
)
v.)
)
American Lifestyle Homes, LLC,)
Et al.)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2010-CP-04-04389

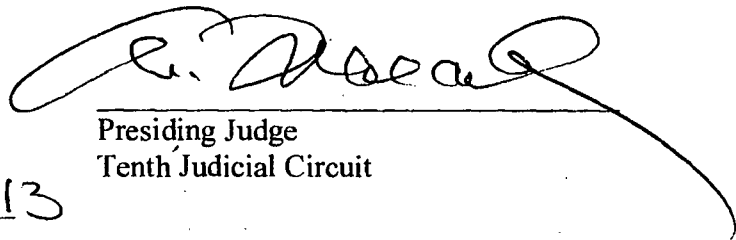
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**CONSENT ORDER STRIKING CASE
FROM DOCKET**

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ANDERSON, SOUTH CAROLINA
2013 AUG 26
COMMON PLEAS
GENERAL SESSIONS
10-22

By and through their signatures below, the parties have informed the Court that they have reached an agreement to strike this matter from the docket pursuant to Rule 40(j), S.C.R.C.P., which is attached hereto. Therefore, it is Ordered that the above captioned be removed from the docket. If the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored. A party moving to restore a case stricken from the docket shall provide all parties notice of the motion to restore at least 10 days before it is heard. Upon being restored, the case shall be placed on the General Docket and proceed from that date as provided in Rule 40(j).

IT IS SO ORDERED!


Presiding Judge
Tenth Judicial Circuit

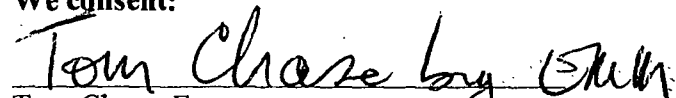
Dated: August 26, 2013
Anderson, South Carolina

I so move:

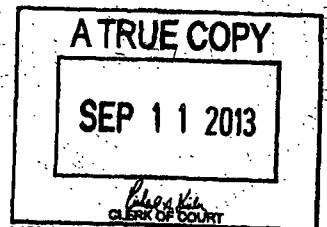

Candy Kern-Fuller, Esq.
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864-855-3446 (facsimile)
candy@upstatelawgroup.com

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864-242-3199 (Facsimile)
tchase@mgclaw.com

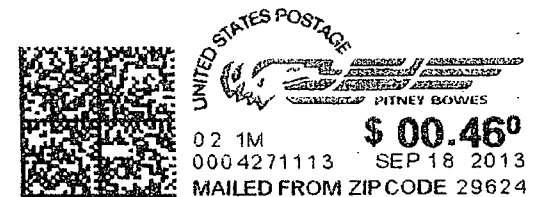
Attorney for Defendant Scott Brown



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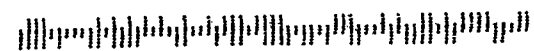
cc: Chase
Kern-Fuller
Johnson
9/12/13 JF

Richard A. Shirley
Clerk of Court
P. O. Box 8002
Anderson, SC 29622



Candy M. Kern-Fuller
200 E. Main St
Easley, SC 296402073

29640215500



00004

MOTION FEE PAID

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Terry and Suzanne Patton,

Plaintiffs,

vs.

American Lifestyle Homes, LLC, Rufus G.
Revis d/b/a American Lifestyle Homes, and
Anderson Brothers Concrete, LLC, Marcus
Anderson d/b/a Anderson Brothers
Concrete, LLC, and Scott Brown,
Defendants.

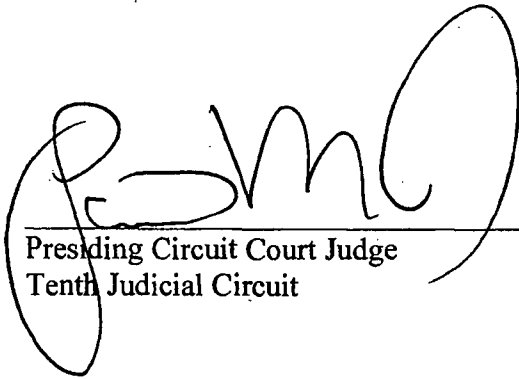
Civil Action No.: 2014-CP-04-2073

**ORDER TO RESTORE
CASE TO ACTIVE ROSTER**

This case was dismissed pursuant to Rule 40(j), S.C.R.C.P. Plaintiff filed a motion to restore the case to the general docket on September 11, 2014. The Notice of the Motion to Restore was served upon all interested parties.

Accordingly, upon motion of Plaintiff it is ordered that this case be restored to the general docket.

AND IT IS SO ORDERED.

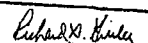

Presiding Circuit Court Judge
Tenth Judicial Circuit

9-15, 2014
Anderson, South Carolina

FILED-CLERK'S OFFICE
ANDERSON SC
2014 SEP 16 P 2:26
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY

SEP 16 2014


CLERK OF COURT

Clerk of Court
P.O. Box 8002
Anderson, SC 29622



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Candy M. Kern-Fuller
Attorney at Law
200 E Main St
Easley, SC 29640-2073

90000

RECEIVED SEP 18 2014

Richard A. Shirley

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP0402073
FILED-CLERK'S OFFICE
ANDERSON SC

Terry Patton et. al.

2014 DEC 29 10 18
American Lifestyles
Homes LLC et. al.

COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY

DEC 30 2014

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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

Circuit Court Judge

2155

Judge Code

12/18/2014

Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Richard A. Shirley

Court Reporter

Richard A. Shirley - Clerk of Court

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

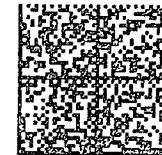
This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Order restoring case vacated. Motion for reconsideration granted and case not restored. Mr. Chase to prepare formal order.

FILED-CLERK'S OFFICE
ANDERSON SC
2014 DEC 29 P 4:19
COMMON PLETS AND
GENERAL SESSIONS

Richard A. Shirley
Clerk of Court
P.O. Box 8002
Anderson, SC 29622

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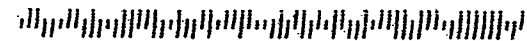


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Attorney at Law
200 E Main St
Easley, SC 29640-2073

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ENTL...

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

FILED-CLERK'S OFFICE
ANDERSON SC
IN THE COURT OF COMMON PLEAS

2015 FEB 20 A 9:58

TERRY AND SUZETTE PATTON,

Civil Action No. 2014-CP-04-2073
COMMON PLEAS AND
GENERAL SESSIONS

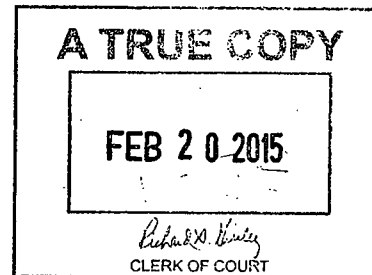
Plaintiffs,

vs.

AMERICAN LIFESTYLE HOMES, LLC,
RUFUS G. REVIS D/B/A AMERICAN
LIFESTYLE HOMES, AND ANDERSON
BROTHERS CONCRETE, LLC,
MARCUS CLINKSCALES AKA
MARCUS ANDERSON D/B/A
ANDERSON BROTHERS CONCRETE,
LLC, AND SCOTT BROWN,

Defendants.

**ORDER GRANTING MOTION FOR
RECONSIDERATION AND
VACATING RESTORATION OF CASE
UNDER RULE 40(J)**



Plaintiffs Terry and Suzette Patton moved to restore the above-captioned case pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure after the case had been dismissed pursuant to the same rule. This Court originally restored the case without a hearing. Subsequent to the restoration, Defendant Scott Brown filed a motion for the Court to reconsider the restoration of the case or, in the alternative, a motion to vacate restoration of the case pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. A hearing was held on Defendant's motion on December 16th, 2014, with counsel for Scott Brown and counsel for Terry and Suzette Patton appearing and presenting each party's respective arguments. Having heard the arguments of counsel and reviewed the record, exhibits, pleadings, orders, briefs and legal authority submitted, the Court is of the opinion and finds that Scott Brown's Motion to Vacate the Restoration of the Case should be granted.

In support of its Order, the Court makes the following findings of fact and conclusions of law:

1. Defendant Scott Brown, by counsel, filed a timely motion for reconsideration of the order restoring the case. Plaintiffs' counsel filed a Motion to Restore Case to Active Roster on September 11, 2014. The motion included a proposed order. The Court

executed the proposed order filed with the motion on September 15, 2014, and the order was filed with the Clerk of Court on September 16, 2014. Scott Brown, through counsel, filed the motion for reconsideration on September 24, 2014.

2. The Court executed the proposed order with the Motion to Restore Case to Active Roster without a hearing. The Court finds no evidence that Defendant Scott Brown consented to the restoration of the case and, rather, finds that Defendant Scott Brown contests the restoration. Therefore, the Court finds that Defendant Scott Brown was entitled to contest the motion for restoration of the case and was granted the opportunity for the Defendant's motion to be heard by full hearing, including consideration of arguments, exhibits and briefs of counsel on both sides.

3. The evidence confirms that Terry and Suzette Patton did not have any time remaining on the statute of limitations for the claim forming the basis of the litigation when the case was dismissed pursuant to Rule 40(j) by consent order executed by Judge Alexander S. Macaulay and filed with the Clerk of Court for Anderson County on August 26, 2013. A party must bring an action within three years of the date the cause of action arises. *S.C. Code Ann.* §15-3-530 (2005). The action must be commenced within three years of "when the underlying cause of action reasonably ought to have been discovered." *Martin v. Companion Health Corp.*, 357 S.C. 570, 575 (Ct. App. 2004). "[T]he three-year clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from wrongful conduct." *Id.* at 575-76; *S.C. Code Ann.* §15-3-535 (2005). "The exercise of reasonable diligence means that an injured party must act promptly where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point, and not when advice of counsel is sought or a full-blown theory of recovery developed." *Dorman v. Campbell*, 331 S.C. 179, 184 (Ct. App. 1998); *Dillon County School Dist. v. Lewis Sheet Metal Works*, 286 S.C. 207 (Ct. App. 1985). Plaintiffs' claim is based on construction defects and resulting damages associated with the construction of a garage, retaining wall and driveway at their home. Considering the evidence in the light most favorable to the Plaintiffs, the construction was contracted for in 2007 and completed in 2008. Plaintiffs

began seeing defects in the construction and made complaints to the general contractor about the construction, including a formal written complaint, by April 2009. Plaintiffs also made a complaint to the South Carolina Department of Labor, Licensing & Regulation on April 5, 2009 detailing the construction defects and damages. A site inspection was performed in June of 2009 by a representative of the Department of Labor, Licensing & Regulation and a report issued to Plaintiffs detailing construction defects and damages in July 2009. Plaintiffs retained the services of a licensed engineer, Alan Lumpkin of Professional Engineering Associates, to inspect the property on September 9, 2009, and a detailed report was issued by this engineer on September 27, 2009 detailing the defects in construction and damages resulting therefrom. The report included substantive information provided by Plaintiffs detailing their knowledge of construction defects and damages. Furthermore, Plaintiffs detailed their knowledge of the defects in their deposition testimony and relied upon this expert report as an exhibit to their Complaint, confirming their actual knowledge of their potential claim as of 2009, at the latest. Therefore, considering a three year statute of limitations, the Plaintiffs did not have any time remaining on the statute of limitations when the case was dismissed pursuant to Rule 40(j) on August 26, 2013.

4. At the hearing, Counsel for Terry and Suzette Patton conceded that Plaintiffs' did not have any time remaining on the statute of limitations for the claim forming the basis of the litigation when the case was dismissed by consent order executed by Judge Alexander S. Macaulay and filed with the Clerk of Court for Anderson County on August 26, 2013.

5. Terry and Suzette Patton did not file the Motion to Restore Case to Active Roster within the period of time the statute of limitations was stayed pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. The Consent Order Striking Case from Docket was executed by Judge Alexander S. Macaulay on August 26, 2013. The executed order was clocked in and filed with the Clerk of Court for Anderson County on August 26, 2013. In order to take advantage of the tolling of the statute of limitations after a case has been dismissed pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, a party must move to restore the case to the docket within one year after the date the case was dismissed. *See*, Rule 40(j) SCRPC ("if the claim is restored upon



motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored.”). At the time of the dismissal on August 26, 2013, Terry and Suzette Patton did not have any remaining time on the statute of limitations. Therefore, they had up until August 26, 2014 to move to restore the case pursuant to this rule to take advantage of the tolling protection afforded them against the statute of limitations. The Motion to Restore Case to Active Trial Roster pursuant to Rule 40(j) was filed on September 11, 2014. As a result, the motion to restore violates the statute of limitations and the case should not be restored.

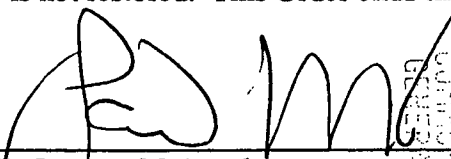
6. Counsel for Terry and Suzette Patton argued that the date to be considered for the tolling of the statute of limitations on a motion to restore a case previously dismissed pursuant to Rule 40(j) is one year from when the executed and filed order is actually received by counsel rather than the date the executed order is filed with the Clerk of Court. The Court disagrees. An order is final and takes effect after the order is signed when it is filed with the Clerk of Court. *See, Bowman v. Richland Memorial Hospital*, 335 S.C. 88, 515 S.E.2d 259 (Ct. App. 1999)(final and binding effective date of order allowing amended complaint was the date the order was entered by the clerk of court). Additionally, considering principles of fairness and equity, Terry and Suzette Patton had notice of the date the Consent Order Striking the Case from Docket was filed with the Clerk of Court for Anderson County over eleven months from the date the filed order was received by counsel prior to the expiration of one year from the date the case was struck pursuant to Rule 40(j). Therefore, they had substantial and sufficient time to comply with the Rule 40(j) for a motion to restore the case pursuant to the rule.

It is therefore ordered that the Defendant’s motion for reconsideration and to vacate the restoration of the case is granted and the case is not restored. This Order ends the case.

AND IT IS SO ORDERED.

RUM

Feb 6
January 2015
Anderson, SC


R. Lawton McIntosh
Judge for the Tenth Judicial Circuit

FILED-CLERK'S OFFICE
ANDERSON SC
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CORRECTIONAL AND
GENERAL SERVICES

Richard A. Shirley
Clerk of Court
P.O. Box 8002
Anderson, SC 29622

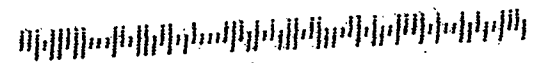
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Candy M. Kern-Fuller
200 E Main St
Easley, SC 29640-2073

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Terry and Suzette Patton

Plaintiff(s)

VS.

American Lifestyle Homes, LLC, Rufus G. Revis
d/b/a American Lifestyle Homes, and Anderson
Brothers Concrete, LLC, Marcus Anderson d/b/a
Anderson Brothers Concrete, LLC, and Scott
Brown,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 04- 04389

A TRUE COPY

DEC 14 2010

Martha A. Newton
CLERK OF COURTS

(Please Print)

Submitted By: Candy M. Kern-Fuller, Esq.

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200 E. Main Street

Easley, South Carolina 29640

SC Bar #: 11392

Telephone #: (864) 855-3114

Fax #: (864) 855-3446

Other:

E-mail: candy@upstatelawgroup.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

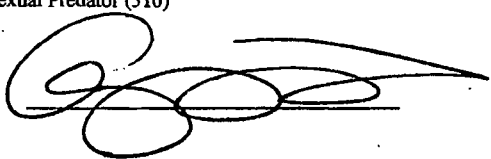
DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☒ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☒ Breach of Contract (140) | 20__-CP-____ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
-
- | | | | |
|--|---|---|--|
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
-
- | | |
|--|--|
| Special/Complex /Other | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) |
| ☐ Other (699) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) |
| | ☐ Sexual Predator (510) |

Submitting Party Signature: 

Date: December 3, 2010

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Terry and Suzette Patton,

Plaintiffs,

vs.

American Lifestyle Homes, LLC, Rufus G.
Revis d/b/a American Lifestyle Homes, and
Anderson Brothers Concrete, LLC, Marcus
Anderson d/b/a Anderson Brothers
Concrete, LLC, and Scott Brown,
Defendants.

Civil Action No.: 2010-CP-04- 04389

SUMMONS

(Jury Trial Demanded)

A TRUE COPY

DEC 14 2010

Martha D. Newton
CLERK OF COURTS

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY summoned and required to answer the Complaint in this action, a copy of which is served upon you, and to have a copy of your Answer served upon counsel for Plaintiffs at 200 E. Main Street, Easley, South Carolina 29640, within thirty (30) days after service thereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, judgment of default will be rendered against you for the relief demanded in the Complaint, and for other and further such relief as the Court may deem just and proper.

Upstate Law Group, LLC



Candy M. Kern-Fuller
200 E. Main Street
Easley, South Carolina 29640
864.855.3114 telephone
864.855.3446 facsimile
candy@upstatelawgroup.com

Easley, South Carolina

December 10, 2010.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Terry and Suzette Patton,

Plaintiffs,

vs.

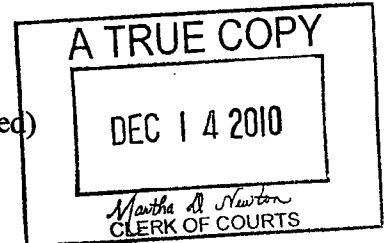
American Lifestyle Homes, LLC, Rufus G.
Revis d/b/a American Lifestyle Homes, and
Anderson Brothers Concrete, LLC, Marcus
Anderson d/b/a Anderson Brothers
Concrete, LLC, and Scott Brown,

Defendants.

Civil Action No.: 2010-CP-04- 04389

COMPLAINT

(Jury Trial Demanded)



COME NOW THE PLAINTIFFS, Terry and Suzette Patton, by and through their undersigned counsel and pursuant to the South Carolina Rules of Civil Procedure, hereby complaining of the Defendants and would herein allege as follows:

PARTIES AND JURISDICTION

1. Plaintiffs, Terry and Suzette Patton, are residents of Anderson County, State of South Carolina.

2. Defendant, American Lifestyle Homes, LLC, is a South Carolina limited liability corporation with its principle place of business in Anderson County and regularly conducts business in Anderson County, South Carolina. Defendant, American Lifestyle Homes, LLC, worked as the general contractor in the project at issue in this Complaint.

3. Defendant, Rufus G. Revis d/b/a American Lifestyle Homes, is a resident of Anderson County, South Carolina, and is the owner of American Lifestyle Homes, LLC, and/or does business as American Lifestyle Homes, and regularly conducts business in Anderson County, South Carolina. Defendant, Rufus G. Revis d/b/a American Lifestyle Homes, worked as the general contractor in the project at issue in this Complaint.

4. Defendant, Anderson Brothers Concrete, LLC, is a South Carolina limited liability corporation with its principle place of business in Anderson County and regularly conducts business in Anderson County, South Carolina. Defendant, Anderson Brothers Concrete, LLC, was a subcontractor on the project at issue in this Complaint.

5. Defendant, Marcus Anderson d/b/a Anderson Brothers Concrete is a resident of Anderson County, South Carolina, and is the owner of Anderson Brothers Concrete, LLC, and/or does business as Anderson Brothers Concrete, and regularly conducts business in Anderson County, South Carolina. Defendant, Marcus Anderson d/b/a Anderson Brothers Concrete, was a subcontractor on the project at issue in this Complaint.

6. Defendant, Scott Brown, is a resident of Anderson County and regularly conducts business in Anderson County. Defendant, Scott Brown, was a subcontractor on the project at issue in this Complaint.

7. Venue in is this case is proper as one or more of the Defendants is a resident of Anderson County and the project at issue is located in Anderson County.

8. Jurisdiction is proper over the parties and this cause of action in this honorable Court.

FACTUAL BACKGROUND

9. On or about November of 2009, Plaintiffs and Defendants Rufus Revis and American Lifestyle Homes, LLC, entered into a contract for the construction of a garage addition with a retaining wall at their property located at 205 Buckingham Drive, Easley, South Carolina 29640.

10. At all times throughout the project at issue, Defendants Rufus Revis and American Lifestyle Homes, LLC, acted as the general contractor and/or subcontractors for various portions of the project at issue.

11. Defendants Rufus Revis and American Lifestyle Homes, LLC, hired Defendants Marcus Anderson, Anderson Brothers Concrete, LLC, and Scott Brown to act as additional subcontractors on the project to excavate the land, construct the retaining wall, pour concrete footers, place fill dirt, and perform all necessary work for the construction of the garage addition and retaining wall at issue, as well as the driveway associated with the instant project.

12. On or about May 21, 2008, the project was substantially completed, although a punch list of items remained unfinished from original construction.

13. Shortly thereafter, Plaintiffs began experiencing cracks in the foundation and retaining walls, cracks in the concrete driveway, and other construction-related defects.

14. Defendants Rufus Revis and American Lifestyle Homes, LLC, continuously represented to Plaintiffs that all construction-related defects would be remedied, but failed to correct the deficiencies.

15. On or about September 9, 2009, Plaintiffs retained the services of a licensed engineer, who performed a site visit and analysis of the project at issue. A copy of the Report of Professional Engineering Associates (Alan M. Lumpkin, PE) is attached as Exhibit A to this Complaint. Mr. Lumpkin detailed a numerous construction deficiencies and violations of building codes, standards of construction practice, and common practice in the construction industry. Mr. Lumpkin's findings are hereby incorporated by reference as specific instances of such violations.

FOR A FIRST CAUSE OF ACTION
(NEGLIGENCE/NEGLIGENCE PER SE)

16. Plaintiffs re-allege the allegations contained in foregoing paragraphs of this Complaint and incorporate the same herein as if repeated verbatim.

17. That at all times material hereto, the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, by and through their agents and/or employees undertook and were under a duty to design, construct and/or repair the subject residence and to provide materials and services in accordance with applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards.

18. That the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, were negligent, grossly negligent, careless, reckless, willful and wanton in developing, designing, constructing, repairing, supervising, and inspecting the subject residence and in failing to construct and/or repair the subject residence in accordance with the applicable building codes and in conformance with accepted design, construction and industry standards, all of which have directly and proximately caused defects and deficiencies in and to the residence, which will need to be corrected, repaired, remediated and/or replaced. Such negligence, gross negligence, careless, reckless, willful and wantonness, includes but not limited to the following particulars:

- a. in failing to use due care in the design, construction and/or repair of the subject project;
- b. in failing to adequately supervise the construction, repair and building of the subject project;

- c. in failing to hire, supervise and train competent subcontractors, specialty subcontractors and employees;
- d. in building and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
- e. in failing to properly construct the retaining walls, footers, and driveway and in building and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices; and
- f. other deficiencies or failures will be proven at trial.

19. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness and wantonness of the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, the Plaintiffs have suffered actual, direct, incidental, consequential, and special damages including but not limited to the expenses associated with having to hire experts to investigate the causes of the defects of the grading, building and construction as set forth above and they have or will have to spend substantial sums of money in order to renovate, correct, repair, remediate and restore their residence to make it safe and habitable. Upon information and belief, these adverse events have occurred each and every year since construction, and constitute "occurrences" and compensable damage; further, the negligence of each defendant herein has resulted in damage to the work of the other subcontractors and trades and in damage to the instant project, the Plaintiffs' property, and the Plaintiffs' use and enjoyment of their residence – all of which will have and will require the Plaintiffs to expend great amounts of money to correct and to repair their residence as well as to suffer the loss, use and enjoyment of their property as well as loss of valuation and depreciation by virtue of the defects and damages aforesaid.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract and Breach of Contract Accompanied by Fraudulent Act)

20. Each and every allegation contained in Paragraphs 1 through 19 above are incorporated herein by express reference as though fully set forth.

21. That at all times herein, the Plaintiffs individually or by and through their agent, entered into a contract with the Defendants, American Lifestyle Homes, LLC, and Rufus G. Revis d/b/a American Lifestyle Homes, for the construction of the garage addition and retaining wall, located at 205 Buckingham Drive, Easley, South Carolina 29640.

22. That all relevant times herein, the Defendants, American Lifestyle Homes, LLC, and Rufus G. Revis d/b/a American Lifestyle Homes, by and through their agents, servants and employees had an obligation and duty to construct the Plaintiffs' garage and retaining wall in accordance with the terms and conditions of the contract, applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards.

23. That the Defendants, American Lifestyle Homes, LLC, and Rufus G. Revis d/b/a American Lifestyle Homes, breached the contract with the Plaintiffs failing to construct the Plaintiffs' garage and retaining wall in accordance with the terms and conditions of the contract, applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence which will need to be or have been corrected, repaired and/or replaced and are in breach of the aforesaid contract. Such breach includes but is not limited to the following particulars, to wit:

- a. in failing to use due care in the design, construction and/or repair of the subject residence;

- b. in failing to adequately supervise the construction, repair and building of the subject residence;
 - c. in failing to hire, supervise and train competent subcontractors, specialty subcontractors and employees;
 - d. in building and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
 - e. in failing to properly construct the retaining walls, footers, and driveway and in building and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices; and
7. other deficiencies or failures will be proven at trial.

24. In addition to wrongfully breaching the contract, Defendants American Lifestyle Homes, LLC, and Rufus G. Revis d/b/a American Lifestyle Homes, engaged in separate and distinct fraudulent acts accompanying the breach of contract. Specifically, these Defendants made numerous and repeated assurances that all defects at the subject project would be remedied, but have failed to do so.

25. As a direct and proximate result of the foregoing acts of breach of contract, Plaintiffs have been damaged in such an amount as may be determined by the trier of fact, as well as any other damages as may be presented to the jury as may be revealed during the course of discovery in this matter and for punitive damages for the breach of contract accompanied by fraudulent act.

FOR A THIRD CAUSE OF ACTION
(BREACH OF WARRANTY OF HABITABILITY, BREACH OF WARRANTY AGAINST LATENT DEFECTS, BREACH OF WARRANTY OF WORKMANLIKE SERVICES, BREACH OF WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND BREACH OF WARRANTY OF MERCHANTABILITY AND SERVICEABILITY)

26. Plaintiffs re-allege the allegations contained in Paragraphs 1 through 25 of this Complaint and incorporates the same herein as if repeated verbatim.

27. The Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, implicitly and/or expressly warranted that subject property would be habitable and fit for its intended use and that such design, construction, repair, and building of the residence would be in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, accepted construction industry standards applicable thereto and would be free from latent defects and fit for the particular purpose for which work was performed.

28. That the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, breached said warranties by designing, building, constructing and repairing the subject project in such a manner as to be in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices.

29. As a direct and proximate result of Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to the expenses associated with having to hire experts to investigate the causes of the defects of the building and construction as set forth above and he has or will have to spend substantial sums of money in order to renovate, correct, repair, remediate and restore their residence to make it safe and habitable – all of which will have and will require the Plaintiffs to expend great amounts of money to correct and to repair their residence as well as to suffer the loss, use and enjoyment of

their property as well as loss of valuation and depreciation by virtue of the defects and damages aforesaid.

FOR A FOURTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES)

30. The Plaintiffs re-alleges the allegations contained in Paragraphs 1 through 29 of this Complaint and incorporates the same herein as if repeated verbatim.

31. The Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, are "persons" within the meaning of South Carolina Code §39-5-10(a) and by their actions in repairing, building, and constructing, the subject project are engaged in commerce within the meaning of South Carolina Code § 39-5-10(b).

32. The Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, by their action(s) described hereinabove constitute unfair and deceptive practice within the meaning of South Carolina Code § 39-5-20(a) and such action(s) are capable of repetition and upon information and belief have been repeated.

33. That the conduct of the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, affects the public interest of the people in South Carolina and the Defendants knew or should have known that their conduct violated the South Carolina Unfair Trade Practices Act.

34. As a direct foreseeable and proximate result of the Defendants' unfair and deceptive practices, the Plaintiffs have suffered actual, direct, incidental, consequential and

special damages, including but not limited to the expenses associated with having to hire experts to investigate the causes of the defects of the building and construction as set forth above and he has or will have to spend substantial sums of money in order to renovate, correct, repair, remediate and restore their residence to make it safe and habitable – all of which will have and will require the Plaintiffs to expend great amounts of money to correct and to repair their residence as well as to suffer the loss, use and enjoyment of their property as well as loss of valuation and depreciation by virtue of the defects and damages aforesaid.

WHEREFORE, Plaintiffs pray for a judgment against the Defendants, jointly and severally in a reasonable amount of actual, punitive, and treble damages to be determined by a jury; for attorneys' fees and the costs of this action; for prejudgment or post-judgment interest on Plaintiffs' damages; and for such other and further relief as this Court may deem just and proper.

Upstate Law Group, LLC



Candy M. Kern-Fuller, Esq.
200 E. Main Street
Easley, South Carolina 29640
864.855.3114 telephone
864.855.3446 facsimile
candy@upstatelawgroup.com

Easley, South Carolina

December 10, 2010.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
) TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)

Terry and Suzette Patton,) Civil Action No.: 2010-CP-04-04389
)

Plaintiffs,)

vs.)

AMENDED COMPLAINT

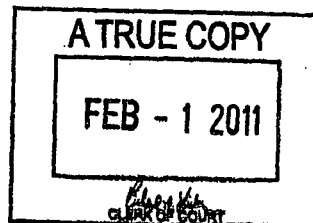
American Lifestyle Homes, LLC, Rufus G.)
Revis d/b/a American Lifestyle Homes, and)
Anderson Brothers Concrete, LLC, Marcus)
Clinkscales aka Marcus Anderson d/b/a)
Anderson Brothers Concrete, LLC, and)
Scott Brown,)
Defendants.)

(Jury Trial Demanded)

COME NOW THE PLAINTIFFS, Terry and Suzette Patton, by and through their undersigned counsel and pursuant to the South Carolina Rules of Civil Procedure, hereby complaining of the Defendants and would herein allege as follows:

PARTIES AND JURISDICTION

1. Plaintiffs, Terry and Suzette Patton, are residents of Anderson County, State of South Carolina.
2. Defendant, American Lifestyle Homes, LLC, is a South Carolina limited liability corporation with its principle place of business in Anderson County and regularly conducts business in Anderson County, South Carolina. Defendant, American Lifestyle Homes, LLC, worked as the general contractor in the project at issue in this Complaint.
3. Defendant, Rufus G. Revis d/b/a American Lifestyle Homes, is a resident of Anderson County, South Carolina, and is the owner of American Lifestyle Homes, LLC, and/or does business as American Lifestyle Homes, and regularly conducts business in Anderson



County, South Carolina. Defendant, Rufus G. Revis d/b/a American Lifestyle Homes, worked as the general contractor in the project at issue in this Complaint.

4. Defendant, Anderson Brothers Concrete, LLC, is a South Carolina limited liability corporation with its principle place of business in Anderson County and regularly conducts business in Anderson County, South Carolina. Defendant, Anderson Brothers Concrete, LLC, was a subcontractor on the project at issue in this Complaint.

5. Defendant, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete is a resident of Anderson County, South Carolina, and is the owner of Anderson Brothers Concrete, LLC, and/or does business as Anderson Brothers Concrete, and regularly conducts business in Anderson County, South Carolina. Defendant, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, was a subcontractor on the project at issue in this Complaint.

6. Defendant, Scott Brown, is a resident of Anderson County and regularly conducts business in Anderson County. Defendant, Scott Brown, was a subcontractor on the project at issue in this Complaint.

7. Venue in is this case is proper as one or more of the Defendants is a resident of Anderson County and the project at issue is located in Anderson County.

8. Jurisdiction is proper over the parties and this cause of action in this honorable Court.

FACTUAL BACKGROUND

9. On or about November of 2009, Plaintiffs and Defendants Rufus Revis and American Lifestyle Homes, LLC, entered into a contract for the construction of a garage addition

with a retaining wall at their property located at 205 Buckingham Drive, Easley, South Carolina 29640.

10. At all times throughout the project at issue, Defendants Rufus Revis and American Lifestyle Homes, LLC, acted as the general contractor and/or subcontractors for various portions of the project at issue.

11. Defendants Rufus Revis and American Lifestyle Homes, LLC, hired Defendants Marcus Clinkscales aka Marcus Anderson, Anderson Brothers Concrete, LLC, and Scott Brown to act as additional subcontractors on the project to excavate the land, construct the retaining wall, pour concrete footers, place fill dirt, and perform all necessary work for the construction of the garage addition and retaining wall at issue, as well as the driveway associated with the instant project.

12. On or about May 21, 2008, the project was substantially completed, although a punch list of items remained unfinished from original construction.

13. Shortly thereafter, Plaintiffs began experiencing cracks in the foundation and retaining walls, cracks in the concrete driveway, and other construction-related defects.

14. Defendants Rufus Revis and American Lifestyle Homes, LLC, continuously represented to Plaintiffs that all construction-related defects would be remedied, but failed to correct the deficiencies.

15. On or about September 9, 2009, Plaintiffs retained the services of a licensed engineer, who performed a site visit and analysis of the project at issue. A copy of the Report of Professional Engineering Associates (Alan M. Lumpkin, PE) is attached as Exhibit A to this Complaint. Mr. Lumpkin detailed a numerous construction deficiencies and violations of building codes, standards of construction practice, and common practice in the construction

industry. Mr. Lumpkin's findings are hereby incorporated by reference as specific instances of such violations.

FOR A FIRST CAUSE OF ACTION
(NEGLIGENCE/NEGLIGENCE PER SE)

16. Plaintiffs re-allege the allegations contained in foregoing paragraphs of this Complaint and incorporate the same herein as if repeated verbatim.

17. That at all times material hereto, the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, by and through their agents and/or employees undertook and were under a duty to design, construct and/or repair the subject residence and to provide materials and services in accordance with applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards.

18. That the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, were negligent, grossly negligent, careless, reckless, willful and wanton in developing, designing, constructing, repairing, supervising, and inspecting the subject residence and in failing to construct and/or repair the subject residence in accordance with the applicable building codes and in conformance with accepted design, construction and industry standards, all of which have directly and proximately caused defects and deficiencies in and to the residence, which will need to be corrected, repaired, remediated and/or replaced. Such negligence, gross negligence, careless, reckless, willful and wantonness, includes but not limited to the following particulars:

- a. in failing to use due care in the design, construction and/or repair of the subject project;
- b. in failing to adequately supervise the construction, repair and building of the subject project;
- c. in failing to hire, supervise and train competent subcontractors, specialty subcontractors and employees;
- d. in building and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
- e. in failing to properly construct the retaining walls, footers, and driveway and in building and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices; and
- f. other deficiencies or failures will be proven at trial.

19. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness and wantonness of the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, the Plaintiffs have suffered actual, direct, incidental, consequential, and special damages including but not limited to the expenses associated with having to hire experts to investigate the causes of the defects of the grading, building and construction as set forth above and they have or will have to spend substantial sums of money in order to renovate, correct, repair, remediate and restore their residence to make it safe and habitable. Upon information and belief, these adverse events have occurred each and every year since construction, and constitute "occurrences" and compensable damage; further, the negligence of each defendant herein has resulted in damage to the work of the other subcontractors and trades and in damage to the instant project, the Plaintiffs' property, and the Plaintiffs' use and enjoyment of their residence – all of which will have and will require the Plaintiffs to expend great amounts of money to correct and to repair their residence as well as to suffer the loss, use and enjoyment of their property as well as loss of valuation and depreciation by virtue of the defects and damages aforesaid.

FOR A SECOND CAUSE OF ACTION

(Breach of Contract and Breach of Contract Accompanied by Fraudulent Act)

20. Each and every allegation contained in Paragraphs 1 through 19 above are incorporated herein by express reference as though fully set forth.

21. That at all times herein, the Plaintiffs individually or by and through their agent, entered into a contract with the Defendants, American Lifestyle Homes, LLC, and Rufus G. Revis d/b/a American Lifestyle Homes, for the construction of the garage addition and retaining wall, located at 205 Buckingham Drive, Easley, South Carolina 29640.

22. That all relevant times herein, the Defendants, American Lifestyle Homes, LLC, and Rufus G. Revis d/b/a American Lifestyle Homes, by and through their agents, servants and employees had an obligation and duty to construct the Plaintiffs' garage and retaining wall in accordance with the terms and conditions of the contract, applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards.

23. That the Defendants, American Lifestyle Homes, LLC, and Rufus G. Revis d/b/a American Lifestyle Homes, breached the contract with the Plaintiffs failing to construct the Plaintiffs' garage and retaining wall in accordance with the terms and conditions of the contract, applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence which will need to be or have been corrected, repaired and/or replaced and are in breach of the aforesaid contract. Such breach includes but is not limited to the following particulars, to wit:

- a. in failing to use due care in the design, construction and/or repair of the subject residence;
- b. in failing to adequately supervise the construction, repair and building of the subject residence;
- c. in failing to hire, supervise and train competent subcontractors, specialty subcontractors and employees;
- d. in building and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
- e. in failing to properly construct the retaining walls, footers, and driveway and in building and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices; and
7. other deficiencies or failures will be proven at trial.

24. In addition to wrongfully breaching the contract, Defendants American Lifestyle Homes, LLC, and Rufus G. Revis d/b/a American Lifestyle Homes, engaged in separate and distinct fraudulent acts accompanying the breach of contract. Specifically, these Defendants made numerous and repeated assurances that all defects at the subject project would be remedied, but have failed to do so.

25. As a direct and proximate result of the foregoing acts of breach of contract, Plaintiffs have been damaged in such an amount as may be determined by the trier of fact, as well as any other damages as may be presented to the jury as may be revealed during the course of discovery in this matter and for punitive damages for the breach of contract accompanied by fraudulent act.

FOR A THIRD CAUSE OF ACTION
(BREACH OF WARRANTY OF HABITABILITY, BREACH OF WARRANTY AGAINST LATENT DEFECTS, BREACH OF WARRANTY OF WORKMANLIKE SERVICES, BREACH OF WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND BREACH OF WARRANTY OF MECHANICALITY AND SERVICEABILITY)

26. Plaintiffs re-allege the allegations contained in Paragraphs 1 through 25 of this Complaint and incorporates the same herein as if repeated verbatim.

27. The Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, implicitly and/or expressly warranted that subject property would be habitable and fit for its intended use and that such design, construction, repair, and building of the residence would be in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, accepted construction industry standards applicable thereto and would be free from latent defects and fit for the particular purpose for which work was performed.

28. That the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, breached said warranties by designing, building, constructing and repairing the subject project in such a manner as to be in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices.

29. As a direct and proximate result of Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to the expenses associated with having to hire experts to investigate the causes of the defects of the building and construction as set forth above and he has or will have to spend substantial sums of money in order to renovate, correct, repair, remediate and restore their residence to make it safe and habitable – all of which will have and will require the Plaintiffs to expend great amounts of money to correct and to repair their residence as well as to suffer the

loss, use and enjoyment of their property as well as loss of valuation and depreciation by virtue of the defects and damages aforesaid.

FOR A FOURTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES)

30. The Plaintiffs re-alleges the allegations contained in Paragraphs 1 through 29 of this Complaint and incorporates the same herein as if repeated verbatim.

31. The Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, are "persons" within the meaning of South Carolina Code §39-5-10(a) and by their actions in repairing, building, and constructing, the subject project are engaged in commerce within the meaning of South Carolina Code § 39-5-10(b).

32. The Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, by their action(s) described hereinabove constitute unfair and deceptive practice within the meaning of South Carolina Code § 39-5-20(a) and such action(s) are capable of repetition and upon information and belief have been repeated.

33. That the conduct of the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, affects the public interest of the people in South Carolina and the Defendants knew or should have known that their conduct violated the South Carolina Unfair Trade Practices Act.

34. As a direct foreseeable and proximate result of the Defendants' unfair and deceptive practices, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to the expenses associated with having to hire experts to investigate the causes of the defects of the building and construction as set forth above and he has or will have to spend substantial sums of money in order to renovate, correct, repair, remediate and restore their residence to make it safe and habitable – all of which will have and will require the Plaintiffs to expend great amounts of money to correct and to repair their residence as well as to suffer the loss, use and enjoyment of their property as well as loss of valuation and depreciation by virtue of the defects and damages aforesaid.

WHEREFORE, Plaintiffs pray for a judgment against the Defendants, jointly and severally in a reasonable amount of actual, punitive, and treble damages to be determined by a jury; for attorneys' fees and the costs of this action; for prejudgment or post-judgment interest on Plaintiffs' damages; and for such other and further relief as this Court may deem just and proper.

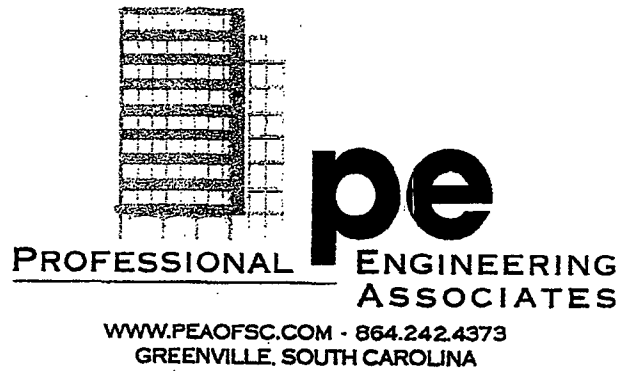
Upstate Law Group, LLC

Candy M. Kern-Fuller, Esq., by Tyler B. Allen, Esq.
Candy M. Kern-Fuller, Esq.
200 E. Main Street
Easley, South Carolina 29640
864.855.3114 telephone
864.855.3446 facsimile
candy@upstatelawgroup.com

Easley, South Carolina

January 31st, 2011.

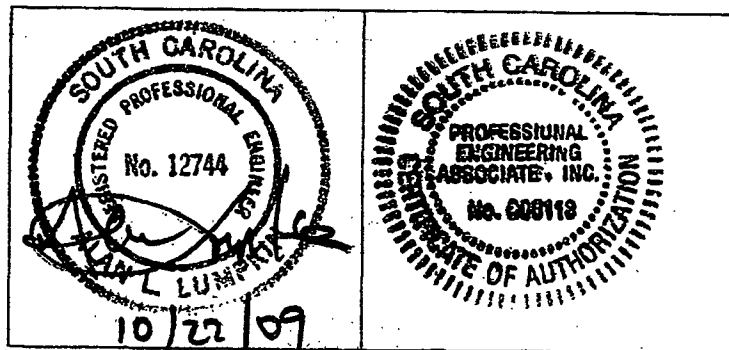
Exhibit A



STRUCTURAL OBSERVATIONS
FOR
TERRY AND SUZETTE PATTON
EASLEY, SOUTH CAROLINA

PE Project 2009-120
PROFESSIONAL ENGINEERING ASSOCIATES, INC
PO BOX 8836
GREENVILLE, SC 29604

October 27, 2009



INDEX OF REPORT

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4	SITE OBSERVATIONS
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13	ANALYTICAL EVALUATION
14	FINAL CONCLUSIONS

INTRODUCTION:

On September 9, 2009 Professional Engineering Associates, INC., (PEA) visited the Patton home at 205 Buckingham Road in Easley, South Carolina. The purpose of this visit was to provide a professional opinion concerning retaining wall cracking and movement along with slab cracking in a new garage addition and driveway recently completed.

The Pattons indicated that they are noticing significant retaining wall movement, slab cracking in the new driveway and cracking in the slab on grade for the new garage structure.

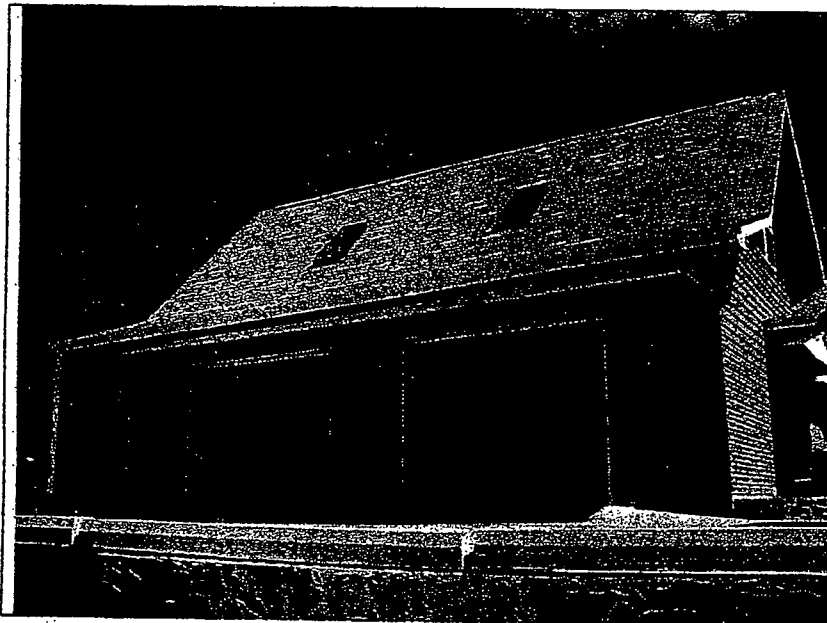
Present at this meeting were Terry and Suzette Patton, Rufus Revis (builder) and Alan L. Lumpkin, P.E. for PEA.

A follow up meeting at the offices of PEA took place on September 21, 2009 to discuss the preliminary findings of the analytical evaluation

PROJECT DESCRIPTION:

The new garage addition is a new 35'-0" x 24'-0" (+/-) x 9'-0" high structure with a gable roof. This structure has a high gable with an 8:1 pitch to accommodate a room at a future loft level. A new driveway was constructed to access the new garage.

The property sloped away from the existing home and required that retaining walls be built to provide structural support for the new fill. The deepest fill area is approximately 7'-4" at the end of the new driveway section.



New garage addition.

Figure 1

SITE OBSERVATIONS:

An initial walk-thru was completed and included observation of the new driveway, new garage structure and all retaining walls.

Driveway Slab:

1. The driveway slab near the end of the construction has a 6'-8" diagonal crack from the corner of the intersection of the rear wall and the driveway wall and showed vertical displacement of the slab on fill approximately $\frac{1}{2}$ " to $\frac{5}{8}$ " in translational movement.
2. Additional stress cracking from exterior wall movement was noted in the same location.
3. Also, shrinkage cracks were noted at the Garage door openings where no control joint had been cut.

Garage Slab:

1. Two large cracks were located inside the garage area.
2. Each crack was approximately 12 feet long and both had vertical displacement translation.
3. The crack on the left side of the garage originated at the rear left corner of the garage and propagated towards the center of the left side car bay. There was an approximate $\frac{1}{8}$ " vertical translation at this joint.
4. The crack on the right side of the garage originated at the front corner of the right car bay and propagated towards the center of the right car bay. There was an approximate $\frac{3}{8}$ " to $\frac{1}{2}$ " vertical translation at this joint.

Retaining Walls:

1. The driveway was supported on the left side by an increasing height retaining wall. It is approximately 2 feet tall at the beginning and 7'-4" at the end.
2. The retaining wall construction is 8" CMU and may have some 12" CMU in the lower courses.
3. There is a horizontal crack running approximately 8 inches from the top of the driveway slab and is present along the final half of the driveway to the end.
4. Vertical cracks are present in the driveway retaining wall approximately 2'-0" from the end of the wall. This crack shows a minimum of $\frac{3}{8}$ " translation away from the driveway or fill side.
5. The rear wall that is approximately 6'-8" to 7'-4" tall has a vertical crack that is open near the front of the garage. This crack has a $\frac{3}{8}$ " translation away from the fill side as well.
6. Floor slabs were not tied into retaining walls so no basement wall is present but it is a true cantilevered wall system.



**Cracking slab on grade
at garage interior left
side.**

Figure 2



**Cracking slab on grade
at garage interior right
side.**

Figure 3



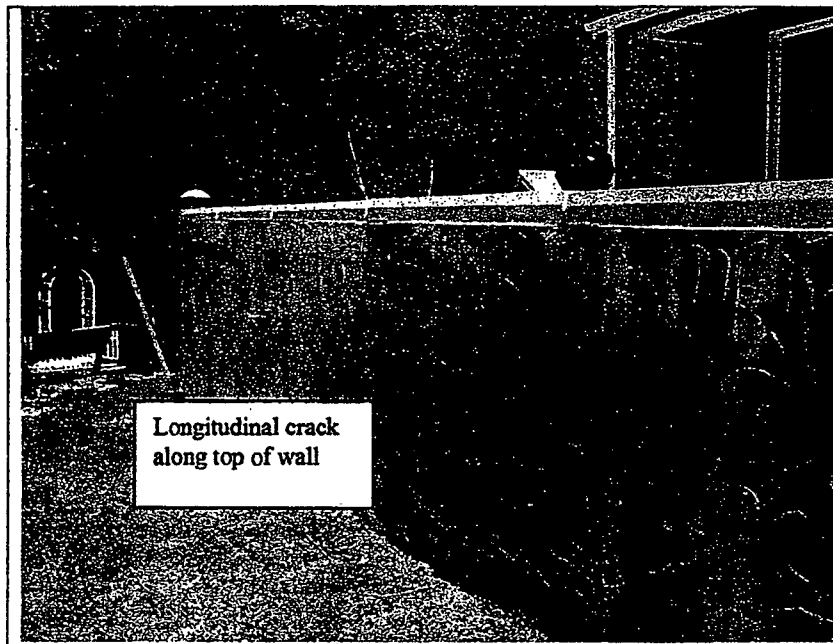
**Shrinkage cracking at
center of garage.**

Figure 4



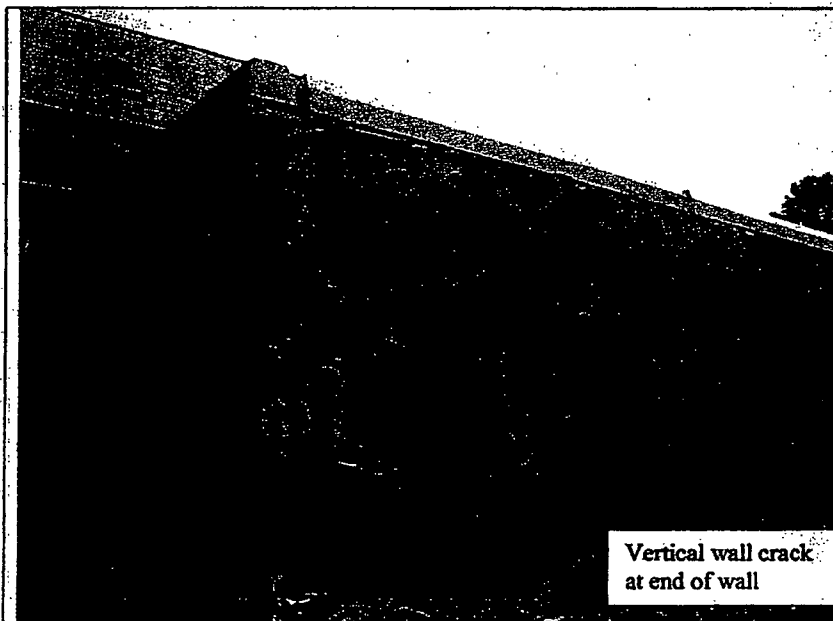
**Retaining wall at the
driveway.**

Figure 5



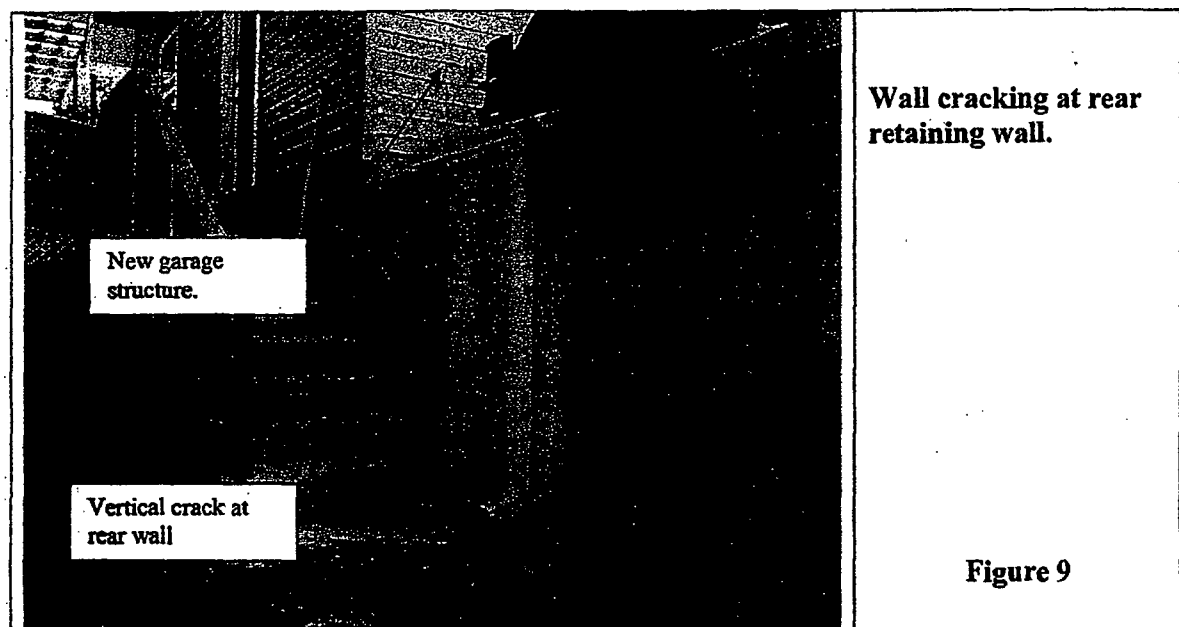
**Horizontal crack at top
of the retaining wall.**

Figure 6



**Wall cracking at the
intersection of the
driveway and rear
retaining walls.**

Figure 7



HISTORICAL DATA:

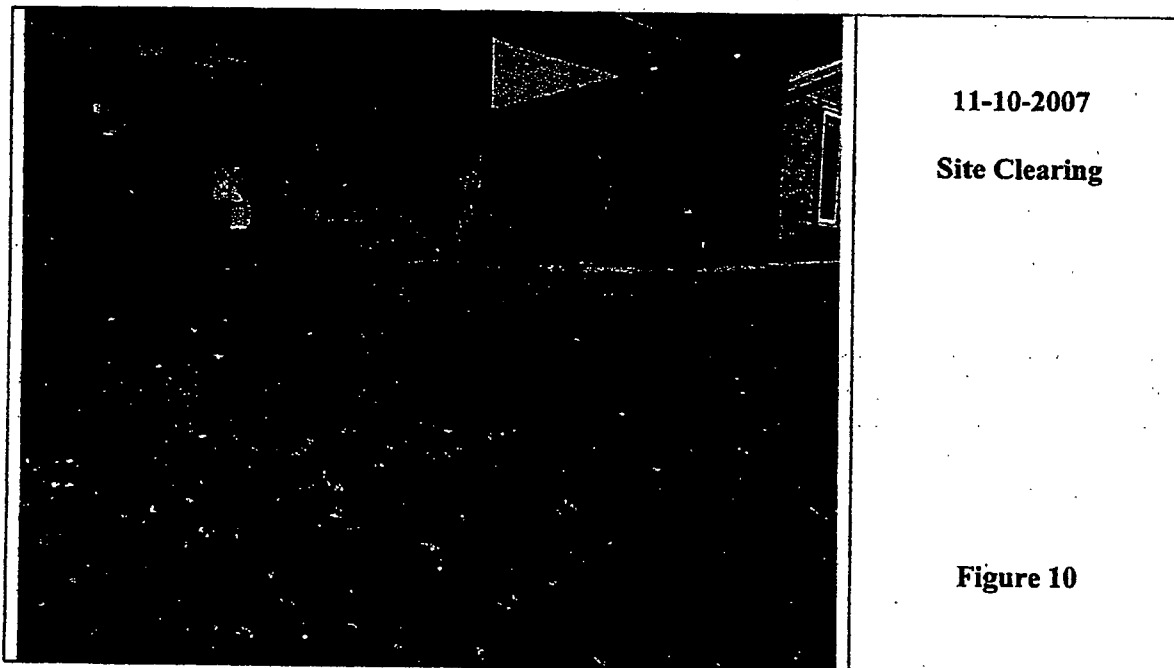
This project is fortunate that we have some eyewitness account of the construction and photographic documentation during various periods of construction. The following is a basic timeline:

- | | |
|-----------------------------|------------|
| 1. Site Cleanup | 11/10/2007 |
| 2. Foundations dug | 11/11/2007 |
| 3. Retaining walls in place | 11/24/2007 |
| 4. Partial wall collapse | 12/05/2007 |
| 5. Structure Framing begun | 12/20/2007 |

Eyewitness accounts provided by the Pattons indicated that a debris pile was left inside of the fill area. This debris pile contained a wood pallet, construction debris, roots, CMU block pieces and other construction materials. Also, very little steel reinforcing was identified as being used in the walls. Some reinforcing was used in the footings per the Pattons.

Near the date of 12/20/2005 a partial wall collapse was noticed by the owner and required that the collapsed wall section be re-built. Some reinforcing was thought to have been added for this rework effort.

See the attached photos provided by the Pattons during the project construction.





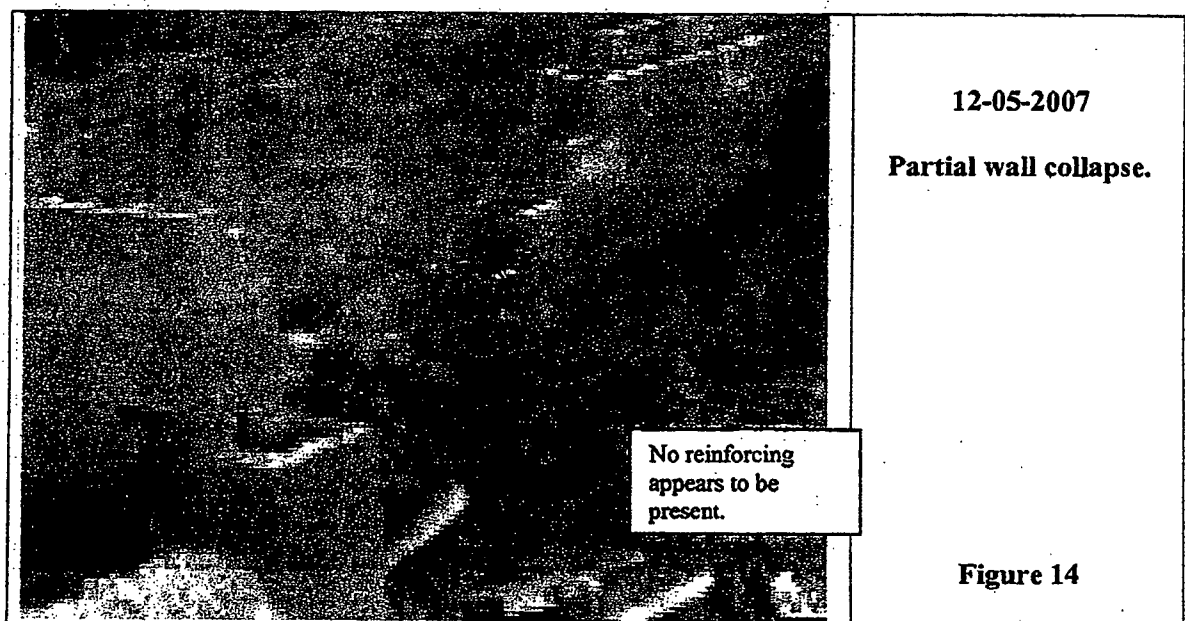
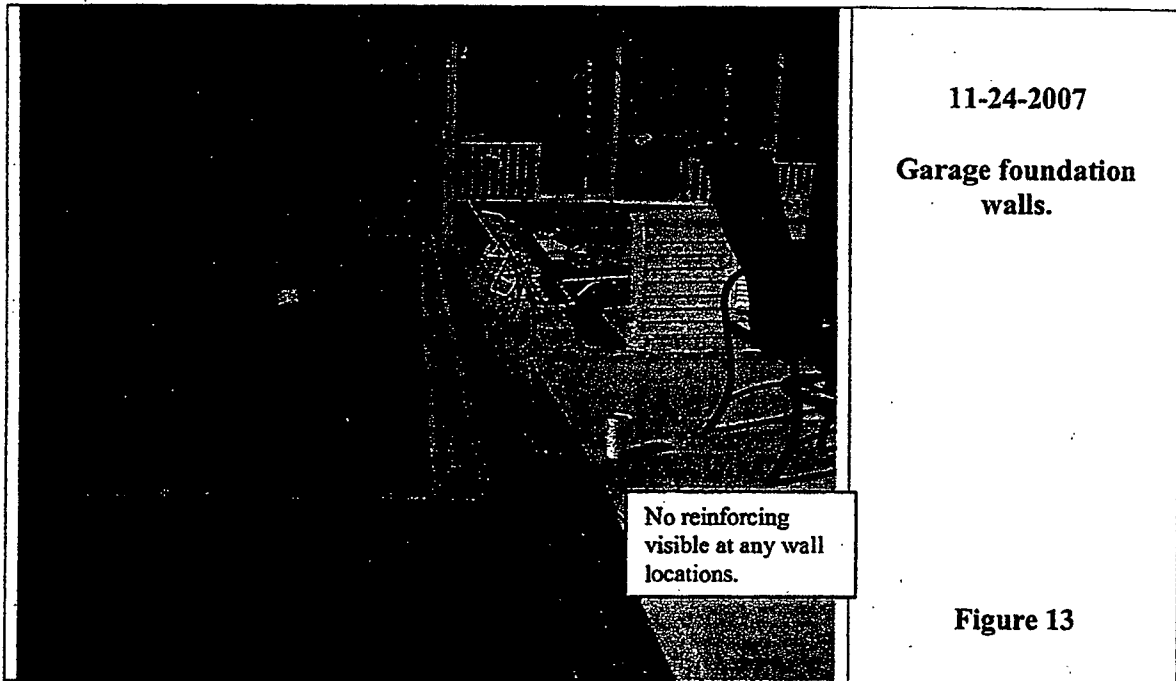
11-11-2007
Foundations Dug

Figure 11



11-24-2007
**Retaining walls and
foundation walls in
place.**

Figure 12





12-17-2007

Slab poured.

Figure 10



12-20-2007

Framing begun.

Figure 10

ANALYTICAL EVALUATION:

Retaining Walls:

Based on the field observation together with construction photographs it is apparent that the exterior CMU wall as constructed as a true retaining wall system. Calculations were performed for the CMU walls using Masonry Design System by the National Concrete Masonry Association (NCMA) and by NCMA TEK notes for "Concrete Masonry Cantilever Retaining Walls".

It should be noted that a 200 psf (+/-) surcharge load was used to design the wall due to the presence of parked vehicles or stored materials that could be present during and after construction. This is typically accomplished by adding 2'-0" to the actual height of the wall. This follows the Department of Transportation method of analysis.

The pertinent design data is as follows:

1. Wall height = 7'-4" highest location + 2'-0" for surcharge = 9'4" design height
2. f'_m = 1500 psi with fully grouted walls
3. f'_c = 3000 psi for concrete foundation
4. f_s = 20,000 and 24,000 psi
5. Equivalent Fluid Weight = 45 pcf

Both the NCMA design program and the NCMA TEK notes provided designs requiring #7 @ 16 inches on center for a 12" CMU wall at a 7'-4" constructed height for Allowable Stress Design. The reinforcing location is 3" from the interior or fill side of the wall. There are footing dowels required to match the vertical reinforcing steel. The CMU wall is also sold grouted.

The footing width at this wall height is 6'-2" wide with #6 @ 21" c/c top bars.

Actual wall construction does not appear to meet the necessary design requirements for a cantilevered retaining wall with a surcharge. No vertical reinforcing appears to be present in the construction documentation photographs. Partial collapse of the wall in or around 12/05/2007 seems to validate the lack of reinforcing steel and proper construction methods for this type wall.

Footing sizes were discussed with the owner and no definitive information was provided. It was thought that the footing width was approximately 2'-0" to 3'-0" wide with some reinforcing present. This footing size would be expected for a basement type wall but not for a cantilevered retaining wall application.

See attached computer runs and NCMA TEK notes of current wall design.

Slabs on Grade:

The excessive cracking in the slabs on grade both in the driveway and interior to the actual garage structure indicate that poor soil compaction was achieved. In the case of the driveway area, the consolidation may very well be due in part to the presence of the debris pile that may have been left in place during the fill operation.

Presently, no structural distress appears to have been observed in the garage superstructure but an additional review of this wood structure may need to be taken to verify settlement or movement. This can be accomplished using a surveyor such that all corners of the building can be measured and compared to check relative movements.

FINAL CONCLUSIONS:

The current retaining wall system at the Patton residence was not properly designed as required by the 2006 International Residential Code concerning foundation walls. Chapter 4 in this document requires that walls with unbalanced fill greater than 4'-0" with no lateral support at the top of the wall must be engineered for proper performance. See Section R404.1.3.

Prescriptive wall designs for BASEMENT walls are given if the top of the wall is restrained or tied into the concrete slab. However, it appears no such effort was made to provide a basement wall system.

A previous wall collapse is evidence to the fact of improper design and construction.

Some destructive demolition is required in order to validate all of the assumptions made in this report or to validate what appears to be portrayed in the construction photographs.

The following is an action list to be performed by the Owner/Builder to rectify the current construction problems:

1. Remove concrete and excavate at the location of the proposed debris pile and remove debris pile if present.
2. Excavation is required to expose the exterior retaining walls so that reinforcing can be identified if present by breaking open CMU cells.
3. Also, excavate such that the retaining wall footing sizes can be verified.
4. After investigative work determine if the wall can be repaired using new or additional reinforcing including slab ties if a basement scenario can be utilized.
5. If a cantilevered wall system is used, foundation expansion will be required.
6. The existing wall may need to be removed and a new wall constructed if the old cannot be repaired or if the contractor deems a new wall less expensive.
7. Structural grade fill shall be used and placed in lifts to secure adequate compaction. A Geotechnical engineering firm should be engaged to test the soil compaction.

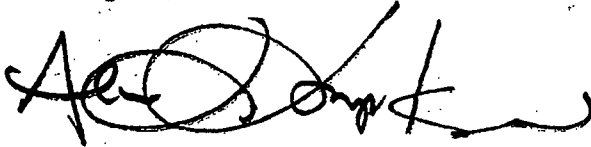
8. The Geotechnical Engineer shall also be used to determine the compaction at the slab on grade at the interior of the garage to determine what remediation measures may be required.
9. The Geotechnical Engineer should also validate the exterior building wall footing compaction to determine if any settlement has occurred or may occur in the future based on previous construction.
10. Possible remediation solutions for the garage slab on grade and supporting wall foundations may include slab/soil removal and replacement with proper compaction, soil injection with grout or epoxy foam to densify the soil medium and increase bearing pressure or helical piers.

Finalization of the corrective action can only take place after significant demolition and investigative work has been completed. At that time, this office will provide an appropriate cost effective solution to the retaining walls and slabs on grade problems.

Please contact me with any questions or comments at 864-242-4373 x133.

Thank you for using Professional Engineering Associates, Inc.

Best Regards,



Alan L. Lumpkin, P.E.
Principal/ Vice-President
SC #12744

Attachments: NCMA Computer Output
NCMA TEK Notes

MASONRY

DESIGN SYSTEM FOR CONCRETE AND CLAY MASONRY

The National Concrete Masonry Association Brick Industry Association
Western States Clay Product Association International Code Council

Version 4.0 (Release 4.0.2)

Prjct: 205 Buckingham
Topic: Retaining Wall
Page:

Name: Alan Lumpkin
Date: 9-16-09
Chkd: Jeff Barrett

Design of a Reinforced Masonry Wall with Out-of-Plane Loads Using the 2006 IBC ASD Design Code

Material and Construction Data

12 in. CMU, Full grout, running bond
Wall Weight = 123.9 psf
Type S Masonry cement / Air-entrained PCL Mortar, Coarse Grout
CMU Density = 115 pcf
 $f_m = 1500$ psi (Specified)
 $E_m = 900f_m = 1350000$ psi

Wall Design Details

Thickness = 11.63 in.
Height = 88 in. (Cantilevered Wall, Effective height = 2H)
 $x = 3$ in.
#7 Bars, $F_y = 60000.0$
Reinforcement Spacing = 16 in. On-Center

Wall Design Section Properties

$A_o = 186$ in.
 $I_o = 2095$ in.
 $S_o = 360.4$ in.
 $R_o = 3.356$ in.

Wall Support: Cantilevered Wall

Specified Load Components

Load	P (lb)	e (in)	W1 (psf)	W2 (psf)	L (lb/ft)	h1 (in)	h2 (in)
Dead	0	0	0	0	0	0	8
Live	0	0	0	0	0	0	88
Soil	0	0	0	330	386	53	88
Fluid	0	0	0	0	0	0	8
Wind	0	0	0	0	0	0	8
Seismic	0	0	0	0	0	0	8
Roof	0	0	0	0	0	0	8
Rain	0	0	0	0	0	0	8
Snow	0	0	0	0	0	0	8

SURCHARGE POINT
LOAD
3FT
FROM
WALL FACE

Controlling Load Cases

Section Forces with Controlling Flexure and Axial Load-- $0.6D + H + W$

$x/H = 0.000$ from bottom of wall
 $V = 1596$ lb/ft
 $M_L = -55951.3$ lb-in./ft

MASONRY

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Name: Alan Lumpkin

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Chkd: Jeff Barrett

$P = 545.2 \text{ lb/ft at } e_n = 0 \text{ in}$

$M_T = M_L + P e_n = -55951.3 \text{ lb-in/ft}$

Moment Capacity = 68693.3 lb-in/ft (5724.44 lb-ft/ft) at this axial load

Shear Capacity = 4008.54 lb/ft

The wall is adequate for these critical section forces.

Section Forces with Controlling Shearing Force—D + H

$x/H = 0.000$ from bottom of wall

$V = 1596 \text{ lb/ft}$

$M_L = -55951.3 \text{ lb-in./ft}$

$P = 908.7 \text{ lb/ft at } e_n = 0 \text{ in}$

$M_T = M_L + P e_n = -55951.3 \text{ lb-in/ft}$

Moment Capacity = 68647.1 lb-in/ft at this axial load

Shear Capacity = 4008.54 lb/ft

The wall is adequate for these critical section forces.

These were found to be load cases that controlled the design.

The flexural, shear and axial forces shown are those occurring

at the critical section for the case controlled by flexure and

at the critical section for the case controlled by shear.

The following design calculations are for the section with controlling bending moment

Section Design Forces Used

$V = 1596 \text{ lb/ft}$ (Computed from Loads)

$M_L = -55951.3 \text{ lb-in./ft}$ (Computed from Loads)

$P = 545.2 \text{ lb/ft at } e = 0 \text{ in}$ (Computed from Loads)

Computed Design Values

Note: 1/3 stress increase was not used

Effective Width = 16 in.

Web Width = 16 in. on effective width

Allowable Shearing Force = 4009 lb/ft

The wall is adequate in shear

Required $A_s = 0.381 \text{ in}^2$ each reinforced cell (0.2858 in²/ft) OK

$d = 8.625 \text{ in.}$

$n = 21.48$

$k_{\text{balanced}} = 0.3092$

$j_{\text{balanced}} = 0.8969$

National Concrete Masonry Association
an information series from the national authority on concrete masonry technology

CONCRETE MASONRY CANTILEVER RETAINING WALLS

TEK 15-7B

Structural (2005)

Keywords: allowable stress design, cantilever walls, design example, footings, lateral loads, reinforced concrete masonry, retaining walls, strength design, weep holes

INTRODUCTION

Using concrete masonry in retaining walls, abutments and other structural components designed primarily to resist lateral pressure permits the designer and builder to capitalize on masonry's unique combination of structural and aesthetic features—excellent compressive strength; proven durability; and a wide selection of colors, textures and patterns. The addition of reinforcement to concrete masonry greatly increases the tensile strength and ductility of a wall, providing higher load resistance.

In cantilever retaining walls, the concrete base or footing holds the vertical masonry wall in position and resists overturning and sliding caused by lateral soil loading. The reinforcement is placed vertically in the cores of the masonry units to resist the tensile stresses developed by the lateral earth pressure.

DESIGN

Retaining walls should be designed to safely resist overturning and sliding due to the forces imposed by the retained backfill. The factors of safety against overturning and sliding should be no less than 1.5 (ref. 7). In addition, the bearing pressure under the footing or bottom of the retaining wall should not exceed the allowable soil bearing pressure.

Recommended stem designs for reinforced cantilever retaining walls with no surcharge are contained in Tables 1 and 2 for allowable stress design and strength design, respectively. These design methods are discussed in detail in *Allowable Stress Design of Concrete Masonry*, TEK 14-7A, and *Strength Design of Concrete Masonry*, TEK 14-4A (refs. 5, 6).

Figure 1 illustrates typical cantilever retaining wall detailing requirements.

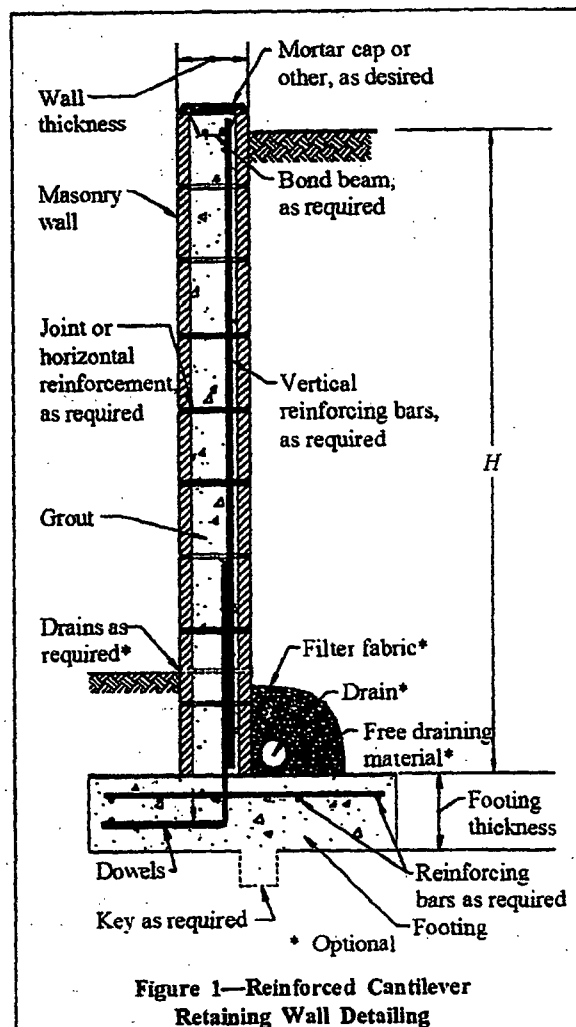


Figure 1—Reinforced Cantilever
Retaining Wall Detailing

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$k = 0.2995$

$j = 0.9002$

P_{max} (Compression) = $5.996e+004$ lbs ($4.497e+004$ lbs/ft) OK

P_{max} (Tension) = $1.44e+004$ lbs ($1.08e+004$ lbs/ft) OK

The wall has adequate capacity.

Development and Splice Lengths for Longitudinal Reinforcement

$K = 2.5625$ in.

Required Development Length: $l_d = 31.50$ in.

Required Lap Splice Length: = 103.68 in.

Some codes may require epoxy-coated reinforcement to have longer development and splice lengths.

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Material and Construction Data

12 in. CMU, Full grout, running bond
Wall Weight = 123.9 psf
Type S Masonry cement / Air-entrained PCL Mortar, Course Grout
CMU Density = 115 pcf
 $f_m = 1500$ psi (Specified)
 $E_m = 900f_m = 1350000$ psi

Wall Design Details

Thickness = 11.63 in.
Height = 88 in. (Cantilevered Wall, Effective height = 2H)
 $x = 3$ in.
#7 Bars, $F_y = 60000.0$
Reinforcement Spacing = 16 in. On-Center

Wall Design Section Properties

$A_o = 186$ in.
 $I_o = 2095$ in.
 $S_o = 360.4$ in.
 $R_o = 3.356$ in.

Wall Support: Cantilevered Wall

Specified Load Components

Load	P (lb)	e (in)	W1 (psf)	W2 (psf)	L (lb/ft)	h1 (in)	h2 (in)
Dead	0	0	0	0	0	0	8
Live	0	0	0	0	0	0	88
Soil	0	0	0	330	419	61	88
Fluid	0	0	0	0	0	0	8
Wind	0	0	0	0	0	0	8
Seismic	0	0	0	0	0	0	8
Roof	0	0	0	0	0	0	8
Rain	0	0	0	0	0	0	8
Snow	0	0	0	0	0	0	8

SURCHARGE
POINT LOAD
AT 2 FT
BEHIND
WALL

Controlling Load Cases

Section Forces with Controlling Flexure and Axial Load— $0.6D + H + W$

$x/H = 0.000$ from bottom of wall
 $V = 1629$ lb/ft
 $M_L = -61052.3$ lb-in./ft

MASONRY

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Date: 9-16-09

Chkd: Jeff Barrett

$P = 545.2 \text{ lb/ft at } e_n = 0 \text{ in}$

$M_T = M_L + P e_n = -61052.3 \text{ lb-in/ft}$

Moment Capacity = 68693.3 lb-in/ft (5724.44 lb-ft/ft) at this axial load

Shear Capacity = 4008.54 lb/ft

The wall is adequate for these critical section forces.

Section Forces with Controlling Shearing Force--D + H

$x/H = 0.000$ from bottom of wall

$V = 1629 \text{ lb/ft}$

$M_L = -61052.3 \text{ lb-in./ft}$

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Moment Capacity = 68647.1 lb-in/ft at this axial load

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The wall is adequate for these critical section forces.

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The following design calculations are for the section with controlling bending moment

Section Design Forces Used

$V = 1629 \text{ lb/ft}$ (Computed from Loads)

$M_L = -61052.3 \text{ lb-in./ft}$ (Computed from Loads)

$P = 545.2 \text{ lb/ft at } e = 0 \text{ in}$ (Computed from Loads)

Computed Design Values

Note: 1/3 stress increase was not used

Effective Width = 16 in.

Web Width = 16 in. on effective width

Allowable Shearing Force = 4009 lb/ft

The wall is adequate in shear

Required $A_s = 0.4276 \text{ in}^2$ each reinforced cell (0.3207 in²/ft) OK

$d = 8.625 \text{ in.}$

$n = 21.48$

$k_{\text{balanced}} = 0.3092$

$j_{\text{balanced}} = 0.8969$

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$$k = 0.3131$$

$$j = 0.8956$$

$$P_{\max} \text{ (Compression)} = 5.996\text{e}+004 \text{ lbs (4.497e}+004 \text{ lbs/ft) OK}$$

$$P_{\max} \text{ (Tension)} = 1.44\text{e}+004 \text{ lbs (1.08e}+004 \text{ lbs/ft) OK}$$

The wall has adequate capacity.

Development and Splice Lengths for Longitudinal Reinforcement

$$K = 2.5625 \text{ in.}$$

$$\text{Required Development Length: } l_d = 31.50 \text{ in.}$$

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12 in. CMU, Full grout, running bond
Wall Weight = 123.9 psf
Type S Masonry cement / Air-entrained PCL Mortar, Course Grout
CMU Density = 115 pcf
 $f_m = 1500$ psi (Specified)
 $E_m = 900f_m = 1350000$ psi

Wall Design Details

Thickness = 11.63 in.
Height = 88 in. (Cantilevered Wall, Effective height = 2H)
 $x = 3$ in.
#7 Bars, $F_y = 60000.0$
Reinforcement Spacing = 16 in. On-Center

Wall Design Section Properties

$A_o = 186$ in.
 $I_o = 2095$ in.
 $S_o = 360.4$ in.
 $R_o = 3.356$ in.

Wall Support: Cantilevered Wall

Specified Load Components

Load	P (lb)	e (in)	W1 (psf)	W2 (psf)	L (lb/ft)	h1 (in)	h2 (in)
Dead	0	0	0	0	0	0	8
Live	0	0	0	0	0	0	88
Soil	0	0	0	330	442	72	88
Fluid	0	0	0	0	0	0	8
Wind	0	0	0	0	0	0	8
Seismic	0	0	0	0	0	0	8
Roof	0	0	0	0	0	0	8
Rain	0	0	0	0	0	0	8
Snow	0	0	0	0	0	0	8

Controlling Load Cases

Section Forces with Controlling Flexure and Axial Load—D + H

$x/H = 0.000$ from bottom of wall

$V = 1652$ lb/ft

$M_L = -67317.3$ lb-in./ft

SURFACE
POINT LOAD
AT 2 FT
BEHIND WALL

MASONRY

DESIGN SYSTEM FOR CONCRETE AND CLAY MASONRY

The National Concrete Masonry Association Brick Industry Association
Western States Clay Product Association International Code Council

Version 4.0 (Release 4.0.2)

Prjct: 205 Buckingham
Topic: Retaining Wall
Page:

Name: Alan Lumpkin
Date: 9-16-09
Chkd: Jeff Barrett

$$P = 908.7 \text{ lb/ft at } e_n = 0 \text{ in}$$

$$M_T = M_L + P e_n = -67317.3 \text{ lb-in/ft}$$

$$\text{Moment Capacity} = 68647.1 \text{ lb-in/ft (5720.59 lb-ft/ft) at this axial load}$$

$$\text{Shear Capacity} = 4008.54 \text{ lb/ft}$$

The wall is adequate for these critical section forces.

Section Forces with Controlling Shearing Force—D + H

$$x/H = 0.000 \text{ from bottom of wall}$$

$$V = 1652 \text{ lb/ft}$$

$$M_L = -67317.3 \text{ lb-in./ft}$$

$$P = 908.7 \text{ lb/ft at } e_n = 0 \text{ in}$$

$$M_T = M_L + P e_n = -67317.3 \text{ lb-in/ft}$$

$$\text{Moment Capacity} = 68647.1 \text{ lb-in/ft at this axial load}$$

$$\text{Shear Capacity} = 4008.54 \text{ lb/ft}$$

The wall is adequate for these critical section forces.

These were found to be load cases that controlled the design.

The flexural, shear and axial forces shown are those occurring
at the critical section for the case controlled by flexure and
at the critical section for the case controlled by shear.

The following design calculations are for the section with controlling bending moment

Section Design Forces Used

$$V = 1652 \text{ lb/ft (Computed from Loads)}$$

$$M_L = -67317.3 \text{ lb-in./ft (Computed from Loads)}$$

$$P = 908.7 \text{ lb/ft at } e = 0 \text{ in (Computed from Loads)}$$

Computed Design Values

Note: 1/3 stress increase was not used

$$\text{Effective Width} = 16 \text{ in.}$$

$$\text{Web Width} = 16 \text{ in. on effective width}$$

$$\text{Allowable Shearing Force} = 4009 \text{ lb/ft}$$

The wall is adequate in shear

$$\text{Required } A_s = 0.5661 \text{ in}^2 \text{ each reinforced cell (0.4245 in}^2\text{/ft) OK}$$

$$d = 8.625 \text{ in.}$$

$$n = 21.48$$

$$k_{\text{balanced}} = 0.3092$$

$$j_{\text{balanced}} = 0.8969$$

MASONRY

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$$k = 0.3551$$

$$j = 0.8816$$

$$P_{\max} (\text{Compression}) = 5.996\text{e}+004 \text{ lbs } (4.497\text{e}+004 \text{ lbs/ft}) \text{ OK}$$

$$P_{\max} (\text{Tension}) = 1.44\text{e}+004 \text{ lbs } (1.08\text{e}+004 \text{ lbs/ft}) \text{ OK}$$

The wall has adequate capacity.

Development and Splice Lengths for Longitudinal Reinforcement

$$K = 2.5625 \text{ in.}$$

$$\text{Required Development Length: } l_d = 31.50 \text{ in.}$$

$$\text{Required Lap Splice Length: } = 103.68 \text{ in.}$$

Some codes may require epoxy-coated reinforcement to have longer development and splice lengths.

DESIGN EXAMPLE

The following design example briefly illustrates some of the basic steps used in the allowable stress design of a reinforced concrete masonry cantilever retaining wall.

Example: Design the reinforced concrete masonry cantilever retaining wall shown in Figure 2. Assume level backfill, no surcharge or seismic loading, active earth pressure and masonry laid in running bond. The coefficient of friction between the footing and foundation soil, k_1 , is 0.25, and the allowable soil bearing pressure is 2,000 psf (95.8 kPa) (ref. 7).

a. Design criteria:

Wall thickness = 12 in. (305 mm)

$f'_m = 1,500$ psi (10.3 MPa)

Assumed weights:

Reinforced masonry: 130 pcf (2,082 kg/m³)

(solid grout to increase overturning and sliding resistance)

Reinforced concrete: 150 pcf (2,402 kg/m³)

Required factors of safety (ref. 7)

F.S. (overturning) = 1.5

F.S. (sliding) = 1.5

b. Rankine active earth pressure

$$P_a = \frac{1}{2} \gamma (H - t)^2 K_a$$

where $K_a = \tan^2 (45^\circ - \phi/2) = \tan^2 (45^\circ - 30^\circ/2)$

$$= 0.33$$

$$P_a = \frac{1}{2} (120) (9.67)^2 (0.33) = 1,851 \text{ lb/ft} (27 \text{ kN/m})$$

Overturning moment

$$M = P_a (\text{height}/3)$$

$$= (1,851 \text{ lb/ft}) (9.67 \text{ ft}/3) = 5,966 \text{ ft-lb/ft} (27 \text{ kNm/m})$$

c. Resisting moment (about toe of footing)

Component weights:

$$\text{masonry: } (0.97)(8.67 \text{ ft})(130 \text{ pcf}) = 1,093 \text{ lb/ft} (16 \text{ kN/m})$$

$$\text{earth: } (2.69)(8.67 \text{ ft})(120 \text{ pcf}) = 2,799 \text{ lb/ft} (41 \text{ kN/m})$$

$$\text{footing: } (1.0)(5.33 \text{ ft})(150 \text{ pcf}) = 800 \text{ lb/ft} (12 \text{ kN/m})$$

	Weight (lb/ft)	x	Arm (ft)	=	Moment (ft-lb/ft)
masonry:	1,093	x	2.67	=	2,918
earth:	2,799	x	3.98	=	11,140
footing:	800	x	2.67	=	2,136
	4,692				16,194

Total resisting moment 16,194 ft-lb/ft

Overturning moment 5,966 ft-lb/ft

$$10,228 \text{ ft-lb/ft} (45.5 \text{ kNm/m})$$

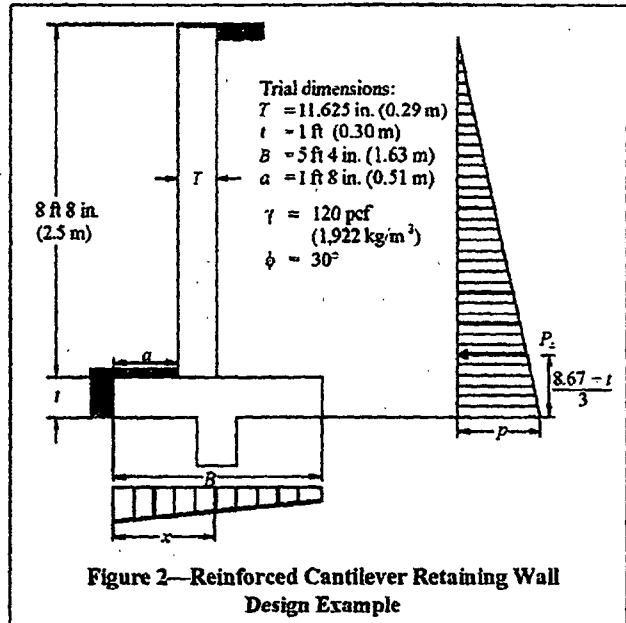
d. Check factors of safety (F.S.)

F.S. (overturning)

= total resisting moment about toe/overturning moment

$$= 14,670/5,966$$

$$= 2.4 > 1.5 \quad \text{O.K.}$$



$$F.S.(\text{sliding}) = \frac{(\sum W)k_1 + P_p}{P_a}$$

$P_p = \frac{1}{2} D$ (soil lateral bearing pressure)

set $D = t = 1.0$ ft (0.30 m)

soil lateral bearing pressure = 150 psf/ft below grade (ref. 7)

$$F.S.(\text{sliding}) = \frac{(4,692 \text{ lb/ft})(0.25) + \frac{1}{2}(1)(150 \text{ psf/ft})}{1,851 \text{ lb/ft}}$$

$$= 1,248/1,851 = 0.67 < 1.5 \quad \text{N.G., need key}$$

e. Pressure on footing

Location of resultant force,

$$x = (10,228 \text{ ft-lb/ft}) / (4,692 \text{ lb/ft})$$

= 2.18 ft (0.6 m) (resultant falls in middle 1/3 of base)

$$e = (5.33 \text{ ft}/2) - 2.18 = 0.48 \text{ ft} (0.15 \text{ m})$$

$$p = \frac{W}{A} \pm \frac{Mc}{I} = \frac{W}{bd} \pm \frac{6We}{bd^2}$$

$$p = \frac{4,692 \text{ lb/ft}}{(1 \text{ ft})(5.33 \text{ ft})} \pm \frac{6(4,692 \text{ lb/ft})(0.48 \text{ ft})}{(1 \text{ ft})(5.33 \text{ ft})^2}$$

$$p = 880 \pm 476$$

$$= 404 \text{ psf} (19.3 \text{ kPa}) \text{ and } 1,356 \text{ psf} (64.9 \text{ kPa})$$

$$< 2,000 \text{ psf} (95.8 \text{ kPa}) \quad \text{O.K.}$$

f. Determine size of key

Passive lateral soil resistance = 150 psf/ft of depth and may be increased 150 psf for each additional foot of depth to a maximum of 15 times the designated value (ref. 7). The average soil pressure under the footing is: $\frac{1}{2}(1,356 + 404) = 880$ psf (42.1 kPa).

Equivalent soil depth: $880 \text{ psf}/120 \text{ pcf} = 7.33 \text{ ft} (2.23 \text{ m})$

$$P_p = (150 \text{ psf/ft})(7.33 \text{ ft}) = 1,100 \text{ psf} (52.7 \text{ kPa})$$

For F.S. (sliding) = 1.5, the required total passive soil resistance is: $1.5(1,851 \text{ lb/ft}) = 2,776 \text{ lb/ft}$ (41 kN/m)

The shear key must provide for this value minus the frictional resistance: $2,776 - 1,248 = 1,528 \text{ lb/ft}$ (22 kN/m).

Depth of shear key = $(1,528 \text{ lb/ft}) / (1,100 \text{ psf}) = 1.39 \text{ ft}$ (0.42 m), try 1.33 ft (0.41 m).

At 1.33 ft, lateral resistance =

$(1,100 \text{ psf}) + (150 \text{ psf/ft})(1.33 \text{ ft}) = 1,300 \text{ lb/ft}$ (19 kN/m)

Depth = $(1,528 \text{ lb/ft}) / [1/2(1,100 + 1,300)] = 1.27 \text{ ft}$ (0.39 m) < 1.33 ft (0.41 m) O.K.

g. Design of masonry

Tables 1 and 2 can be used to estimate the required

reinforcing steel based on the equivalent fluid weight of soil, wall thickness, and wall height. For this example, the equivalent fluid weight = $(K_a \gamma) = 0.33 \times 120 = 40 \text{ pcf}$ (6.2 kN/m³).

Using allowable stress design (Table 1) and the conservative equivalent fluid weight of soil of 45 pcf (7.1 kN/m³), this wall requires No. 6 bars at 16 in. o.c. (M #19 at 406 mm o.c.). Using strength design (Table 2), this wall requires No. 5 bars at 16 in. o.c. (M #16 at 406 mm o.c.).

h. Design of footing

The design of the reinforced concrete footing and key should conform to American Concrete Institute requirements. For guidance, see ACI Standard 318 (ref. 2) or reinforced concrete design handbooks.

CONSTRUCTION

Materials and construction practices should comply with applicable requirements of *Specification for Masonry Structures*.

Table 1—Allowable Stress Design: Vertical Reinforcement for Cantilever Retaining Walls^{a,b}

Wall thickness, in. (mm)	Wall height, H, ft (m)	Reinforcement size & spacing for equivalent fluid weight of soil, lb/ft ³ /ft (kN/m ³ /m), of:		
		30 (4.7)	45 (7.1)	60 (9.4)
8 (203)	4.0 (1.2)	No. 4 @ 88 in.	No. 4 @ 56 in.	No. 4 @ 40 in.
	4.7 (1.4)	No. 4 @ 48 in.	No. 4 @ 32 in.	No. 4 @ 16 in.
	5.3 (1.6)	No. 4 @ 32 in.	No. 4 @ 16 in.	No. 5 @ 24 in.
	6.0 (1.8)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 7 @ 16 in.
	6.7 (2.0)	No. 4 @ 16 in.	No. 7 @ 16 in.	No. 9 @ 8 in.
10 (254)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 88 in.	No. 4 @ 64 in.
	4.7 (1.4)	No. 4 @ 88 in.	No. 4 @ 48 in.	No. 4 @ 32 in.
	5.3 (1.6)	No. 4 @ 56 in.	No. 4 @ 32 in.	No. 4 @ 16 in.
	6.0 (1.8)	No. 4 @ 32 in.	No. 4 @ 16 in.	No. 5 @ 24 in.
	6.7 (2.0)	No. 4 @ 24 in.	No. 5 @ 16 in.	No. 5 @ 16 in.
	7.3 (2.2)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 7 @ 16 in.
	8.0 (2.4)	No. 5 @ 16 in.	No. 7 @ 16 in.	No. 8 @ 8 in.
12 (305)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 120 in.	No. 4 @ 96 in.
	4.7 (1.4)	No. 4 @ 120 in.	No. 4 @ 72 in.	No. 4 @ 48 in.
	5.3 (1.6)	No. 4 @ 80 in.	No. 4 @ 48 in.	No. 4 @ 32 in.
	6.0 (1.8)	No. 4 @ 48 in.	No. 4 @ 24 in.	No. 4 @ 16 in.
	6.7 (2.0)	No. 4 @ 32 in.	No. 4 @ 16 in.	No. 5 @ 16 in.
	7.3 (2.2)	No. 4 @ 24 in.	No. 5 @ 16 in.	No. 5 @ 16 in.
	8.0 (2.4)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 6 @ 16 in.
	8.7 (2.7)	No. 5 @ 16 in.	No. 6 @ 16 in.	No. 8 @ 16 in.
	9.3 (2.8)	No. 5 @ 16 in.	No. 7 @ 16 in.	No. 8 @ 8 in.

^a The reinforcement listed is designed to resist soil loads only. Other conditions, such as surcharges or seismic loads, also need to be considered where applicable.

^b based on: fully grouted masonry; $f_m = 1500 \text{ psi}$ (10.3 MPa); $d = 5 \text{ in.}, 7 \text{ in. and } 9 \text{ in.}$ (127, 178, and 229 mm) for wall thicknesses of 8, 10, and 12 in. (203, 254, and 305 mm), respectively; level backfill to top of wall

^c The specified reinforcement spacing is greater than six times the wall thickness. Prudent engineering practice dictates that stresses in the unreinforced masonry spanning between the reinforcing bars be designed to meet *Building Code Requirements for Masonry Structures* Section 2.2.3.2 (ref. 1).

Table 2—Strength Design: Vertical Reinforcement for Cantilever Retaining Walls^{a,b}

Wall thickness, in. (mm)	Wall height, H, ft (m)	Reinforcement size & spacing for equivalent fluid weight of soil, lb/ft ³ /ft (kN/m ³ /m), of:		
		30 (4.7)	45 (7.1)	60 (9.4)
8 (203)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 96 in.	No. 4 @ 64 in.
	4.7 (1.4)	No. 4 @ 88 in.	No. 4 @ 56 in.	No. 4 @ 40 in.
	5.3 (1.6)	No. 4 @ 56 in.	No. 4 @ 32 in.	No. 4 @ 24 in.
	6.0 (1.8)	No. 4 @ 32 in.	No. 4 @ 24 in.	No. 4 @ 16 in.
	6.7 (2.0)	No. 4 @ 24 in.	No. 4 @ 16 in.	No. 5 @ 16 in.
10 (254)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 120 in.	No. 4 @ 104 in.
	4.7 (1.4)	No. 4 @ 120 in.	No. 4 @ 88 in.	No. 4 @ 56 in.
	5.3 (1.6)	No. 4 @ 96 in.	No. 4 @ 56 in.	No. 4 @ 40 in.
	6.0 (1.8)	No. 4 @ 56 in.	No. 4 @ 32 in.	No. 4 @ 24 in.
	6.7 (2.0)	No. 4 @ 40 in.	No. 4 @ 24 in.	No. 4 @ 16 in.
	7.3 (2.2)	No. 4 @ 24 in.	No. 4 @ 16 in.	No. 5 @ 16 in.
	8.0 (2.4)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 6 @ 16 in.
12 (305)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 120 in.	No. 4 @ 120 in.
	4.7 (1.4)	No. 4 @ 120 in.	No. 4 @ 120 in.	No. 4 @ 88 in.
	5.3 (1.6)	No. 4 @ 120 in.	No. 4 @ 80 in.	No. 4 @ 56 in.
	6.0 (1.8)	No. 4 @ 88 in.	No. 4 @ 48 in.	No. 4 @ 32 in.
	6.7 (2.0)	No. 4 @ 56 in.	No. 4 @ 32 in.	No. 4 @ 24 in.
	7.3 (2.2)	No. 4 @ 40 in.	No. 4 @ 24 in.	No. 4 @ 16 in.
	8.0 (2.4)	No. 4 @ 24 in.	No. 4 @ 16 in.	No. 5 @ 16 in.
	8.7 (2.7)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 5 @ 16 in.
	9.3 (2.8)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 6 @ 16 in.

^a The reinforcement listed is designed to resist soil loads only. Other conditions, such as surcharges or seismic loads, also need to be considered where applicable.

^b based on: fully grouted masonry; $f_m = 1500 \text{ psi}$ (10.3 MPa); $d = 5 \text{ in.}, 7 \text{ in. and } 9 \text{ in.}$ (127, 178, and 229 mm) for wall thicknesses of 8, 10, and 12 in. (203, 254, and 305 mm), respectively; level backfill to top of wall

tures (ref. 4), or applicable local codes.

Footings should be placed on firm undisturbed soil, or on adequately compacted fill material. In areas exposed to freezing temperatures, the base of the footing should be placed below the frost line. Backfilling against retaining walls should not be permitted until the masonry has achieved sufficient strength or the wall has been adequately braced. During backfilling, heavy equipment should not approach closer to the top of the wall than a distance equal to the height of the wall. Ideally, backfill should be placed in 12 to 24 in. (305 to 610 mm) lifts, with each lift being compacted by a hand tamper. During construction, the soil and drainage layer, if provided, also needs to be protected from saturation and erosion.

Provisions must be made to prevent the accumulation of water behind the face of the wall and to reduce the possible effects of frost action. Where heavy prolonged rains are anticipated, a continuous longitudinal drain along the back of the wall may be used in addition to through-wall drains.

Climate, soil conditions, exposure and type of construction determine the need for waterproofing the back face of retaining walls. Waterproofing should be considered: in areas subject to severe frost action; in areas of heavy rainfall; and when the backfill material is relatively impermeable. The use of integral and post-applied water repellents is also recommended. The top of masonry retaining walls should be capped or otherwise protected to prevent water entry.

REFERENCES

1. *Building Code Requirements for Masonry Structures*, ACI 530-05/ASCE 5-05/TMS 402-05. Reported by the Masonry Standards Joint Committee, 2005.
2. *Building Code Requirements for Structural Concrete and Commentary*, ACI 318-02. Detroit, MI: American Concrete Institute, 2002.

3. Das, B. M. *Principles of Foundation Engineering*. Boston, MA: PWS Publishers, 1984.
4. *Specification for Masonry Structures*, ACI 530.1-05/ASCE 6-05/TMS 602-05. Reported by the Masonry Standards Joint Committee, 2005.
5. *Allowable Stress Design of Concrete Masonry*, TEK 14-7A. National Concrete Masonry Association, 2004.
6. *Strength Design of Concrete Masonry*, TEK 14-4A. National Concrete Masonry Association, 2002.
7. *2003 International Building Code*. International Code Council, 2003.

NOTATIONS

- a length of footing toe, in. (mm)
 B width of footing, ft (m)
 d distance from extreme compression fiber to centroid of tension reinforcement, in. (mm)
 e eccentricity, in. (mm)
F.S. factor of safety
 f_m' specified compressive strength of masonry, psi (MPa)
 H total height of backfill, ft (m)
 I moment of inertia, ft⁴ (m⁴)
 K_a active earth pressure coefficient
 k_f coefficient of friction between footing and foundation soil
 M maximum moment in section under consideration, ft-lb/ft (kN-m/m)
 P_a resultant lateral load due to soil, lb/ft (kN/m)
 P_p passive earth pressure, lb/ft (N/m)
 p pressure on footing, psf (MPa)
 T thickness of wall, in. (mm)
 t thickness of footing, in. (mm)
 W vertical load, lb/ft (N/m)
 x location of resultant force, ft (m)
 γ density of soil, pcf (kg/m³)
 ϕ angle of internal friction of soil, degrees

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT
)

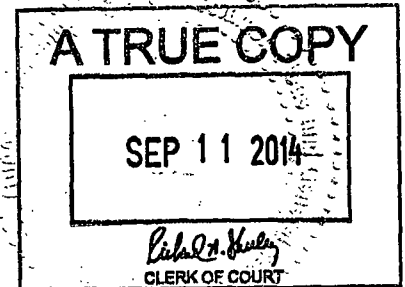
Terry and Suzanne Patton,) Civil Action No.: 2010-CP-04-4389
)

Plaintiffs,)

vs.)

**MOTION TO RESTORE
CASE TO ACTIVE ROSTER**

American Lifestyle Homes, LLC, Rufus G.)
Revis d/b/a American Lifestyle Homes, and)
Anderson Brothers Concrete, LLC, Marcus)
Anderson d/b/a Anderson Brothers)
Concrete, LLC, and Scott Brown,)
Defendants.)



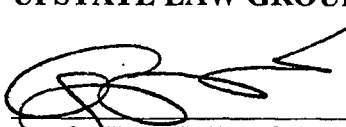
TO: THE DEFENDANT AND ITS ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, pursuant to SCRC
40(j), will move this Honorable Court, at a time and place to be arranged by the Court
and counsel involved, for an Order restoring this case to the general docket.

This motion is based upon the pleadings and record herein, the applicable law and
rules of civil procedure, and the arguments of counsel.

UPSTATE LAW GROUP, LLC

BY:


Candy Kern-Fuller (SC Bar No. 11392)

Upstate Law Group, LLC
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(864) 855-3114
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Attorney for Plaintiff

September 11, 2014

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

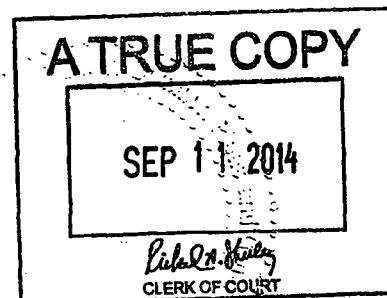
Terry and Suzanne Patton,) Civil Action No.: 2010-CP-04-4389

Plaintiffs,)

vs.)

CERTIFICATE OF SERVICE

American Lifestyle Homes, LLC, Rufus G.)
Revis d/b/a American Lifestyle Homes, and)
Anderson Brothers Concrete, LLC, Marcus)
Anderson d/b/a Anderson Brothers)
Concrete, LLC, and Scott Brown,)
Defendants.)



I hereby certify that on this day I served a true and correct copy of the foregoing NOTICE OF MOTION TO RESTORE TO CASE ACTIVE DOCKET, upon all parties via U.S. First Class Mail, postage prepaid, addressed to counsel of record for the Defendant as follows:

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Greenville, SC 29601

Mr. Marcus Clinkscales
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Mr. Rufus Revis
101 Hurricane Road
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UPSTATE LAW GROUP, LLC

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September 11, 2014

Attorney for Plaintiff

MOTION FEE PAID

STATE OF SOUTH CAROLINA)

IN THE FAMILY COURT)

COUNTY OF Anderson)

10th JUDICIAL CIRCUIT)

Terry and Suzanne Patton)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

American Lifestyle Homes, LLC, Rufus G.)
Revis d/b/a American Lifestyle Homes, and)
Anderson Brothers Concrete, LLC, Marcus)
Anderson d/b/a Anderson Brothers Concrete,)
LLC, and Scott Brown)

Defendant.)

Docket No. 2010-CP-04-4389

A TRUE COPY

SEP 11 2014

Richard A. Huley
CLERK OF COURT**Plaintiff's Attorney:**

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E-mail: tchase@mgclaw.com Other:

☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)☒ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)☒ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)**SECTION I: Hearing Information**

Nature of Motion: Motion to Restore

Estimated Time Needed: 15 min

Court Reporter Needed: ☒ **YES** / ☐ **NO****SECTION II: Motion/Order Type**☐ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

September 11, 2014

Date submitted

SECTION III: Motion Fee☒ **PAID - AMOUNT: \$** _____☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE CODE _____ Date: _____

Judge Signature: _____

CLERK'S VERIFICATION

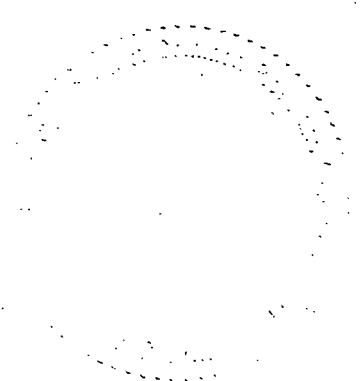
Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Terry and Suzette Patton

Plaintiff(s)

vs.

American Lifestyle Homes, LLC, Rufus G. Revis d/b/a
American Lifestyle Homes, and Anderson Brothers
Concrete, LLC, Marcus Clinkscales aka Marcus
Anderson d/b/a Anderson Brothers Concrete, LLC, and
Scott Brown

Defendant(s)

IN THE COURT OF COMMON PLEAS

MOTION AND ORDER INFORMATION FORM
AND COVER SHEET

C/A No: 2014-CP-04-2073

Plaintiff's Attorney:

Candy M. Kern-Fuller, Esquire Bar No.

Address:

200 E. Main Street

Easley, South Carolina 29640

phone: (864) 855-3114 fax: (864) 855-3446

e-mail: candy@upstatelawgroup.com other:

Defendant's Attorney:

G. Thomas Chase, S.C. Bar No. 66452

Address: McAngus, Goudelock & Courie, LLC

Post Office Box 2980

55 East Camperdown Way, Suite 300 (29601)

Greenville, South Carolina 29602

(864) 239-4000

Direct number: (864) 239-4008 Fax: (864) 242-3199

e-mail: tchase@mgclaw.com other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider

Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

TERRY AND SUZETTE PATTON,

Plaintiffs,

vs.

AMERICAN LIFESTYLE HOMES, LLC,
RUFUS G. REVIS D/B/A AMERICAN
LIFESTYLE HOMES, AND ANDERSON
BROTHERS CONCRETE, LLC,
MARCUS CLINKSCALES AKA
MARCUS ANDERSON D/B/A
ANDERSON BROTHERS CONCRETE,
LLC, AND SCOTT BROWN,

Defendants.

Civil Action No. 2014-CP-04-2073

**MOTION TO RECONSIDER
RESTORATION OF CASE OR, IN THE
ALTERNATIVE, MOTION TO
VACATE RESTORATION OF CASE
PURSUANT TO RULE 40(J)**

TO: TERRY AND SUZETTE PATTON, PLAINTIFFS, AND CANDY KERN-FULLER,
THEIR ATTORNEY:

The Defendant, Scott Brown, moves this Court pursuant to Rule 59(e) and/or Rule 60 to reconsider the Court's Order of September 15, 2014, which was received by Defendant on September 19, 2014, restoring the case previously stricken from the docket pursuant to Rule 40(j) to allow for a hearing on the motion to restore considering the statute of limitations. Alternatively, Defendant moves this Court to vacate the Order restoring the case under Rule 40(j) based on the statute of limitations.

Initially, Defendant moves the Court to reconsider the Court's Order restoring the case to the active roster considering Defendant did not receive at least ten (10) days' notice of the Motion to Restore Case to Active Roster and was not given the opportunity for a hearing on the motion. Therefore, Defendant was not given the opportunity to challenge the restoration of the case pursuant to the South Carolina Rules of Civil Procedure. Plaintiffs' counsel filed a Motion to Restore Case to Active Roster on September 11, 2014. (See Exhibit A "Motion to Restore

Case to Active Roster”). Defendant received a copy of the Motion to Restore Case to Active Roster on September 18, 2014, by facsimile. (See Exhibit B “Facsimile from Upstate Law Group, LLC”). Defendant’s Counsel, by signing this motion, affirmatively states that Defendant did not consent to the restoration of the case and, in fact, was not contacted in any manner by counsel for Plaintiffs regarding the proposed motion. The motion apparently included a proposed Order, which was executed by the Court on September 15, 2014, and filed with the Clerk of Court on September 16, 2014. (See Exhibit C “Order”). On September 19th, 2014, Defendant received the executed Order restoring the case. (See Exhibit D “Order with Receipt Date on Reverse Side”). Considering this evidence, Defendant received the Motion to Restore Case to Active Roster seven (7) days *after* it was filed, three days *after* the Court had executed the Order and two days after the Order was filed with the Clerk of Court. Therefore, Defendant was not properly notified of the motion and was denied the opportunity to be heard on the motion as provided by the rules of procedure. Based on these circumstances, Defendant moves for the Court to reconsider the Order restoring the case and to allow for a formal hearing on the motion to restore the case.

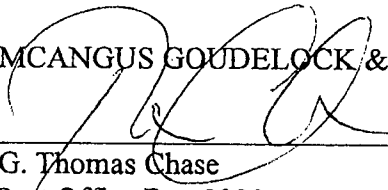
Second, Defendant moves the Court to reconsider the Court’s Order restoring the case to the active roster based on the statute of limitations. The Plaintiffs claim they suffered from property damage arising out of allegedly negligent work performed by Defendants in the construction of a retaining wall, parking pad and detached garage. Under South Carolina law, Plaintiffs had three years within which to bring their claim under the statute of limitations. The statute of limitations was tolled during the period the case was dismissed pursuant to Rule 40(j). However, the tolling period ended before the motion to restore the case by Plaintiffs’ counsel and, therefore, the case should not be restored due to the failure to satisfy the statute of limitations.

Plaintiffs contracted for the construction of the retaining wall, parking pad and detached garage in November 2007. (See Exhibit E "Job Proposal"; Exhibit F "Testimony of Suzette Patton; Exhibit G "Testimony of Terry Patton"). The construction was completed by May 2008. (See Exhibit H "Final List for Patton's April 2, 2008"; Exhibit F; Exhibit G). Plaintiffs confirmed that they first saw cracking in the construction within ten days of the work being completed. (See Exhibit F). Plaintiffs repeatedly complained of the defects and alleged damages to the general contractor after the work was completed. (See Exhibit F; Exhibit G). Plaintiffs made a formal written complaint to the general contractor on April 6, 2009. (See Exhibit I "Letter to Rufus Revis April 6, 2009). Plaintiffs made a complaint detailing the construction defects and damages to the Department of Labor, Licensing & Regulation on April 5, 2009 (See Exhibit J "LLR Complaint). A site inspection was set for June 11, 2009 and an inspection report was issued by the LLR on July 15, 2009. (See Exhibit K "LLR letter dated April 28, 2009; Exhibit L "LLR letter dated May 22, 2009"; Exhibit M "LLR Inspection Report"). Plaintiffs then retained the services of a licensed engineer, Alan Lumpkin of PE Professional Engineering Associates, to inspect the alleged defects and damages from the construction. Mr. Lumpkin came to the home on September 9, 2009 and issued a report to Plaintiffs on September 27, 2009, identifying alleged construction defects and identifying damages. (See Exhibit N "Structural Observations for Terry and Suzette Patton"). Therefore, Plaintiffs were well aware of their potential claim as of that time considering their intimate personal knowledge of the alleged defects and damages as complained of by them and confirmed by expert evaluation. Plaintiffs, by and through counsel, filed their initial Complaint on December 14, 2010. (See Court File). Plaintiffs relied upon and attached their expert's report to their Amended Complaint filed January 31, 2011. (See Exhibit O "Amended Summons and Complaint"). By Consent Order, the case was dismissed pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure on

August 26, 2013 and filed the same day with the Anderson Clerk of Court. (See Exhibit P "Consent Order Striking Case From Docket"). Therefore, any tolling of the statute of limitations under Rule 40(j) would have ended as of August 26, 2014, at the latest. Plaintiffs' counsel moved to restore the case pursuant to Rule 40(j) on September 11, 2014. (See Exhibit A). Therefore, the tolling period had ended as of the date the motion was filed and the motion to restore the case violates the statute of limitations for the claim considering the date when Plaintiffs were on notice of their claim. Therefore, the case must not be restored and/or must be dismissed because the statute of limitations had expired as of the date of the motion to restore and/or the Order restoring the case pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure and the common law of South Carolina, including *Maxwell v. Genez*, 356 S.C. 617, 591 S.E. 2d 26 (2003).

This Motion is based upon the attached exhibits and any supplemental exhibits provided to the Court before this hearing, any memoranda of law submitted before the hearing on this Motion, as well as the South Carolina Rules of Civil Procedure and the statutory and common law of South Carolina.

MCANGUS GOUDELOCK & COURIE, L.L.C.


G. Thomas Chase
Post Office Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000

ATTORNEYS FOR DEFENDANT SCOTT
BROWN

September 23, 2014

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

TERRY AND SUZETTE PATTON,

Civil Action No. 2014-CP-04-2073

Plaintiffs,

vs.

CERTIFICATE OF SERVICE

AMERICAN LIFESTYLE HOMES, LLC,
RUFUS G. REVIS D/B/A AMERICAN
LIFESTYLE HOMES, AND ANDERSON
BROTHERS CONCRETE, LLC,
MARCUS CLINKSCALES AKA
MARCUS ANDERSON D/B/A
ANDERSON BROTHERS CONCRETE,
LLC, AND SCOTT BROWN,

Defendants.

I certify that on this date, I have served a copy of Motion to Reconsider Restoration of Case or, in the Alternative, Motion to Vacate Restoration of Case Pursuant to Rule 40(j) in this action on counsel of record by

☒ Mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 E. Main Street
Easley, South Carolina 29640
Attorney for Plaintiffs

September 23, 2014
Date

Melinda B. Owens
Melinda B. Owens
Legal Assistant to G. Thomas Chase

EXHIBIT A

STATE OF SOUTH CAROLINA)

IN THE FAMILY COURT
10th JUDICIAL CIRCUIT

COUNTY OF Anderson)

Terry and Suzanne Patton)

Plaintiff,)

vs.)

American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown)

Defendant.)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

A TRUE COPY

SEP 11 2014

Docket No. 2010-CP-04-4389

Plaintiff's Attorney:

Candy Kern-Fuller, Bar No. 11392

Address:

200 East Main Street, Easley, SC 29640

Phone: 864-855-3114 Fax 864-231-7378

E-mail: wepattorney@aol.com Other:

Defendant's Attorney:

G. Thomas Chase, Bar No.

Address:

75 Beattie Place, Ste 300 Greenville, SC 29601

Phone: 864-239-4000 Fax 864-

E-mail: tchase@mgclaw.com Other:

Robert A. Jones
CLERK OF COURT☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Restore

Estimated Time Needed: 15 min

Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendant

September 11, 2014

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE CODE _____ Date: _____

Judge Signature: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)

MOTION FEE PAID

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Terry and Suzanne Patton,) Civil Action No.: 2010-CP-04-4389

Plaintiffs,)

vs.)

**MOTION TO RESTORE
CASE TO ACTIVE ROSTER**

American Lifestyle Homes, LLC, Rufus G.)
Revis d/b/a American Lifestyle Homes, and)
Anderson Brothers Concrete, LLC, Marcus)
Anderson d/b/a Anderson Brothers)
Concrete, LLC, and Scott Brown,)
Defendants.)

A TRUE COPY

SEP 11 2014

Patricia A. Kelly
CLERK OF COURT

TO: THE DEFENDANT AND ITS ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, pursuant to SCRC
40(j), will move this Honorable Court, at a time and place to be arranged by the Court
and counsel involved, for an Order restoring this case to the general docket.

This motion is based upon the pleadings and record herein, the applicable law and
rules of civil procedure, and the arguments of counsel.

UPSTATE LAW GROUP, LLC

BY: 

Candy Kern-Fuller (SC Bar No. 11392)

Upstate Law Group, LLC

200 East Main Street

Easley, South Carolina 29640

(864) 855-3114

(864) 855-3446 (Facsimile)

Candy@UpstateLawGroup.com

Attorney for Plaintiff

September 11, 2014

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
) TENTH JUDICIAL CIRCUIT
 COUNTY OF ANDERSON)

Terry and Suzanne Patton,

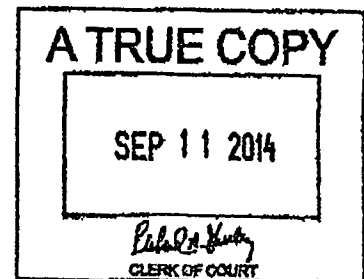
Civil Action No.: 2010-CP-04-4389

Plaintiffs,

vs.

CERTIFICATE OF SERVICE

American Lifestyle Homes, LLC, Rufus G.)
 Revis d/b/a American Lifestyle Homes, and)
 Anderson Brothers Concrete, LLC, Marcus)
 Anderson d/b/a Anderson Brothers)
 Concrete, LLC, and Scott Brown,)
 Defendants.)



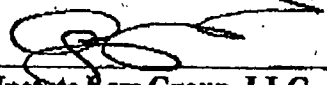
I hereby certify that on this day I served a true and correct copy of the foregoing NOTICE OF MOTION TO RESTORE TO CASE ACTIVE DOCKET, upon all parties via U.S. First Class Mail, postage prepaid, addressed to counsel of record for the Defendant as follows:

Mr. G. Thomas Chase, Esq.
 McAngus Goudelock & Courie, LLC
 75 Beattie Place, Suite 300
 Greenville, SC 29601

Mr. Marcus Clinkscales
 124 Tanglewood Drive
 Anderson, SC 29621

Mr. Rufus Revis
 101 Hurricane Road
 Anderson, South Carolina 29621

UPSTATE LAW GROUP, LLC

BY: 

Upstate Law Group, LLC
 200 East Main Street
 Easley, South Carolina 29640
 (864) 855-3114
 (864) 855-3446 (Facsimile)

September 11, 2014

Attorney for Plaintiff

EXHIBIT B

UPSTATE LAW GROUP, LLC
200 E. MAIN STREET
EASLEY, SC 29640
(864) 855-3114 - OFFICE
(864) 855-3446 - FAX

FACSIMILE TRANSMITTAL SHEET

FAX Number: (864)242-3199

DATE: September 18, 2014

TO: Angela

RE: Terry and Suzanne Patton v. American Lifestyle Homes, LLC,
Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson
Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers
Concrete, LLC and Scott Brown

FROM: Susan Lockwood, Legal Assistant to Candy Kern-Fuller,
Esq.

Thank you,
Susan

#PAGES (including cover page) 5

URGENT

☐ FOR REVIEW X PLEASE COMMENT

☐ PLEASE REPLY

NOTES/COMMENTS

Confidentiality Notice: The information contained in this facsimile message may be attorney privileged and confidential information and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

STATE OF SOUTH CAROLINA

COUNTY OF Anderson

Terry and Suzanne Patton

Plaintiff,

vs.

American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown

Defendant.

IN THE FAMILY COURT
10th JUDICIAL CIRCUIT

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

A TRUE COPY

SEP 11 2014

Docket No. 2010-CP-04-4389

Plaintiff's Attorney:

Candy Kern-Fuller, Bar No. 11392

Address:

200 East Main Street, Easley, SC 29640

Phone: 864-855-3114 Fax 864-231-7378

E-mail: wepatton@aol.com Other:

Defendant's Attorney:

G. Thomas Chase, Bar No. _____

Address:

75 Beattie Place, Ste 300 Greenville, SC 29601

Phone: 864-239-4000 Fax 864-

E-mail: tchase@mgclaw.com Other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Restore

Estimated Time Needed: 15 min

Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendant

September 11, 2014

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other.

JUDGE CODE _____ Date: _____

Judge Signature: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)

MOTION FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

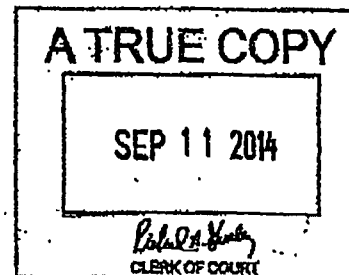
Terry and Suzanne Patton,) Civil Action No.: 2010-CP-04-4389

Plaintiffs,)

vs.)

**MOTION TO RESTORE
CASE TO ACTIVE ROSTER**

American Lifestyle Homes, LLC, Rufus G.)
Revis d/b/a American Lifestyle Homes, and)
Anderson Brothers Concrete, LLC, Marcus)
Anderson d/b/a Anderson Brothers)
Concrete, LLC, and Scott Brown,)
Defendants.)



TO: THE DEFENDANT AND ITS ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, pursuant to SCRCP 40(j), will move this Honorable Court, at a time and place to be arranged by the Court and counsel involved, for an Order restoring this case to the general docket.

This motion is based upon the pleadings and record herein, the applicable law and rules of civil procedure, and the arguments of counsel.

UPSTATE LAW GROUP, LLC

BY: 

Candy Kern-Fuller (SC Bar No. 11392)

Upstate Law Group, LLC

200 East Main Street

Easley, South Carolina 29640

(864) 855-3114

(864) 855-3446 (Facsimile)

Candy@UpstateLawGroup.com

Attorney for Plaintiff

September 11, 2014

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
)
 COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT
)

Terry and Suzanne Patton,

Civil Action No.: 2010-CP-04-4389

Plaintiffs,

vs.

CERTIFICATE OF SERVICE

American Lifestyle Homes, LLC, Rufus G.)
 Revis d/b/a American Lifestyle Homes, and)
 Anderson Brothers Concrete, LLC, Marcus)
 Anderson d/b/a Anderson Brothers)
 Concrete, LLC, and Scott Brown,)
 Defendants.)

A TRUE COPY

SEP 11 2014

Peter J. Harty
 CLERK OF COURT

I hereby certify that on this day I served a true and correct copy of the foregoing NOTICE OF MOTION TO RESTORE TO CASE ACTIVE DOCKET, upon all parties via U.S. First Class Mail, postage prepaid, addressed to counsel of record for the Defendant as follows:

Mr. G. Thomas Chase, Esq.
 McAngus Gondeck & Courie, LLC
 75 Beattie Place, Suite 300
 Greenville, SC 29601

Mr. Marcus Clinkscales
 124 Tanglewood Drive
 Anderson, SC 29621

Mr. Rufus Revis
 101 Hurricane Road
 Anderson, South Carolina 29621

UPSTATE LAW GROUP, LLC

BY: 

Upstate Law Group, LLC
 200 East Main Street
 Easley, South Carolina 29640
 (864) 855-3114
 (864) 855-3446 (Facsimile)

September 11, 2014

Attorney for Plaintiff

00091

EXHIBIT C

MOTION FEE PAID

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT
)

Terry and Suzanne Patton,) Civil Action No.: 2014-CP-04-2073
)

Plaintiffs,)

vs.)

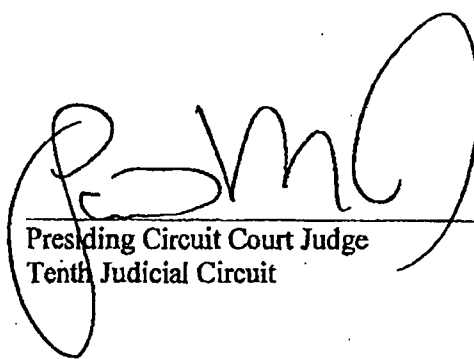
**ORDER TO RESTORE
CASE TO ACTIVE ROSTER**

American Lifestyle Homes, LLC, Rufus G.)
Revis d/b/a American Lifestyle Homes, and)
Anderson Brothers Concrete, LLC, Marcus)
Anderson d/b/a Anderson Brothers)
Concrete, LLC, and Scott Brown,)
Defendants.)

This case was dismissed pursuant to Rule 40(j), S.C.R.C.P. Plaintiff filed a motion to restore the case to the general docket on September 11, 2014. The Notice of the Motion to Restore was served upon all interested parties.

Accordingly, upon motion of Plaintiff it is ordered that this case be restored to the general docket.

AND IT IS SO ORDERED.



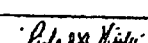
Presiding Circuit Court Judge
Tenth Judicial Circuit

9-15, 2014
Anderson, South Carolina

FILED-CLERK'S OFFICE
ANDERSON SC
2014 SEP 16 P 2:26
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY

SEP 16 2014


CLERK OF COURT

00093

EXHIBIT D

MOTION FEE PAID

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Terry and Suzanne Patton,) Civil Action No.: 2014-CP-04-2073

Plaintiffs,)

vs.)

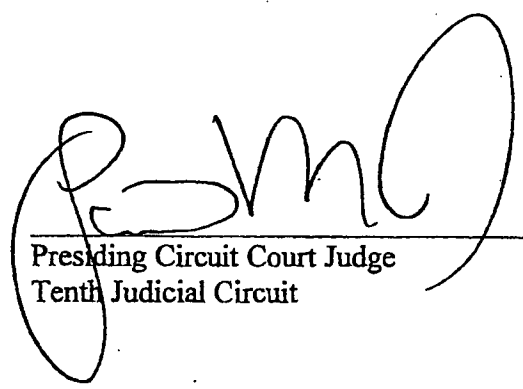
**ORDER TO RESTORE
CASE TO ACTIVE ROSTER**

American Lifestyle Homes, LLC, Rufus G.)
Revis d/b/a American Lifestyle Homes, and)
Anderson Brothers Concrete, LLC, Marcus)
Anderson d/b/a Anderson Brothers)
Concrete, LLC, and Scott Brown,)
Defendants.)

This case was dismissed pursuant to Rule 40(j), S.C.R.C.P. Plaintiff filed a motion to restore the case to the general docket on September 11, 2014. The Notice of the Motion to Restore was served upon all interested parties.

Accordingly, upon motion of Plaintiff it is ordered that this case be restored to the general docket.

AND IT IS SO ORDERED.



Presiding Circuit Court Judge
Tenth Judicial Circuit

9-15, 2014
Anderson, South Carolina

FILED-CLERK'S OFFICE
ANDERSON SC
2014 SEP 16 P 2:26
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY
SEP 16 2014
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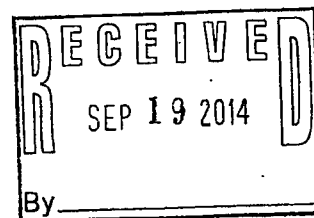


EXHIBIT E

AMERICAN LIFESTYLE HOMES & GARAGES

Construction and Remodeling Services

101 Hurricane Road

Anderson, SC 29621

Ph: (864)224-1300 or (864)202-1482

(800)387-6455

Fax: (864)224-4174

E-Mail: americanrealtor@bellsouth.net

JOB PROPOSAL

Dear Terry and Suzanne Patton,

We hereby propose to furnish all materials and perform all labor necessary for the completion of the custom design plan furnished by you for the new construction of this home and specified as follows:

- 24' X 34' garage with bonus room.
- Breezeway connecting garage to existing house.
- One foot trench between pool and garage to control flow of water.
- Block wall and concrete pad
- Two (2) nine light doors in Breezeway
- Twin windows upstairs facing pool
- Single window upstairs facing neighbors back yard.
- Install gutters.
- Two (2) standard 8' X 10' garage doors.

7 $\begin{array}{r} 40,975 \\ 13,665 \\ \hline 13,545 \\ 19,565.00 \end{array}$

This work is to be performed at 205 Buckingham Dr. Easley, SC 29640. For the owner(s), Terry and Suzanne Patton, in accordance with the drawings and specifications submitted for the above work. The total cost including state tax is \$ 40,995.00.

Payments to be made as follows: the sum of (1/3 when construction begins on foundation, 1/3 due when building is in the dry (windows, doors, and felt paper on roof), 1/3 upon completion of the garage. (Structure description)

Any alteration or deviations from the above specifications involving extra cost of material or labor will only be executed upon written orders for same and will become an extra charge over the sum mentioned in this contract. All agreements must be made in writing.

Property lines shall be designed by substantial marks, by the owner or his certified engineer. The contractors shall not be liable, as regards to the completion of the work, for any delay which may be caused by reason or on account of any strike of workmanship, any act of God, unavoidable accidents, inability to secure materials in the performance of the work by any reason of laws or regulations of the United States of America or the state of South Carolina, or any other circumstance beyond their controls, other than the want of funds. No such delay shall be deemed a default on the part of the contractors, and, in the event of any such delay, the contractor's time limit for performance of work shall be correspondingly extended. Workmen's Compensation and Public Liability Insurance on the above work shall be provided by the Contractor.

This contract shall be deemed null and void if not signed within thirty days.

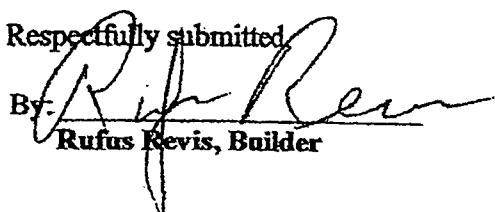
Builder to quote at a later date addition to driveway and closing in existing garage.

ACCEPTED;


OWNER


OWNER

Respectfully submitted

By: 
Rufus Revis, Builder

DATED: 11-0-09

EXHIBIT F

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF ANDERSON C.A. NO. 2010-CP-04-04389
3 Terry and Suzette Patton,
4 Plaintiffs,
5 vs.
6 American Lifestyle Homes, LLC,
7 et al.,
8 Defendants.

9
10
11
12 Deposition of **SUZETTE PATTON**
13
14

15 Pursuant to notice of deposition and/or agreement
16 in the above-entitled case, a deposition was taken on
17 the 12th day of November, 2012 commencing at
18 approximately 2:00 p.m. attended by counsel as follows:
19
20
21
22
23
24
25

1 Appearances:

2
3 **CANDY M. KERN-FULLER**, Esquire

4 Upstate Law Group, LLC

5 200 E. Main Street

6 Easley, South Carolina 29640

7 Attorney for Plaintiffs,

8
9 **G. THOMAS CHASE**, Esquire

10 McAngus, Goudelock & Courie, LLC

11 75 Beattie Place, Suite 300

12 Greenville, South Carolina 29602

13 Attorney for Defendant Scott Brown.

14
15
16 Also Present: **Terry Patton**, Plaintiff

17 **Scott Brown**, Defendant

18 **Shannon Brown**, Defendant Brown's wife

19
20
21
22 Deposition Reported By:

23 Bebe O. Norris, CR

24 Depositions And ..., Inc.

25 (864) 235-3518

1 Pursuant to notice and/or agreement to take
2 depositions, the within deposition was taken by the
3 above reporter, a notary public, as required under the
4 code of laws of South Carolina, 1976, section 19-17-10,
5 and circuit court rule 30, et al., by consent of all
6 parties at The Ward Law Firm, 233 South Pine Street,
7 Spartanburg, South Carolina.

8 **WAIVER:**

9 Counsel and the deponent agreed that both the reading
10 over of and signing of the deposition are hereby **NOT**

11 **WAIVED.**

12 **

**

**

13 The deponent was duly sworn to tell the truth, the
14 whole truth, and nothing but the truth concerning the
15 matter herein.

16 **SUZETTE PATTON**, being duly sworn, testified as follows:

17 **DIRECT EXAMINATION BY MR. CHASE:**

18 **DIRECT EXAMINATION RESUMED BY MR. CHASE:**

19 Q. Ms. Patton, we've obviously met each other a number
20 of times. My name is Tom Chase. I represent Scott
21 Brown's company, Scott Brown individually and also
22 Foothills Custom Masonry, which is obviously his
23 company. Here today to take your deposition; you
24 understand that, right?

25 A. Uh-huh (affirmative).

1 Q. When did you put the bedroom in?

2 A. When we built the garage.

3 Q. Same time?

4 A. Yes.

5 Q. Did some other contractor do the work on the bedroom
6 other than Rufus Revis and American Lifestyle Homes?

7 A. He closed everything in, my husband finished the
8 inside.

9 Q. in approximately 2007, is that when all that work
10 was done?

11 A. No, it's -- it's the -- the work started in '07,
12 November of '07, finished up in '08 of May.

13 Q. So the -- let me see if I can speed it up a little
14 bit and if I'm wrong -- did you enter into a
15 contract for some work with American Lifestyle
16 Homes?

17 A. Yes.

18 Q. Is that who you contracted with?

19 A. Yes.

20 Q. And was Rufus Revis, your understanding, he was the
21 owner of that company?

22 A. Yes.

23 Q. And was he the party that you negotiated with ---

24 A. Yes.

25 Q. --- in entering that contract?

1 Q. So that it matched ---

2 A. Right.

3 Q. --- the new concrete?

4 A. Right.

5 Q. Then the other portion was "enclose the brick wall,
6 etc., replace door, etc. for bedroom, 2 windows as
7 discussed." Is that the enclosing that you talked
8 about?

9 A. That's it, yes.

10 Q. Basically put up a wall and some doors?

11 A. Exactly.

12 Q. And then Terry finished the rest?

13 A. Right.

14 (COURT REPORTER MARKS DOCUMENT AS DEFENDANTS' EXHIBIT
15 NUMBER 3; ATTACHED TO DEPOSITION)

16 DIRECT EXAMINATION RESUMED BY MR. CHASE:

17 Q. I'm going to show you what's marked as Exhibit
18 Number 3 and it's entitled, "Final List for Patton's
19 April 02, 2008"; do you see that?

20 A. Uh-huh (affirmative), yes.

21 Q. Have you seen this document before?

22 A. Yes.

23 Q. What is Exhibit Number 3?

24 A. It's what they had to finish. My husband did that.

25 Q. So the final list was work that Terry had agreed

1 that he would do?

2 A. No, this is the work that they were to finish. See,
3 that was April of '08 and they finished in May. So
4 we walked a walk-through and made a list of things
5 that weren't done.

6 Q. I see. This is a list that was prepared by Terry.

7 A. For them.

8 Q. That was submitted over to Rufus Revis?

9 A. Right.

10 Q. And then Rufus Revis or American Lifestyle Homes
11 completed this list?

12 A. Yes.

13 Q. Is it your understanding that they did complete it?

14 A. As far as we know it they did. We went back through
15 after everything was done.

16 Q. Are there any other documents, other than Exhibits 1
17 and 2, that you're aware of that identify amounts
18 agreed to be paid by you or Terry in relation to the
19 construction by American Lifestyle Homes?

20 A. Like I said, unless there's another contract. And
21 his contract was just writing of what he would, when
22 he would do it, that kind of thing and signed, we
23 signed after we decided on all of this.

24 Q. Well if you see this Exhibit Number 2 it's not
25 signed; do you see that?

1 and the garage floor was there any other work that
2 was performed after that pad was laid, that concrete
3 pad was laid?

4 A. The building was built.

5 Q. I know the building, on that area, on those areas?

6 A. Not that I recall.

7 Q. And from then on it was just the garage being built?

8 A. Right.

9 Q. If you look on Exhibit Number 1 it talks about that
10 there is a cut out for water to drain on the
11 backside?

12 A. Uh-huh (affirmative).

13 Q. Who did that? Who did that work; do you know?

14 A. I think it was Scott, I'm not sure.

15 Q. You don't know?

16 A. I don't know.

17 Q. Do you know who poured that concrete back there?

18 A. No, I don't.

19 Q. Was the garage completed before you started seeing
20 any cracking?

21 A. Yes.

22 Q. For how long had the garage been completed?

23 A. I'd say about 10 days.

24 Q. 10 days?

25 A. Approximately, yes.

- 1 Q. Where did you first see some breaking?
- 2 A. In the first door.
- 3 Q. By the "first door" do you mean the first door ---
- 4 A. Garage.
- 5 Q. --- from the road up to the garage?
- 6 A. Yes, uh-huh (affirmative). There's a hairline
- 7 crack.
- 8 Q. And is it a hairline crack that went into the garage
- 9 or that went away, onto the parking pad?
- 10 A. It was in the garage.
- 11 Q. Did you contact Mr. Revis about that crack?
- 12 A. I did.
- 13 Q. And what was done?
- 14 A. He said he could come up and sand it down and redo
- 15 it.
- 16 Q. Did he?
- 17 A. No.
- 18 Q. What happened then?
- 19 A. It progressed -- well it -- it got worse. I called
- 20 Alan Lumpkin in I think it was June or July, talked
- 21 to him about it.
- 22 Q. 2008?
- 23 A. Yes. And when I told him what had took place and
- 24 what had happened and how it was done he told me
- 25 exactly what was wrong. When he come out to examine

1 it he confirmed what he said.

2 Q. What did he say was wrong?

3 A. He said it wasn't built to code and it was -- didn't
4 have rebarb(sic) in it. It sounded like it didn't
5 have rebarb(sic) in it. But he come out and took
6 pictures and measured and you have, I think, a copy
7 of the report?

8 Q. Did you contact Mr. Revis in between the time you
9 talked about this hairline fracture at the first
10 garage door and the time that Alan Lumpkin came out
11 there?

12 A. Oh, yes.

13 Q. Repeatedly?

14 A. I called him several times.

15 Q. Was there only evidence of this cracking in that one
16 area still?

17 A. At that point, yes.

18 Q. And he never fixed that?

19 A. No.

20 Q. After Mr. Lumpkin came out there was there
21 additional cracking that you noted?

22 A. There was and I can't remember exactly whether it
23 was before Alan came out or after that I called LLR
24 and they come out and they did a -- they did it
25 before he did.

- 1 Q. When you called LLR did they do an investigation?
- 2 A. Yes.
- 3 Q. Did they send a representative out?
- 4 A. Yes, they did.
- 5 Q. And was a hearing ever set?
- 6 A. No, none that I know of. They did stuff there. Now
- 7 whether they did anything there or not I don't know.
- 8 We weren't notified of a hearing.
- 9 Q. They didn't give you an explanation as to why?
- 10 A. They said -- well as to why they didn't?
- 11 Q. Right.
- 12 A. If they did I don't recall.
- 13 Q. Did it have to do with the license of Mr. ---
- 14 A. It could have.
- 15 Q. --- of American Lifestyle Homes?
- 16 A. It could have. And when it first -- when the first
- 17 hairline crack I -- he -- Jerry O'Shields come out
- 18 to sign off on what he had done at that point ---
- 19 Q. On what Terry had done?
- 20 A. What my husband had done, yes, he had come out and
- 21 looked at it and said it had to be redone. So then
- 22 at a later point in time I found out that --
- 23 somebody had advised me to call LLR so I did that
- 24 and they come out and did the report and
- 25 investigated it. Then Jerry O'Shields told me --

EXHIBIT G

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF ANDERSON)
3
4 TERRY AND SUZETTE PATTON,)
5 Plaintiffs,)
6 vs.) NO. 10-CP-04-04389
7 AMERICAN LIFESTYLE HOMES,)
8 LLC, RUFUS G. REVIS D/B/A)
9 AMERICAN LIFESTYLE HOMES,)
10 AND ANDERSON BROTHERS)
11 CONCRETE, LLC, MARCUS)
12 CLINKSCALES, AKA MARCUS)
13 ANDERSON D/B/A ANDERSON)
14 BROTHERS CONCRETE, LLC, AND)
15 SCOTT BROWN,)
16 Defendants.)



COPY

Deposition of

TERRY PATTON

Pursuant to Notice of Deposition and/or agreement in
the above-entitled case, a deposition was taken on the
7th day of December, 2012, commencing at approximately
9:45 a.m., attended as follows:

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS: CANDY M. KERN-FULLER, ESQ.
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640
(864) 855-3114
Candy@UpstateLawGroup.com

FOR THE DEFENDANTS: G. THOMAS CHASE, ESQ.
McAngus, Goudelock & Courie
75 Beattie Place, Suite 300
Greenville, South Carolina 29601
(864) 239-4000
tom.chase@mgclaw.com

DEPOSITION REPORTED BY: SUSAN L. McCRACKEN, RMR
Depositions And. . . , Inc.
P.O. Box 10268
Greenville, SC 29603
(864) 235-3518

**

**

**

**

1 Pursuant to Notice and/or agreement to take
2 depositions, the within deposition was taken by Susan L.
3 McCracken, RMR, a Notary Public, as required under South
4 Carolina Court Rule 30, et al, by consent of all parties,
5 at the law offices of Upstate Law Group, LLC, 200 East
6 Main Street, Easley, South Carolina.

7 **WAIVER**

8 It is agreed by Counsel for all parties that the
9 reading over of and signing of the deposition by the
10 witness are waived.

11 ** ** ** **

12 The deponent was duly sworn to tell the truth, the
13 whole truth and nothing but the truth of his own
14 knowledge concerning the matter herein:

15 **TERRY PATTON**

16 having been first duly sworn, was examined
17 and testified as follows:

18 **EXAMINATION**

19 **BY MR. CHASE:**

20 Q. Mr. Patton, you have obviously been at least in
21 attendance at a number of depositions associated with
22 this case. Let me just remind you of the procedure we
23 will follow just to get through as quickly and as
24 efficiently as possible.

25 A. Okay.

1 estimates from these other or proposals from these other
2 contractors that was different from what you submitted to
3 Rufus Revis.

4 A. No.

5 Q. Or was it generally the same?

6 A. No; generally the same.

7 Q. Ultimately, do you recall a core or base range
8 of the proposal from Mr. Revis that he gave you for that
9 particular work?

10 A. Most everything we done with Rufus was verbal
11 other than when we actually closed out, he give us a
12 little list of stuff. I think that's what you got
13 there.

14 Q. Is it accurate to say that you actually entered
15 into a written contract with Mr. Revis for the work he
16 was going to perform?

17 A. If that's what you call a contract, yes, sir,
18 that's it.

19 Q. That's what I want to show you first thing.

20 [Defendants' Exhibit 1 was marked for
21 identification.]

22 Q. [Mr. Chase] I want to show you Exhibit No. 1,
23 Mr. Patton. Take as much time as you need to look over
24 that. Have you seen Exhibit No. 1 before?

25 A. Uh-huh [yes].

1 Q. Yes?

2 A. Yes, sir.

3 Q. Great. On the second page of this document,
4 there are essentially what I believe are three
5 signatures.

6 A. Correct.

7 Q. Obviously, this is a copy of a document, but is
8 your signature on there, a copy of your signature?

9 A. That's correct.

10 Q. It says "accepted," semicolon, and it says
11 "owner."

12 A. That's correct.

13 Q. Is the first one yours, first signature yours?

14 A. Yes.

15 Q. You have obviously seen your wife's signature
16 before?

17 A. Correct.

18 Q. And is that a copy of her signature also?

19 A. That is correct.

20 Q. This is dated, it says, 11/0/07. Do you see
21 that?

22 A. I do.

23 Q. Do you know what date this was actually entered
24 into in November of 2007?

25 A. No.

1 Q. Okay. Was it entered in at some day in November
2 of 2007?

3 A. It was at some day in November, yes.

4 Q. And were you present when your wife signed this
5 document?

6 A. I was.

7 Q. Do you see where it says "Respectfully submitted
8 by Rufus Revis"? Do you see that on the right-hand side
9 on page two?

10 A. Yes.

11 Q. Did he sign that in your presence, or was that
12 signed earlier outside your presence?

13 A. I do not know.

14 Q. Okay. This document identified as Exhibit No. 1
15 has a title on it. It says "Job proposal." Do you see
16 that?

17 A. I do.

18 Q. You have obviously said you entered into a
19 contract with Mr. Revis doing his business as American
20 Lifestyle Homes and Garages, correct?

21 A. Correct.

22 Q. Is this the contract or your understanding of
23 what was a contract that you entered into with him?

24 A. This is it.

25 Q. So there is no other contract document that you

1 Q. Do you know why there is these handwritten
2 numbers on there where it looks like there is a
3 reduction?

4 A. I have no idea what that is for.

5 Q. Was it based on draws or anything; do you
6 know?

7 A. That might be because I do know we paid him
8 three different times. That may be what that is because
9 we paid him different times. We paid him to get started,
10 and then we paid him halfway through it, and we paid him
11 right up to the end of it. We held back five grand, I
12 think it was, until he finalized everything, which he
13 never done.

14 [Defendants' Exhibit 3 was marked for
15 identification.]

16 Q. [Mr. Chase] Okay. I show you what is marked as
17 Exhibit No. 3.

18 A. Okay. That's mine.

19 Q. Did you prepare this list?

20 A. I did.

21 Q. What is this list?

22 A. This is a list of walk-through with Rufus Revis
23 at the end of repair, what was done to finish it up.

24 Q. So looking at this, it looks like this list was
25 prepared April 2nd of 2008. Is that an accurate date?

1 A. That is very accurate.

2 Q. So having seen that date and based on your
3 statement that you prepared this, does it refresh your
4 recollection that this project was done in the April-May
5 time frame of 2008?

6 A. That's correct.

7 Q. So is it accurate to say it did not extend into
8 the summer?

9 A. No. You are probably exactly right. I thought
10 it did. Now, what I am thinking about, I think is the
11 carpenters did additional work on into the summer.

12 Q. Got you.

13 A. That's what it was.

14 Q. Now, all of these issues, were these presented
15 to Mr. Revis?

16 A. They were.

17 Q. Was it based on a meeting that you had with
18 him?

19 A. He come out to the house, and we gave that to
20 him.

21 Q. Was anyone other than Mr. Revis present?

22 A. Not that I remember, no.

23 Q. It says, "One step in garage five inches high at
24 new door to stairs."

25 A. Stairs, go up these stairs.

1 Q. Did he come out?

2 A. He did.

3 Q. Did you meet with him?

4 A. I was there.

5 Q. And what happened?

6 A. I think -- I am not sure, the first time he
7 come, if he brought the big guy, the big black guy. I am
8 not sure if his name is Clinkscales or what his name is,
9 but, anyway, he come out either the second time, I think,
10 with Mr. Revis, and the only thing I remember about the
11 whole conversation is they told Suzette that concrete
12 will crack. It is going to have cracks, and Suzette said
13 "I don't think it ought to be cracking this soon," and,
14 you know, I agreed with her. I didn't think it should be
15 either.

16 Q. So what was done?

17 A. I think at that point they told us that they
18 could come in there and sand it down and patch it or
19 something or do something or wasn't going to do anything.
20 I can't remember what they said they was going to do, but
21 I know that it continued to get worse, and she called
22 them several times, and on several occasions he come out
23 there and looked at it.

24 Q. From the time that the wall collapsed to the
25 time that it was rebuilt and then the job was completed,

1 were there any other cracks that developed in the wall?

2 A. Oh, my goodness, yes.

3 Q. So during the actual -- from the time that the
4 wall was reconstructed after the collapse to the time the
5 job was done, the wall cracked?

6 A. Absolutely.

7 Q. Where did it crack?

8 A. I think the cracks started back there at the
9 corner and started in the middle there. We had a crack
10 the back side up next to the pool area, and I think there
11 was a crack started up on the upper end of the wall that
12 goes up to the street.

13 Q. So essentially in all areas of the wall, you
14 found some cracks?

15 A. At that point, yeah. That was earliest part of
16 it, yeah.

17 Q. So during the construction, you were already
18 seeing cracks?

19 A. When the garage was being built, yeah.

20 Q. Was it after the pad was done that you were
21 seeing the cracks, or was it before?

22 A. It was after the pad was done.

23 Q. So while the garage framing and structure was
24 being built, you started seeing cracks in the retaining
25 wall in various areas?

1 A. In the retaining wall and the pad, yeah.

2 Q. And did you meet with Mr. Revis, or did you
3 identify those cracks to Mr. Revis?

4 A. He come out to the house and looked at them,
5 yeah.

6 Q. Did he come out by himself to look at the
7 wall?

8 A. Most of the time, he did.

9 Q. Did he ever bring anybody with him other than
10 the Clinkscales fellow?

11 A. Yeah. I don't remember who it was. He brought
12 other people out there, I think. I think he came out
13 there whenever Suzette got the --

14 Q. LLR?

15 A. Yeah, the LLR out there. He come out there
16 then.

17 Q. Do you remember, were you present when he was
18 out there with the LLR official?

19 A. Yes, sir.

20 Q. Do you remember anything he said during that
21 time frame?

22 A. Not really, no, nothing other than he is going
23 to fix everything.

24 Q. So was that kind of a repeated theme?

25 A. That is constantly, yeah.

1 Q. So how many times did you have Mr. Revis come
2 out to the site to your house to look at issues
3 associated with his construction work?

4 A. After the construction?

5 Q. After the construction until the time of the
6 lawsuit. Was it more than five?

7 A. Oh, yeah.

8 Q. More than ten, you think?

9 A. Probably about ten.

10 Q. Did he ever do any work related to those
11 meetings?

12 A. Only thing he ever done was drove his truck out
13 there for me to pile my stuff out of the garage into that
14 truck so they could get started on taking the concrete
15 out to fix it.

16 Q. Did they ever do that? Did they ever take the
17 concrete out?

18 A. That day hasn't come yet.

19 Q. Did he indicate he was going to do that?

20 A. He brought his truck out there for me to load
21 everything up and a man to help load it up.

22 Q. Was there a discussion that he was going to
23 remove the concrete and fix the condition of the
24 concrete?

25 A. That was the discussion the day he brought the

1 truck out there he would be out there Monday to start,
2 crews would be there Monday to start.

3 Q. It didn't happen?

4 A. It never has happened. Monday hasn't come yet.

5 Q. Okay. Did Mr. Revis ever bring Scott Brown out
6 to the site?

7 A. You would have to ask that question of Suzette.
8 I don't remember.

9 Q. Was there ever a time when you recall him
10 bringing Scott Brown out?

11 A. Not me. I think he was out there one time or he
12 met with Suzette one time or something. I don't know. I
13 don't remember.

14 Q. Were you present when there were meetings with
15 Mr. Lumpkin at your home?

16 A. Now, that is Alan Lumpkin?

17 Q. Yes, sir.

18 A. That was the gentleman not --

19 Q. This is the guy from Professional Engineering
20 Associates that prepared this report.

21 A. This guy, okay, not the high dollar man that you
22 had out there. Yeah. No. I know who you're talking
23 about, yeah, was present.

24 Q. Were you present when Mr. Lumpkin came to your
25 house?

1 A. I was.

2 Q. How many times did he come to your house?

3 A. Once, maybe twice.

4 Q. Did you assist him in any manner while he was
5 out at your residence?

6 A. I think he used my tape measure.

7 Q. Did you provide any information to him while you
8 were out there?

9 A. Yeah, I am sure I did.

10 Q. Spoke with him?

11 A. Oh, yeah.

12 Q. He asked questions?

13 A. He did.

14 Q. You were truthful?

15 A. I was very truthful.

16 Q. Did you have a meeting after he came out and
17 looked at the construction with Mr. Lumpkin?

18 A. Yes. We went to his office, Rufus Revis,
19 Suzette and I.

20 Q. Do you remember any representations that
21 Mr. Revis made at that time?

22 A. Mr. Revis tried at that time to pay the man and
23 he was going to pay him that day, and, unfortunately,
24 Alan declined and told him he could pay him later, and I
25 knew that was a mistake when he did it, but, you know, he

EXHIBIT H

Final List for Patton's April 02, 2008

01. One step in garage 5" inches high at new door to stars.
02. Install door in garage to stars.
03. Install drain corner of garage out side.
04. Remove cement step & install 2 - 5" steps onto lower deck and rails across deck.
05. Stucco block walls around drive and garage base.
06. Two 2" holes w/PVC to let water out of wall at back of driveway at lake.
07. Deck on top of garage on left missing 1 slat.
08. Remove the section of fence.
09. Landscape yard.
10. Complete all siding.
11. Close in old garage & install 2 windows in wall.
12. Cut-out window in brick wall & frame-in. The room from house to new garage.
13. Cut off end of driveway and fix asphalt.
14. Install Gutters

EXHIBIT I

April 6th, 2009

American Lifestyle Homes

101 Hurricane Creek Road

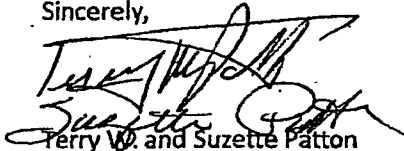
Anderson, SC 29621

Dear Rufus;

This letter is in reference to the problems with the driveway, floor in garage and the retaining wall. The floor has several cracks that are separating and one side is higher than the other and the back wall along the seams is coming apart. Also the back wall has water coming thru and the wall looks stain and rusty.

I need you to address this problem and correct the problem with some urgency and the problem needs to be fully addressed so it will be fixed correctly. I appreciate you addressing this matter in a timely fashion.

Sincerely,



Terry W. and Suzette Patton

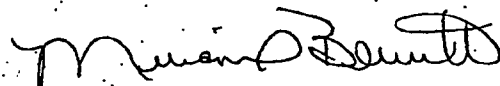
864-449-9803

Cc: Marcus Anderson

Anderson, SC

Office of Investigations and Enforcement Residential Builders Commission

Columbia, South Carolina



4/6/09

Meriam D. Barrett

My Commission Expires:
March 17, 2015

EXHIBIT J



OFFICE OF INVESTIGATIONS AND ENFORCEMENT
RESIDENTIAL BUILDERS COMMISSION
COMPLAINT FORM

For Consumer Complaints Against:
Residential Home Builders, Residential Specialty Contractors and Home Inspectors

Please complete and return to this office for review in order to determine if this complaint falls within the scope of the statutory authority of the Residential Builders Commission. Please answer all questions so that your complaint can be processed as soon as possible. Failure to answer all questions could result in delays in processing and/or request for additional information. You will be notified of receipt of your complaint and how it will be handled.

Your Name: (Complainant)

Patton L. Suzette
Last First M. W.

205 Buckingham Rd.
Mailing Address

2asley SC 29640
City State Zip Code County

(864) 855-6950 - 449-9803
Home Phone Day Time Phone

SAME
Address of Property Involving Dispute

I. Facts Regarding Your Complaint:

A. About your agreement:

- (1) Did you enter into: written contract ☒ verbal agreement ☐
(2) Is a copy of your contract attached to this complaint? Yes ☒ No ☐
(3) Total cost for work to be performed: \$ 36,995.00

B. Work performed for: New Construction ☒ Repair/Remodeling ☒ Home Inspection ☒

- (1) Is a copy of your building permit attached (if applicable)? Yes ☒ No ☐
(2) If new construction, has Certificate of Occupancy been issued? Yes ☒ No ☐
(3) What is approximate age of the home? 34
(4) If repairs or remodeling, date work started _____ date work completed _____

Complaint Against: (Licensee/Respondent)

Revis Rufus
Last First M.

American Life Style Homes
Company Name

101 Hurricane Creek Road
Mailing Address

Anderson SC 29621
City State Zip Code

(864) 224-1300
Day Time Phone License #

* Anderson Brothers Concrete LLC
1114 Salem Church Road
Anderson SC

C. Have you hired an attorney to assist you in this matter?
If answer is yes, please provide name and address.

Yes ☐

No ☒

Name of Attorney

Name of Firm

Mail Address

City

State

Zip Code

Phone: ()

D. Explain your complaint specifically. List items needing correction. Describe events in the order in which they occurred. Attach additional sheets if necessary.

see attached

II. Additional Information Regarding Dispute Resolution

A. Does your contract contain an arbitration clause?

Yes ☐

No ☐

B. Have you and Licensee/Respondent begun arbitration concerning this construction?

Yes ☐

No ☐

C. Have you begun a civil action concerning the items in Your complaint?

Yes ☐

No ☒

Outline directions to site of property involving dispute. Directions should be to a specific reference point in your area to allow the Investigator to proceed directly to the location. Attach a map or on the back of this page, draw a sketch using highway and road numbers, names and other landmarks.

see attached

Date

4-5-09

Complainant Signature

[Signature]

Sworn to before me this 5 day of April,
2009

Notary Public State of South Carolina

[Signature]

My Commission Expires

My Commission expires March 17, 2015

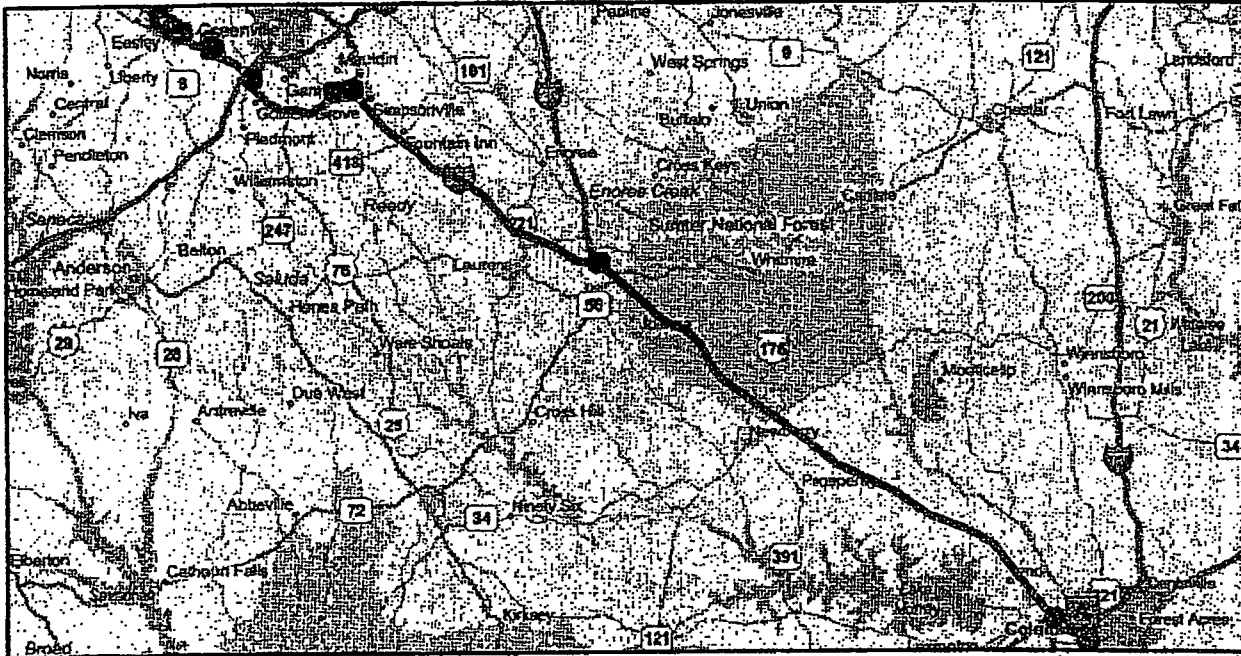
Meriam D. Barrett

Return completed form to:
SC Department of Labor, Licensing and Regulation
Office of Investigation and Enforcement
Attn: Complaint Department
Post Office Box 11329
Columbia, South Carolina 29211-1329
Telephone: (803) 896-4470
Fax: (803) 896-4656

Rev. date: 4/11/05

Print this page in a more readable format: Click Print next to the upper-right corner of the map.

Driving directions: Columbia, SC to 205 Buckingham Rd, Easley



A Start: Columbia, SC

A-B: 114.3 mi, 1 hr 56 min

1. Depart US-21 / US-176 / US-321 / Huger St 0.7 mi
2. Take ramp left and follow signs for I-126 / Lester Bates Fwy West 3.8 mi
3. Keep straight onto I-26 West 55.8 mi
- At exit 51, take ramp left for I-385 / Veterans Memorial Hwy North 29.7 mi
4. toward Laurens / Greenville
- At exit 30, take ramp right for I-185 Toll / Southern Connector North 2.2 mi
5. toward Atlanta
Toll road
- Keep left to stay on I-185 Toll / Buck Mickel Memorial Southern 10.1 mi
6. Connector North / Southern Connector
Stop for toll booth
7. At exit 12, take ramp right toward Easley / Clemson 0.1 mi
8. Turn right onto Earle E Morris Hwy 4.8 mi
Pass BURGER KING in 1.3 mi
9. Turn left onto Old Pendleton Rd 0.2 mi
10. Bear right onto Powdersville Rd 0.5 mi
11. Keep left to stay on Powdersville Rd 3.3 mi
- Bear left onto US-123 South / Calhoun Memorial Hwy, and then keep 0.8 mi
12. right onto SR-93 North / Main St

- | | |
|---|--------|
| 13. Turn right onto Hagood St | 0.1 mi |
| 14. Turn left toward Hagood St
<i>BP/BP on the corner</i> | 0.2 mi |
| 15. Bear left onto Hagood St | 0.5 mi |
| 16. Turn right onto Front St | |
| 17. Turn left onto Glenwood Rd | 0.8 mi |
| 18. Turn right onto SR-135 / Dacusville Hwy | 0.5 mi |
| 19. Turn left onto Pierce Ln | 0.1 mi |
| 20. Bear right onto Asbury Circle | 0.1 mi |
| 21. Turn right onto Buckingham Rd | |
| 22. Arrive at 205 Buckingham Rd
<i>The last intersection is Asbury Circle</i>
<i>If you reach Windamere Rd, you've gone too far</i> | |

B End: 205 Buckingham Rd, Easley, SC 29640-1359

These directions are subject to the [Microsoft® Live Search Terms of Use](#) and for informational purposes only. No guarantee is made regarding their completeness or accuracy. Construction projects, traffic, or other events may cause actual conditions to differ from these results. Map and traffic data © 2008 NAVTEQ™, AND™.

April 6, 2009

The driveway and back wall is showing cracks in floor that is separating and the back wall which is the retaining wall is showing great signs of water where it is coming thru the wall. The line of where the blocks were put together the second time is coming apart. It had to be repaired because with the first load of crush and run the wall fell down.

The floor in the garage is separating from where a crack started and it continued to get worse. On one side of the separation it is higher than the other side where you could trip over and fall. They did not bring any dirt to my knowledge or to Marcus's knowledge because he said they used the dirt that was there and brought a couple of loads of crush and run. They had a man with a machine to spread the crush before the cement was poured. They did not give it enough time to settle and get packed did not spray with water etc.

There are more cracks coming in the cement and beginning to separate like the two worse one that are in the garage and they are up the drive way and in front of the garage.

Marcus Anderson is the owner of the company that had the cement poured. He was hired for the drive and the floor in the garage and then we decided we needed to do the entire driveway to match the new area for the new construction. Marcus said they smoothed out the dirt that was already there and it was what was dug up which was not enough by any imagination to do the job. Marcus tried to say the footers were raising and my husband remembered saying he could not believe how much concrete Scott Brown who poured the footers used. He made them extremely secure. Marcus also asked if we had parked any vehicles in the garage, I thought that is why we had one built.

We have taken pictures of the project and we have a couple of the whole before and when the first load came that pushed down the wall. We want it to be fully corrected. Rufus had suggested they could sand down the edges and patch the floor in the garage and if we have this kind of problem with it been down right at a year what will happened in a couple more years.

Rufus Revis came and looked at the problem approximately 3 weeks after the inspector came and signed off on the work my husband had done on the inside of the house. That date was February 17, 2009 of this year. He made a remark to a contractor that did the carpentry work Wade Morris I believe this had been about a year hasn't it. He then made three appointments and finally on the fourth he and Marcus came and looked at the problem. This was last Tuesday March 31, 2009.

I spoke with Marcus who owns Anderson Brothers Concrete in Anderson, SC and he told me he would be in Easley on the 30th and would call me and come by and look he never came or called. I received a call from Rufus with American Lifestyle Homes and he said they would be at the house on Tuesday around 10am or 10:30 which they did show.

When Jerry Shield's came to sign off on the final inspection with my husband I showed him the cracks and the driveway and he said that it was unacceptable and he would call Rufus that afternoon which he did and that was on the 17th day of February of this year.

Y 2008-2009

CITY OF EASLEY
INSPECTION REPORT

<u>PERMIT/DATE</u> <u>INSPECTED</u>	<u>OWNER/LOCATION</u>	<u>INSPECTOR/CONTACT/PHONE</u>	<u>TYPE OF GROUP/</u> <u>INSPECTION</u>	<u>STATUS</u>
2700 2/17/2009	T.W. PATTON 205 BUCKINGHAM ROAD EASLEY, SC 29640 SUBDIVISION/PROJECT: BURDINE SPRINGS CONTRACTOR: on plumbing and electrical	JDO RUFUS REVIS PHONE: 864-202-1482	FINAL INSPECTION	Scheduled
		MOBILE: 864-245-3510		
		CONTRACTOR PHONE:		

TOTAL ALL: 1

*Cracks in concrete floor / Retain
wall*

City of Essey

OUTBUILDINGS/GARAGES PERMIT

P.O. Box 466 Essey, SC 29541

Phone: 864 855 7908 FAX: 864 855 7951

DATE ISSUED: 11/08/2007

PERMIT # 2007- 2469

LOCATION: BURDINE SPRINGS

DISTRICT TAX MAP/PARCEL#

205 BUCKINGHAM ROAD

LOT ZONING-DISTRICT

R-10

OWNER: T.W. PATTON

CONTRACTOR: 5482

TOTAL VALUATION

\$ 36,995

AMERICAN LIFESTYLE HOMES

101 HURRICANE CREEK ROAD

ANDERSON, SC 29621

PHONE: 224-1308

SUBCONTRACTOR ID/NAME

SUBCONTRACTOR TYPE

STRUCTURAL

UNITS

NOTE

TYPE CONSTRUCTION: NEW CONSTRUCTION

OCCUPANCY GROUP: RESIDENTIAL

FEE CODE

FEE

BUILDING

200.00

TOTAL PAID:

200.00

PAID IN FULL

TOTAL AMOUNT:

200.00

REMARKS: APPROVED BY TOMMY-720 SQ FT-2X10-HEIGHT 21 FT

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS DOCUMENT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION. THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN SIX MONTHS, OR IF WORK OR CONSTRUCTION IS SUSPENDED OR ABANDONED FOR A PERIOD OF SIX MONTHS AFTER COMMENCING.

(SIGNATURE OF CONTRACTOR/OWNER)

DATE

(ISSUED BY)

(DATE)

RESIDENTIAL BUILDING PERMIT APPLICATION

for the CITY OF EASLEY, Planning & Development Office, POB 466, Easley, SC 29641

Office (864) 855-7908 Fax (864) 855-7951

Date of application: 11/8/08Lot # 205 Subdivision Name: Buckingham SpringsPhysical (911) Address: 205 Buckingham Rd. Anderson Springs

If you do not know this address, contact Pickens County at 898-5950 before submitting application

Tax Map # _____ Zoning _____ is this a corner lot? yes ☒ noOwner Name: T. W. Patton

If owner/builder, click here for owner/builder agreement and click here for owner/builder subcontractor list

Address (if different from physical address): _____

Telephone: _____ cell # _____

Contractor: Rufus Ravi American Lifestyle Homes

Address: _____

Contractor License # 10521 Expiration date of license June 30 2008 Type of License: specialty (residential / GC)Business License # 17419 Telephone Number 202-1482 Cell # 215-7510 Fax # 864-224-4174

**Proof of contractor eligibility is required at the time of the application. (ie. copy of contractor's license, business license, general liability insurance)

Type of Work:

☐ new house: Square footage of 1st floor: _____ Square footage of 2nd floor (includes bonus room): _____

square footage of basement: _____ finished / unfinished Square footage of garage: _____ attached / detached

Detached garages cannot be more than 800 square feet and 19 feet high.

Total heated square feet: _____ Number of bedrooms: _____ number of bathrooms: _____

number of fireplaces: _____ prefab or masonry Cost of Job: \$ _____

Total square footage is _____ x \$68.00 = \$ _____ Permit Cost: \$ _____

☐ addition to house: Square footage of addition: _____ Purpose of addition: _____

to include (mark all that apply): plumbing / electrical / mechanical / other _____

cost of Job: \$ _____ Permit Cost: \$ _____

☐ electrical upgrade ☐ plumbing ☐ mechanical upgrade/change-out ☐ mobile home set-up ☐ porch / deck size: _____☐ swimming pool: above or in-ground ☐ modular home Cost of Job: \$ _____ Permit Cost: \$ _____☐ renovations: description of work: _____

Cost of Job: \$ _____ Permit Cost: \$ _____

☒ detached garage / storage shed Square footage: 720 detached 24x30 attached 24x30size: _____ x _____ Height: _____ Detached cannot be more than 800 square feet and 19 feet in height. Also see notes

of dwellings on lot _____ # of detached structures on lot _____ (ie: garage, storage shed, etc) CITY ZONING ORDINANCES

ALLOW ONE DETACHED STRUCTURE PER DEVELOPED LOT.

Is this a prefab garage/shed? _____ To include (mark all that apply): electrical / plumbing / other _____

Cost of Job: \$ 36,995 Setbacks: front _____ side _____ rear _____ (to be completed by inspector)

PLANS MUST BE SUBMITTED FOR APPROVAL. Approved by: _____

Must get set back

IMPORTANT: This is an application only. You must have approval and a permit prior to beginning any construction. All inspections must be called in by the contractor who applies for permit. A 24-hour notice is needed for inspections. Silt fences must be installed around all lots prior to footing inspections. Inspections will be denied if silt fence is not up at job site.

CITY OF EASLEY
INSPECTION REPORT

FY 2008-2009

PERMIT/DATE	OWNER/LOCATION	INSPECTOR/CONTACT/PHONE	TYPE OF GROUP/INSPECTION	STATUS
2469	T.W. PATTON	JDO		
11/15/2007	205 BUCKINGHAM ROAD EASLEY, SC 29640 SUBDIVISION/PROJECT: BURDINE SPRINGS CONTRACTOR: AMERICAN LIFESTYLE HOMES footings must be free of water and loose dirt or mud	RUFUS REVIS PHONE: 864-202-1482	MOBILE: 864-245-3510	FOOTING INSPECTIC Failed
2469	T.W. PATTON	JDO		
11/16/2007	205 BUCKINGHAM ROAD EASLEY, SC 29640 SUBDIVISION/PROJECT: BURDINE SPRINGS CONTRACTOR: AMERICAN LIFESTYLE HOMES re-inspection	RUFUS REVIS PHONE: 864-202-1482	MOBILE: 864-245-3510	FOOTING INSPECTIC Passed
2469	T.W. PATTON	JDO		
05/21/2008	205 BUCKINGHAM ROAD EASLEY, SC 29640 SUBDIVISION/PROJECT: BURDINE SPRINGS CONTRACTOR: AMERICAN LIFESTYLE HOMES	RUFUS REVIS PHONE: 864-202-1482	MOBILE: 864-245-3510	FINAL INSPECTION Passed

TOTAL ALL: 3

EXHIBIT K



Mark Sanford
Governor

Adrienne Riggins Youmans
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional Occupational Licensing
Office of Investigations and Enforcement



110 Centerview Drive
Post Office box 11329
Columbia, S.C. 29211-11329
Phone: (803) 896-4470

FAX Information
Office of Investigations (803) 896-4656
Wage and Child Labor (803) 896-7680
www.llr.state.sc.us

April 28, 2009

Mr. and Mrs. L. Terry Patton
205 Buckingham Road
Easley, SC 29640

Re: Residential Builders Commission
File #: 2009-242

Dear Mr. and Mrs. Patton:

Your complaint has been received and a case file has been opened. Investigator Benjamin Page has been assigned the case and will be contacting you in the future to schedule an appointment to review your complaint. Site inspections are not routinely conducted relative to work by unlicensed individuals and/or firms. Please be assured we will conduct a thorough inquiry of your complaint as quickly as we can. Complaints are routinely investigated in the order received.

It is important for you to understand that the function of this agency is to administer and enforce the South Carolina Residential Homebuilders' License Law as set forth in Chapter 59, Title 40, Code of Laws of South Carolina, 1986, as amended, and we have no authority beyond that statute. With respect to your complaint, the agency has the authority to investigate to determine if a licensee has violated the license law and, if so, to take disciplinary action that the Commission deems appropriate. Discipline may range from a public reprimand to revocation of a license or registration. The agency does not have the authority to intercede in contractual or cosmetic issues and cannot require the licensee to fix any items, pay for repairs, refund any monies or arbitrate disputes. During the course of this investigation the licensee may volunteer to resolve some, or all of the issues you raise. The licensee's willingness to resolve the dispute will not affect the determination of a violation of the license law, but it may affect the ultimate sanction by the Commission.

The Investigator assigned to this case will collect evidence to determine if there are any facts to support a charge against the licensee for violations of the license law. Relevant facts include violations of the applicable building codes, or the Commission's published construction standards where failure to comply with those codes and standards is the responsibility of the licensee.

We do not provide routine status reports. You will be notified should we require additional assistance and you will be provided a written disposition report. Your complaint does not preclude your right to seek civil remedy through the courts. If you have further questions regarding this complaint, please contact the above investigator at (803) 896-4470.

602

Thank you for your patience in this matter.

Respectfully,

Charles J. Ido
Chief of Investigations

CJI

00143

EXHIBIT L



Mark Sanford
Governor

Adrienne Riggins Youmans
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Legal Services
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: Information
Office of Investigations (803) 896-4656
Wages and Child Labor (803) 896-7680
www.llr.state.sc.us

NOTICE OF INSPECTION

May 22, 2009

RBC Case # 2009-242

Complainant:
TERRY & SUZETTE PATTON
205 BUCKINGHAM RD.
EASLEY, SC 29640

Respondent:
RUFUS REVIS
522 SHIRLEY CIR.
ANDERSON, SC 29625

INSPECTION SITE: COMPLAINANT'S ADDRESS

To Whom It May Concern:

An inspection date has been set for Thursday, June 11, 2009 at 10:00 am to review items of the complaint filed at this office. This inspection will be part of the preparation for a formal hearing before the Residential Builders Commission.

Please put the case number and investigators name on any response to insure that it will be properly processed. If the issues in the complaint are resolved prior to the inspection date, please notify me at 803-608-6295 so I can verify the corrections, or agreement, and may avoid further action in this matter.

Sincerely,

Benjamin Page
Investigator
Office of Investigations and Enforcement

Cc: Complainant;
Respondent;
File

EXHIBIT M



Office of Investigation and Enforcement

Inspection Report

Case No: 2009-242

Complainant:

Terry & Suzette Patton
205 Buckingham Road
Easley, SC 29640

Respondent:

Rufus G Revis
522 Shirley Cir
Anderson Sc 29625

Date Received: 04/16/2009

Date of Report: 7/15/2009

Investigator: Benjamin Page

Person(s) Interviewed:

Complainant: Terry and Suzette Patton
Licensee/Respondent: Rufus G Revis

The South Carolina Office of Investigations and Enforcement conducted an interview for the S.C. Residential Builders Commission in reference to a complaint filed by the Complainant referenced above. The purpose of this interview was to determine if specific facts exist or conduct displayed should warrant recommendation of any sanction(s) against the Respondent based upon conduct or actions made by the Respondent.

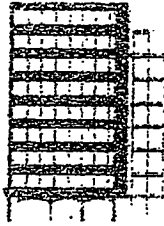
Complaint Items:

Item # 1: Garage Slab Cracks

Investigator's Observation: The garage slab has a crack that runs from the back left corner through the middle control joint to the front right corner. The crack has also has vertical displacement. (South Carolina Residential Construction Standards Ch. XIX #4)

Respondent's Responsibility: Respondent has not complied with the building codes and standards that govern the practice of residential and specialty construction in South Carolina.

EXHIBIT N



pe

**PROFESSIONAL ENGINEERING
ASSOCIATES**

WWW.PEAOFSC.COM - 864.242.4373
GREENVILLE, SOUTH CAROLINA

STRUCTURAL OBSERVATIONS

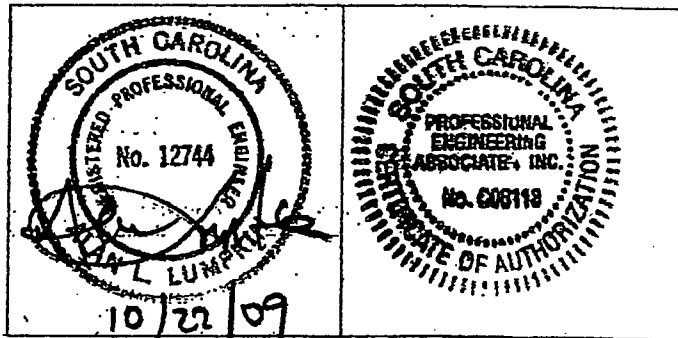
FOR

TERRY AND SUZETTE PATTON

EASLEY, SOUTH CAROLINA

PE Project 2009-120
PROFESSIONAL ENGINEERING ASSOCIATES, INC
PO BOX 8836
GREENVILLE, SC 29604

October 27, 2009



INDEX OF REPORT

<u>Page</u>	<u>Description</u>
1	TITLE PAGE
2	INDEX
3	INTRODUCTION
3	PROJECT DESCRIPTION
4	SITE OBSERVATIONS
9	HISTORICAL DATA
13	ANALYTICAL EVALUATION
14	FINAL CONCLUSIONS

INTRODUCTION:

On September 9, 2009 Professional Engineering Associates, INC., (PEA) visited the Patton home at 205 Buckingham Road in Easley, South Carolina. The purpose of this visit was to provide a professional opinion concerning retaining wall cracking and movement along with slab cracking in a new garage addition and driveway recently completed.

The Pattons indicated that they are noticing significant retaining wall movement, slab cracking in the new driveway and cracking in the slab on grade for the new garage structure.

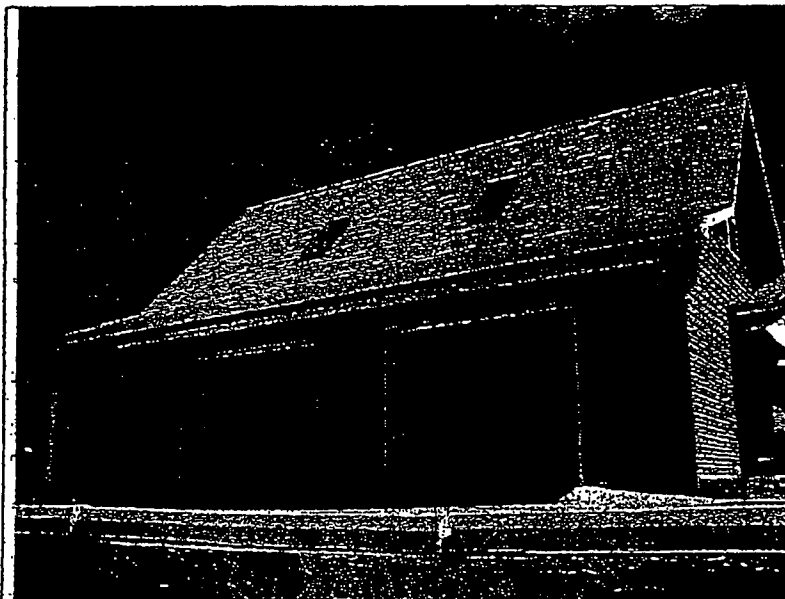
Present at this meeting were Terry and Suzette Patton, Rufus Revis (builder) and Alan L. Lumpkin, P.E. for PEA.

A follow up meeting at the offices of PEA took place on September 21, 2009 to discuss the preliminary findings of the analytical evaluation

PROJECT DESCRIPTION:

The new garage addition is a new 35'-0" x 24'-0" (+/-) x 9'-0" high structure with a gable roof. This structure has a high gable with an 8:1 pitch to accommodate a room at a future loft level. A new driveway was constructed to access the new garage.

The property sloped away from the existing home and required that retaining walls be built to provide structural support for the new fill. The deepest fill area is approximately 7'-4" at the end of the new driveway section.



New garage addition.

Figure 1

SITE OBSERVATIONS:

An initial walk-thru was completed and included observation of the new driveway, new garage structure and all retaining walls.

Driveway Slab:

1. The driveway slab near the end of the construction has a 6'-8" diagonal crack from the corner of the intersection of the rear wall and the driveway wall and showed vertical displacement of the slab on fill approximately $\frac{1}{2}$ " to $\frac{5}{8}$ " in translational movement.
2. Additional stress cracking from exterior wall movement was noted in the same location.
3. Also, shrinkage cracks were noted at the Garage door openings where no control joint had been cut.

Garage Slab:

1. Two large cracks were located inside the garage area.
2. Each crack was approximately 12 feet long and both had vertical displacement translation.
3. The crack on the left side of the garage originated at the rear left corner of the garage and propagated towards the center of the left side car bay. There was an approximate $\frac{1}{8}$ " vertical translation at this joint.
4. The crack on the right side of the garage originated at the front corner of the right car bay and propagated towards the center of the right car bay. There was an approximate $\frac{3}{8}$ " to $\frac{1}{2}$ " vertical translation at this joint.

Retaining Walls:

1. The driveway was supported on the left side by an increasing height retaining wall. It is approximately 2 feet tall at the beginning and 7'-4" at the end.
2. The retaining wall construction is 8" CMU and may have some 12" CMU in the lower courses.
3. There is a horizontal crack running approximately 8 inches from the top of the driveway slab and is present along the final half of the driveway to the end.
4. Vertical cracks are present in the driveway retaining wall approximately 2'-0" from the end of the wall. This crack shows a minimum of $\frac{3}{8}$ " translation away from the driveway or fill side.
5. The rear wall that is approximately 6'-8" to 7'-4" tall has a vertical crack that is open near the front of the garage. This crack has a $\frac{3}{8}$ " translation away from the fill side as well.
6. Floor slabs were not tied into retaining walls so no basement wall is present but it is a true cantilevered wall system.



Cracking slab on grade
at garage interior left
side.

Figure 2



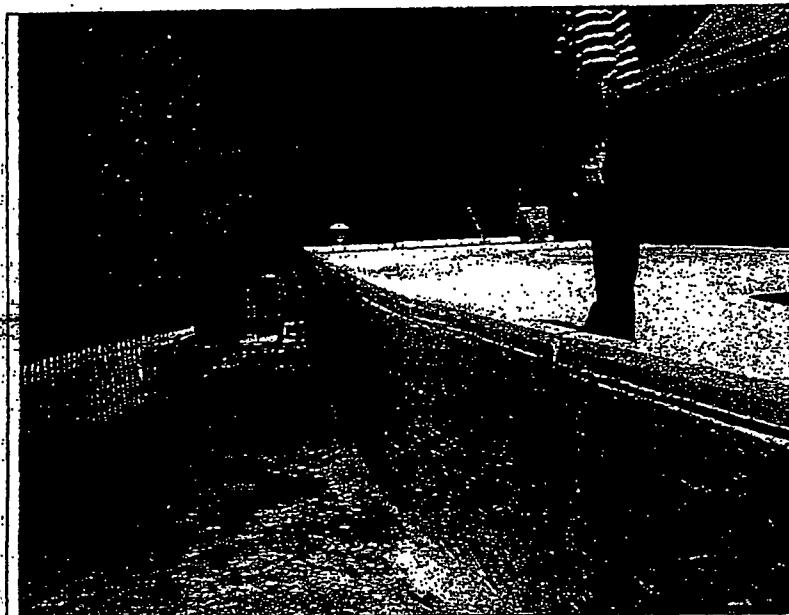
Cracking slab on grade
at garage interior right
side.

Figure 3



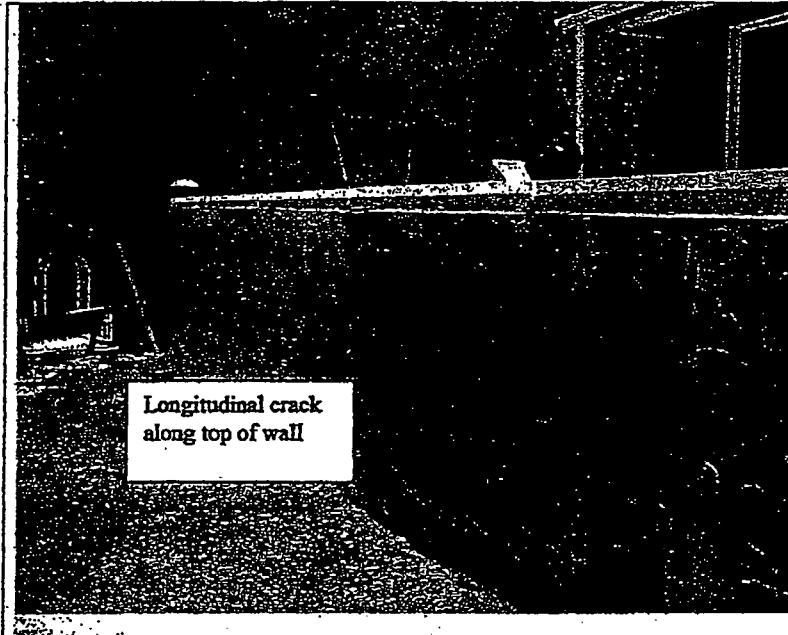
Shrinkage cracking at
center of garage.

Figure 4



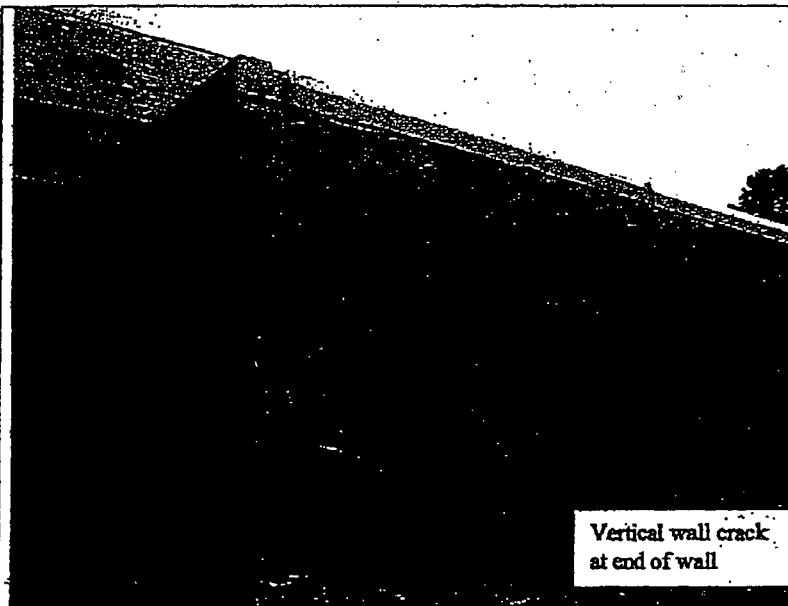
Retaining wall at the
driveway.

Figure 5



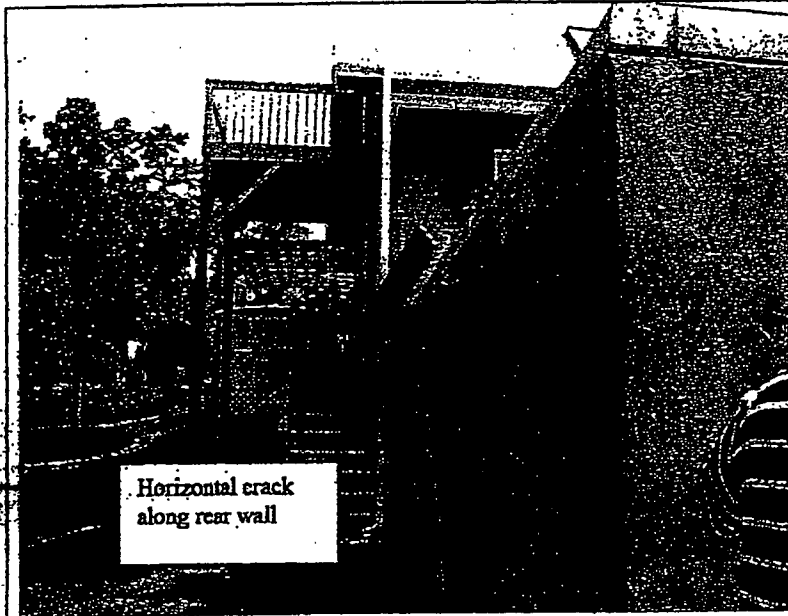
Horizontal crack at top
of the retaining wall.

Figure 6



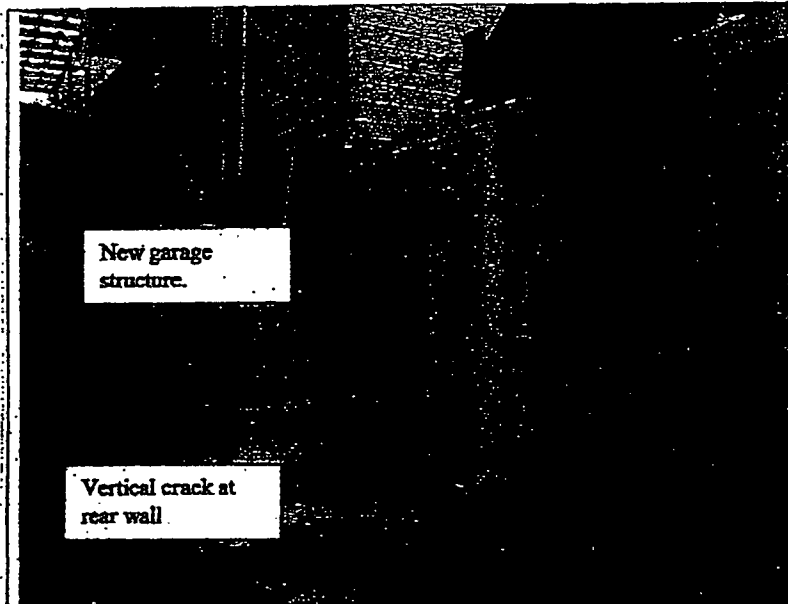
Wall cracking at the
intersection of the
driveway and rear
retaining walls.

Figure 7



Horizontal crack at the
rear retaining wall.

Figure 8



Wall cracking at rear
retaining wall.

Figure 9

HISTORICAL DATA:

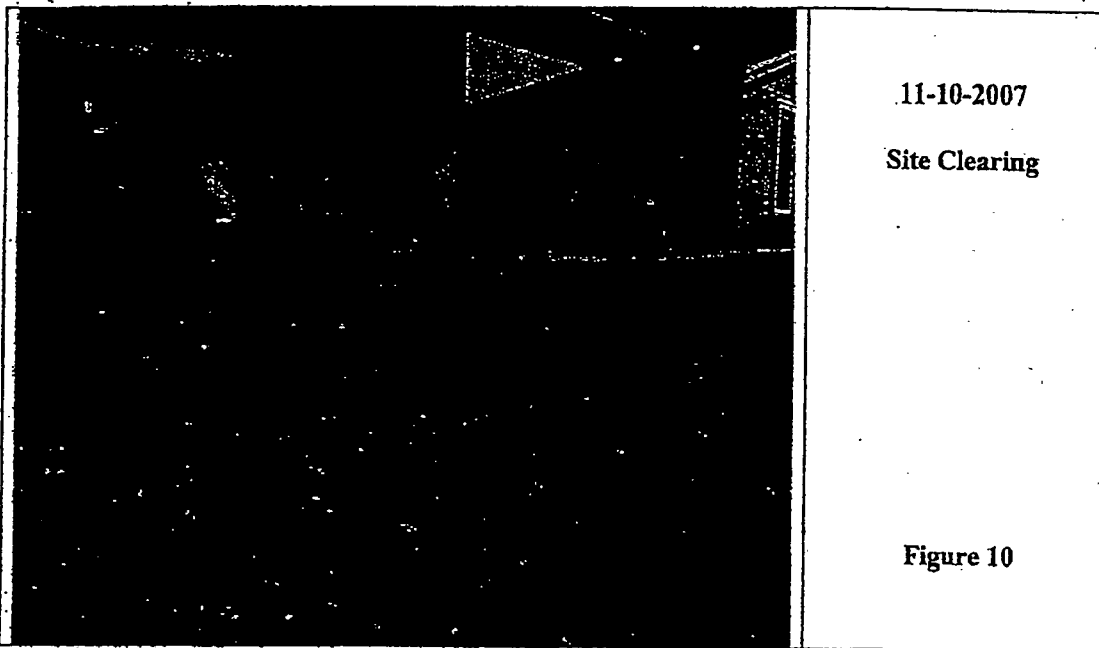
This project is fortunate that we have some eyewitness account of the construction and photographic documentation during various periods of construction. The following is a basic timeline:

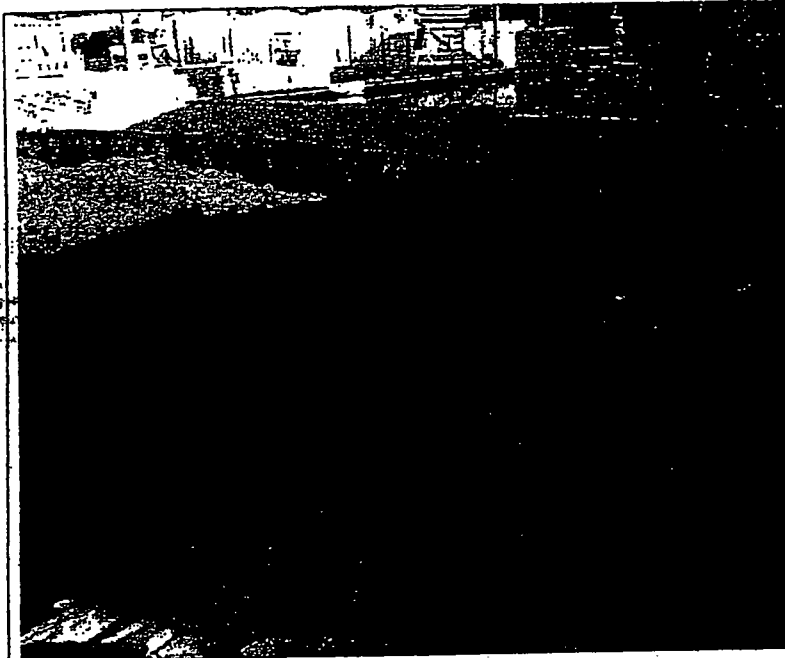
- | | |
|-----------------------------|------------|
| 1. Site Cleanup | 11/10/2007 |
| 2. Foundations dug | 11/11/2007 |
| 3. Retaining walls in place | 11/24/2007 |
| 4. Partial wall collapse | 12/05/2007 |
| 5. Structure Framing begun | 12/20/2007 |

Eyewitness accounts provided by the Pattons indicated that a debris pile was left inside of the fill area. This debris pile contained a wood pallet, construction debris, roots, CMU block pieces and other construction materials. Also, very little steel reinforcing was identified as being used in the walls. Some reinforcing was used in the footings per the Pattons.

Near the date of 12/20/2005 a partial wall collapse was noticed by the owner and required that the collapsed wall section be re-built. Some reinforcing was thought to have been added for this rework effort.

See the attached photos provided by the Pattons during the project construction.

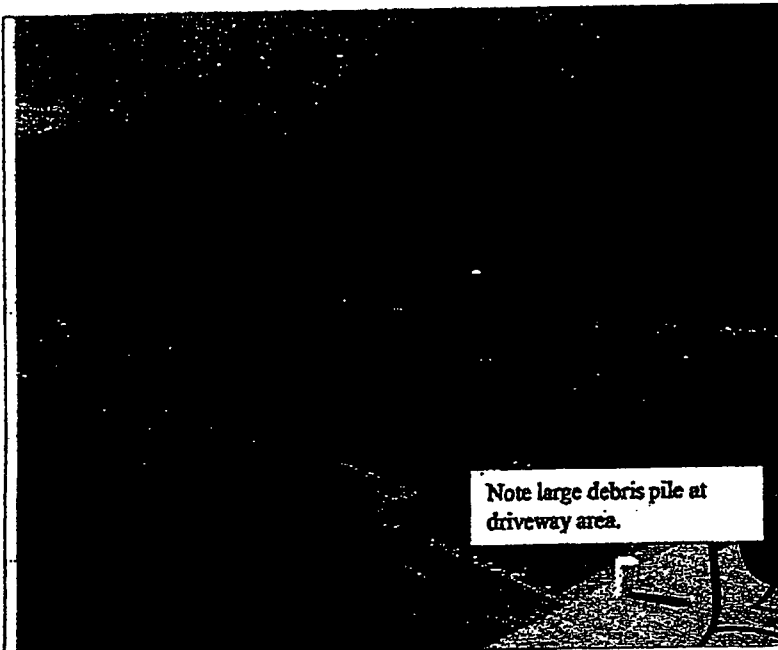




11-11-2007

Foundations Dug

Figure 11

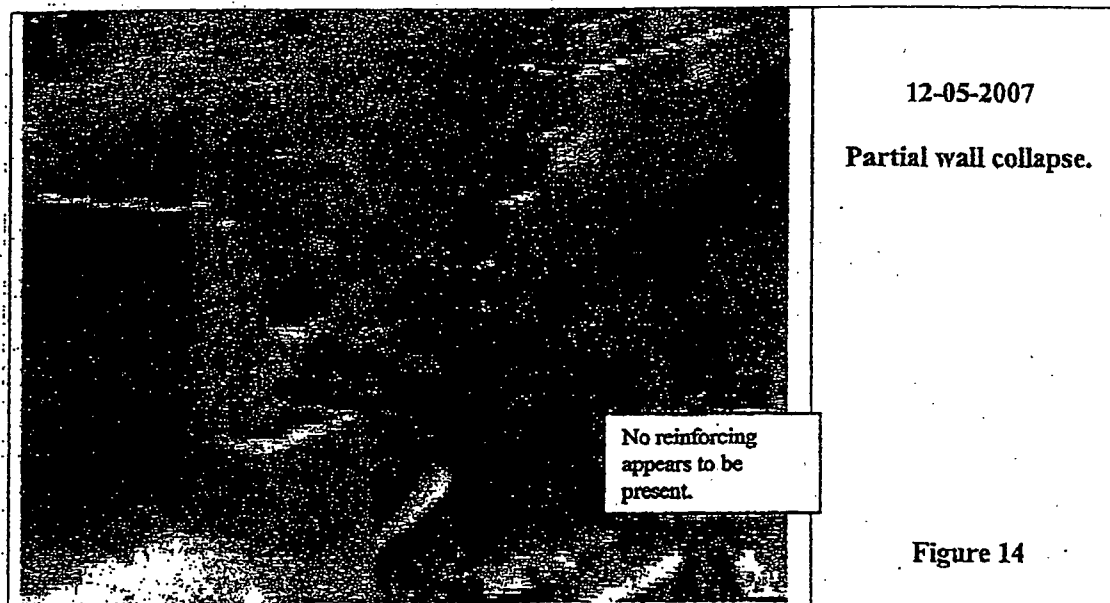
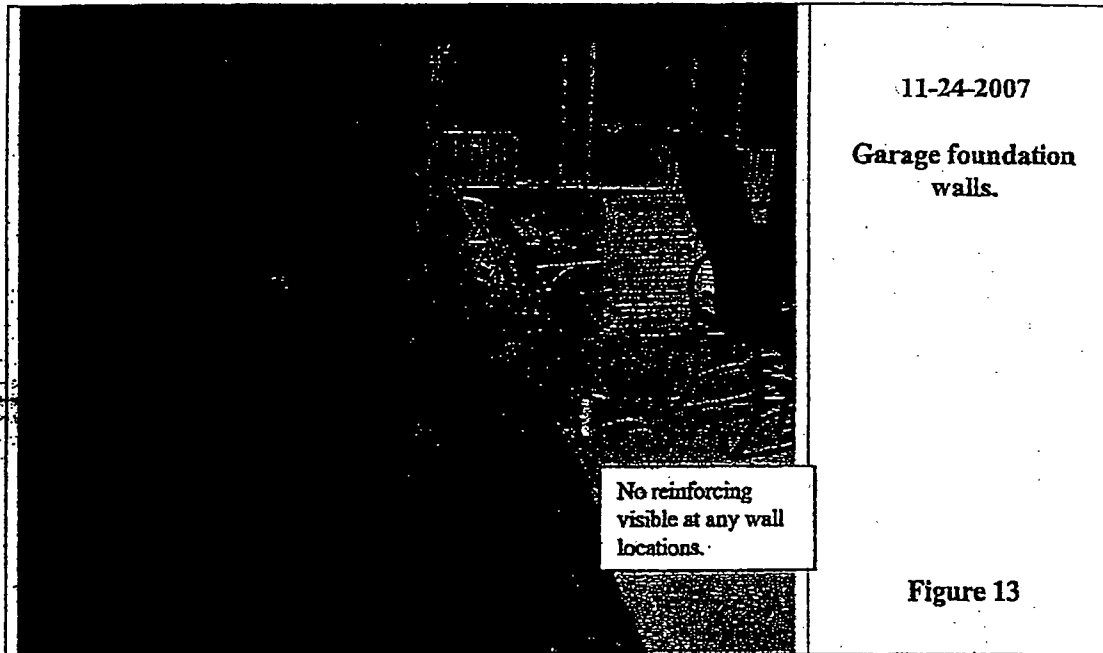


Note large debris pile at
driveway area.

11-24-2007

Retaining walls and
foundation walls in
place.

Figure 12





12-17-2007

Slab poured.

Figure 10



12-20-2007

Framing begun.

Figure 10

ANALYTICAL EVALUATION:

Retaining Walls:

Based on the field observation together with construction photographs it is apparent that the exterior CMU wall as constructed is a true retaining wall system. Calculations were performed for the CMU walls using Masonry Design System by the National Concrete Masonry Association (NCMA) and by NCMA TEK notes for "Concrete Masonry Cantilever Retaining Walls".

It should be noted that a 200 psf (+/-) surcharge load was used to design the wall due to the presence of parked vehicles or stored materials that could be present during and after construction. This is typically accomplished by adding 2'-0" to the actual height of the wall. This follows the Department of Transportation method of analysis.

The pertinent design data is as follows:

1. Wall height = 7'-4" highest location + 2'-0" for surcharge = 9'-4" design height
2. f'_m = 1500 psi with fully grouted walls
3. f'_c = 3000 psi for concrete foundation
4. f_s = 20,000 and 24,000 psi
5. Equivalent Fluid Weight = 45 pcf

Both the NCMA design program and the NCMA TEK notes provided designs requiring #7 @ 16 inches on center for a 12" CMU wall at a 7'-4" constructed height for Allowable Stress Design. The reinforcing location is 3" from the interior or fill side of the wall. There are footing dowels required to match the vertical reinforcing steel. The CMU wall is also solid grouted.

The footing width at this wall height is 6'-2" wide with #6 @ 21" c/c top bars.

Actual wall construction does not appear to meet the necessary design requirements for a cantilevered retaining wall with a surcharge. No vertical reinforcing appears to be present in the construction documentation photographs. Partial collapse of the wall in or around 12/05/2007 seems to validate the lack of reinforcing steel and proper construction methods for this type wall.

Footing sizes were discussed with the owner and no definitive information was provided. It was thought that the footing width was approximately 2'-0" to 3'-0" wide with some reinforcing present. This footing size would be expected for a basement type wall but not for a cantilevered retaining wall application.

See attached computer runs and NCMA TEK notes of current wall design.

Slabs on Grade:

The excessive cracking in the slabs on grade both in the driveway and interior to the actual garage structure indicate that poor soil compaction was achieved. In the case of the driveway area, the consolidation may very well be due in part to the presence of the debris pile that may have been left in place during the fill operation.

Presently, no structural distress appears to have been observed in the garage superstructure but an additional review of this wood structure may need to be taken to verify settlement or movement. This can be accomplished using a surveyor such that all corners of the building can be measured and compared to check relative movements.

FINAL CONCLUSIONS:

The current retaining wall system at the Patton residence was not properly designed as required by the 2006 International Residential Code concerning foundation walls. Chapter 4 in this document requires that walls with unbalanced fill greater than 4'-0" with no lateral support at the top of the wall must be engineered for proper performance. See Section R404.1.3.

Prescriptive wall designs for BASEMENT walls are given if the top of the wall is restrained or tied into the concrete slab. However, it appears no such effort was made to provide a basement wall system.

A previous wall collapse is evidence to the fact of improper design and construction.

Some destructive demolition is required in order to validate all of the assumptions made in this report or to validate what appears to be portrayed in the construction photographs.

The following is an action list to be performed by the Owner/Builder to rectify the current construction problems:

1. Remove concrete and excavate at the location of the proposed debris pile and remove debris pile if present.
2. Excavation is required to expose the exterior retaining walls so that reinforcing can be identified if present by breaking open CMU cells.
3. Also, excavate such that the retaining wall footing sizes can be verified.
4. After investigative work determine if the wall can be repaired using new or additional reinforcing including slab ties if a basement scenario can be utilized.
5. If a cantilevered wall system is used, foundation expansion will be required.
6. The existing wall may need to be removed and a new wall constructed if the old cannot be repaired or if the contractor deems a new wall less expensive.
7. Structural grade fill shall be used and placed in lifts to secure adequate compaction. A Geotechnical engineering firm should be engaged to test the soil compaction.

October 27, 2009

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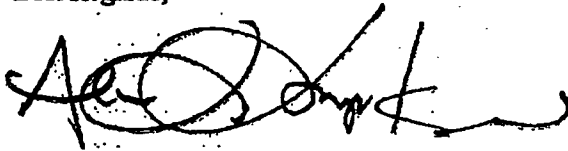
8. The Geotechnical Engineer shall also be used to determine the compaction at the slab on grade at the interior of the garage to determine what remediation measures may be required.
9. The Geotechnical Engineer should also validate the exterior building wall footing compaction to determine if any settlement has occurred or may occur in the future based on previous construction.
10. Possible remediation solutions for the garage slab on grade and supporting wall foundations may include slab/soil removal and replacement with proper compaction, soil injection with grout or epoxy foam to densify the soil medium and increase bearing pressure or helical piers.

Finalization of the corrective action can only take place after significant demolition and investigative work has been completed. At that time, this office will provide an appropriate cost effective solution to the retaining walls and slabs on grade problems.

Please contact me with any questions or comments at 864-242-4373 x133.

Thank you for using Professional Engineering Associates, Inc.

Best Regards,



Alan L. Lumpkin, P.E.
Principal/ Vice-President
SC #12744

Attachments: NCMA Computer Output
NCMA TEK Notes

MASONRY

DESIGN SYSTEM FOR CONCRETE AND CLAY MASONRY

The National Concrete Masonry Association Brick Industry Association
Western States Clay Product Association International Code Council

Version 4.0 (Release 4.0.2)

Prjct: 205 Buckingham

Topic: Retaining Wall

Page:

Name: Alan Lumpkin

Date: 9-16-09

Chkd: Jeff Barrett

Design of a Reinforced Masonry Wall with Out-of-Plane Loads

Using the 2006 IBC ASD Design Code

Material and Construction Data

12 in. CMU, Full grout, running bond

Wall Weight = 123.9 psf

Type S Masonry cement / Air-entrained PCL Mortar, Coarse Grout

CMU Density = 115 pcf

$f_m = 1500$ psi (Specified)

$E_m = 900f_m = 1350000$ psi

Wall Design Details

Thickness = 11.63 in.

Height = 88 in. (Cantilevered Wall, Effective height = $2H$)

$x = 3$ in.

#7 Bars, $F_y = 60000.0$

Reinforcement Spacing = 16 in. On-Center

Wall Design Section Properties

$A_o = 186$ in.

$I_o = 2095$ in.

$S_o = 360.4$ in.

$R_o = 3.356$ in.

Wall Support: Cantilevered Wall

Specified Load Components

Load	P (lb)	e (in)	W1 (psf)	W2 (psf)	L (lb/ft)	h1 (in)	h2 (in)
Dead	0	0	0	0	0	0	8
Live	0	0	0	0	0	0	88
Soil	0	0	0	330	386	53	88
Fluid	0	0	0	0	0	0	8
Wind	0	0	0	0	0	0	8
Seismic	0	0	0	0	0	0	8
Roof	0	0	0	0	0	0	8
Rain	0	0	0	0	0	0	8
Snow	0	0	0	0	0	0	8

SURCHARGE POINT
LOAD
3 FT
FROM
WALL FACE

Controlling Load Cases

Section Forces with Controlling Flexure and Axial Load— $0.6D + H + W$

$x/H = 0.000$ from bottom of wall

$V = 1596$ lb/ft

$M_L = -55951.3$ lb-in./ft

MASONRY

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The National Concrete Masonry Association
Western States Clay Product Association

Brick Industry Association
International Code Council

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Chkd: Jeff Barrett

$P = 545.2 \text{ lb/ft at } e_n = 0 \text{ in}$

$M_T = M_L + P e_n = -55951.3 \text{ lb-in/ft}$

Moment Capacity = 68693.3 lb-in/ft (5724.44 lb-ft/ft) at this axial load

Shear Capacity = 4008.54 lb/ft

The wall is adequate for these critical section forces.

Section Forces with Controlling Shearing Force—D + H

$x/H = 0.000$ from bottom of wall

$V = 1596 \text{ lb/ft}$

$M_L = -55951.3 \text{ lb-in/ft}$

$P = 908.7 \text{ lb/ft at } e_n = 0 \text{ in}$

$M_T = M_L + P e_n = -55951.3 \text{ lb-in/ft}$

Moment Capacity = 68647.1 lb-in/ft at this axial load

Shear Capacity = 4008.54 lb/ft

The wall is adequate for these critical section forces.

These were found to be load cases that controlled the design.

The flexural, shear and axial forces shown are those occurring at the critical section for the case controlled by flexure and at the critical section for the case controlled by shear.

The following design calculations are for the section with controlling bending moment

Section Design Forces Used

$V = 1596 \text{ lb/ft (Computed from Loads)}$

$M_L = -55951.3 \text{ lb-in/ft (Computed from Loads)}$

$P = 545.2 \text{ lb/ft at } e = 0 \text{ in (Computed from Loads)}$

Computed Design Values

Note: 1/3 stress increase was not used

Effective Width = 16 in.

Web Width = 16 in. on effective width

Allowable Shearing Force = 4009 lb/ft

The wall is adequate in shear

Required $A_s = 0.381 \text{ in}^2$ each reinforced cell (0.2858 in²/ft) OK

$d = 8.625 \text{ in.}$

$n = 21.48$

$k_{balanced} = 0.3092$

$j_{balanced} = 0.8969$

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Western States Clay Product Association International Code Council

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Prjct: 205 Buckingham

Topic: Retaining Wall

Page:

Name: Alan Lumpkin

Date: 9-16-09

Chkd: Jeff Barrett

$k = 0.2995$

$j = 0.9002$

$P_{max} \text{ (Compression)} = 5.996e+004 \text{ lbs (4.497e+004 lbs/ft) OK}$

$P_{max} \text{ (Tension)} = 1.44e+004 \text{ lbs (1.08e+004 lbs/ft) OK}$

The wall has adequate capacity.

Development and Splice Lengths for Longitudinal Reinforcement

$K = 2.5625 \text{ in.}$

Required Development Length: $l_d = 31.50 \text{ in.}$

Required Lap Splice Length: $= 103.68 \text{ in.}$

Some codes may require epoxy-coated reinforcement to have longer development and splice lengths.

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Page:

Name: Alan Lumpkin
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Chkd: Jeff Barrett

Design of a Reinforced Masonry Wall with Out-of-Plane Loads
Using the 2006 IBC ASD Design Code

Material and Construction Data

12 in. CMU, Full grout, running bond
Wall Weight = 123.9 psf
Type S Masonry cement / Air-entrained PCL Mortar, Course Grout
CMU Density = 115 pcf
 $f_m = 1500$ psi (Specified)
 $E_m = 900f_m = 1350000$ psi

Wall Design Details

Thickness = 11.63 in.
Height = 88 in. (Cantilevered Wall, Effective height = 2H)
 $x = 3$ in.
#7 Bars, $F_y = 60000.0$
Reinforcement Spacing = 16 in. On-Center

Wall Design Section Properties

$A_o = 186$ in.
 $I_o = 2095$ in.
 $S_o = 360.4$ in.
 $R_o = 3.356$ in.

Wall Support: Cantilevered Wall

Specified Load Components

Load	P (lb)	e (in)	W1 (psf)	W2 (psf)	L (lb/ft)	h1 (in)	h2 (in)
Dead	0	0	0	0	0	0	8
Live	0	0	0	0	0	0	88
Soil	0	0	0	330	419	61	88
Fluid	0	0	0	0	0	0	8
Wind	0	0	0	0	0	0	8
Seismic	0	0	0	0	0	0	8
Roof	0	0	0	0	0	0	8
Rain	0	0	0	0	0	0	8
Snow	0	0	0	0	0	0	8

Surcharge
point load
AT 2 FT
BEHIND
wall

Controlling Load Cases

Section Forces with Controlling Flexure and Axial Load $-0.6D + H + W$

$x/H = 0.006$ from bottom of wall

$V = 1629$ lb/ft

$M_L = -61052.3$ lb-in./ft

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Page:

Name: Alan Lumpkin
Date: 9-16-09
Chkd: Jeff Barrett

$P = 545.2 \text{ lb/ft at } e_n = 0 \text{ in}$

$M_T = M_L + P e_n = -61052.3 \text{ lb-in/ft}$

Moment Capacity = 68693.3 lb-in/ft (5724.44 lb-ft/ft) at this axial load

Shear Capacity = 4008.54 lb/ft

The wall is adequate for these critical section forces.

Section Forces with Controlling Shearing Force--D + H

$x/H = 0.000$ from bottom of wall

$V = 1629 \text{ lb/ft}$

$M_L = -61052.3 \text{ lb-in/ft}$

$P = 908.7 \text{ lb/ft at } e_n = 0 \text{ in}$

$M_T = M_L + P e_n = -61052.3 \text{ lb-in/ft}$

Moment Capacity = 68647.1 lb-in/ft at this axial load

Shear Capacity = 4008.54 lb/ft

The wall is adequate for these critical section forces.

These were found to be load cases that controlled the design.

The flexural, shear and axial forces shown are those occurring
at the critical section for the case controlled by flexure and
at the critical section for the case controlled by shear.

The following design calculations are for the section with controlling bending moment

Section Design Forces Used

$V = 1629 \text{ lb/ft}$ (Computed from Loads)

$M_L = -61052.3 \text{ lb-in/ft}$ (Computed from Loads)

$P = 545.2 \text{ lb/ft at } e = 0 \text{ in}$ (Computed from Loads)

Computed Design Values

Note: 1/3 stress increase was not used

Effective Width = 16 in.

Web Width = 16 in. on effective width

Allowable Shearing Force = 4009 lb/ft

The wall is adequate in shear

Required $A_s = 0.4276 \text{ in}^2$ each reinforced cell ($0.3207 \text{ in}^2/\text{ft}$) OK

$d = 8.625 \text{ in.}$

$n = 21.48$

$k_{\text{balanced}} = 0.3092$

$j_{\text{balanced}} = 0.8969$

MASONRY

DESIGN SYSTEM FOR CONCRETE AND CLAY MASONRY

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Topic: Retaining Wall
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Name: Alan Lumpkin
Date: 9-16-09
Chkd: Jeff Barrett

$$k = 0.3131$$

$$j = 0.8956$$

$$P_{\max} (\text{Compression}) = 5.996\text{e}+004 \text{ lbs } (4.497\text{e}+004 \text{ lbs/ft}) \text{ OK}$$

$$P_{\max} (\text{Tension}) = 1.44\text{e}+004 \text{ lbs } (1.08\text{e}+004 \text{ lbs/ft}) \text{ OK}$$

The wall has adequate capacity.

Development and Splice Lengths for Longitudinal Reinforcement

$$K = 2.5625 \text{ in.}$$

$$\text{Required Development Length: } l_d = 31.50 \text{ in.}$$

$$\text{Required Lap Splice Length: } = 103.68 \text{ in.}$$

Some codes may require epoxy-coated reinforcement to have longer development and splice lengths.

$$k = 0.3131$$

$$j = 0.8956$$

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Material and Construction Data

12 in. CMU, Full grout, running bond
Wall Weight = 123.9 psf
Type S Masonry cement / Air-entrained PCL Mortar, Course Grout
CMU Density = 115 pcf
 $f_m = 1500$ psi (Specified)
 $E_m = 900f_m = 1350000$ psi

Wall Design Details

Thickness = 11.63 in.
Height = 88 in. (Cantilevered Wall, Effective height = 2H)
 $x = 3$ in.
#7 Bars, $F_y = 60000.0$
Reinforcement Spacing = 16 in. On-Center

Wall Design Section Properties

$A_o = 188$ in.
 $I_o = 2095$ in.
 $S_o = 360.4$ in.
 $R_o = 3.358$ in.

Wall Support: Cantilevered Wall

Specified Load Components

Load	P (lb)	e (in)	W1 (psf)	W2 (psf)	L (lb/ft)	h1 (in)	h2 (in)
Dead	0	0	0	0	0	0	8
Live	0	0	0	0	0	0	88
Soil	0	0	0	330	142	72	88
Fluid	0	0	0	0	0	0	8
Wind	0	0	0	0	0	0	8
Seismic	0	0	0	0	0	0	8
Roof	0	0	0	0	0	0	8
Rain	0	0	0	0	0	0	8
Snow	0	0	0	0	0	0	8

Controlling Load Cases

Section Forces with Controlling Flexure and Axial Load—D + H

$x/H = 0.000$ from bottom of wall

$V = 1652$ lb/ft

$M_L = -67317.3$ lb-in./ft

SUMMABLE
POINT LOAD
AT
2 FT
BEHIND WALL

MASONRY

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Date: 9-16-09

Chkd: Jeff Barrett

$$P = 908.7 \text{ lb/ft at } e_n = 0 \text{ in}$$

$$M_T = M_L + P e_n = -67317.3 \text{ lb-in/ft}$$

Moment Capacity = 68647.1 lb-in/ft (5720.59 lb-ft/ft) at this axial load

Shear Capacity = 4008.54 lb/ft

The wall is adequate for these critical section forces.

Section Forces with Controlling Shearing Force—D + H

$x/H = 0.000$ from bottom of wall

$$V = 1652 \text{ lb/ft}$$

$$M_L = -67317.3 \text{ lb-in/ft}$$

$$P = 908.7 \text{ lb/ft at } e_n = 0 \text{ in}$$

$$M_T = M_L + P e_n = -67317.3 \text{ lb-in/ft}$$

Moment Capacity = 68647.1 lb-in/ft at this axial load

Shear Capacity = 4008.54 lb/ft

The wall is adequate for these critical section forces.

These were found to be load cases that controlled the design.

The flexural, shear and axial forces shown are those occurring at the critical section for the case controlled by flexure and at the critical section for the case controlled by shear.

The following design calculations are for the section with controlling bending moment

Section Design Forces Used

$$V = 1652 \text{ lb/ft (Computed from Loads)}$$

$$M_L = -67317.3 \text{ lb-in/ft (Computed from Loads)}$$

$$P = 908.7 \text{ lb/ft at } e = 0 \text{ in (Computed from Loads)}$$

Computed Design Values

Note: 1/3 stress increase was not used

Effective Width = 16 in.

Web Width = 16 in. on effective width

Allowable Shearing Force = 4009 lb/ft

The wall is adequate in shear

Required $A_s = 0.5661 \text{ in}^2$ each reinforced cell (0.4245 in²/ft) OK

$d = 8.625 \text{ in.}$

$n = 21.48$

$k_{\text{balanced}} = 0.3092$

$j_{\text{balanced}} = 0.8969$

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$$k = 0.3551$$

$$j = 0.8816$$

$$P_{\max} (\text{Compression}) = 5.998\text{e}+004 \text{ lbs } (4.497\text{e}+004 \text{ lbs/ft}) \text{ OK}$$

$$P_{\max} (\text{Tension}) = 1.44\text{e}+004 \text{ lbs } (1.08\text{e}+004 \text{ lbs/ft}) \text{ OK}$$

The wall has adequate capacity.

Development and Splice Lengths for Longitudinal Reinforcement

$$K = 2.5625 \text{ in.}$$

$$\text{Required Development Length: } l_d = 31.50 \text{ in.}$$

$$\text{Required Lap Splice Length: } = 103.68 \text{ in.}$$

Some codes may require epoxy-coated reinforcement to have longer development and splice lengths.

National Concrete Masonry Association
an information series from the national authority on concrete masonry technology

CONCRETE MASONRY CANTILEVER RETAINING WALLS

TEK 15-7B
Structural (2005)

Keywords: allowable stress design, cantilever walls, design example, footings, lateral loads, reinforced concrete masonry, retaining walls, strength design, weep holes

INTRODUCTION

Using concrete masonry in retaining walls, abutments and other structural components designed primarily to resist lateral pressure permits the designer and builder to capitalize on masonry's unique combination of structural and aesthetic features—excellent compressive strength; proven durability; and a wide selection of colors, textures and patterns. The addition of reinforcement to concrete masonry greatly increases the tensile strength and ductility of a wall, providing higher load resistance.

In cantilever retaining walls, the concrete base or footing holds the vertical masonry wall in position and resists overturning and sliding caused by lateral soil loading. The reinforcement is placed vertically in the cores of the masonry units to resist the tensile stresses developed by the lateral earth pressure.

DESIGN

Retaining walls should be designed to safely resist overturning and sliding due to the forces imposed by the retained backfill. The factors of safety against overturning and sliding should be no less than 1.5 (ref. 7). In addition, the bearing pressure under the footing or bottom of the retaining wall should not exceed the allowable soil bearing pressure.

Recommended stem designs for reinforced cantilever retaining walls with no surcharge are contained in Tables 1 and 2 for allowable stress design and strength design, respectively. These design methods are discussed in detail in *Allowable Stress Design of Concrete Masonry*, TEK 14-7A, and *Strength Design of Concrete Masonry*, TEK 14-4A (refs. 5, 6).

Figure 1 illustrates typical cantilever retaining wall detailing requirements.

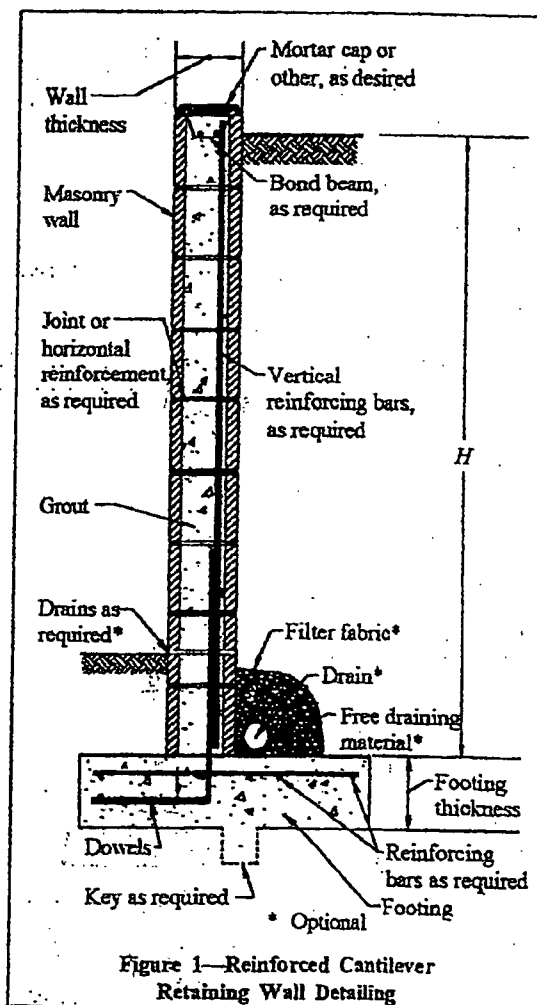


Figure 1—Reinforced Cantilever Retaining Wall Detailing

DESIGN EXAMPLE

The following design example briefly illustrates some of the basic steps used in the allowable stress design of a reinforced concrete masonry cantilever retaining wall.

Example: Design the reinforced concrete masonry cantilever retaining wall shown in Figure 2. Assume level backfill, no surcharge or seismic loading, active earth pressure and masonry laid in running bond. The coefficient of friction between the footing and foundation soil, k_1 , is 0.25, and the allowable soil bearing pressure is 2,000 psf (95.8 kPa) (ref. 7).

a. Design criteria:

Wall thickness = 12 in. (305 mm)

$f'_m = 1,500$ psi (10.3 MPa)

Assumed weights:

Reinforced masonry: 130 pcf (2,082 kg/m³)

(solid grout to increase overturning and sliding resistance)

Reinforced concrete: 150 pcf (2,402 kg/m³)

Required factors of safety (ref. 7)

F.S. (overturning) = 1.5

F.S. (sliding) = 1.5

b. Rankine active earth pressure

$P_a = \frac{1}{2} \gamma (H - t)^2 K_a$

where $K_a = \tan^2 (45^\circ - \phi/2) = \tan^2 (45^\circ - 30^\circ/2)$

= 0.33

$P_a = \frac{1}{2} (120) (9.67)^2 (0.33) = 1,851$ lb/ft (27 kN/m)

Overturning moment

$M = P_a (\text{height}/3)$

$= (1,851 \text{ lb/ft}) (9.67 \text{ ft}/3) = 5,966$ ft-lb/ft (27 kN-m/m)

c. Resisting moment (about toe of footing)

Component weights:

masonry: $(0.97)(8.67 \text{ ft})(130 \text{ pcf}) = 1,093$ lb/ft (16 kN/m)

earth: $(2.69)(8.67 \text{ ft})(120 \text{ pcf}) = 2,799$ lb/ft (41 kN/m)

footing: $(1.0)(5.33 \text{ ft})(150 \text{ pcf}) = 800$ lb/ft (12 kN/m)

	Weight (lb/ft)	x	Arm (ft)	=	Moment (ft-lb/ft)
masonry:	1,093	x	2.67	=	2,918
earth:	2,799	x	3.98	=	11,140
footing:	800	x	2.67	=	2,136
	4,692				16,194

Total resisting moment 16,194 ft-lb/ft

Overturning moment 5,966 ft-lb/ft

10,228 ft-lb/ft (45.5 kN-m/m)

d. Check factors of safety (F.S.)

F.S. (overturning)

= total resisting moment about toe/overturning moment

= 14,670/5,966

= 2.4 > 1.5

O.K.

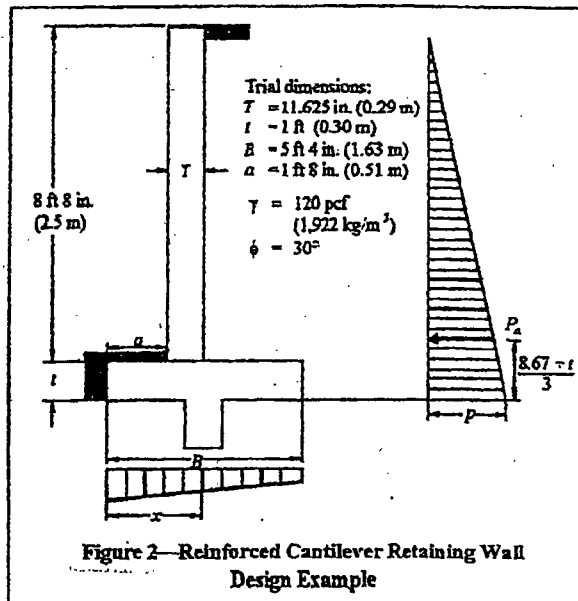


Figure 2—Reinforced Cantilever Retaining Wall Design Example

$$F.S.(\text{sliding}) = \frac{(\sum W)k_1 + P_p}{P_a}$$

$P_p = \frac{1}{2} D$ (soil lateral bearing pressure)

set $D = t = 1.0$ ft (0.30 m)

soil lateral bearing pressure = 150 psf/ft below grade (ref. 7)

$$F.S.(\text{sliding}) = \frac{(4,692 \text{ lb/ft})(0.25) + \frac{1}{2}(1)(150 \text{ psf/ft})}{1,851 \text{ lb/ft}}$$

$$= 1,248/1,851 = 0.67 < 1.5 \quad \text{N.G., need key}$$

e. Pressure on footing

Location of resultant force,

$$x = (10,228 \text{ ft-lb/ft}) / (4,692 \text{ lb/ft})$$

= 2.18 ft (0.6 m) (resultant falls in middle 1/3 of base)

$$e = (5.33 \text{ ft}/2) - 2.18 = 0.48 \text{ ft} (0.15 \text{ m})$$

$$p = \frac{W}{A} \pm \frac{Mc}{I} = \frac{W}{bd} \pm \frac{6We}{bd^2}$$

$$p = \frac{4,692 \text{ lb/ft}}{(1 \text{ ft})(5.33 \text{ ft})} \pm \frac{6(4,692 \text{ lb/ft})(0.48 \text{ ft})}{(1 \text{ ft})(5.33 \text{ ft})^2}$$

$$p = 880 \pm 476$$

= 404 psf (19.3 kPa) and 1,356 psf (64.9 kPa)
< 2,000 psf (95.8 kPa) O.K.

f. Determine size of key

Passive lateral soil resistance = 150 psf/ft of depth and may be increased 150 psf for each additional foot of depth to a maximum of 15 times the designated value (ref. 7). The average soil pressure under the footing is: $\frac{1}{2}(1,356 + 404) = 880$ psf (42.1 kPa).

Equivalent soil depth: $880 \text{ psf}/120 \text{ pcf} = 7.33 \text{ ft} (2.23 \text{ m})$

$$P_p = (150 \text{ psf/ft})(7.33 \text{ ft}) = 1,100 \text{ psf} (52.7 \text{ kPa})$$

For F.S. (sliding) = 1.5, the required total passive soil resistance is: $1.5(1,851 \text{ lb/ft}) = 2,776 \text{ lb/ft}$ (41 kN/m)

The shear key must provide for this value minus the frictional resistance: $2,776 - 1,248 = 1,528 \text{ lb/ft}$ (22 kN/m).

Depth of shear key = $(1,528 \text{ lb/ft}) / (1,100 \text{ psf}) = 1.39 \text{ ft}$ (0.42 m), try 1.33 ft (0.41 m).

At 1.33 ft, lateral resistance =

$(1,100 \text{ psf}) + (150 \text{ psf/ft})(1.33 \text{ ft}) = 1,300 \text{ lb/ft}$ (19 kN/m)

Depth = $(1,528 \text{ lb/ft}) / (1/2(1,100 + 1,300))$

$= 1.27 \text{ ft}$ (0.39 m) < 1.33 ft (0.41 m) O.K.

g. Design of masonry

Tables 1 and 2 can be used to estimate the required

reinforcing steel based on the equivalent fluid weight of soil, wall thickness, and wall height. For this example, the equivalent fluid weight = $(K_a \gamma) = 0.33 \times 120 = 40 \text{ pcf}$ (6.2 kN/m³).

Using allowable stress design (Table 1) and the conservative equivalent fluid weight of soil of 45 pcf (7.1 kN/m³), this wall requires No. 6 bars at 16 in. o.c. (M#19 at 406 mm o.c.). Using strength design (Table 2), this wall requires No. 5 bars at 16 in. o.c. (M#16 at 406 mm o.c.).

h. Design of footing

The design of the reinforced concrete footing and key should conform to American Concrete Institute requirements. For guidance, see ACI Standard 318 (ref. 2) or reinforced concrete design handbooks.

CONSTRUCTION

Materials and construction practices should comply with applicable requirements of *Specification for Masonry Structures*.

Table 1—Allowable Stress Design: Vertical Reinforcement for Cantilever Retaining Walls ^{a,b}				
Wall thickness, in. (mm)	Wall height, ft (m)	Reinforcement size & spacing for equivalent fluid weight of soil, lb/ft ³ /ft (kN/m ³ /m), of:		
		30 (4.7)	45 (7.1)	60 (9.4)
8 (203)	4.0 (1.2)	No. 4 @ 88 in.	No. 4 @ 56 in.	No. 4 @ 40 in.
	4.7 (1.4)	No. 4 @ 48 in.	No. 4 @ 32 in.	No. 4 @ 16 in.
	5.3 (1.6)	No. 4 @ 32 in.	No. 4 @ 16 in.	No. 5 @ 24 in.
	6.0 (1.8)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 7 @ 16 in.
	6.7 (2.0)	No. 4 @ 16 in.	No. 7 @ 16 in.	No. 9 @ 8 in.
10 (254)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 88 in.	No. 4 @ 64 in.
	4.7 (1.4)	No. 4 @ 88 in.	No. 4 @ 48 in.	No. 4 @ 32 in.
	5.3 (1.6)	No. 4 @ 56 in.	No. 4 @ 32 in.	No. 4 @ 16 in.
	6.0 (1.8)	No. 4 @ 32 in.	No. 4 @ 16 in.	No. 5 @ 24 in.
	6.7 (2.0)	No. 4 @ 24 in.	No. 5 @ 16 in.	No. 5 @ 16 in.
12 (305)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 120 in.	No. 4 @ 96 in.
	4.7 (1.4)	No. 4 @ 120 in.	No. 4 @ 72 in.	No. 4 @ 48 in.
	5.3 (1.6)	No. 4 @ 80 in.	No. 4 @ 48 in.	No. 4 @ 32 in.
	6.0 (1.8)	No. 4 @ 48 in.	No. 4 @ 24 in.	No. 4 @ 16 in.
	6.7 (2.0)	No. 4 @ 32 in.	No. 4 @ 16 in.	No. 5 @ 16 in.
	7.3 (2.2)	No. 4 @ 24 in.	No. 5 @ 16 in.	No. 5 @ 16 in.
	8.0 (2.4)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 6 @ 16 in.
	8.7 (2.7)	No. 5 @ 16 in.	No. 6 @ 16 in.	No. 8 @ 16 in.
	9.3 (2.8)	No. 5 @ 16 in.	No. 7 @ 16 in.	No. 8 @ 8 in.

^a The reinforcement listed is designed to resist soil loads only. Other conditions, such as surcharges or seismic loads, also need to be considered where applicable.

^b based on: fully grouted masonry; $f'_m = 1500 \text{ psi}$ (10.3 MPa); $d = 5 \text{ in.}$, 7 in. and 9 in. (127, 178, and 229 mm) for wall thicknesses of 8, 10, and 12 in. (203, 254, and 305 mm), respectively; level backfill to top of wall

The specified reinforcement spacing is greater than six times the wall thickness. Prudent engineering practice dictates that stresses in the unreinforced masonry spanning between the reinforcing bars be designed to meet *Building Code Requirements for Masonry Structures* Section 2.2.3.2 (ref. 1).

Table 2—Strength Design: Vertical Reinforcement for Cantilever Retaining Walls ^{a,b}				
Wall thickness, in. (mm)	Wall height, ft (m)	Reinforcement size & spacing for equivalent fluid weight of soil, lb/ft ³ /ft (kN/m ³ /m), of:		
		30 (4.7)	45 (7.1)	60 (9.4)
8 (203)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 96 in.	No. 4 @ 64 in.
	4.7 (1.4)	No. 4 @ 88 in.	No. 4 @ 56 in.	No. 4 @ 40 in.
	5.3 (1.6)	No. 4 @ 56 in.	No. 4 @ 32 in.	No. 4 @ 24 in.
	6.0 (1.8)	No. 4 @ 32 in.	No. 4 @ 24 in.	No. 4 @ 16 in.
	6.7 (2.0)	No. 4 @ 24 in.	No. 4 @ 16 in.	No. 5 @ 16 in.
10 (254)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 120 in.	No. 4 @ 104 in.
	4.7 (1.4)	No. 4 @ 120 in.	No. 4 @ 88 in.	No. 4 @ 56 in.
	5.3 (1.6)	No. 4 @ 96 in.	No. 4 @ 56 in.	No. 4 @ 40 in.
	6.0 (1.8)	No. 4 @ 56 in.	No. 4 @ 32 in.	No. 4 @ 24 in.
	6.7 (2.0)	No. 4 @ 40 in.	No. 4 @ 24 in.	No. 4 @ 16 in.
	7.3 (2.2)	No. 4 @ 24 in.	No. 4 @ 16 in.	No. 5 @ 16 in.
	8.0 (2.4)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 6 @ 16 in.
12 (305)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 120 in.	No. 4 @ 120 in.
	4.7 (1.4)	No. 4 @ 120 in.	No. 4 @ 120 in.	No. 4 @ 88 in.
	5.3 (1.6)	No. 4 @ 120 in.	No. 4 @ 80 in.	No. 4 @ 56 in.
	6.0 (1.8)	No. 4 @ 88 in.	No. 4 @ 48 in.	No. 4 @ 32 in.
	6.7 (2.0)	No. 4 @ 56 in.	No. 4 @ 32 in.	No. 4 @ 24 in.
	7.3 (2.2)	No. 4 @ 40 in.	No. 4 @ 24 in.	No. 4 @ 16 in.
	8.0 (2.4)	No. 4 @ 24 in.	No. 4 @ 16 in.	No. 5 @ 16 in.
	8.7 (2.7)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 5 @ 16 in.
	9.3 (2.8)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 6 @ 16 in.

^a The reinforcement listed is designed to resist soil loads only. Other conditions, such as surcharges or seismic loads, also need to be considered where applicable.

^b based on: fully grouted masonry; $f'_m = 1500 \text{ psi}$ (10.3 MPa); $d = 5 \text{ in.}$, 7 in. and 9 in. (127, 178, and 229 mm) for wall thicknesses of 8, 10, and 12 in. (203, 254, and 305 mm), respectively; level backfill to top of wall

nures (ref. 4), or applicable local codes.

Footings should be placed on firm undisturbed soil, or on adequately compacted fill material. In areas exposed to freezing temperatures, the base of the footing should be placed below the frost line. Backfilling against retaining walls should not be permitted until the masonry has achieved sufficient strength or the wall has been adequately braced. During backfilling, heavy equipment should not approach closer to the top of the wall than a distance equal to the height of the wall. Ideally, backfill should be placed in 12 to 24 in. (305 to 610 mm) lifts, with each lift being compacted by a hand tamper. During construction, the soil and drainage layer, if provided, also needs to be protected from saturation and erosion.

Provisions must be made to prevent the accumulation of water behind the face of the wall and to reduce the possible effects of frost action. Where heavy prolonged rains are anticipated, a continuous longitudinal drain along the back of the wall may be used in addition to through-wall drains.

Climate, soil conditions, exposure and type of construction determine the need for waterproofing the back face of retaining walls. Waterproofing should be considered: in areas subject to severe frost action; in areas of heavy rainfall; and when the backfill material is relatively impermeable. The use of integral and post-applied water repellents is also recommended. The top of masonry retaining walls should be capped or otherwise protected to prevent water entry.

REFERENCES

1. *Building Code Requirements for Masonry Structures*, ACI 530-05/ASCE 5-05/TMS 402-05. Reported by the Masonry Standards Joint Committee, 2005.
2. *Building Code Requirements for Structural Concrete and Commentary*, ACI 318-02. Detroit, MI: American Concrete Institute, 2002.
3. Das, B. M. *Principles of Foundation Engineering*. Boston, MA: PWS Publishers, 1984.
4. *Specification for Masonry Structures*, ACI 530.1-05/ASCE 6-05/TMS 602-05. Reported by the Masonry Standards Joint Committee, 2005.
5. *Allowable Stress Design of Concrete Masonry*, TEK 14-7A. National Concrete Masonry Association, 2004.
6. *Strength Design of Concrete Masonry*, TEK 14-4A. National Concrete Masonry Association, 2002.
7. 2003 *International Building Code*. International Code Council, 2003.

NOTATIONS

- a length of footing toe, in. (mm)
 B width of footing, ft (m)
 d distance from extreme compression fiber to centroid of tension reinforcement, in. (mm)
 e eccentricity, in. (mm)
F.S. factor of safety
 f_m' specified compressive strength of masonry, psi (MPa)
 H total height of backfill, ft (m)
 I moment of inertia, ft⁴ (m⁴)
 K_a active earth pressure coefficient
 k_f coefficient of friction between footing and foundation soil
 M maximum moment in section under consideration, ft-lb/ft (kNm/m)
 P_a resultant lateral load due to soil, lb/ft (kN/m)
 P_p passive earth pressure, lb/ft (N/m)
 p pressure on footing, psf (MPa)
 T thickness of wall, in. (mm)
 t thickness of footing, in. (mm)
 W vertical load, lb/ft (N/m)
 x location of resultant force, ft (m)
 γ density of soil, pcf (kg/m³)
 ϕ angle of internal friction of soil, degrees

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EXHIBIT O

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Terry and Suzette Patton,

Plaintiffs,

vs.

American Lifestyle Homes, LLC, Rufus G.
Revis d/b/a American Lifestyle Homes, and
Anderson Brothers Concrete, LLC, Marcus
Clinkscates aka Marcus Anderson d/b/a
Anderson Brothers Concrete, LLC, and
Scott Brown,

Defendants.

Civil Action No.: 2010-CP-04-04389

AMENDED SUMMONS

(Jury Trial Demanded)

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY summoned and required to answer the Complaint in this action, a copy of which is served upon you, and to have a copy of your Answer served upon counsel for Plaintiffs at 200 E. Main Street, Basley, South Carolina 29640, within thirty (30) days after service thereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, judgment of default will be rendered against you for the relief demanded in the Complaint, and for other and further such relief as the Court may deem just and proper;

Upstate Law Group, LLC

Candy M. Kern-Fuller

200 E. Main Street

Basley, South Carolina 29640

864.855.3114 telephone

864.855.3446 facsimile

candy@upstatelawgroup.com

Basley, South Carolina

January 31st, 2011.

TRUE COPY

FEB - 1 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
) TENTH JUDICIAL CIRCUIT
 COUNTY OF ANDERSON)

Terry and Suzette Patton,) Civil Action No.: 2010-CP-04-04389
)

Plaintiffs,)

vs.)

AMENDED COMPLAINT

American Lifestyle Homes, LLC, Rufus G.)
 Revis d/b/a American Lifestyle Homes, and)
 Anderson Brothers Concrete, LLC, Marcus)
 Clinkscales aka Marcus Anderson d/b/a)
 Anderson Brothers Concrete, LLC, and)
 Scott Brown,)

Defendants.)

(Jury Trial Demanded)

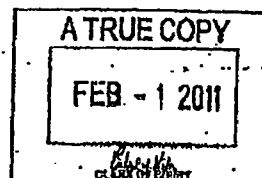
COME NOW THE PLAINTIFFS, Terry and Suzette Patton, by and through their undersigned counsel and pursuant to the South Carolina Rules of Civil Procedure, hereby complaining of the Defendants and would herein allege as follows:

PARTIES AND JURISDICTION

1. Plaintiffs, Terry and Suzette Patton, are residents of Anderson County, State of South Carolina.

2. Defendant, American Lifestyle Homes, LLC, is a South Carolina limited liability corporation with its principle place of business in Anderson County and regularly conducts business in Anderson County, South Carolina. Defendant, American Lifestyle Homes, LLC, worked as the general contractor in the project at issue in this Complaint.

3. Defendant, Rufus G. Revis d/b/a American Lifestyle Homes, is a resident of Anderson County, South Carolina, and is the owner of American Lifestyle Homes, LLC, and/or does business as American Lifestyle Homes, and regularly conducts business in Anderson



County, South Carolina. Defendant, Rufus G. Revis d/b/a American Lifestyle Homes, worked as the general contractor in the project at issue in this Complaint.

4. Defendant, Anderson Brothers Concrete, LLC, is a South Carolina limited liability corporation with its principal place of business in Anderson County and regularly conducts business in Anderson County, South Carolina. Defendant, Anderson Brothers Concrete, LLC, was a subcontractor on the project at issue in this Complaint.

5. Defendant, Marcus Chinkseales aka Marcus Anderson d/b/a Anderson Brothers Concrete is a resident of Anderson County, South Carolina, and is the owner of Anderson Brothers Concrete, LLC, and/or does business as Anderson Brothers Concrete, and regularly conducts business in Anderson County, South Carolina. Defendant, Marcus Chinkseales aka Marcus Anderson d/b/a Anderson Brothers Concrete, was a subcontractor on the project at issue in this Complaint.

6. Defendant, Scott Brown, is a resident of Anderson County and regularly conducts business in Anderson County. Defendant, Scott Brown, was a subcontractor on the project at issue in this Complaint.

7. Venue in this case is proper as one or more of the Defendants is a resident of Anderson County and the project at issue is located in Anderson County.

8. Jurisdiction is proper over the parties and this cause of action in this honorable Court.

FACTUAL BACKGROUND

9. On or about November of 2009, Plaintiffs and Defendants Rufus Revis and American Lifestyle Homes, LLC, entered into a contract for the construction of a garage addition

with a retaining wall at their property located at 205 Buckingham Drive, Darley, South Carolina 29640.

10. At all times throughout the project at issue, Defendants Rufus Revis and American Lifestyle Homes, LLC, acted as the general contractor and/or subcontractors for various portions of the project at issue.

11. Defendants Rufus Revis and American Lifestyle Homes, LLC, hired Defendants Marcus Clarkscales aka Marcus Anderson, Anderson Brothers Concrete, LLC, and Scott Brown to act as additional subcontractors on the project to excavate the land, construct the retaining wall, pour concrete footers, place fill dirt, and perform all necessary work for the construction of the garage addition and retaining wall at issue, as well as the driveway associated with the instant project.

12. On or about May 21, 2008, the project was substantially completed, although a punch list of items remained unfinished from original construction.

13. Shortly thereafter, Plaintiffs began experiencing cracks in the foundation and retaining walls, cracks in the concrete driveway, and other construction-related defects.

14. Defendants Rufus Revis and American Lifestyle Homes, LLC, continuously represented to Plaintiffs that all construction-related defects would be remedied, but failed to correct the deficiencies.

15. On or about September 9, 2009, Plaintiffs retained the services of a licensed engineer, who performed a site visit and analysis of the project at issue. A copy of the Report of Professional Engineering Associates (Alan M. Lumsden, PE) is attached as Exhibit A to this Complaint. Mr. Lumsden detailed numerous construction deficiencies and violations of building codes, standards of construction practice, and common practice in the construction

industry. Mr. Lumpkin's findings are hereby incorporated by reference as specific instances of such violations.

FOR A FIRST CAUSE OF ACTION
(NEGLIGENCE/NEGLIGENCE PER SE)

16. Plaintiffs re-allege the allegations contained in foregoing paragraphs of this Complaint and incorporate the same herein as if repeated verbatim.

17. That at all times material hereto, the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, by and through their agents and/or employees undertook and were under a duty to design, construct and/or repair the subject residence and to provide materials and services in accordance with applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards.

18. That the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, were negligent, grossly negligent, careless, reckless, willful and wanton in developing, designing, constructing, repairing, supervising, and inspecting the subject residence and in failing to construct and/or repair the subject residence in accordance with the applicable building codes and in conformance with accepted design, construction and industry standards, all of which have directly and proximately caused defects and deficiencies in and to the residence, which will need to be corrected, repaired, remediated and/or replaced. Such negligence, gross negligence, careless, reckless, willful and wantonness, includes but not limited to the following particulars:

- a. in failing to use due care in the design, construction and/or repair of the subject project;
- b. in failing to adequately supervise the construction, repair and building of the subject project;
- c. in failing to hire, supervise and train competent subcontractors, specialty subcontractors and employees;
- d. in building and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
- e. in failing to properly construct the retaining walls, footers, and driveway and in building and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices; and
- f. other deficiencies or failures will be proven at trial.

19. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness and wantonness of the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, the Plaintiffs have suffered actual, direct, incidental, consequential, and special damages including but not limited to the expenses associated with having to hire experts to investigate the causes of the defects of the grading, building and construction as set forth above and they have or will have to spend substantial sums of money in order to renovate, correct, repair, remediate and restore their residence to make it safe and habitable. Upon information and belief, these adverse events have occurred each and every year since construction, and constitute "occurrences" and compensable damage; further, the negligence of each defendant herein has resulted in damage to the work of the other subcontractors and trades and in damage to the instant project, the Plaintiffs' property, and the Plaintiffs' use and enjoyment of their residence — all of which will have and will require the Plaintiffs to expend great amounts of money to correct and to repair their residence as well as to suffer the loss, use and enjoyment of their property as well as loss of valuation and depreciation by virtue of the defects and damages aforesaid.

FOR A SECOND CAUSE OF ACTION**(Breach of Contract and Breach of Contract Accompanied by Fraudulent Act)**

20. Each and every allegation contained in Paragraphs 1 through 19 above are incorporated herein by express reference as though fully set forth.

21. That at all times herein, the Plaintiffs individually or by and through their agent, entered into a contract with the Defendants, American Lifestyle Homes, LLC, and Rufus G. Revis d/b/a American Lifestyle Homes, for the construction of the garage addition and retaining wall, located at 205 Buckingham Drive, Easley, South Carolina 29640.

22. That all relevant times herein, the Defendants, American Lifestyle Homes, LLC, and Rufus G. Revis d/b/a American Lifestyle Homes, by and through their agents, servants and employees had an obligation and duty to construct the Plaintiffs' garage and retaining wall in accordance with the terms and conditions of the contract, applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards.

23. That the Defendants, American Lifestyle Homes, LLC, and Rufus G. Revis d/b/a American Lifestyle Homes, breached the contract with the Plaintiffs failing to construct the Plaintiffs' garage and retaining wall in accordance with the terms and conditions of the contract, applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence which will need to be or have been corrected, repaired and/or replaced and are in breach of the aforesaid contract. Such breach includes but is not limited to the following particulars, to wit:

- a. in failing to use due care in the design, construction and/or repair of the subject residence;
 - b. in failing to adequately supervise the construction, repair and building of the subject residence;
 - c. in failing to hire, supervise and train competent subcontractors, specialty subcontractors and employees;
 - d. in building and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
 - e. in failing to properly construct the retaining walls, footers, and driveway and in building and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices; and
7. other deficiencies or failures will be proven at trial.

24. In addition to wrongfully breaching the contract, Defendants American Lifestyle Homes, LLC, and Rufus G. Revis d/b/a American Lifestyle Homes, engaged in separate and distinct fraudulent acts accompanying the breach of contract. Specifically, these Defendants made numerous and repeated assurances that all defects at the subject project would be remedied, but have failed to do so.

25. As a direct and proximate result of the foregoing acts of breach of contract, Plaintiffs have been damaged in such an amount as may be determined by the trier of fact, as well as any other damages as may be presented to the jury as may be revealed during the course of discovery in this matter and for punitive damages for the breach of contract accompanied by fraudulent act.

FOR A THIRD CAUSE OF ACTION

(BREACH OF WARRANTY OF HABITABILITY, BREACH OF WARRANTY AGAINST LATENT DEFECTS, BREACH OF WARRANTY OF WORKMANLIKE SERVICES, BREACH OF WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND BREACH OF WARRANTY OF MERCHANTABILITY AND SERVICEABILITY)

26. Plaintiffs re-allege the allegations contained in Paragraphs 1 through 25 of this Complaint and incorporates the same herein as if repeated verbatim.

27. The Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, implicitly and/or expressly warranted that subject property would be habitable and fit for its intended use and that such design, construction, repair, and building of the residence would be in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, accepted construction industry standards applicable thereto and would be free from latent defects and fit for the particular purpose for which work was performed.

28. That the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, breached said warranties by designing, building, constructing and repairing the subject project in such a manner as to be in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices.

29. As a direct and proximate result of Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscales aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to the expenses associated with having to hire experts to investigate the causes of the defects of the building and construction as set forth above and he has or will have to spend substantial sums of money in order to renovate, correct, repair, remediate and restore their residence to make it safe and habitable - all of which will have and will require the Plaintiffs to expend great amounts of money to correct and to repair their residence as well as to suffer the

loss, use and enjoyment of their property as well as loss of valuation and depreciation by virtue of the defects and damages aforesaid.

FOR A FOURTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES)

30. The Plaintiffs re-alleges the allegations contained in Paragraphs 1 through 29 of this Complaint and incorporates the same herein as if repeated verbatim.

31. The Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscates aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, are "persons" within the meaning of South Carolina Code §39-5-10(a) and by their actions in repairing, building, and constructing, the subject project are engaged in commerce within the meaning of South Carolina Code § 39-5-10(b).

32. The Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscates aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, by their action(s) described hereinabove constitute unfair and deceptive practice within the meaning of South Carolina Code § 39-5-20(a) and such action(s) are capable of repetition and upon information and belief have been repeated.

33. That the conduct of the Defendants, American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and Anderson Brothers Concrete, LLC, Marcus Clinkscates aka Marcus Anderson d/b/a Anderson Brothers Concrete, LLC, and Scott Brown, affects the public interest of the people in South Carolina and the Defendants knew or should have known that their conduct violated the South Carolina Unfair Trade Practices Act.

34. As a direct foreseeable and proximate result of the Defendants' unfair and deceptive practices, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to the expenses associated with having to hire experts to investigate the causes of the defects of the building and construction as set forth above and he has or will have to spend substantial sums of money in order to renovate, correct, repair, remediate and restore their residence to make it safe and habitable -- all of which will have and will require the Plaintiffs to expend great amounts of money to correct and to repair their residence as well as to suffer the loss, use and enjoyment of their property as well as loss of valuation and depreciation by virtue of the defects and damages aforesaid.

WHEREFORE, Plaintiffs pray for a judgment against the Defendants, jointly and severally in a reasonable amount of actual, punitive, and treble damages to be determined by a jury; for attorneys' fees and the costs of this action; for prejudgment or post-judgment interest on Plaintiffs' damages; and for such other and further relief as this Court may deem just and proper.

Upstate Law Group, LLC

Candy M. Kern-Fuller, Esq.
Candy M. Kern-Fuller, Esq.
200 E. Main Street
Easley, South Carolina 29640
864.855.3114 telephone
864.855.3446 facsimile
candy@upstatelawgroup.com

Easley, South Carolina

January 31st, 2011.

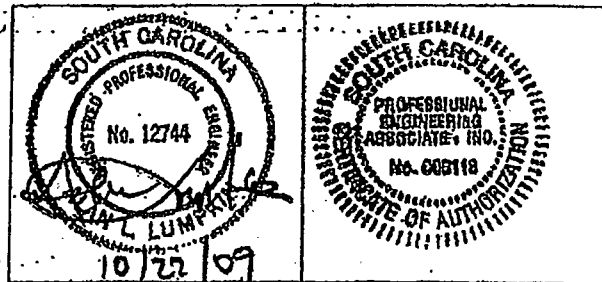
Exhibit A



**STRUCTURAL OBSERVATIONS
FOR
TERRY AND SUZETTE PATTON
EASLEY, SOUTH CAROLINA**

PE Project 2009-120
PROFESSIONAL ENGINEERING ASSOCIATES, INC
PO BOX 8836
GREENVILLE, SC 29604

October 27, 2009



Terry and Suzette Patton: Structural Observation
205 Buckingham Rd. Easley SC

October 27, 2009

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Terry and Suzette Patton: Structural Observation
205 Buckingham Rd. Easley SC

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INTRODUCTION:

On September 9, 2009 Professional Engineering Associates, INC., (PEA) visited the Patton home at 205 Buckingham Road in Easley, South Carolina. The purpose of this visit was to provide a professional opinion concerning retaining wall cracking and movement along with slab cracking in a new garage addition and driveway recently completed.

The Pattons indicated that they are noticing significant retaining wall movement, slab cracking in the new driveway and cracking in the slab on grade for the new garage structure.

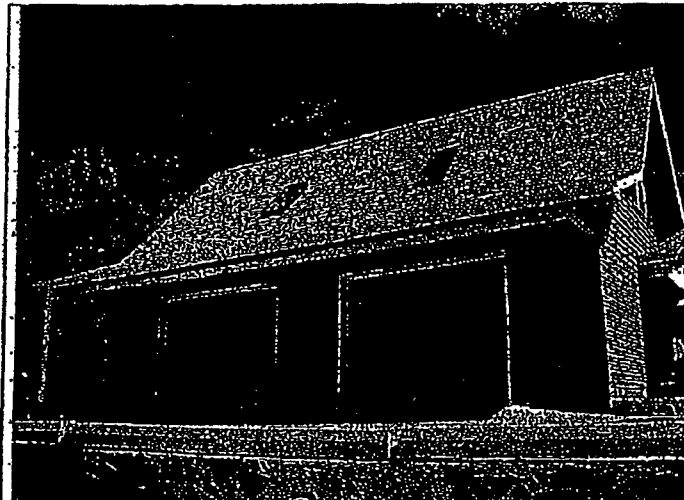
Present at this meeting were Terry and Suzette Patton, Rufus Revis (builder) and Alan L. Lumpkin, P.E. for PEA.

A follow up meeting at the offices of PEA took place on September 21, 2009 to discuss the preliminary findings of the analytical evaluation

PROJECT DESCRIPTION:

The new garage addition is a new 35'-0" x 24'-0" (+/-) x 9'-0" high structure with a gable roof. This structure has a high gable with an 8:1 pitch to accommodate a room at a future loft level. A new driveway was constructed to access the new garage.

The property sloped away from the existing home and required that retaining walls be built to provide structural support for the new fill. The deepest fill area is approximately 7'-4" at the end of the new driveway section.



New garage addition.

Figure 1

Terry and Suzette Patton: Structural Observation
105 Buckingham Rd, Easley SC

October 27, 2009

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SITE OBSERVATIONS:

An initial walk-thru was completed and included observation of the new driveway, new garage structure and all retaining walls.

Driveway Slab:

1. The driveway slab near the end of the construction has a 6'-8" diagonal crack from the corner of the intersection of the rear wall and the driveway wall and showed vertical displacement of the slab on fill approximately $\frac{1}{4}$ " to $\frac{5}{8}$ " in translational movement.
2. Additional stress cracking from exterior wall movement was noted in the same location.
3. Also, shrinkage cracks were noted at the Garage door openings where no control joint had been cut.

Garage Slab:

1. Two large cracks were located inside the garage area.
2. Each crack was approximately 12 feet long and both had vertical displacement translation.
3. The crack on the left side of the garage originated at the rear left corner of the garage and propagated towards the center of the left side car bay. There was an approximate $\frac{1}{8}$ " vertical translation at this joint.
4. The crack on the right side of the garage originated at the front corner of the right car bay and propagated towards the center of the right car bay. There was an approximate $\frac{3}{8}$ " to $\frac{1}{2}$ " vertical translation at this joint.

Retaining Walls:

1. The driveway was supported on the left side by an increasing height retaining wall. It is approximately 2 feet tall at the beginning and 7'-4" at the end.
2. The retaining wall construction is 8" CMU and may have some 12" CMU in the lower courses.
3. There is a horizontal crack running approximately 8 inches from the top of the driveway slab and is present along the final half of the driveway to the end.
4. Vertical cracks are present in the driveway retaining wall approximately 2'-0" from the end of the wall. This crack shows a minimum of $\frac{3}{8}$ " translation away from the driveway or fill side.
5. The rear wall that is approximately 6'-8" to 7'-4" tall has a vertical crack that is open near the front of the garage. This crack has a $\frac{3}{8}$ " translation away from the fill side as well.
6. Floor slabs were not tied into retaining walls so no basement wall is present but it is a true cantilevered wall system.

Terry and Suzette Patton: Structural Observation
205 Buckingham Rd, Easley SC

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Cracking slab on grade
at garage interior left
side.

Figure 2



Cracking slab on grade
at garage interior right
side.

Figure 3

Terry and Suzette Patton: Structural Observation
205 Buckingham Rd. Easley SC

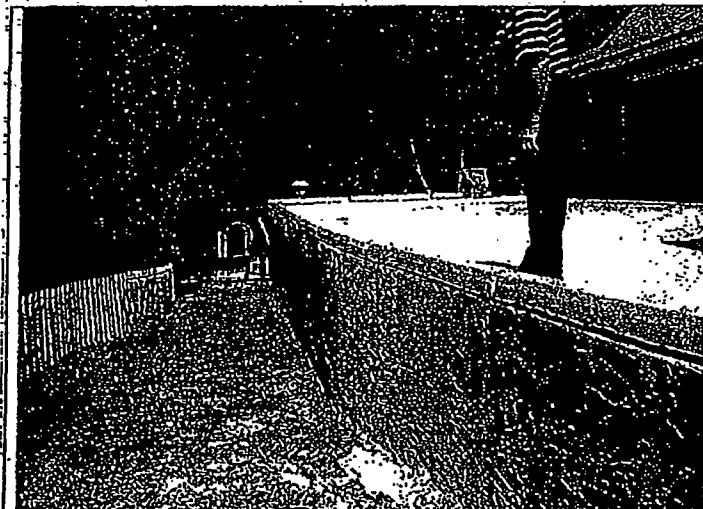
October 27, 2009

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Shrinkage cracking at
center of garage.

Figure 4



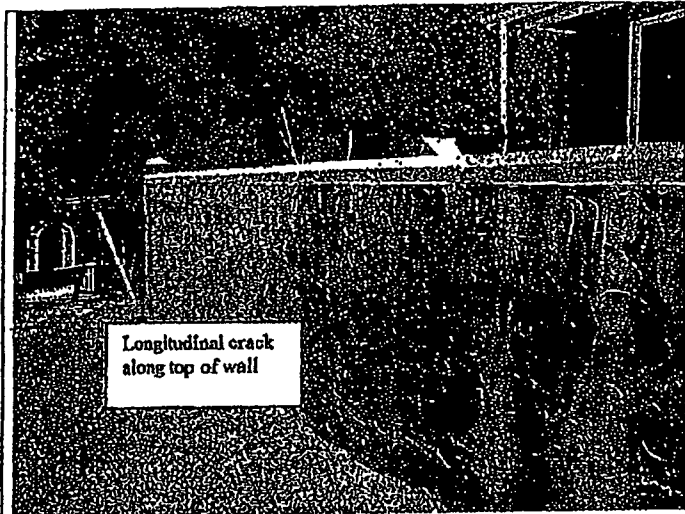
Retaining wall at the
driveway.

Figure 5

Terry and Suzette Patton; Structural Observation
205 Buckingham Rd. Easley SC

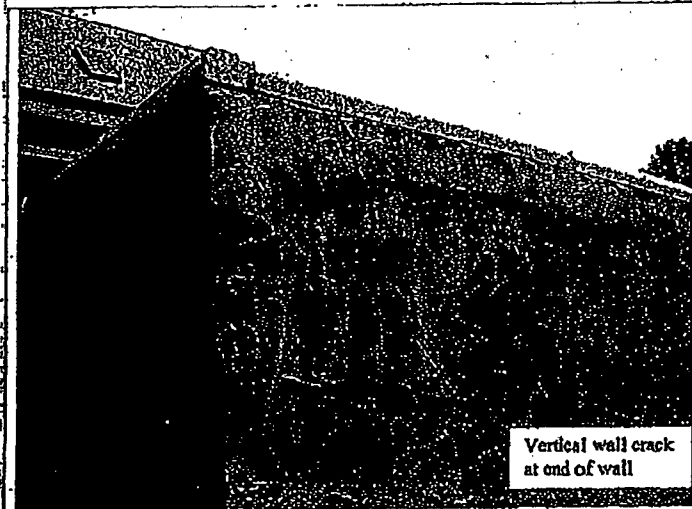
October 27, 2009

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Horizontal crack at top
of the retaining wall.

Figure 6



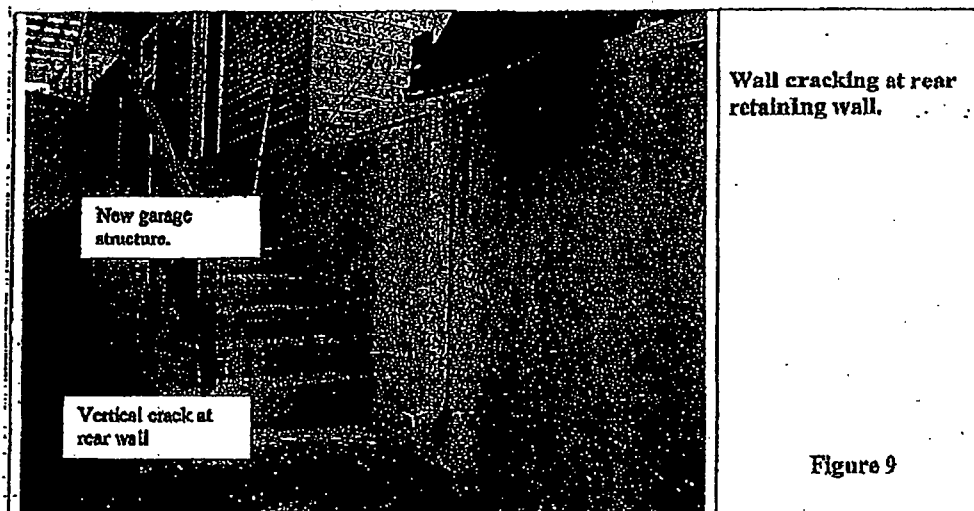
Wall cracking at the
intersection of the
driveway and rear
retaining walls.

Figure 7

Terry and Suzette Patton: Structural Observation
205 Buckingham Rd. Easley SC

October 27, 2009

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Terry and Suzette Patton: Structural Observation
205 Buckingham Rd. Easley SC

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HISTORICAL DATA:

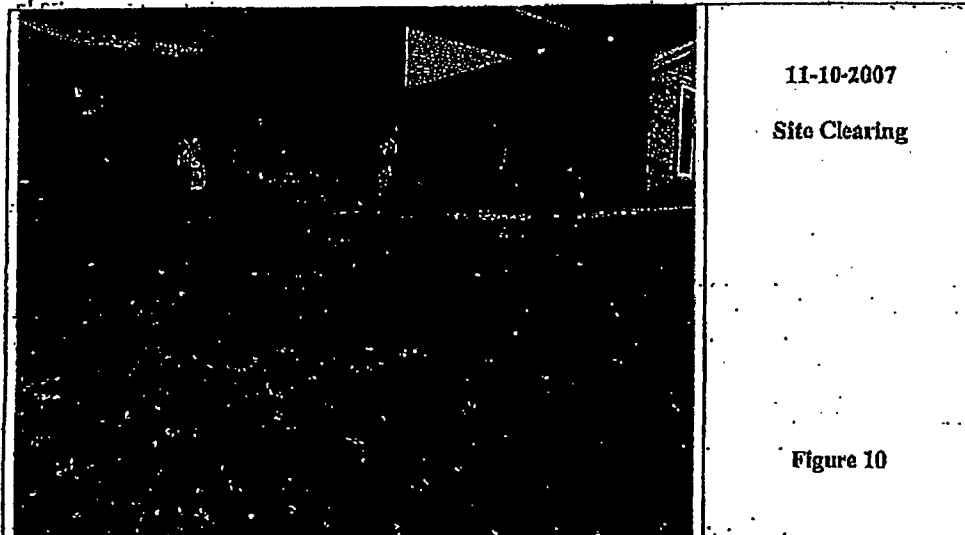
This project is fortunate that we have some eyewitness account of the construction and photographic documentation during various periods of construction. The following is a basic timeline:

- | | |
|-----------------------------|------------|
| 1. Site Cleanup | 11/10/2007 |
| 2. Foundations dug | 11/11/2007 |
| 3. Retaining walls in place | 11/24/2007 |
| 4. Partial wall collapse | 12/05/2007 |
| 5. Structure Framing begun | 12/20/2007 |

Eyewitness accounts provided by the Pattons indicated that a debris pile was left inside of the fill area. This debris pile contained a wood pallet, construction debris, roots, CMU block pieces and other construction materials. Also, very little steel reinforcing was identified as being used in the walls. Some reinforcing was used in the footings per the Pattons.

Near the date of 12/20/2005 a partial wall collapse was noticed by the owner and required that the collapsed wall section be re-built. Some reinforcing was thought to have been added for this rework effort.

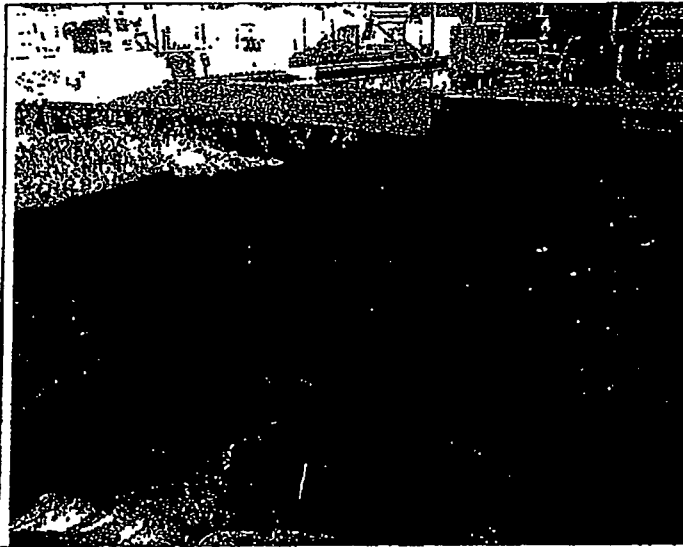
See the attached photos provided by the Pattons during the project construction.



Terry and Suzette Patton: Structural Observation
205 Buckingham Rd. Easley SC

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11-11-2007

Foundations Dug

Figure 11



11-24-2007

Retaining walls and
foundation walls in
place.

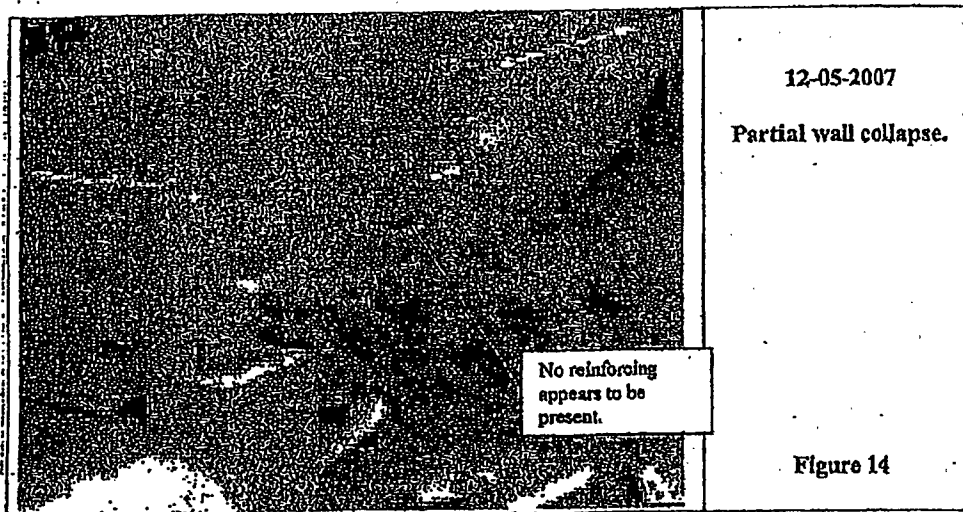
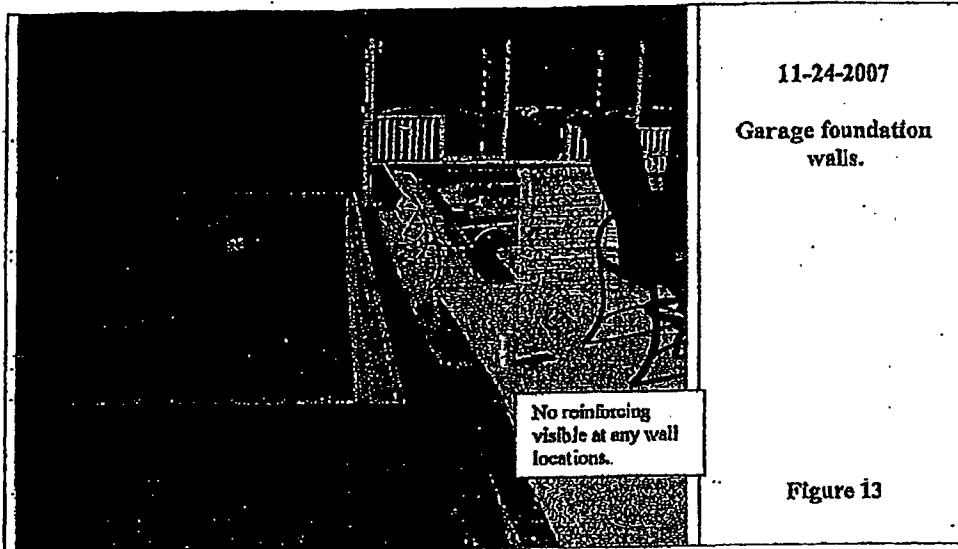
Note large debris pile at
driveway area.

Figure 12

Terry and Suzette Patton: Structural Observation
205 Buckingham Rd. Easley SC

October 27, 2009

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Terry and Suzette Patton: Structural Observation
205 Buckingham Rd. Easley SC

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12-17-2007

Slab poured.

Figure 10



12-20-2007.

Framing begun.

Figure 10

Terry and Suzette Patton: Structural Observation
205 Buckingham Rd. Easley SC

October 27, 2009

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ANALYTICAL EVALUATION:

Retaining Walls:

Based on the field observation together with construction photographs it is apparent that the exterior CMU wall as constructed as a true retaining wall system. Calculations were performed for the CMU walls using Masonry Design System by the National Concrete Masonry Association (NCMA) and by NCMA TEK notes for "Concrete Masonry Cantilever Retaining Walls".

It should be noted that a 200 psf (+/-) surcharge load was used to design the wall due to the presence of parked vehicles or stored materials that could be present during and after construction. This is typically accomplished by adding 2'-0" to the actual height of the wall. This follows the Department of Transportation method of analysis.

The pertinent design data is as follows:

1. Wall height = 7'-4" highest location + 2'-0" for surcharge = 9'-4" design height
2. $f_m = 1500$ psi with fully grouted walls
3. $f_c = 3000$ psi for concrete foundation
4. $f_s = 20,000$ and 24,000 psi
5. Equivalent Fluid Weight = 45 pcf

Both the NCMA design program and the NCMA TEK notes provided designs requiring #7 @ 16 inches on center for a 12" CMU wall at a 7'-4" constructed height for Allowable Stress Design. The reinforcing location is 3" from the interior or fill side of the wall. There are footing dowels required to match the vertical reinforcing steel. The CMU wall is also sold grouted.

The footing width at this wall height is 6'-2" wide with #6 @ 21" c/c top bars.

Actual wall construction does not appear to meet the necessary design requirements for a cantilevered retaining wall with a surcharge. No vertical reinforcing appears to be present in the construction documentation photographs. Partial collapse of the wall in or around 12/05/2007 seems to validate the lack of reinforcing steel and proper construction methods for this type wall.

Footing sizes were discussed with the owner and no definitive information was provided. It was thought that the footing width was approximately 2'-0" to 3'-0" wide with some reinforcing present. This footing size would be expected for a basement type wall but not for a cantilevered retaining wall application.

See attached computer runs and NCMA TEK notes of current wall design.

Terry and Suzette Patton: Structural Observation
205 Buckingham Rd. Easley SC

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Slabs on Grade:

The excessive cracking in the slabs on grade both in the driveway and interior to the actual garage structure indicate that poor soil compaction was achieved. In the case of the driveway area, the consolidation may very well be due in part to the presence of the debris pile that may have been left in place during the fill operation.

Presently, no structural distress appears to have been observed in the garage superstructure but an additional review of this wood structure may need to be taken to verify settlement or movement. This can be accomplished using a surveyor such that all corners of the building can be measured and compared to check relative movements.

FINAL CONCLUSIONS:

The current retaining wall system at the Patton residence was not properly designed as required by the 2006 International Residential Code concerning foundation walls. Chapter 4 in this document requires that walls with unbalanced fill greater than 4'-0" with no lateral support at the top of the wall must be engineered for proper performance. See Section R404.1.3.

Prescriptive wall designs for BASEMENT walls are given if the top of the wall is restrained or tied into the concrete slab. However, it appears no such effort was made to provide a basement wall system.

A previous wall collapse is evidence to the fact of improper design and construction.

Some destructive demolition is required in order to validate all of the assumptions made in this report or to validate what appears to be portrayed in the construction photographs.

The following is an action list to be performed by the Owner/Builder to rectify the current construction problems:

1. Remove concrete and excavate at the location of the proposed debris pile and remove debris pile if present.
2. Excavation is required to expose the exterior retaining walls so that reinforcing can be identified if present by breaking open CMU cells.
3. Also, excavate such that the retaining wall footing sizes can be verified.
4. After investigative work determine if the wall can be repaired using new or additional reinforcing including slab ties if a basement scenario can be utilized.
5. If a cantilevered wall system is used, foundation expansion will be required.
6. The existing wall may need to be removed and a new wall constructed if the old cannot be repaired or if the contractor deems a new wall less expensive.
7. Structural grade fill shall be used and placed in lifts to secure adequate compaction. A Geotechnical engineering firm should be engaged to test the soil compaction.

Terry and Suzette Patton: Structural Observation
205 Buckingham Rd. Easley SC

October 27, 2009

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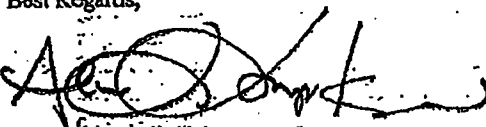
8. The Geotechnical Engineer shall also be used to determine the compaction at the slab on grade at the interior of the garage to determine what remediation measures may be required.
9. The Geotechnical Engineer should also validate the exterior building wall footing compaction to determine if any settlement has occurred or may occur in the future based on previous construction.
10. Possible remediation solutions for the garage slab on grade and supporting wall foundations may include slab/soil removal and replacement with proper compaction, soil injection with grout or epoxy foam to densify the soil medium and increase bearing pressure or helical piers.

Finalization of the corrective action can only take place after significant demolition and investigative work has been completed. At that time, this office will provide an appropriate cost effective solution to the retaining walls and slabs on grade problems.

Please contact me with any questions or comments at 864-242-4373 x133.

Thank you for using Professional Engineering Associates, Inc.

Best Regards,


Alan L. Lumpkin, P.E.
Principal/ Vice-President
SC #12744

Attachments: NCMA Computer Output
NCMA TBK Notes

Please call me at 864-242-4373 x133.

Thank you for your time and attention.

Respectfully,

Alan L. Lumpkin, P.E.
Principal/ Vice-President
SC #12744

MASONRY**DESIGN SYSTEM FOR CONCRETE AND CLAY MASONRY**The National Concrete Masonry Association
Western States Clay Product AssociationBrick Industry Association
International Code Council

Version 4.0 (Release 4.0.2)

Proj: 206 Buckingham
Topic: Retaining Wall
Page:

Name: Alan Lumpkin
Date: 9-18-09
Chkd: Jeff Barrett

Design of a Reinforced Masonry Wall with Out-of-Plane Loads
Using the 2006 IBC ASD Design Code

Material and Construction Data

12 in. CMU, Full grout, running bond
Wall Weight = 123.9 psf
Type S Masonry cement / Air-entrained PCL Mortar, Coarse Grout
CMU Density = 116 pcf
 $f_m = 1500$ psi (Specified)
 $E_m = 900f_m = 1350000$ psi

Wall Design Details

Thickness = 11.63 in.
Height = 88 in. (Cantilevered Wall, Effective height = $2H$)
 $x = 3$ in.
#7 Bars, $F_y = 60000.0$
Reinforcement Spacing = 16 in. On-Center

Wall Design Section Properties

$P_o = 186$ in.

$I_o = 2095$ in.

$S_o = 380.4$ in.

$R_o = 3358$ in.

Wall Support: Cantilevered Wall**Specified Load Components**

Load	P (lb)	e (in)	W1 (psf)	W2 (psf)	L (lb/ft)	H1 (in)	H2 (in)
Dead	0	0	0	0	0	0	8
Live	0	0	0	0	0	0	88
Soil	0	0	0	330	388	63	88
Fluid	0	0	0	0	0	0	8
Wind	0	0	0	0	0	0	8
Seismic	0	0	0	0	0	0	8
Roof	0	0	0	0	0	0	8
Rain	0	0	0	0	0	0	8
Snow	0	0	0	0	0	0	8

Sunshine Point
Load
3PS
From
wall face

Controlling Load Cases

Section Forces with Controlling Flexure and Axial Load $\sim 0.6D + H + W$

$W/H = 0.000$ from bottom of wall

$V = 1596$ lb/ft

$M_L = 55951.3$ lb-in./ft

MASONRY**DESIGN SYSTEM FOR CONCRETE AND CLAY MASONRY**The National Concrete Masonry Association Brick Industry Association
Western States Clay Product Association International Code Council

Version 4.0 (Release 4.0.2)

Proj: 206 Buckingham
Topic: Retaining Wall
Page:

Name: Alan Lumpkin
Date: 9-18-09
Chkd: Jeff Barrett

$P = 545.2 \text{ lb/ft at } e_n = 0 \text{ in}$
 $M_T = M_L + P e_n = -55951.3 \text{ lb-in/ft}$
 Moment Capacity = 68693.3 lb-in/ft (5724.44 lb-ft/ft) at this axial load
 Shear Capacity = 4008.54 lb/ft

The wall is adequate for these critical section forces.

Section Forces with Controlling Shearing Force—D + H

$x/H = 0.000$ from bottom of wall
 $V = 1596 \text{ lb/ft}$
 $M_L = -55951.3 \text{ lb-in/ft}$
 $P = 908.7 \text{ lb/ft at } e_n = 0 \text{ in}$
 $M_T = M_L + P e_n = -55951.3 \text{ lb-in/ft}$
 Moment Capacity = 68647.1 lb-in/ft at this axial load
 Shear Capacity = 4008.54 lb/ft

The wall is adequate for these critical section forces.

These were found to be load cases that controlled the design.
 The flexural, shear and axial forces shown are those occurring
 at the critical section for the case controlled by flexure and
 at the critical section for the case controlled by shear.

The following design calculations are for the section with controlling bending moment

Section Design Forces Used

$V = 1596 \text{ lb/ft}$ (Computed from Loads)
 $M_L = -55951.3 \text{ lb-in/ft}$ (Computed from Loads)
 $P = 545.2 \text{ lb/ft at } e = 0 \text{ in}$ (Computed from Loads)

Computed Design Values

Note: 1/3 stress increase was not used
 Effective Width = 16 in.
 Web Width = 16 in. on effective width

Allowable Shearing Force = 4008 lb/ft
 The wall is adequate in shear

Required $A_s = 0.381 \text{ in}^2$ each reinforced cell (0.2868 in²/ft) OK

$d = 8.626 \text{ in}$

$\eta = 21.48$

$k_{balanced} = 0.3092$

$\rho_{balanced} = 0.8969$

MASONRY**DESIGN SYSTEM FOR CONCRETE AND CLAY MASONRY**The National Concrete Masonry Association Brick Industry Association
Western States Clay Product Association International Code Council

Version 4.0 (Release 4.0.2)

Prjct: 205 Buckingham

Topic: Retaining Wall

Page:

Name: Alan Lumpkin

Date: 9-16-09

Chkd: Jeff Barrett

 $k = 0.2995$ $j = 0.9002$ $P_{max} \text{ (Compression)} = 5.998e+004 \text{ lbs (4.497e+004 lbs/ft) OK}$ $P_{max} \text{ (Tension)} = 1.44e+004 \text{ lbs (1.08e+004 lbs/ft) OK}$

The wall has adequate capacity.

Development and Splice Lengths for Longitudinal Reinforcement $K = 2.6626 \text{ in.}$ Required Development Length: $l_d = 31.60 \text{ in.}$ Required Lap Splice Length: $= 103.68 \text{ in.}$

Some codes may require epoxy-coated reinforcement to have longer development and splice lengths.

Prjct: 205 Buckingham
Topic: Retaining Wall
Page:Name: Alan Lumpkin
Date: 9-16-09
Chkd: Jeff Barrett $k = 0.2995$ $j = 0.9002$ $P_{max} \text{ (Compression)} = 5.998e+004 \text{ lbs (4.497e+004 lbs/ft) OK}$ $P_{max} \text{ (Tension)} = 1.44e+004 \text{ lbs (1.08e+004 lbs/ft) OK}$

The wall has adequate capacity.

Development and Splice Lengths for Longitudinal Reinforcement $K = 2.6626 \text{ in.}$ Required Development Length: $l_d = 31.60 \text{ in.}$ Required Lap Splice Length: $= 103.68 \text{ in.}$

Some codes may require epoxy-coated reinforcement to have longer development and splice lengths.

MASONRY		DESIGN SYSTEM FOR CONCRETE AND CLAY MASONRY	
The National Concrete Masonry Association Western States Clay Product Association		Brick Industry Association International Code Council	Version 4.0 (Release 4.0.2)
Prjct: 205 Buckingham Topic: Retaining Wall Page:		Name: Alan Lumpkin Date: 9-16-09 Chkd: Jeff Barrett	
Design of a Reinforced Masonry Wall with Out-of-Plane Loads Using the 2006 IBC ASD Design Code			
Material and Construction Data 12 in. CMU, Full grout, running bond Wall Weight = 123.9 psf Type S Masonry cement / Air-entrained PCL Mortar, Course Grout CMU Density = 115 pcf $f_m = 1600$ psi (Specified) $E_m = 900f_m = 1350000$ psi			
Wall Design Details Thickness = 11.63 in. Height = 88 in. (Cantilevered Wall, Effective height = 2H) $x = 3$ in. #7 Bars, $F_y = 60000.0$ Reinforcement Spacing = 19 in. On-Center			
Wall Design Section Properties $P_c = 186$ in. $I_o = 2085$ in. $S_o = 380.4$ in. $R_o = 3.358$ in.			
Wall Support: Cantilevered Wall			
Specified Load Components			
Load	P (lb)	e (in)	W1 (psf) W2 (psf) L (lb/ft) h1 (in) h2 (in)
Dead	0	0	0 0 0 0 8
Live	0	0	0 0 0 0 88
Soil	0	0	0 330 419 81 88
Fluid	0	0	0 0 0 0 8
Wind	0	0	0 0 0 0 8
Seismic	0	0	0 0 0 0 8
Roof	0	0	0 0 0 0 8
Rain	0	0	0 0 0 0 8
Snow	0	0	0 0 0 0 8
Controlling Load Cases Section Forces with Controlling Flexure and Axial Load— $0.8D + H + W$ $x/H = 0.000$ from bottom of wall $V = 1629$ lb/ft $M_c = 81052.3$ lb-in./ft			

Sunshade
 point load
 at 2 ft
 behind
 wall

MASONRY**DESIGN SYSTEM FOR CONCRETE AND CLAY MASONRY**The National Concrete Masonry Association Brick Industry Association
Western States Clay Product Association International Code Council

Version 4.0 (Release 4.0.2)

Prjct: 205 Buckingham
Topic: Retaining Wall
Page:Name: Alan Lumpkin
Date: 9-16-09
Chkd: Jeff Barrett

$P = 545.2 \text{ lb/ft at } e_n = 0 \text{ in}$
 $M_T = M_L + P e_n = -61052.3 \text{ lb-in/ft}$
 Moment Capacity = 68693.3 lb-in/ft (5724.44 lb-ft/ft) at this axial load
 Shear Capacity = 4008.64 lb/ft

The wall is adequate for these critical section forces.

Section Forces with Controlling Shearing Force--D + H

$x/H = 0.000$ from bottom of wall

$V = 1629 \text{ lb/ft}$

$M_L = -61052.3 \text{ lb-in/ft}$

$P = 908.7 \text{ lb/ft at } e_n = 0 \text{ in}$

$M_T = M_L + P e_n = -61052.3 \text{ lb-in/ft}$

Moment Capacity = 68647.1 lb-in/ft at this axial load

Shear Capacity = 4008.64 lb/ft

The wall is adequate for these critical section forces.

These were found to be load cases that controlled the design.
 The flexural, shear and axial forces shown are those occurring
 at the critical section for the case controlled by flexure and
 at the critical section for the case controlled by shear.

The following design calculations are for the section with controlling bending moment

Section Design Forces Used

$V = 1629 \text{ lb/ft}$ (Computed from Loads)

$M_L = -61052.3 \text{ lb-in/ft}$ (Computed from Loads)

$P = 545.2 \text{ lb/ft at } e = 0 \text{ in}$ (Computed from Loads)

Computed Design Values

Note: 1/3 stress increase was not used

Effective Width = 16 in.

Web Width = 16 in. on effective width

Allowable Shearing Force = 4009 lb/ft

The wall is adequate in shear

Required $A_s = 0.4276 \text{ in}^2$ each reinforced cell (0.3207 in²/ft) OK

$n = 8.825 \text{ in.}$

$n = 21.48$

$k_{balanced} = 0.3092$

$k_{balanced} = 0.8969$

MASONRY		DESIGN SYSTEM FOR CONCRETE AND CLAY MASONRY	
The National Concrete Masonry Association		Brick Industry Association	
Western States Clay Product Association		International Code Council	
Project: 205 Buckingham Topic: Retaining Wall Page:		Name: Alan Lumpkin Date: 8-18-09 Chkd: Jeff Barrett	
$k = 0.3131$ $j = 0.8866$ $P_{max} \text{ (Compression)} = 5.886e+004 \text{ lbs (4.497e+004 lbs/ft) OK}$ $P_{max} \text{ (Tension)} = 1.44e+004 \text{ lbs (1.08e+004 lbs/ft) OK}$ The wall has adequate capacity.			
Development and Splice Lengths for Longitudinal Reinforcement			
$K = 2.5626 \text{ in.}$ Required Development Length: $l_d = 31.60 \text{ in.}$ Required Lap Splice Length: $= 103.68 \text{ in.}$ Some codes may require epoxy-coated reinforcement to have longer development and splice lengths.			
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MASONRY**DESIGN SYSTEM FOR CONCRETE AND CLAY MASONRY**The National Concrete Masonry Association Brick Industry Association
Western States Clay Product Association International Code Council

Version 4.0 (Release 4.0.2)

Prjct: 205 Buckingham

Topic: Retaining Wall

Page:

Name: Alan Lumpkin

Date: 9-16-09

Chkd: Jeff Barrett

 $k = 0.3651$ $j = 0.8816$ $P_{max} \text{ (Compression)} = 5.998e+004 \text{ lbs (4.497e+004 lbs/ft)} \text{ OK}$ $P_{max} \text{ (Tension)} = 1.44e+004 \text{ lbs (1.08e+004 lbs/ft)} \text{ OK}$

The wall has adequate capacity.

Development and Splice Lengths for Longitudinal Reinforcement $K = 2.5825 \text{ in.}$ Required Development Length: $l_d = 31.50 \text{ in.}$ Required Lap Splice Length: $= 103.88 \text{ in.}$

Some codes may require epoxy-coated reinforcement to have longer development and splice lengths.

 $k = 0.3651$ $j = 0.8816$ $P_{max} \text{ (Compression)} = 5.998e+004 \text{ lbs (4.497e+004 lbs/ft)} \text{ OK}$ $P_{max} \text{ (Tension)} = 1.44e+004 \text{ lbs (1.08e+004 lbs/ft)} \text{ OK}$

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Development and Splice Lengths for Longitudinal Reinforcement $K = 2.5825 \text{ in.}$ Required Development Length: $l_d = 31.50 \text{ in.}$ Required Lap Splice Length: $= 103.88 \text{ in.}$

Some codes may require epoxy-coated reinforcement to have longer development and splice lengths.

DESIGN EXAMPLE

The following design example briefly illustrates some of the basic steps used in the allowable stress design of a reinforced concrete masonry cantilever retaining wall.

Example: Design the reinforced concrete masonry cantilever retaining wall shown in Figure 2. Assume level backfill, no surcharge or seismic loading, active earth pressure and masonry laid in running bond. The coefficient of friction between the footing and foundation soil, k_f , is 0.25, and the allowable soil bearing pressure is 2,000 psf (95.8 kPa) (ref. 7).

n. Design criteria:

Wall thickness = 12 in. (305 mm)
 $f_m = 1,500$ psi (10.3 MPa)

Assumed weights:

Reinforced masonry: 130 pcf (2,082 kg/m³)
 (solid grout to increase overturning and sliding resistance)
 Reinforced concrete: 150 pcf (2,402 kg/m³)

Required factors of safety (ref. 7)

F.S. (overturning) = 1.5
 F.S. (sliding) = 1.5

b. Rankine active earth pressure

$$P_a = \frac{1}{2} \gamma (H - \frac{1}{2} K_a) K_a$$

where $K_a = \tan^2 (45^\circ - \phi/2) = \tan^2 (45^\circ - 30^\circ/2)$
 $= 0.33$
 $P_a = \frac{1}{2} (120) (9.67) (0.33) = 1,851$ lb/ft (27 kN/m)

Overturning moment

$$M_o = P_a (\text{height}/3) = (1,851 \text{ lb/ft}) (9.67 \text{ ft}/3) = 5,966 \text{ ft-lb/ft} (27 \text{ kNm/m})$$

c. Resisting moment (about toe of footing)

Component weights:

masonry: $(0.97) (8.67 \text{ ft}) (130 \text{ pcf}) = 1,093$ lb/ft (16 kN/m)
 earth: $(2.69) (8.67 \text{ ft}) (120 \text{ pcf}) = 2,799$ lb/ft (41 kN/m)
 footing: $(1.0) (5.33 \text{ ft}) (150 \text{ pcf}) = 800$ lb/ft (12 kN/m)

Weight (lb/ft)	x Arm (ft)	Moment (ft-lb/ft)
masonry: 1,093	x 2.67	= 2,918
earth: 2,799	x 3.98	= 11,140
footing: 800	x 2.67	= 2,136
Resultant: 4,692		16,194

Total resisting moment = 16,194 ft-lb/ft
 Overturning moment = 5,966 ft-lb/ft
 10,228 ft-lb/ft (45.5 kNm/m)

d. Check factors of safety (F.S.)

F.S. (overturning) = total resisting moment about toe / overturning moment
 $= 16,194 / 5,966$
 $= 2.4 > 1.5$ O.K.

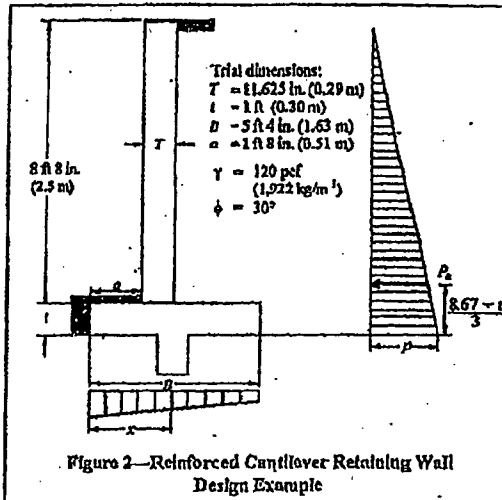


Figure 2—Reinforced Cantilever Retaining Wall Design Example

$$F.S. (\text{sliding}) = \frac{(\Sigma V) k_f + P_p}{P_a}$$

$P_p = \frac{1}{2} D$ (soil lateral bearing pressure)
 set $D = 1 = 1.0$ ft (0.30 m)
 soil lateral bearing pressure = 150 psf/ft below grade (ref. 7)

$$F.S. (\text{sliding}) = \frac{(4,692 \text{ lb/ft}) (0.25) + \frac{1}{2} (1) (150 \text{ psf/ft})}{1,851 \text{ lb/ft}}$$

$$= 1.248 / 1.851 = 0.67 < 1.5 \quad \text{N.G., need key}$$

e. Pressure on footing

Location of resultant force,

$x = (10,228 \text{ ft-lb/ft}) / (4,692 \text{ lb/ft})$
 $= 2.18$ ft (0.6 m) (resultant falls in middle 1/3 of base)
 $e = (5.33 \text{ ft}) / 2 - 2.18 = 0.48$ ft (0.15 m)

$$P = \frac{W}{d} \pm \frac{3e}{d^2} = \frac{W}{d} \pm \frac{6Pe}{d^2}$$

$$= \frac{4,692 \text{ lb/ft}}{(1 \text{ ft}) (5.33 \text{ ft})} \pm \frac{6(4,692 \text{ lb/ft}) (0.48 \text{ ft})}{(1 \text{ ft}) (5.33 \text{ ft})^2}$$

$P = 880 \pm 476$
 $= 404$ psf (19.3 kPa) and $1,356$ psf (64.9 kPa)
 $< 2,000$ psf (95.8 kPa) O.K.

f. Determine size of key

Passive lateral soil resistance = 150 psf/ft of depth and may be increased 150 psf for each additional foot of depth to a maximum of 15 times the designated value (ref. 7). The average soil pressure under the footing is: $\frac{1}{2} (1,356 + 404) = 880$ psf (42.1 kPa).

Equivalent soil depth: $880 \text{ psf} / 120 \text{ pcf} = 7.33$ ft (2.23 m)

$P_p = (150 \text{ psf/ft}) (7.33 \text{ ft}) = 1,100$ psf (52.7 kPa)

For F.S. (sliding) = 1.5, the required total passive soil resistance is $1.5(1,851 \text{ lb/ft}) = 2,776 \text{ lb/ft}$ (41 kN/m).

The shear key must provide for this value minus the frictional resistance: $2,776 - 1,248 = 1,528 \text{ lb/ft}$ (22 kN/m).

Depth of shear key = $(1,528 \text{ lb/ft}) / (1,100 \text{ psf}) = 1.39 \text{ ft}$ (0.42 m), try 1.33 ft (0.41 m).

At 1.33 ft, lateral resistance =

$(1,100 \text{ psf}) + (150 \text{ psf/ft})(1.33 \text{ ft}) = 1,300 \text{ lb/ft}$ (19 kN/m)

Depth = $(1,528 \text{ lb/ft}) / (1/2(1,100 + 1,300)) = 1.27 \text{ ft}$ (0.39 m) < 1.33 ft (0.41 m) O.K.

g. Design of masonry

Tables 1 and 2 can be used to estimate the required

reinforcing steel based on the equivalent fluid weight of soil, wall thickness, and wall height. For this example, the equivalent fluid weight = $(K_p \gamma) = 0.33 \times 120 = 40 \text{ pcf}$ (6.2 kN/m³).

Using allowable stress design (Table 1) and the conservative equivalent fluid weight of soil of 45 pcf (7.1 kN/m³), this wall requires No. 6 bars at 16 in. o.c. (M #19 at 406 mm o.c.). Using strength design (Table 2), this wall requires No. 5 bars at 16 in. o.c. (M #16 at 406 mm o.c.).

h. Design of footing

The design of the reinforced concrete footing and key should conform to American Concrete Institute requirements. For guidance, see ACI Standard 318 (ref. 2) or reinforced concrete design handbooks.

CONSTRUCTION

Materials and construction practices should comply with applicable requirements of *Specification for Masonry Structures*.

Table 1—Allowable Stress Design: Vertical Reinforcement for Cantilever Retaining Walls^{a,b}

Wall thickness, in. (mm)	Wall height, ft (m)	Reinforcement size & spacing for equivalent fluid weight of soil, lb/ft ³ (kN/m ³), of:		
		30 (4.7)	45 (7.1)	60 (9.4)
8 (203)	4.0 (1.2)	No. 4 @ 88 in.	No. 4 @ 56 in.	No. 4 @ 40 in.
	4.7 (1.4)	No. 4 @ 48 in.	No. 4 @ 32 in.	No. 4 @ 16 in.
	5.3 (1.6)	No. 4 @ 32 in.	No. 4 @ 16 in.	No. 5 @ 24 in.
	6.0 (1.8)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 7 @ 16 in.
	6.7 (2.0)	No. 4 @ 16 in.	No. 7 @ 16 in.	No. 9 @ 8 in.
10 (254)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 88 in.	No. 4 @ 64 in.
	4.7 (1.4)	No. 4 @ 88 in.	No. 4 @ 48 in.	No. 4 @ 32 in.
	5.3 (1.6)	No. 4 @ 56 in.	No. 4 @ 32 in.	No. 4 @ 16 in.
	6.0 (1.8)	No. 4 @ 32 in.	No. 4 @ 16 in.	No. 5 @ 24 in.
	6.7 (2.0)	No. 4 @ 24 in.	No. 5 @ 16 in.	No. 5 @ 16 in.
12 (305)	7.3 (2.2)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 7 @ 16 in.
	8.0 (2.4)	No. 5 @ 16 in.	No. 7 @ 16 in.	No. 8 @ 8 in.
12 (305)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 120 in.	No. 4 @ 96 in.
	4.7 (1.4)	No. 4 @ 120 in.	No. 4 @ 72 in.	No. 4 @ 48 in.
	5.3 (1.6)	No. 4 @ 80 in.	No. 4 @ 48 in.	No. 4 @ 32 in.
	6.0 (1.8)	No. 4 @ 48 in.	No. 4 @ 24 in.	No. 4 @ 16 in.
	6.7 (2.0)	No. 4 @ 32 in.	No. 4 @ 16 in.	No. 5 @ 16 in.
12 (305)	7.3 (2.2)	No. 4 @ 24 in.	No. 5 @ 16 in.	No. 5 @ 16 in.
	8.0 (2.4)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 6 @ 16 in.
	8.7 (2.7)	No. 5 @ 16 in.	No. 6 @ 16 in.	No. 8 @ 16 in.
	9.3 (2.8)	No. 5 @ 16 in.	No. 7 @ 16 in.	No. 8 @ 8 in.

^a The reinforcement listed is designed to resist soil loads only. Other conditions, such as surcharges or seismic loads, also need to be considered where applicable.

^b based on: fully grouted masonry; $f_m = 1500 \text{ psi}$ (10.3 MPa); $d = 5 \text{ in.}, 7 \text{ in.}, \text{ and } 9 \text{ in.}$ (127, 178, and 229 mm) for wall thicknesses of 8, 10, and 12 in. (203, 254, and 305 mm), respectively; level backfill to top of wall.

The specified reinforcement spacing is greater than six times the wall thickness. Provide engineering practices to develop full stresses in the unreinforced masonry spanning between the reinforcing bars be designed to meet *Building Code Requirements for Masonry Structures* Section 2.2.3.2 (ref. 1).

Table 2—Strength Design: Vertical Reinforcement for Cantilever Retaining Walls^{a,b}

Wall thickness, in. (mm)	Wall height, ft (m)	Reinforcement size & spacing for equivalent fluid weight of soil, lb/ft ³ (kN/m ³), of:		
		30 (4.7)	45 (7.1)	60 (9.4)
8 (203)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 96 in.	No. 4 @ 64 in.
	4.7 (1.4)	No. 4 @ 88 in.	No. 4 @ 56 in.	No. 4 @ 40 in.
	5.3 (1.6)	No. 4 @ 56 in.	No. 4 @ 32 in.	No. 4 @ 24 in.
	6.0 (1.8)	No. 4 @ 32 in.	No. 4 @ 24 in.	No. 4 @ 16 in.
	6.7 (2.0)	No. 4 @ 24 in.	No. 4 @ 16 in.	No. 5 @ 16 in.
10 (254)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 120 in.	No. 4 @ 104 in.
	4.7 (1.4)	No. 4 @ 120 in.	No. 4 @ 88 in.	No. 4 @ 56 in.
	5.3 (1.6)	No. 4 @ 96 in.	No. 4 @ 56 in.	No. 4 @ 40 in.
	6.0 (1.8)	No. 4 @ 56 in.	No. 4 @ 32 in.	No. 4 @ 24 in.
	6.7 (2.0)	No. 4 @ 40 in.	No. 4 @ 24 in.	No. 4 @ 16 in.
12 (305)	7.3 (2.2)	No. 4 @ 24 in.	No. 4 @ 16 in.	No. 5 @ 16 in.
	8.0 (2.4)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 6 @ 16 in.
12 (305)	4.0 (1.2)	No. 4 @ 120 in.	No. 4 @ 120 in.	No. 4 @ 120 in.
	4.7 (1.4)	No. 4 @ 120 in.	No. 4 @ 120 in.	No. 4 @ 88 in.
	5.3 (1.6)	No. 4 @ 120 in.	No. 4 @ 80 in.	No. 4 @ 56 in.
	6.0 (1.8)	No. 4 @ 88 in.	No. 4 @ 48 in.	No. 4 @ 32 in.
	6.7 (2.0)	No. 4 @ 56 in.	No. 4 @ 32 in.	No. 4 @ 24 in.
12 (305)	7.3 (2.2)	No. 4 @ 40 in.	No. 4 @ 24 in.	No. 4 @ 16 in.
	8.0 (2.4)	No. 4 @ 24 in.	No. 4 @ 16 in.	No. 5 @ 16 in.
	8.7 (2.7)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 5 @ 16 in.
	9.3 (2.8)	No. 4 @ 16 in.	No. 5 @ 16 in.	No. 6 @ 16 in.

^a The reinforcement listed is designed to resist soil loads only. Other conditions, such as surcharges or seismic loads, also need to be considered where applicable.

^b based on: fully grouted masonry; $f_m = 1500 \text{ psi}$ (10.3 MPa); $d = 5 \text{ in.}, 7 \text{ in.}, \text{ and } 9 \text{ in.}$ (127, 178, and 229 mm) for wall thicknesses of 8, 10, and 12 in. (203, 254, and 305 mm), respectively; level backfill to top of wall.

nures (ref. 4), or applicable local codes.

Footings should be placed on firm undisturbed soil, or on adequately compacted fill material. In areas exposed to freezing temperatures, the base of the footing should be placed below the frost line. Backfilling against retaining walls should not be permitted until the masonry has achieved sufficient strength or the wall has been adequately braced. During backfilling, heavy equipment should not approach closer to the top of the wall than a distance equal to the height of the wall. Ideally, backfill should be placed in 12 to 24 in. (305 to 610 mm) lifts, with each lift being compacted by a hand tamper. During construction, the soil and drainage layer, if provided, also needs to be protected from saturation and erosion.

Provisions must be made to prevent the accumulation of water behind the face of the wall and to reduce the possible effects of frost action. Where heavy prolonged rains are anticipated, a continuous longitudinal drain along the back of the wall may be used in addition to through-wall drains.

Climate, soil conditions, exposure and type of construction determine the need for waterproofing the back face of retaining walls. Waterproofing should be considered; in areas subject to severe frost action; in areas of heavy rainfall; and when the backfill material is relatively impervious. The use of integral and post-applied water repellents is also recommended. The top of masonry retaining walls should be capped or otherwise protected to prevent water entry.

REFERENCES

1. *Building Code Requirements for Masonry Structures*, ACI 530-05/ASCE 5-05/TMS 402-05. Reported by the Masonry Standards Joint Committee, 2005.
2. *Building Code Requirements for Structural Concrete and Commentary*, ACI 318-02. Detroit, MI: American Concrete Institute, 2002.

3. Das, B. M. *Principles of Foundation Engineering*. Boston, MA: PWS Publishers, 1984.
4. *Specification for Masonry Structures*, ACI 530.1-05/ASCE 6-05/TMS 602-05. Reported by the Masonry Standards Joint Committee, 2005.
5. *Allowable Stress Design of Concrete Masonry*, TEK 14-7A. National Concrete Masonry Association, 2004.
6. *Strength Design of Concrete Masonry*, TEK 14-4A. National Concrete Masonry Association, 2002.
7. *2003 International Building Code*. International Code Council, 2003.

NOTATIONS

- a length of footing toe, in. (mm)
- B width of footing, ft (m)
- d distance from extreme compression fiber to centroid of tension reinforcement, in. (mm)
- e eccentricity, in. (mm)
- $F.S.$ factor of safety
- f_m specified compressive strength of masonry, psi (MPa)
- H total height of backfill, ft (m)
- I moment of inertia, ft⁴ (m⁴)
- K_a active earth pressure coefficient
- k_f coefficient of friction between footing and foundation soil
- M maximum moment in section under consideration, ft-lb/ft (kNm/m)
- P_a resultant lateral load due to soil, lb/ft (kN/m)
- P_p passive earth pressure, lb/ft (kN/m)
- p pressure on footing, psf (MPa)
- T thickness of wall, in. (mm)
- t thickness of footing, in. (mm)
- W vertical load, lb/ft (kN/m)
- x location of resultant force, ft (m)
- γ density of soil, pcf (kg/m³)
- ϕ angle of internal friction of soil, degrees

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Disclaimer: Although care has been taken to ensure the enclosed information is as accurate and complete as possible, NCMA does not assume responsibility for errors or omissions resulting from the use of this TEK.

NATIONAL CONCRETE MASONRY ASSOCIATION
13750 Sunrise Valley Drive, Herndon, Virginia 20171
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EXHIBIT P

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
Terry and Suzette Patton,)
Plaintiffs,)
v.)
American Lifestyle Homes, LLC,)
Et al.)
Defendants.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2010-CP-04-04389

ENTERED
[Signature]

**CONSENT ORDER STRIKING CASE
FROM DOCKET**

FILED - CLERK'S OFFICE
ANDERSON COUNTY
2013 AUG 26
10:28 AM
GENERAL SESSION

By and through their signatures below, the parties have informed the Court that they have reached an agreement to strike this matter from the docket pursuant to Rule 40(j), S.C.R.C.P., which is attached hereto. Therefore, it is Ordered that the above captioned be removed from the docket. If the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored. A party moving to restore a case stricken from the docket shall provide all parties notice of the motion to restore at least 10 days before it is heard. Upon being restored, the case shall be placed on the General Docket and proceed from that date as provided in Rule 40(j).

IT IS SO ORDERED!

[Signature]

Presiding Judge
Tenth Judicial Circuit

Dated: August 26, 2013
Anderson, South Carolina

I so move:

[Signature]

Candy Kern-Fuller, Esq.
Upstate Law Group, LLC
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Easley, SC 29640
864-855-3114
864-855-3446 (facsimile)
candy@upstatelawgroup.com

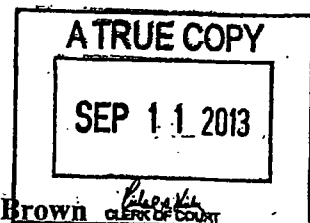
Attorney for Plaintiffs

We consent:

[Signature]

Tom Chase, Esq.
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tchase@mgclaw.com

Attorney for Defendant Scott Brown



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
In The Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

C.A. No.: 2014-CP-04-2073

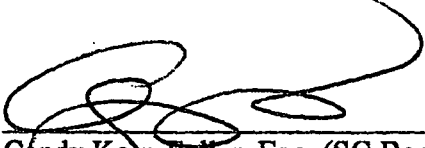
Terry and Suzette Patton Appellants

v.

American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and
Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete,
LLC, and Scott Brown.....Respondents

NOTICE OF APPEAL

Terry and Suzette Patton hereby appeal the Order Granting Motion for
Reconsideration and Vacating Restoration of the Case under Rule 40(j) of the Honorable
R. Lawton McIntosh, dated February 6, 2015, clocked in February 20, 2015 and received
on February 24, 2015.



Candy Kern-Fuller, Esq. (SC Bar No. 11392)
UPSTATE LAW GROUP, LLC
200 E. Main Street
Easley, SC 29640
(864) 855-3114
(864) 855-3446 (facsimile)

March 24, 2015

ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
In The Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

C.A. No.: 2014-CP-04-2073

Terry and Suzette Patton Appellants

v.

American Lifestyle Homes, LLC, Rufus G. Revis d/b/a American Lifestyle Homes, and
Anderson Brothers Concrete, LLC, Marcus Anderson d/b/a Anderson Brothers Concrete,
LLC, and Scott Brown.....Respondents

PROOF OF SERVICE

I certify that pursuant to SCRAP 203(d)(1)(B), I have filed a copy of the Notice of Appeal and proof of service upon the Defendant/Respondent with the Clerk of the South Carolina Court of Appeals, by depositing a copy of it in an envelope via the United States First Class Mail on March 24, 2015 addressed to:

The Honorable Jenny Abbott Kitchings
P.O. Box 11629
Columbia, SC 29211

and by sending a copy of the same addressed to the Anderson County Clerk of the Family Court as follows:

Anderson County Family Court
Post Office Box 8002
Anderson, SC 29622

and the Respondents as follows:

G. Thomas Chase, Esq.
McAngus Goudelock
POB 2980
Greenville, SC 29602-2980

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March 24, 2015

ATTORNEY FOR APPELLANT

1 State of South Carolina Court of Common Pleas
2 County of Anderson Tenth Judicial Circuit
3

4 Terry Patton, et al.) Transcript of Record
5 Plaintiffs,) 2014-CP-04-2073
6 vs.)
7 American Lifestyle Homes,)
8 Defendant.)

9 December 16, 2014
10 Anderson, South Carolina

11 B E F O R E:

12 The Honorable R. Lawton McIntosh, Judge

13
14 A P P E A R A N C E S:

15 Candy M. Kern-Fuller, Esquire
16 Attorney for the Plaintiffs

17 G. Thomas Chase, Esquire
18 Attorneys for Defendant Scott Brown

19 STACY S. JOHNSON
20 CIRCUIT COURT REPORTER
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I N D E X

WITNESS

PAGE

Certificate Of Reporter

12

E X H I B I T S

NUMBER

DESCRIPTION

ID.

EVD.

(No exhibits were marked.)

P R O C E E D I N G S

THE COURT: All right. What do we have, guys?

MR. CHASE: May it please the Court, Your Honor.

THE COURT: Yes, Mr. Chase.

MR. CHASE: Thomas Chase here on behalf of
Scott Brown. The litigation, it is captioned Terry
and Suzette Patton versus a number of defendants,
including my client, Scott Brown.

Just to give us the background leading up to this
motion, it is a motion for reconsideration of the
restoration of the case under Rule 40(j) or, in the
alternative, a motion to vacate that restoration. And
it starts with kind of our basis as to how we got here
on the restoration itself and then I can give you the
basis of why we challenge the restoration under the
circumstances.

THE COURT: Okay. Is it basically not timely?

MR. CHASE: It is not timely, Your Honor. As
relates to the actual motion itself, it was filed on
September the 11th of this year. We did not receive a
copy of that motion. It was ultimately submitted over
to you. It was a form motion. There was -- no hearing
was requested according to the documents that we
ultimately received and there was a proposed order, a
consent order, that was submitted with it. The order

1 was ultimately filed with the Court on September 16th
2 and it looks like that Your Honor actually executed that
3 order.

4 **THE COURT:** I did.

5 **MR. CHASE:** Yes, sir, Your Honor, which is why --

6 **THE COURT:** So, if I understand what you're telling
7 me, the Plaintiff filed the motion to restore, did not
8 copy you or counsel of record with that motion; is that
9 what you're saying?

10 **MR. CHASE:** I'm saying I didn't receive a copy of
11 the motion and then it was executed and filed even
12 before the ten days notice.

13 **THE COURT:** So you got an order from my office
14 without having received a copy of the motion?

15 **MR. CHASE:** That's correct.

16 **THE COURT:** Did you not serve him?

17 **MS. KERN-FULLER:** I did, Your Honor, and there is a
18 certificate of service. When Mr. Chase called and said
19 he had not received it, we faxed it to him, but it was
20 placed in the mail that day, Your Honor.

21 **THE COURT:** All right. You know, you don't need to
22 submit an affidavit. You can just say I didn't actually
23 receive it.

24 **MR. CHASE:** That's fine. I think what's important
25 is under Rule 40(j) it says that the party shall provide

1 ten days notice to the opposing parties of the intent
2 to do a motion to restore. Obviously that -- that
3 notice is so that we can actually participate in the
4 hearing. The motion did not request a hearing and
5 submitted a proposed order with it. That order was
6 actually executed less than ten days from when the
7 motion was even filed, so there was no way --

8 **THE COURT:** So if I vacate that order based on the
9 fact that you didn't get required notice, and I'm glad
10 to do that, I want you to argue why I shouldn't grant
11 it now.

12 **MR. CHASE:** Yes, sir. What happened was, Your
13 Honor, this goes back to a contract for the construction
14 of a parking pad, a retaining wall, and a garage
15 addition onto a home. That contract was entered into
16 in 2007. In 2008, the construction was completed. The
17 plaintiffs, and I've got a number of exhibits which I'll
18 kind of walk through with Your Honor if you want to
19 indulge me on that --

20 **THE COURT:** Sure.

21 **MR. CHASE:** -- to show why the plaintiffs were on
22 notice or when they were on notice, even considering
23 the evidence in the light most favorable to them in
24 2009. So in 2008 the construction was completed.

25 **MS. KERN-FULLER:** Your Honor, and I'll stipulate

1 to the dates that he has in his memorandum. That's not
2 where our issue is. I'll stipulate to the dates in
3 the memorandum to save the Court time because the dates
4 were what they were and we filed it initially within
5 the statute of limitations and --

6 **THE COURT:** Hang on. Let him finish his argument.
7 He'll take your stipulation I'm sure.

8 **MS. KERN-FULLER:** That's fine.

9 **THE COURT:** Go ahead.

10 **MR. CHASE:** Sure. What we've got, Your Honor, is
11 from 2008 there begins the -- the plaintiffs notice that
12 there are -- there's substantial cracking in this work
13 that was done.

14 **THE COURT:** And the date of notice is when now?

15 **MR. CHASE:** Well, I'm gonna -- I'll give you the --

16 **THE COURT:** Big picture?

17 **MR. CHASE:** Well, I think it's -- I really have to
18 do that, Your Honor, because through the exhibits that
19 I've submitted up there there's correspondence back and
20 forth between the plaintiffs to the general contractor,
21 there is a request for an inspection and a complaint
22 opened up with LLR in 2009, in April of 2009. An
23 inspection was actually performed, a report issued by
24 LLR in 2009 stating that there -- this construction did
25 not comply with the code, then in the fall of 2009 the

1 plaintiffs actually hire an engineer to come out there,
2 a Mr. Alan Lumpkin with Professional Engineering. He
3 issues a report in October, October 27th of 2009, that
4 details all the defects that he identified associated
5 with this construction and outlined following up on all
6 their complaints that had been going on since 2008.

7 That report from 2009, October of 2009, is actually
8 an exhibit to the complaint that includes my client,
9 so there's absolute reliance on that Professional
10 Engineering report and his findings, his opinions,
11 regarding what the damages are in the suit. So
12 considering all of this evidence that leads up to that,
13 the statute of limitations, they have three years to
14 file their complaint. The initial complaint using the
15 October 27th of 2009 date, the initial complaint was
16 timely filed.

17 Then there was an amended pleading that was filed
18 in 2011. Again, using that 2009 date, still timely.
19 We get into litigation. The suit is ultimately
20 dismissed pursuant to Rule 40(j) on August the 26th of
21 2013.

22 **THE COURT:** Was any settlement agreement put in the
23 order?

24 **MR. CHASE:** No, just the standard Rule 40 that
25 we agree to -- we can't challenge the statute of

1 limitations during the one year that the case is
2 dismissed, so just the standard rule.

3 We go one year forward. Now as of the date of
4 August the 26th of 2013 when Judge Macaulay entered this
5 dismissal and filed it with the Court, we then -- we're
6 already ten months past the statute of limitations so
7 there's no remaining time on the statute of limitations
8 at that point.

9 So then we go into the year period of August 26th
10 of 2013. We go through a whole year up to August
11 the 26th of 2014 the motion to restore was not filed.
12 The motion to restore was then filed sixteen days
13 later, which is a year and sixteen days, and once that
14 August the 26th of 2014 date arrived, that date -- the
15 tolling, the protection of the statute of limitations,
16 we can then challenge it from that point forward, and
17 that is exactly where we are now.

18 So they lost the protection of the tolling once it
19 reached August the 26th of 2014 and failed to restore
20 -- to do a motion to restore at that time, and we have
21 the motion that was actually filed in September of 2014,
22 and that's where we stand.

23 Now if there's an agreement or a stipulation as to
24 the dates, then, you know, certainly I think it would
25 be great for Your Honor to hear it because it would

1 save a lot of time on the information that I have to
2 convey up to Your Honor regarding the evidence of when
3 the statute of limitations would actually apply. I
4 have put substantial exhibits attached to my motion.

5 **THE COURT:** Do you have substantial exhibits?

6 **MR. CHASE:** They're substantial exhibits, yes.

7 And I actually have -- Your Honor, there's one exhibit
8 in there that probably -- all we had was the front page
9 of the LLR report, if I can approach, Your Honor, but
10 that is from 2009. That is the full report from the --
11 from the Department of Labor, Licensing and Regulation
12 outlining -- so that dates back -- that actually dates
13 back to July the 15th of 2009 when literally the
14 Department of Labor, Licensing and Regulation tells
15 them that -- that the builder had not complied with the
16 building code both as related to the garage slab and
17 also as to the retaining wall issues, which is exactly
18 the basis for the litigation that we're involved in
19 today.

20 Your Honor, I also have, albeit brief, a short
21 memorandum supporting our position that also out
22 outlines, again, the evidence that's actually in our
23 motion. I put a little bit more detail in the motion
24 itself, Your Honor, so the factual background is
25 actually repeated in the memorandum. It is in the

1 detail portion of the -- of our motion.

2 **THE COURT:** Okay.

3 **MR. CHASE:** Also, if Your Honor needs to see
4 it, the report that was made an exhibit to the
5 complaint --

6 **THE COURT:** Well, it should be part of the file.

7 **MR. CHASE:** Yes. I've actually got color copies
8 of it, Your Honor, and I don't know whether there are
9 colored copies, but this report, which was -- again,
10 is actually an exhibit to the complaint, outlines in
11 detail what they are relying on to show as damages
12 alleged to have been caused by my client. This is the
13 report from October the 27th.

14 **THE COURT:** Is that Professional Engineering
15 Associates?

16 **MR. CHASE:** Yes, sir, Your Honor. Is it a color
17 copy that --

18 **THE COURT:** They're not colored, but --

19 **MR. CHASE:** If I could --

20 **THE COURT:** That's okay. Will I need colored
21 for --

22 **MR. CHASE:** Well, I don't know how good the copies
23 are. It just allows you to really see that there's
24 really no question about the nature of the damages that
25 we're talking about here, so if I could --

1 **THE COURT:** All right. Sure. Pass it up.

2 **MR. CHASE:** If for no other reason than to humor
3 Your Honor. So we are in a situation where the statute
4 of limitations, considering the evidence in the light
5 most favorable, I mean, I've got the testimony of the
6 plaintiffs in there. I've got them talking about yes,
7 we complained to the builder. I've got letters from
8 them to the builder. This is before they got LLR
9 involved talking about these cracks and problems in the
10 slab and the retaining wall. I've got their complaints
11 to the LLR in there, which is very detailed complaint
12 talking about damages. Then they actually have the
13 LLR come out there in early 2009, they get the report
14 from LLR. There's testimony that they said yes,
15 that's exactly what we did. Then they also have their
16 testimony about the fact that they hired this expert
17 to come out there. The report is very detailed. This
18 is all in 2009.

19 Three years from that is 2012 when this case was
20 dismissed pursuant to Rule 40(j). There was no time
21 left on the statute of limitations. At the same time,
22 under Rule 40 we had one year within which we would
23 not be able to challenge and it's -- it really falls
24 directly in line.

25 **THE COURT:** And this is residential obviously?

1 **MR. CHASE:** Yes, sir, Your Honor.

2 **THE COURT:** Is there any effect on the running of
3 the statute of limitation on the right to cure provision
4 under that, under the code? Does that toll it till
5 that's done or does it have any effect on the running
6 of the statute at all?

7 **MR. CHASE:** There is -- my understanding, Your
8 Honor, is that it does not affect the statute of
9 limitations because we go by the discovery rule and
10 the discovery rule as I've laid out in the standard of
11 law is whether or not they -- someone with common
12 experience would be reasonably on notice of -- of the
13 conditions. Here we have -- there's no question about
14 it and all we end up having is a case that was dismissed
15 -- properly dismissed pursuant to Rule 40(j), but the
16 motion to restore was not within one year and so they
17 lose the protection of Rule 40(j) for that tolling of
18 the statute of limitations and, therefore, we seek to
19 vacate the order restoring under the circumstance
20 because we would have had -- obviously had a full
21 hearing on that to challenge that restoration if given
22 the opportunity.

23 **THE COURT:** Well, just procedurally because of the
24 way in which it was served and of your lack of service
25 on it, I'm gonna vacate that order anyway. The question

1 today is whether or not they're gonna be allowed to
2 file it or not.

3 **MR. CHASE:** Yes, sir, Your Honor.

4 **THE COURT:** Okay. So I think it's a genuine issue.

5 **MS. KERN-FULLER:** Thank you, Your Honor.

6 **THE COURT:** Go ahead.

7 **MS. KERN-FULLER:** And the issue is solely 40(j),
8 Your Honor. I'm gonna hand this up and this has
9 originals in it. This is the original of the envelope
10 from the Court. It has the original of the order that
11 we received from the Court.

12 **THE COURT:** Do you really want to give me originals
13 of anything? Do I need them?

14 **MS. KERN-FULLER:** I'd like Your Honor to see them.
15 I'll be happy to give you a copy as well. I would like
16 Your Honor to see the true copy seal. I would like
17 Your Honor to see a copy of the actual envelope from
18 the clerk, and then I'll be happy to give you a copy as
19 well, Your Honor.

20 **THE COURT:** Well, is that just for reference with
21 regard to whether or not you served the motion on him?

22 **MS. KERN-FULLER:** It goes to the issue of what
23 constitutes the year from date stricken, Your Honor.
24 That's really what the core issue is. It's not about
25 when my client knew and the discovery rule and all of

1 that. That's not the issue today. The issue is what
2 does Rule 40(j) mean as to when the action is stricken.

3 In this particular case, what happened was Judge
4 Macaulay signed the order on August the 26th of 2014.
5 Your Honor has a copy of -- the true copy of the actual
6 order that came in the mail to my office and you have a
7 copy of the actual envelope that it came in. And what
8 happened was this action was signed by Judge Macaulay
9 on August 26th of 2013, but it wasn't processed through
10 the clerk's office until September 11th of 2013. It
11 was not mailed to my office --

12 **THE COURT:** It was filed August 26th, correct? The
13 same day it was signed.

14 **MS. KERN-FULLER:** It was stamped August 26th, Your
15 Honor.

16 **THE COURT:** Well, that's filed.

17 **MS. KERN-FULLER:** Yes, Your Honor, but the case
18 law -- the case law says that an order is not valid
19 until it is served upon the party, and in this case --
20 and you'll see the originals that are in the Court's
21 file. This was not served upon the parties until the
22 12th of September of 2013. What you have a copy of
23 there is actually the clerk's signature, and this is
24 in the Court's file, I got it from the Court's file,
25 where the clerk actually who entered this, these

1 initials right here, has a handwritten note that says
2 c.c. Chase, Kern-Fuller, and Johnson, and it's dated
3 9-12 of 2013, and then that was actually put in an
4 envelope that was postmarked on the 18th of September
5 and sent to our office. And because the true copy date
6 on it is the 11th of September, that was the date that
7 it was docketed to be re-filed within a year, and it
8 was re-filed within a year from that.

9 And, Your Honor, in our memorandum we have cited,
10 and I've handed up the cases, and those cases include
11 an unpublished opinion where the same issue came up and
12 the court said until the party's actually put on notice
13 of it, the case is not considered stricken. And in
14 this particular case, Judge Macaulay signed the order
15 on the 26th, it obviously was stamped the 26th, but the
16 clerk's office did not enter it and strike it until the
17 11th of September. They then did not serve it on the
18 parties until at the earliest, the possible earliest it
19 could have been, the 12th of September, and then it was
20 not actually sent to us until the 18th of September.
21 The motion to restore was filed on the 11th of September
22 the following year.

23 So the question is not under the discovery rule.
24 The question is was the motion filed within the year of
25 the date stricken and the language that Mr. Chase cited

1 to, and I'll cite to, the actual rule says that if the
2 claim is restored upon motion made within one year of
3 the date stricken, then the statute of limitations shall
4 be tolled. The ten-day notice -- at that point the
5 ten-day notice. I don't argue that the Court granted
6 the order before the ten days, but the issue is whether
7 it should be restored also and whether it's within the
8 statute of limitations. The issue is much narrower
9 than that. The issue becomes what constitutes the date
10 stricken. And the cases that we've cited, Your Honor,
11 we've cited the Bowman case where it says that an order
12 does not take effect until it has been delivered. It
13 could not have been delivered prior to September 12th.

14 **THE COURT:** How does that compare to the actual
15 language of the Rule 40(j), if you will?

16 **MS. KERN-FULLER:** Because when it is stricken --

17 **THE COURT:** How does it compare to the actual
18 language, if you know?

19 **MS. KERN-FULLER:** Your Honor, I've given you up the
20 West case, Your Honor. This is the case -- and I have
21 provided Mr. Chase a copy of this, but this actually
22 deals with 40(j), and it's an unpublished opinion, Your
23 Honor, but when you look at the Bowman case which says
24 an order is not effective until it's delivered. You
25 look at the Upchurch case to decide whether a notice of

1 appeal was timely filed. You look at Bayne versus Bass
2 to determine whether or not a ruling that has not been
3 recorded and sent out is actually effective. You take
4 all of that into consideration and then look at the
5 unpublished opinion, which I freely admit it's an
6 unpublished opinion, but it deals directly with 40(j).

7 **THE COURT:** Under this case that you handed me,
8 granted that it is unpublished, that would place
9 August 26th would be the date, correct?

10 **MS. KERN-FULLER:** No, Your Honor, because the order
11 is not effective --

12 **THE COURT:** You read it different than I do.

13 **MS. KERN-FULLER:** I understand, Your Honor. The
14 order is not effective until it's delivered and served.
15 Our clients didn't even have notice of it -- of when
16 the Court entered it until it was served upon us, so
17 the clerk's own records show that it could not have
18 been before the 12th of September because the clerk's
19 own records in their own handwriting says it was not
20 sent to me and Mr. Chase and Mr. Johnson until the 12th
21 of September.

22 **THE COURT:** Okay.

23 **MS. KERN-FULLER:** So the order was not entered
24 through the clerk's office until that point and the
25 case could not have been stricken until the parties

1 were notified; otherwise, we could have orders that
2 were out there that parties aren't put notice of that
3 their time would run on and that would not be the
4 public policy because parties cannot act until they
5 know what the order of the Court is. That's what the
6 Upchurch case says, Your Honor.

7 **THE COURT:** Okay.

8 **MR. CHASE:** May it please, Your Honor, an
9 interesting theory, but not applicable to Rule 40(j).
10 We're talking about notice. Where they had notice.
11 Even assuming her facts, they have notice. One, it's
12 a consent order that is actually requested by them to
13 Judge Macaulay that is executed and filed, and there's
14 no question about it, that it is filed that day and so
15 it is effective that date. The notice to them is a
16 year from that point. This is a complete manipulation
17 of Rule 40(j) when the case is absolutely struck on the
18 date that the court files it. They have over -- almost
19 a full year earn using her time, eleven months and
20 fifteen days approximately, to then file the -- re-file
21 the action; in this case chose not to do that within the
22 one year that is expressly set out within Rule 40(j)
23 and, therefore, the consequence is absolute defense of
24 the statute of limitations.

25 **THE COURT:** Let me get you to take these originals

1 back.

2 **MS. KERN-FULLER:** I will, Your Honor. And, if I
3 may, I failed to hand this up. This is the clerk's
4 actual note. It should be in the Court's file.

5 **THE COURT:** I have it.

6 **MS. KERN-FULLER:** Okay.

7 **THE COURT:** I'm gonna let you go through that and
8 give you back the originals, please.

9 **MS. KERN-FULLER:** These are the originals, Your
10 Honor.

11 **THE COURT:** I mean, give me back copies. I'm sorry.

12 **MS. KERN-FULLER:** Okay.

13 **THE COURT:** All right. I'm gonna read your briefs.
14 I'm gonna look at the information and I'll get an order.

15 **MR. CHASE:** Thank you for your time, Your Honor.

16 **MS. KERN-FULLER:** This should be a better copy.

17 **THE COURT:** Thank you.

18 (Proceedings were concluded at 2:34 PM.)
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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eighth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete transcript of record of all
the proceedings had and the evidence introduced in the
hearing of the captioned case in Circuit Court on the
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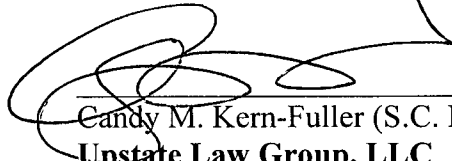
I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

April 26, 2015

s/ Stacy S. Johnson
Stacy S. Johnson, RPR
Circuit Court Reporter

Certificate of Counsel

Counsel for Appellant hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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September 23, 2015

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