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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

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SC Court of Appeals

Case No. 2013-CP-28-0250

Clifford D. Holley and Sharon Holley, Appellants,

v.

Dan-Sa, Inc.; Charles E. Oman; Janis M. Niemi;
Gina L. Pike; Dermac Contractors, LLC; Bluewater
Development of South Carolina, LLC, and Blue
Ridge Savings Bank, Inc., Defendants,

Of whom Charles E. Oman and Janis M. Niemi are the Respondents.

RECORD ON APPEAL

Catharine Garbee Griffin
Alina Dudau
Post Office Box 8057
Columbia, South Carolina 29202
(803) 343-3863
Attorneys for Respondents

H. Freeman Belser
William C. Dillard, Jr.
Post Office Box 96
Columbia, South Carolina 29202
(803) 929-0096
Attorneys for Appellants

Stephen C. Burn, Jr.
945 East Main Street, Ste. D
Lexington, South Carolina 29072
(803) 358-7220
Attorney for Appellants

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STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Clifford D. Holley and Sharon Holley,

Plaintiffs,

v.

Dan-Sa, Inc.; Charles E. Oman; Janis M.
Niemi; Gina L. Pike; Dermac Contractors, LLC;
Bluewater Development of South Carolina,
LLC, and Blue Ridge Savings Bank, Inc.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) Civil Action No.: 2013-CP-28-00250

) ORDER GRANTING DEFENDANTS
) OMAN AND NIEMI'S MOTION FOR
) SUMMARY JUDGMENT

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CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before the undersigned judge on January 20, 2015 on the defendants, Oman and Niemi's motion for summary judgment. Present and appearing at the hearing were Freeman Belser, attorney for the plaintiff, and Catharine Garbee Griffin, attorney for the defendants. After hearing the argument of counsel, reviewing the memorandum of law, the deposition excerpts, the submitted affidavits, and the exhibits, this court grants the defendants' motion for summary judgment.

FACTS

On October 20, 2006, Oman and Niemi, residents of Minnesota, purchased a property with a modular home situated on 1.93 acres in Kershaw County, at Lake Wateree. After purchasing the property, Oman and Niemi divided the property to make two lots: one was 1.07 acres on which the modular home was located; and the other parcel was 0.86 acres. On March 2, 2007, Defendants obtained a building permit to move the modular home from the original site onto the site of the smaller lot. Defendants planned to sell the larger lot, and keep the smaller lot with the modular home on it for themselves to use it as their house. In January of February of

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Clerk of Court Kershaw County

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2007, Oman hired a company, Bluewater Development, to clear the lot to prepare it for the footings on which to move the modular home.

Bluewater employee Altman testified that Oman directed that Bluewater move the debris which had been cleared off the property into an area on the left side of the property and bury it. Oman believed that the area to the left of the new home site cleared by Bluewater was not buildable due to the slope, terrain, erosion and the flood plain. The slope of the land to the left of the house was described as a forty five degree angle, sloping at a "pretty good little clip." The plaintiffs' contractor also concurred that where the slope started that "it was a pretty big hill" and estimated that it had a five to six foot slope. The plaintiffs' contractor agreed that it was "not practical to build a building in this sloped area" which Mr. Oman also described as "nonbuildable." Another contractor also commented that the land had a six foot slope which was so steep that he could not drive his backhoe on it.

Oman hired Der-Mac to pour the footings for the foundation for where the modular home would be relocated. On July 10, 2007, the Kershaw County building official approved the footings poured by DerMac. On the smaller lot, Mr. Oman built a retaining wall, at the County building official's recommendation.

After having the footings dug and completing a retaining wall, defendants decided not to move the modular home, but to return to Minnesota, due to health issues of Mr. Oman. On October 24, 2007, defendants entered into a "Land, Lots and Acreage Contract of Sale" with Dan-Sa, who purchased the smaller lot from Defendants. When Oman and Niemi entered into the contract with Dan-Sa to sell the lot with the footers, driveway, and retaining wall, they did not provide a Seller's Disclosure Form because no house existed on the property. Oman and Niemi provided a set of draftsman plans to Dan-Sa for a house which could be built on the

existing footers. The draftsman's drawings provided that the porch on the side of the house be supported by posts which had their own footings. Before buying the lot, Gibson had the right to inspect the property. Gibson was aware that the property had a driveway, septic tank, footers and retaining wall. He testified that he looked at the footers before buying the property and described them as "big footers" dug with a "two foot bucket." He testified that they were "good looking footers." Gibson also testified that there was no foundation built for the house at the time of his purchase of the lot. As required by his bank, Gibson had a survey done on the property to be sure that the footers on the lot were not in the flood plain.

On December 21, 2007, Oman and Niemi transferred the property to Dan-Sa. Danny Gibson, the owner of the building company, Dan-Sa, intended to build a spec home on the property. Gibson had worked in the construction business since 1973 and obtained a general contractor's license in 1987. Gibson had built five houses in the Lake Wateree area before purchasing this property. Gibson built seventy-five houses while a licensed contractor. Gibson applied for and received a building permit to build a home on the property on January 3, 2008. Gibson estimated his own construction costs.

After being issued the building permit, Gibson constructed the now Holley home in approximately five to six months. Dan-Sa built a house on the existing footings which had been poured by Der-Mac. Gibson had inspections completed by Kershaw County of the foundation, framing, plumbing, electrical and HVAC. Kershaw County issued a certificate of occupancy to Dan-Sa, the builder, on June 20, 2008.

During the construction of the home, Gibson modified the draftsman's plans. The plans provide that the porch on the house be supported by posts which had their own footings. However, Dan-Sa modified the plans and built the house with two stories instead of one story

and a half. Additionally, Dan-Sa also built a two-story porch on the house, using the retaining wall to support at least part of the porch on it. The porch was also supported by some posts dug about two feet in the ground. Four months after finishing the construction, Gibson gave the deed in lieu of foreclosing to Blue Ridge Savings Bank. On June 23, 2010, Blue Ridge Savings Bank sold the property to Gina Pike almost two years after it had acquired the property. The contract of sale between the bank and Pike indicated the property was sold "AS-IS" and that "Buyer and Seller agree[d] that Seller will not complete nor provide a Residential Property Condition Disclosure Statement" pursuant to the applicable statute. Furthermore, the South Carolina Residential Property Condition Disclosure Act exempts certain transfers from its requirement of providing a disclosure form, including a transfer when the bank takes title from a mortgagor whose indebtedness was in default. See, S.C. Code Ann. § 27-50-30 (2).

The property was conveyed pursuant to a Special Warranty Deed. Gina Pike owned the house for one year. On June 29, 2011, Pike contracted with the Holleys to sell the property. Pike conveyed the property to the Holleys on July 8, 2011. Before purchasing the property from Pike, the Holleys had the home inspected. It is undisputed that there were no structural defects found in the home.

Soon after purchasing the house from Pike, the Holleys decided to build a pool to the left of the existing home in the yard. The Holleys contracted with Alaglass to build the pool. The Holleys did not test the soil to determine if the soil was suitable for a pool. The Holleys were aware when they began their project to build the pool that the project was more complex due to the slope of the land. The Holleys had the property surveyed three times to be certain that it was not in the flood plain. In undertaking the project, the Holleys knew that the slope of the property was so severe that they would need to build a six foot retaining wall around the deep end of the

pool, and fill it in with dirt to support the pool in order to accommodate the natural terrain.

In August of 2011, the plaintiffs started working on installing a pool in the portion of the yard to the left of the house. When their contractor, Alaglass, started work on the pool, they found debris -- timber, limbs, and other organic materials -- buried underground. During the digging out of the debris in the yard adjacent to the house, the retaining wall on the left side of the house was affected. After the retaining wall was affected, the roof of the porch began to sag. The debris found on excavating the pool extended from the side yard to under the porch. The plaintiffs complain that the construction of the upper porch was done incorrectly because it was supported by the retaining wall rather than a footer. The majority of the soil underneath the footers for the entire main house, not the porches, was considered to be reasonably compacted and did not have any debris underneath it. In removing the debris, there was no digging under the actual footers of the house. The contractor focused on stabilizing the porches and the roof on the second story porch. The contractor hired to stabilize the porches testified that there was no settlement in the house itself due to the debris. Likewise, the plaintiffs agree that there was no damage to the house itself.

The plaintiffs' only cause of action listed in the complaint is negligence. The duties allegedly breached by the insureds are the duty to act reasonably and with care in maintaining the property, dividing the property, and disclosing any defects or materials located on the property. Specifically, Plaintiffs alleged Oman and Niemi acted negligently in burying debris "on the property to be conveyed to Defendant Dan-Sa, Inc." and in failing to disclose the existence of buried debris to Dan-Sa and subsequent purchasers.

STANDARD FOR SUMMARY JUDGMENT

The purpose of summary judgment is to expedite disposition of cases which do not

require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). A trial court may properly grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF. When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). However, when triable issues exist, those issues must go to the jury. BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn there from in the light most favorable to the non-moving party. Worley Cos., Inc. v. Town of Mount Pleasant, 339 S.C. 51, 528 S.E.2d 657 (2000). The burden is on the moving party to clearly establish an absence of a genuine issue of material fact. Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 671 S.E.2d 79 (Ct. App. 2008). Once the moving party meets the initial burden of showing an absence of evidentiary support for the non-moving party's case, the non-moving party is required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In meeting its burden, the non-moving party cannot simply rest on mere allegations or denials contained in the pleadings. Moore v. Weinberg, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007). It is not sufficient that a party create an inference which is not reasonable or an issue of fact that is not genuine. Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). A trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case. Harris v. Rose's Stores, Inc., 315 S.C. 344, 433 S.E.2d 905

(Ct. App. 1993).

CONCLUSIONS OF LAW

I. OMAN AND NIEMI ARE NOT LIABLE TO PLAINTIFFS, SUBSEQUENT PURCHASERS, FOR FAILURE TO DISCLOSE BURIED DEBRIS ON LAND SOLD TO DAN-SA.

As a matter of law, this court finds that the plaintiffs failed to present any evidence creating a genuine issue of material fact that the defendants, Oman and Niemi, had a duty to disclose to subsequent purchasers that there was buried organic material on their land. It is undisputed that the sellers, Oman and Niemi, were not in privity with the subsequent purchasers, the Holleys.

In their complaint, Plaintiffs asserted a cause of action in negligence against Oman and Niemi allegedly stemming from these Defendants' sale of the property at 2834 Lake Road to Dan-Sa, the builder of the home on the property. No South Carolina court has ever decided whether a subsequent purchaser of land can bring an action for negligent failure to disclose debris buried on a portion of land not built upon against a seller not in privity with them.

Pursuant to South Carolina law involving situations of non-disclosure in the context of contracts of sale,

The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties.

Ardis v. Cox, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (S.C. Ct. App. 1993) (quoting Jacobson v. Yaschik, 249 S.C. 577, 585, 155 S.E.2d 601, 605 (1967)); see also Holly Hill Lumber Co. v. McCoy, 201 S.C. 427, 23 S.E.2d 372, 376 (1942).

Plaintiffs purchased the property from Gina Pike in 2011 and had no relationship with these Defendants. In 2007, Oman and Niemi sold the lot located at 2834 Lake Road to defendant, Dan-Sa, the home residential builder, who eventually deeded it to their bank in lieu of foreclosure. In deeding the property to their bank, Dan-Sa made no disclosures about the home. The bank then sold it to Pike without any disclosures. This court finds that Plaintiffs do not have a cause of action against these Defendants because Plaintiffs were not in privity with them and this situation does not fall into any of the recognized three classes in which the duty to disclose exists.

The plaintiffs argued that the defendants would be liable under Pruitt v. Morrow, 288 S.C. 298, 301, 342 S.E.2d 400, 401 (1986) for failure to disclose to subsequent purchasers in which the court referred to "actions based upon negligent or reckless non-disclosure of land defects." This case is inapposite to the instant case. In Pruitt, the Ervin Company (Ervin) purchased a tract of land and subdivided it, roughed in streets and laid utilities. Another company purchased these properties in 1974, and then sold a lot to Anthony Morrow upon which he built a "spec" house. Morrow sold this house to a couple, who subsequently sold it to Pruitt, the plaintiff in that case. The house began to shift and it was discovered that the house had been built over a gulley filled with stumps and construction materials capped with fill dirt.

The single issue addressed in Pruitt was whether the doctrine of *caveat emptor* afforded a defense to Ervin's successor against the causes of action in fraud and negligence/recklessness brought by Pruitt. Ervin's successor argued that the exception to *caveat emptor* that applied to

sales of new buildings did not extend to sales of undeveloped land. The court held that "the doctrine of *caveat emptor* is also inapplicable in actions based upon negligent or reckless non-disclosure of land defects," relying on the two opinions in Lawson v. Citizens and Southern National Bank of South Carolina (Lawson I, 255 S.C. 517, 180 S.E.2d 206 (1971), in which the plaintiffs in that case appealed the trial court's decision to sustain defendant's demurrer and Lawson II, 259 S.C. 477, 193 S.E.2d 124 (1972), in which the defendant appealed the trial court's decision declining to grant JNOV or new trial after the jury's verdict for plaintiffs).

However, the court held "the remaining issues present no errors of law" and it is not apparent from the record what other issues were raised. Id. There is no indication that Ervin's successor raised the issue that Pruitt did not have a cause of action based upon negligent non-disclosure of land defects against it. Therefore, the court did not decide whether Pruitt had such a cause of action against Ervin's successor. Analyzing the language in Lawson I and II, on which the Pruitt court relied, and in the case law addressing the situations where the duty to disclose arises, this court finds that Plaintiffs could only bring an action for failure to disclose against Gina Pike, and Oman and Niemi would only be liable to Dan-Sa, if they are liable for a failure to disclose at all.

In Lawson, Mr. Lawson, purchased a lot in a residential subdivision from the developer of the property. He and his wife built their home on the lot. They subsequently divorced and Mr. Lawson conveyed the house to his wife. Afterward, Mrs. Lawson discovered the house was built over a ravine filled with unsuitable material and capped with clay and the house suffered damage. Mr. and Mrs. Lawson joined in bringing an action against the developer, asking for actual and punitive damages. In Lawson I, the court analyzed the specific allegations in the complaint, noting they "jumble[d] allegations appropriate to an action for deceit with allegations

appropriate to an action for negligence" but found:

. . . the complaint charges, by specific allegation or reasonable inference, that the defendant in developing and subdividing its land into lots to be sold for residential use only, filled an enormous gulley with stumps and other rubble to a depth of twenty to twenty-five feet and concealed this fill by covering it with soil. A large part of the lot sold to Mr. Lawson was comprised of this filled area, which the defendant knew was unstable and unsuited for the intended purpose. Knowing that the purchaser was ignorant of the condition, which was not apparent upon inspection, and knowing its materiality, the defendant failed to disclose the truth.

Lawson I, 255 S.C. at 520-21, 180 S.E.2d at 208.

However, on the issue of the subsequent conveyance of the property by Mr. Lawson to his ex-wife, the court decided it did not need to determine whether Mrs. Lawson was a proper party because the cause of action "ripened in Mr. Lawson upon completion of the dwelling." Id. at 522, 180 S.E.2d at 209. The court specified it did not need to inquire whether Mrs. Lawson was a proper party because "defect of parties, not multiplicity, is ground for demurrer," i.e. a proper party, Mr. Lawson, had a cause of action against the developer, and it did not matter that Mrs. Lawson did not. Id.

Furthermore, Lawson II acknowledged the South Carolina law regarding the limitation of the duty to disclose as between the parties to the transaction by citing to Holly Hill Lumber Co. Explicitly, in Lawson II, the court addresses the duty to disclose arising from the transaction between Mr. Lawson and developer, and the developer's duty to disclose in the context of that transaction. Lawson II, 259 S.C. at 480-81, 193 S.E.2d at 126.

Furthermore, in support of its holding, the Pruitt court also noted that section 353 of the Restatement (Second) of Torts "reject[ed], by clear implication, *caveat emptor* in non-disclosure of land defect cases." Pruitt, 288 S.C. at 301, 342 S.E.2d at 401. In LoPresti v. Burry, 364 S.C. 271, 612 S.E.2d 730 (Ct. App. 2005), the court states, in a footnote, that section 353 'suggest[s] a

seller of real property may be liable for negligent nondisclosure of defects in the land” but points out the condition precedent before liability can be imposed that “the vendee does not know or have reason to know of the condition or the risk involved.” (emphasis added). In LoPresti, a subsequent purchaser brought a claim for negligent and reckless nondisclosure of land defects against the seller, together with claims for fraud and fraudulent concealment, in an action arising from their purchase of a home encumbered by a flood easement. The seller recorded a plat without the floodplain line, although the flood easement had been previously recorded. The appellate court affirmed the trial court’s grant of summary judgment to the seller on all causes of action and specifically considered as dispositive the absence of any special relationship between the subsequent purchaser and the seller that would require disclosure of a matter of public record, along with the constructive notice of the easement. Likewise, this court fails to find a special relationship between the seller and subsequent purchasers; therefore, summary judgment should be granted in favor of the sellers.

This court also considered the case law from other jurisdictions that limit the duty to disclose land defects to situations where the relationship between the parties is that of seller-purchaser. See Wellesley Hills Realty Trust v. Mobil Oil Corp., 747 F. Supp. 93, 100-101 (D. Mass. 1990) (specifying that the exception to the general rule¹ of nonliability for vendors in the circumstances of any hidden defects that the vendor knows or should know would create an unreasonable risk of harm does not apply in this case where the relationship between the plaintiff and the defendant was not one of vendor and vendee); Christy v. Glass, 415 Mich. 684, 696, 329 N.W.2d 748, 753 (1982) (the vendor of land with water problems had no duties of disclosure to the subvendees and its only liability for a failure to disclose would have been only to its vendee).

¹ This “exception to the general rule” is the one referred to in section 353 of the Restatement. See Wellesley Hills Realty Trust, 747 F. Supp. at 100; Christy, 415 Mich. at 695 n. 7, 329 N.W.2d at 752 n.7.

See also DeAravjo v. Walker, 589 So. 2d 1292, 1294 (Ala. 1991) (affirming summary judgment granted to the vendor of land when the plaintiffs did not offer anything to indicate they were in privity with the vendor).

Moreover, this court finds that the defendants had no duty to disclose debris buried on any portion of the lot that was outside the perimeter of the footings. A fundamental difference exists between the situations in Pruitt and Lawson and the situation in the present case. In both Pruitt and Lawson, the developer/seller of land failed to disclose debris buried on the lots in situations where the residential homes could be built anywhere on those lots. Additionally, Lawson II indicates that the purchaser of the lot placed the location of the house in such a manner as to avoid a gulley or ditch that was visible on the lot. Lawson II, 259 S.C. at 484, 193 S.E.2d at 128. The Pruitt court does not specify what a cause of action in negligent or reckless non-disclosure of land defects must rely on, but cites to Lawson I and II. The land purchaser's cause of action in Lawson II relied on the seller's knowledge that the land was unstable and unsuited for the intended purpose of building a residential house on it, which was a *material fact* in the transaction between Lawson and the developer. From the Pruitt court's reliance on Lawson, this court infers that materiality of the non-disclosure applies even when the non-disclosure is negligent or reckless, as opposed to fraudulent.

Here, the material fact in the transaction between Defendants and Dan-Sa, the builder, was the possibility of building a house on the footings poured on the property. The location of the house was clearly established by the footings poured on the lot prior to the lot being sold to Dan-Sa. The house built on the footings did not show any defects or signs that it was built on unsuitable footings. The remaining part of the lot was, to Defendant's knowledge, not buildable, due to the topography of the land and the 100-year floodplain which shows a large portion of the

remaining lot was not above the 100-year floodplain. Dan-Sa's owner actually agreed that a builder would know not to build in an area not above area the 100-year floodplain and it was general knowledge for builders that it could not be built upon. Therefore, building anything on the part of the property known as unbuildable was not a material part of the transaction between Dan-Sa and Oman and Niemi to give rise to a duty to disclose. Consequently, Oman and Niemi cannot be liable as a matter of law for failure to disclose.

Furthermore, Section 353 of the Restatement (Second) of Torts, to which the Pruitt court referred, and the comments thereof, clearly establish that this section is not applicable under the facts of this case. Pursuant to section 353, the vendor of land is subject to liability for physical harm when the vendor fails to disclose to his vendee a condition "which involves unreasonable risk to persons on the land" IF

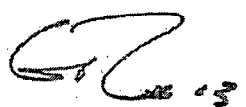
- (a) the vendee does not know or have reason to know of the condition or the risk involved, and
- (b) the vendor knows or has reason to know of the condition, and realizes or should realize the risk involved, and has reason to believe that the vendee will not discover the condition or realize the risk.

Restatement (Second) of Torts § 353 (1965) (emphasis added).

Comment (e) to this section, specifies that a condition necessary to subject the vendor to liability is that he realized or should realize the risk involved. Specifically,

[i]f the defect which he fails to disclose is one which does not make the land dangerous to persons upon it unless it is used for a purpose to which the vendor has reason to believe that it will not be applied, a reasonable man, though knowing of the condition, would not believe that it was likely to cause any harm to such persons.

Plaintiffs' complaint indicates the discovery of the debris was a result of their contractor's work to install a pool. This pool was to be placed on the portion of the lot to the left



of the house that had been built by Dan-Sa on the footings poured by Defendants. There is no dispute that the burial of the organic debris did not make the land dangerous to persons. Defendants had no reason to believe that the buried debris would make the land unsuitable for building a pool in that area when, to their knowledge, that area was not buildable to begin with and had no information that the subsequent purchaser, six years later, would decide to build a six foot retaining wall to accommodate a pool.

Also, the draftsman's drawings provided by Defendants to Dan-Sa were for a house that could be built on the existing footings, but did not include porches that would be supported on any part by the retaining wall. The drawings actually indicated the porches were to be supported by posts, each of them placed on its own footings. Dan-Sa supported the second floor roof of the porch with a post placed on the retaining wall which violated the standard of care for a builder. Thus, Defendants did not realize and could not have realized that Dan-Sa would decide to use a part of the retaining wall to support the porch and these Defendants cannot be liable to Dan-Sa for failure to disclose to him that the retaining wall was unsuited for such a use. Additionally, Defendants could not have realized that removing the debris to accomplish the construction of a pool on the left side of the retaining wall would create a risk to the porch which was improperly constructed by a subsequent purchaser/builder.

This court finds that Oman and Niemi did not owe a duty even to Dan-Sa, their purchaser with whom they were in privity, to disclose that debris was buried on the lot in an area considered not buildable, which was to the left of the home site marked by the poured footings because such a disclosure was not material to the transaction.

Even if Oman and Niemi would have had a duty to disclose the existence of the debris to Dan-Sa, pursuant to section 353 of the Restatement (Second) of Torts, knowledge of a land

defect on the part of the vendee or an opportunity to discover it and to remedy the situation relieves the vendor of any duty or liability. Dan-Sa had the opportunity to discover that some buried debris ran under the retaining wall when it dug footers for some of the posts to a depth of two feet to support the porch on the left side of the house.

Furthermore, Dan-Sa conveyed the property to Blue Ridge Savings Bank in lieu of foreclosure. At the time Dan-Sa gave a deed in lieu of foreclosure, it did not make any disclosures to the bank nor was it required to make any disclosures. For that reason, when the bank conveyed the property two years after acquiring it, the bank conveyed the property "AS-IS" to Gina Pike under a contract specifically stating that no Residential Property Condition Disclosure Statement was to be provided. The South Carolina Residential South Carolina Residential Property Condition Disclosure Act specifically exempts disclosure under these circumstances where the bank takes title from a mortgagor whose indebtedness was in default. See, S.C. Code Ann. § 27-50-30 (2). Therefore, any disclosure, if it had been required, and although not made, would never have been conveyed to the Holleys. This court, therefore, dismisses the plaintiffs' action for failure to disclose.

II. DEFENDANTS OWED NO DUTY TO PLAINTIFFS IN MAINTAINING THE LOT THEY OWNED IN A PARTICULAR MANNER OR IN CLEARING THE LAND AND IN BUILDING THE RETAINING WALL

The plaintiffs also contend that the defendants are liable as residential home builders and also to maintain the property. In a negligence action, [t]he court must determine, as a matter of law, whether the law recognizes a particular duty." Steinke v. S. Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999). "An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Without a duty, there is no actionable negligence." Bishop v. S. Carolina Dep't

of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998).

Plaintiffs allege that Oman and Niemi had a duty "to act reasonably and with care in maintaining the property" while they cleared the land. However, this court finds no South Carolina cases which impose a duty on a landowner to maintain their property in a certain way while owning the property. Such a duty would be unreasonable, as expressed persuasively by a court from another jurisdiction:

... no legal authority . . . would support the imposition of a duty on an owner of land to maintain his or her property in a certain condition or to refrain from any activity affecting the property which would extend to future owners of the land. The imposition of such a duty would be unreasonable because such future owners may not be known or even contemplated at the time the landowner creates or maintains a condition on his or her property. Moreover, such a duty would unreasonably interfere with a landowner's right of ownership; the right to do with his or her property as desired without liability so long as he or she does not interfere with the interests of others.

Wellesley Hills Realty Trust v. Mobil Oil Corp., 747 F. Supp. 93, 100 (D. Mass. 1990).

In Wellesley, Mobil Oil Corporation sold a property on which it previously operated a gasoline station to Harold Alexander. A few months thereafter, Alexander sold the property to Wellesley Hills Realty Trust (Trust). One of the Trust's many causes of action asserted that "Mobil had a duty to ensure that there were no releases of oil or hazardous materials at the site" and that Mobil was liable in negligence because it breached this duty and caused damage to the Trust's property. The court concluded as a matter of law that Mobil did not owe a duty to the Trust to ensure that there were no releases of oil or hazardous material on the property while Mobile owned and possessed the property. See also Jones v. Texaco, Inc., 945 F. Supp. 1037, 1047 (S.D. Tex. 1996) (citing to Wellesley Hills Realty Trust and to cases from other jurisdiction in which the courts declined to impose liability under a negligence theory upon a prior

landowner in favor of remote, subsequent purchasers, in situations of contamination with oil or other chemicals).

Similarly, this court finds that Oman and Niemi owed no duty to subsequent purchasers to maintain the property in a certain condition or refrain from any activity affecting the property, like the clearing of their land and disposal of the debris on their property, while they owned the property. Furthermore, the buried debris does not involve hazardous material per se that contaminated the property, but debris that was organic material that would decompose in time.

This court also concludes that an action in negligence by Plaintiffs' against Oman and Niemi arising from the building of the retaining wall and pouring the footings, although one not asserted in the complaint, but argued by the plaintiffs at the hearing, must fail due to Plaintiffs' failure to establish the existence of an essential element of the party's case. See Harris, 315 S.C. at 346, 433 S.E.2d at 906.

In Terlinde v. Neely, 275 S.C. 395, 399, 271 S.E.2d 768, 770 (1980), the Supreme Court held that a residential builder of a home built as speculative owes a duty of care in constructing it to the members of the class for which it was constructed, so as to render him accountable for negligent workmanship, even in absence of privity. This court finds that the duty of care in Terlinde is applicable to the entire home, the finished product, placed into the stream of commerce. Therefore, this court concludes that the Terlinde duty cannot be extended to the footings or, even more so, to the retaining wall, which is not even a part of a residential building. As stated above, the house was built on the poured footings by Dan-Sa, a South Carolina licensed residential builder, who was building it for speculative sale. Under these circumstances, the duty of care in building the residence should be imputed to Dan-Sa, who built the finished product, and not the sellers of the property.

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Defendants intended to move the modular home on the lot at 2834 Lake Road to use as their residence. For this purpose, they applied for and obtained a building permit. If their plan would have proceeded, Oman and Niemi would have been in a similar situation as the one described in Smith v. Breedlove, 377 S.C. 415, 661 S.E.2d 67 (2008). Breedlove planned to build a residence for his family on a vacant lot he owned in Hilton Head and he did not have any agreement or intention to sell the residence. Breedlove built the house acting as his own general contractor. The family lived in the residence for a while, but unforeseen circumstances made it necessary for them to sell it. Several years later, the purchaser filed suit against Breedlove on several causes of action, including negligence in constructing the home. The supreme court affirmed the grant of summary judgment to Breedlove. In regard to the negligence argument, the supreme court noted "[t]he circuit court held that the undertaking or agreement to construct a dwelling for another is what creates the duty to exercise and use due care in the construction of that dwelling." Id. at 424, 661 S.E.2d at 72. In light of the decision in Smith, this court concludes that it would be unreasonable to impose a residential builders' duty of workmanship on Oman and Niemi when the entirety of their work consisted of pouring footings and building a retaining wall while the construction of a home for another was done by Dan-Sa.

Additionally, the Terlinde court's imposition of liability in tort in the absence of privity between the tortfeasor and the third party was limited to protecting an innocent purchaser in the context of defective construction. Therefore, there could not be any liability imposed on Oman and Niemi because there is no competent evidence that the house constructed on the footings by Dan-Sa was defective. According to Dan-Sa's owner, Danny Gibson, who built the house, "if [the plaintiffs] had never dug that pool, the house would still be there like in 40 years from now." His statements are supported by the allegations in the complaint, where it is explained that the



discovery of buried debris was the result of Plaintiffs' contractor's work to install a pool, and not by finding any defects in the house.

Because the Plaintiffs also failed to show they owed any additional duties to the subsequent purchasers for failing to maintain or the construction of the footers and retaining wall, this court grants summary judgment to the Defendants, Oman and Niemi, on all of the remaining allegations in the complaint.

ORDER

For the reasons set forth above, it is ORDERED that Oman and Niemi's Motion for Summary Judgment is granted and the case against these defendants is dismissed with prejudice.

AND IT IS SO ORDERED.


G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

Camden, South Carolina

2-22, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2013 CP 2800250

Clifford D. Holley and
Sharon Holley,
Plaintiffs,

v.

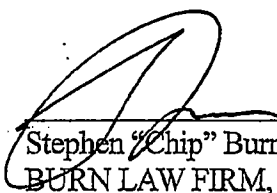
SUMMONS.

Dan-Sa, Inc.; Charles E. Oman; and
Janis M. Niemi,
Defendants.

FILED FOR RECORD
2013 MAR 19 AM 10:48
JOYCE HODDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

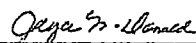
TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.


Stephen "Chip" Burn, Esquire
BURN LAW FIRM, LLC
945 East Main Street, Ste. D
Lexington, South Carolina 29072
(803) 358-7220
ATTORNEY FOR PLAINTIFFS

Lexington, South Carolina
March 19, 2013

ATTEST: True, Correct & Certified
Copy of Original on File in this
Court


Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2013-CP-28-00250

Clifford D. Holley and)
Sharon Holley,)
)
Plaintiffs,)

v.)

SECOND AMENDED COMPLAINT

(JURY TRIAL REQUESTED)

Dan-Sa, Inc.; Charles E. Oman;)
Janis M. Niemi; Gina L. Pike; Dermac)
Contractors, LLC; Bluewater)
Development of South Carolina, LLC; and)
Blue Ridge Savings Bank, Inc.,)
Defendants.)

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2014 FEB 18 PM 1:30
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

The Plaintiffs, by and through their undersigned counsel, would respectfully show unto
this Honorable Court as follows:

JURISDICTION

1. Plaintiffs are citizens and residents of the County of Richland, State of South Carolina.
2. Upon information and belief, Defendant Dan-Sa, Inc. is a dissolved corporation founded in the State of North Carolina.
3. Upon information and belief, Defendants Charles E. Oman and Janis M. Niemi are residents of the County of Hennepin, State of Minnesota.
4. Upon information and belief, Defendant Gina L. Pike is a resident of the County of Richland, State of South Carolina.
5. Upon information and belief, Defendant Dermac Contractors, LLC is a corporation with its principal place of business in York County, South Carolina and is founded and authorized to conduct business in the State of South Carolina.

6. Upon information and belief, Defendant Bluewater Development of South Carolina, LLC is a corporation with its principal place of business in Fairfield County, South Carolina and is founded and authorized to conduct business in the State of South Carolina.
7. Upon information and belief, Defendant Blue Ridge Savings Bank, Inc. is a corporation founded in the State of North Carolina and authorized to conduct business in South Carolina.
8. The Court has jurisdiction over the subject matter of this action pursuant to the South Carolina Constitution, Article V, Section 11.
9. Venue is proper in this action pursuant Section 15-07-10(1) of the Code of Laws of South Carolina Annotated (2012). The subject of this action is real property located in the County of Kershaw, State of South Carolina.

FACTUAL BACKGROUND

10. On or about July 8, 2011, Plaintiffs received a Title to Real Estate (Deed) from Defendant Gina L. Pike. In pertinent part, the Deed granted to Plaintiffs the property more fully described as:

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and bearing in the County of Kershaw, State of South Carolina, being known and designated as PARCEL 'B', containing 0.86 acres, more or less, on a plat prepared for Charles Oman and Janis Niemi by Robert H. Lackey Surveying, Inc., dated October 12, 2006 and recorded in the Office of the ROD for Kershaw County in Plat Book B-200 at page 9-A. Reference to said plat is hereby made for a more complete and accurate description thereof. Be all measurements a little more or less.

Also conveyed herewith is that certain boat dock and boat slip, including but not limited to all related appurtenances to the boat dock and boat slip, on the subject property.

This being the same property conveyed to Grantor(s) by deed of Blue Ridge Savings Bank, Inc., recorded 6/25/10 in Book 2687 page 1.

TMS#: 177-01-06-146

11. As set forth in Plaintiffs' deed, Defendant Gina L. Pike obtained her interest in the aforementioned property on or about June 23, 2010 by deed from Defendant Blue Ridge Savings Bank, Inc., recorded June 25, 2010 in Book 2687 page 1.
12. Defendant Blue Ridge Savings Bank, Inc. obtained its interest in the aforementioned property on or about October 24, 2008 by deed from Defendant Dan-sa, Inc. [sic] in lieu of foreclosure, recorded October 27, 2008 in Book 2435 page 310.
13. Defendant Dan-Sa, Inc. obtained its interest in the aforementioned property on or about December 19, 2007 by deed from Charles E. Oman and Janis M. Niemi, recorded December 27, 2007 in Book 2291 page 130. As set forth in the deed, the described property "is a portion of the property conveyed to Charles E. Oman and Janis M. Niemi."
14. Defendants Charles E. Oman and Janis M. Niemi obtained their interest in the aforementioned property by way of a Joint Survivorship Deed executed on or about October 20, 2006 by Robert C. Long and Mildred J. Long, recorded October 24, 2006 in Book 2058 page 292.
15. In August 2011, Plaintiffs contacted Alaglass Pools and other contractors in order to have a pool installed on the subject property.
16. When construction was commenced, various debris was encountered, including, but not limited to, timber and limbs, which had been buried underground. The debris ran across the property and proceeded under the home and porch.
17. Wateree Home Partners, Inc. was contacted in order to attempt to remove the debris. As underground debris was removed the porch of the house located on the property began to sag and the work was stopped.

18. Plaintiffs were thereafter forced to contract with additional companies in order to prevent further damage to the property.
19. Upon information and belief, the timber and limbs found on Plaintiffs' property were transferred there from neighboring property by Defendants Charles E. Oman and Janis M. Niemi prior to the time Defendant Dan-Sa, Inc. obtained title to the property.
20. The timber and limbs were then buried on the property, and the property developed thereon by Defendant Dan-Sa, Inc.
21. Upon information and belief, Defendant Dan-Sa, Inc. constructed a dwelling on the property for Defendant Gina L. Pike.

FOR A FIRST CAUSE OF ACTION
(Negligence)
(As to Defendant Dan-Sa, Inc.)

22. The allegations set forth in the paragraphs above are incorporated as if repeated herein verbatim.
23. Negligence is the breach of a duty of care owed to the plaintiff by the defendant. In order to establish a cause of action for negligence, it must be shown that defendant owed a duty of care to plaintiff, a breach of that duty by a negligent act or omission, and damages proximately resulting from the breach.
24. Defendant Dan-Sa, Inc. owed all subsequent owners of the aforementioned property, including Plaintiffs, a duty to act reasonably in developing the property and constructing on the property.
25. Defendant Dan-Sa, Inc. breached its duty when it acquiesced in the timber and limbs being buried, and then knowingly commenced construction on top of the debris.
26. This negligent and defective construction caused the porch of the home to begin to sag

during construction of the pool. Upon information and belief, the defective construction existed independent the presence of the buried timber and limbs on the property.

27. The presence of the buried timber and limbs on the property was known to Defendant Dan-Sa, Inc. or should have become known through the proper development and grading of the property.

28. Defendant Dan-Sa, Inc. was negligent, willful, wanton, and reckless in proceeding with development and construction on the property while it had knowledge or should have had knowledge of the presence of the buried debris, and in negligently constructing the residence's porch in particular.

29. As a direct and proximate result of Defendant Dan-Sa, Inc.'s negligence, Plaintiffs have suffered substantial damages, including, but not limited to, loss of use of the subject property and monetary damages, including money to repair the defective porch. As a result, Plaintiffs are entitled to an award of actual and consequential damages.

FOR A SECOND CAUSE OF ACTION

(Negligence)

(As to Defendants Charles E. Oman and Janis M. Niemi)

30. The allegations set forth in the paragraphs above are incorporated as if repeated herein verbatim.

31. Negligence is the breach of a duty of care owed to the plaintiff by the defendant. In order to establish a cause of action for negligence, it must be shown that defendant owed a duty of care to plaintiff, a breach of that duty by a negligent act or omission, and damages proximately resulting from the breach.

32. Defendants Charles E. Oman and Janis M. Niemi owed all subsequent purchasers of the aforementioned property, including Plaintiffs, a duty to act reasonably and with care in

maintaining the property, dividing the property, and disclosing any defects or materials located on the property.

33. Defendants Charles E. Oman and Janis M. Niemi breached that duty when they divided the property and conveyed a portion of the property to Defendant Dan-Sa, Inc. Specifically, Defendants Charles E. Oman and Janis M. Niemi removed the timber and limbs from the other portion of the divided property and proceeded to bury the timber and limbs on the property now owned by Plaintiffs.

34. Defendants Charles E. Oman and Janis M. Niemi thereafter failed to disclose the existence of the buried timber and limbs.

35. Defendants Charles E. Oman and Janis M. Niemi therefore acted negligently in not only placing and burying the timber and limbs on the property to be conveyed to Defendant Dan-Sa, Inc., but in also failing to disclose the existence of the debris to Defendant Dan-Sa, Inc. and subsequent purchasers.

36. As a direct and proximate result of Defendants Charles E. Oman and Janis M. Niemis' negligence, Plaintiffs have suffered substantial damages, including, but not limited to, loss of use of the property, substantial monetary damages in having experts and specialists review the condition of the property, substantial monetary damages in having the timber and limbs removed, further damages in having the pool completed on the property. As a result, Plaintiffs are entitled to an extremely substantial award of actual and consequential damages.

37. As a result of the willful, wanton, and reckless conduct of Defendants Charles E. Oman and Janis M. Niemi with respect to their actions involving the aforementioned property, Plaintiffs are also entitled to an award of punitive or exemplary damages.

FOR A THIRD CAUSE OF ACTION

(Negligence)

(As to Defendant Gina L. Pike)

38. The allegations set forth in the paragraphs above are incorporated as if repeated herein verbatim.

39. Negligence is the breach of a duty of care owed to the plaintiff by the defendant. In order to establish a cause of action for negligence, it must be shown that defendant owed a duty of care to plaintiff, a breach of that duty by a negligent act or omission, and damages proximately resulting from the breach.

40. Defendant Gina L. Pike owed all subsequent owners of the aforementioned property, including Plaintiffs, a duty to act reasonably in disclosing any defects or materials located on the property.

41. Defendant Gina L. Pike breached her duty when she conveyed the property to Plaintiffs without disclosing the existence of buried timber and limbs.

42. As a direct and proximate result of Defendant Gina L. Pike's negligence, Plaintiffs have suffered substantial damages, including, but not limited to, loss of use of the subject property and monetary damages in order or to repair the defective porch. As a result, Plaintiffs are entitled to an award of actual and consequential damages.

FOR A FOURTH CAUSE OF ACTION

(Violation of the South Carolina Residential Property Condition Disclosure Act)

(As to Defendant Gina L. Pike)

43. The allegations set forth in the paragraphs above are incorporated as if repeated herein verbatim.

44. Pursuant to the Residential Property Condition Disclosure Act, certain transfers of residential real property must be accompanied by a written disclosure statement from the

owner. See S.C. Code § 27-50-40 (2012).

45. In accordance with the Act, "An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the purchaser and court costs. The court may award reasonable attorney fees incurred by the prevailing party." S.C. Code § 27-50-65 (2012).

46. Defendant Gina L. Pike contracted with Defendant Dan-Sa, Inc. to construct a dwelling on the property. As set forth above, the property contained buried timber and limbs, and parts of the dwelling were even constructed on top of the debris.

47. When Defendant Gina L. Pike entered into a contract for sale with Plaintiffs, she provided a disclosure statement in accordance with the Act. However, Defendant Gina L. Pike alleged in the disclosure she had no knowledge of any "grading or stability of soil or retaining structure" defects.

48. In failing to properly disclose the existence of the buried timber and debris, Defendant Gina L. Pike has violated the South Carolina Residential Property Condition Disclosure Act. As a result, Plaintiffs are entitled to the actual damages proximately caused, court costs, and reasonably attorneys' fees.

FOR A FIFTH CAUSE OF ACTION

(Negligence)

(As to Defendant Dermac Contractors, LLC)

49. The allegations set forth in the paragraphs above are incorporated as if repeated herein verbatim.

50. Negligence is the breach of a duty of care owed to the plaintiff by the defendant. In order

to establish a cause of action for negligence, it must be shown that defendant owed a duty of care to plaintiff, a breach of that duty by a negligent act or omission, and damages proximately resulting from the breach.

51. Defendant Dermac Contractors, LLC owed all subsequent owners of the aforementioned property, including Plaintiffs, a duty to act reasonably in constructing at the property.

52. Defendant Dermac Contractors, LLC breached its duty when it participated in placing and burying the timber and limbs on the property to be conveyed to Defendant Dan-Sa, Inc.

53. Defendant Dermac Contractors, LLC further breached its duty when it participated in placing foundation on top of the buried timber and limbs on the property to be conveyed to Defendant Dan-Sa, Inc.

54. The presence of the buried timber and limbs on the property was known to Defendant Dermac Contractors, LLC.

55. Defendant Dermac Contractors, LLC acted negligently in participating in the placement and burial of timber on the property and in participating in the placement of the foundation on the property.

56. As a direct and proximate result of Defendant Dermac Contractors, LLC's negligence, Plaintiffs have suffered substantial damages, including, but not limited to, loss of use of the property, substantial monetary damages in having experts and specialists review the condition of the property, and substantial monetary damages in have the timber and limbs removed.

FOR A SIXTH CAUSE OF ACTION

(Negligence)

(As to Defendant Bluewater Development of South Carolina, LLC)

57. The allegations set forth in the paragraphs above are incorporated as if repeated herein verbatim.

58. Negligence is the breach of a duty of care owed to the plaintiff by the defendant. In order to establish a cause of action for negligence, it must be shown that defendant owed a duty of care to plaintiff, a breach of that duty by a negligent act or omission, and damages proximately resulting from the breach.

59. Defendant Bluewater Development of South Carolina, LLC owed all subsequent owners of the aforementioned property, including Plaintiffs, a duty to act reasonably in constructing at the property.

60. Defendant Bluewater Development of South Carolina, LLC breached its duty when it participated in placing and burying the timber and limbs on the property to be conveyed to Defendant Dan-Sa, Inc.

61. Defendant Bluewater Development of South Carolina, LLC further breached its duty when it built a retaining wall that it knew, or should have known, would not be able to properly support a structure built on it.

62. The presence of the buried timber and limbs on the property was known to Defendant Bluewater Development of South Carolina, LLC.

63. Defendant Bluewater Development of South Carolina, LLC acted negligently in placing and burying the timber and limbs on the property and in building a retaining wall on the property that it knew or should have known would not have been able to properly support a structure built on it.

64. As a direct and proximate result of Defendant Bluewater Development of South Carolina, LLC's negligence, Plaintiffs have suffered substantial damages, including, but not limited to, loss of use of the property, substantial monetary damages in having experts and specialists review the condition of the property, and substantial monetary damages in have the timber and limbs removed.

FOR A SEVENTH CAUSE OF ACTION
(Negligence)
(As to Defendant Blue Ridge Savings Bank, Inc.)

65. The allegations set forth in the paragraphs above are incorporated as if repeated herein verbatim.

66. Negligence is the breach of a duty of care owed to the plaintiff by the defendant. In order to establish a cause of action for negligence, it must be shown that defendant owed a duty of care to plaintiff, a breach of that duty by a negligent act or omission, and damages proximately resulting from the breach.

67. Defendant Blue Ridge Savings Bank, Inc. owed all subsequent owners of the aforementioned property, including Plaintiffs, a duty to act reasonably in disclosing any defects or materials located on the property.

68. Defendant Blue Ridge Savings Bank, Inc. breached its duty when it conveyed the property without disclosing the existence of buried timber and limbs.

69. As a direct and proximate result of Defendant Blue Ridge Savings Bank, Inc.'s negligence, Plaintiffs have suffered substantial damages, including, but not limited to, loss of use of the subject property and monetary damages in order or to repair the defective porch. As a result, Plaintiffs are entitled to an award of actual and consequential damages.

WHEREFORE, Plaintiffs Clifford D. Holley and Sharon Holley pray:

1. That judgment be entered in their favor against Defendants in an amount to be determined by a jury, and sufficient to compensate them fully for all damages incurred and will occur in the future as a result of Defendants' actions;
2. For an award of punitive damages as determined by a jury in an amount sufficient to impress upon Defendants Charles E. Oman and Janis M. Niemi the seriousness of their conduct and to deter similar conduct in the future by themselves and others;
3. For an award of attorneys' fees plus costs; and
4. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

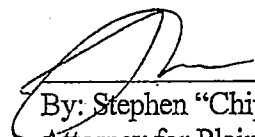


Stephen "Chip" Burn, Esquire
BURN LAW FIRM, LLC
945 East Main Street, Ste. D
Lexington, South Carolina 29072
(803) 358-7220
ATTORNEY FOR PLAINTIFFS

Lexington, South Carolina
January 28, 2014

Jury Trial Requested.

Burn Law Firm, LLC



By: Stephen "Chip" Burn, Esquire
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Clifford D. Holley and Sharon	)	C. A. No. 2013-CP-28-00250
Holley,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	ANSWER TO SECOND AMENDED
	)	COMPLAINT
	)	(Jury Trial Demanded)
Dan-Sa, Inc., Charles E. Oman, and	)	
Janis M. Niemi, Gina L. Pike,	)	
Dermac Contractors, LLC;	)	
Bluewater Development of South	)	
Carolina, LLC, and Blue Ridge	)	
Savings Bank, Inc.,	)	
	)	
Defendants.	)	

Defendants, Charles E. Oman and Janis M. Niemi, answer the second amended complaint of the plaintiff as follows:

FOR A FIRST DEFENSE

1. Deny each and every allegation of the complaint not herein specifically admitted, qualified or explained.
2. Do not have sufficient information to form a belief as to the truth of the allegations of paragraphs one (1) and two (2) of the second amended complaint, and therefore, deny the same and demand strict proof thereof.
3. Admit the allegations of paragraph three (3) of the second amended complaint.
4. Do not have sufficient information to form a belief as to the truth of the allegations of paragraphs four (4), five (5), six (6), seven (7), eight (8) nine (9), ten (10), eleven (11), and twelve (12) of the second amended complaint, and therefore, deny the same and demand strict proof thereof.

5. Admit the allegations of paragraph thirteen (13) of the second amended complaint.

6. Admit the allegations of paragraph fourteen (14) of the second amended complaint.

7. Do not have sufficient information to form a belief as to the truth of the allegations of paragraphs fifteen (15), sixteen (16), seventeen (17), and eighteen (18) of the second amended complaint, and therefore, deny the same and demand strict proof thereof.

8. Deny the allegations of paragraph nineteen (19) of the second amended complaint.

9. Do not have sufficient information to form a belief as to the truth of the allegations of paragraph twenty (20) of the second amended complaint, and therefore, deny the same and demand strict proof thereof.

10. Do not have sufficient information to form a belief as to the truth of the allegations of paragraph twenty-one (21) of the second amended complaint, and therefore, deny the same and demand strict proof thereof.

11. Reallege and reassert its responses to paragraphs one (1) through twenty-one (21) of the second amended complaint in response to paragraph twenty-two (22) of the second amended complaint as if fully reiterated herein verbatim.

12. Admit the allegations of paragraph twenty-three (23) of the second amended complaint.

13. Do not have sufficient information to form a belief as to the truth of the allegations of paragraphs twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), and twenty-nine (29) of the second amended complaint, and therefore, deny the same and demand strict proof thereof.

14. Reallege and reassert its responses to paragraphs one (1) through twenty-nine (29) of the second amended complaint in response to paragraph thirty (30) of the second amended complaint

as if fully reiterated herein verbatim.

15. Admit the allegations of paragraph thirty-one (31) of the second amended complaint

16. Deny the allegations of paragraph thirty-two (32) of the second amended complaint.

17. Deny the allegations of paragraph thirty-three (33) of the second amended complaint.

18. Deny the allegations of paragraph thirty-four (34) of the second amended complaint.

19. Deny the allegations of paragraph thirty-five (35) of the second amended complaint.

20. Do not have sufficient information to form a belief as to the truth of the allegations of paragraph thirty-six (36) of the second amended complaint, and therefore, deny the same and demand strict proof thereof.

21. Deny the allegations of paragraph thirty-seven (37) of the second amended complaint.

22. Reallege and reassert its responses to paragraphs one (1) through twenty-seven (37) of the second amended complaint in response to paragraph thirty-eight (38) of the second amended complaint as if reiterated herein verbatim.

23. Admit the allegations of paragraph thirty-nine (39) of the second amended complaint.

24. Do not have sufficient information to form a belief as to the truth of the allegations of paragraphs forty (40), forty-one (41), and forty-two (42) of the second amended complaint, and therefore, deny the same and demand strict proof thereof.

25. Reallege and reassert its responses to paragraphs one (1) through forty-two (42) of the second amended complaint in response to paragraph forty-three (43) of the second amended complaint as if reiterated herein verbatim.

26. Do not have sufficient information to form a belief as to the truth of the allegations of paragraphs forty-four (44) forty-five (45), forty-six (46), forty-seven (47), and forty-eight (48) of the

second amended complaint, and therefore, deny the same and demand strict proof thereof.

27. Reallege and reassert its responses to paragraphs one (1) through forty-eight (48) of the second amended complaint in response to paragraph forty-nine (49) of the second amended complaint as if fully reiterated herein verbatim.

28. Admit the allegations of paragraph fifty (50) of the second amended complaint.

29. Do not have sufficient information to form a belief as to the truth of the allegations of paragraphs fifty-one (51), fifty-two (52), fifty-three (53), fifty-four (54), fifty-five (55), and fifty-six (56) of the second amended complaint, and therefore, deny the same and demand strict proof thereof.

30. Reallege and reassert its responses to paragraphs one (1) through fifty-six (56) of the second amended complaint in response to paragraph fifty-seven (57) of the second amended complaint as if fully reiterated herein verbatim.

31. Admit the allegations of paragraph fifty-eight (58) of the second amended complaint.

32. Do not have sufficient information to form a belief as to the truth of the allegations of paragraphs fifty-nine (59), sixty (60), sixty-one (61), sixty-two (62), sixty-three (63), and sixty-four (64) of the second amended complaint, and therefore, deny the same and demand strict proof thereof.

33. Reallege and reassert its responses to paragraphs one (1) through sixty-four (64) of the second amended complaint in response to paragraph sixty-five (65) of the second amended complaint as if fully reiterated herein verbatim

34. Admit the allegations of paragraph sixty-six (66) of the second amended complaint.

35. Do not have sufficient information to form a belief as to the truth of the allegations of paragraphs sixty-seven (67), sixty-eight (68) and sixty-nine (69) of the second amended complaint, and therefore, deny the same and demand strict proof thereof.

FOR A SECOND DEFENSE

36. The plaintiffs' claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

FOR A THIRD DEFENSE

37. That plaintiffs' claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

FOR A FOURTH DEFENSE

38. That the plaintiffs' claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant.

FOR A FIFTH DEFENSE

39. That the plaintiffs' claim for punitive damages violated the Federal doctrine of separation of powers and Article 1, Section 8, of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A SIXTH DEFENSE

40. The negligence, recklessness, willfulness and wantonness of the plaintiffs, combining and concurring with the defendants, if any, and the same is denied, was a direct and proximate cause of the plaintiffs' injuries and damages and without which the same would not have occurred, and was

greater in proportion to that of the defendants, if any, and same is denied, and, therefore, the plaintiffs may not recover from the defendants for any of their alleged injuries or damages complained of in the amended complaint. The defendants, therefore, expressly plead the contributory and comparative negligence, recklessness, willfulness and wantonness of the plaintiffs as a bar to any recovery against the defendants.

As an alternative, the defendants are entitled to a reduction of damages as a result of the plaintiffs' comparative negligence.

FOR A SEVENTH DEFENSE

41. This action is barred by the applicable statute of limitations and/or laches.

FOR AN EIGHTH DEFENSE

42. The plaintiffs' damages, if any, were the proximate result of the negligence of third parties.

FOR A NINTH DEFENSE

43. Defendants Oman and Niemi owe no duty to the Holleys regarding the Holleys' purchase of the property.

FOR A TENTH DEFENSE

44. The plaintiffs have no standing to bring this action against these defendants because the plaintiff did not purchase the property from these defendants and would not be liable in contract or tort.

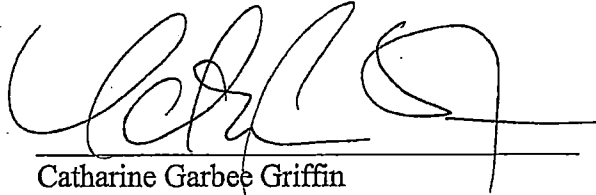
FOR AN ELEVENTH DEFENSE

45. The defendants plead estoppel and waiver.

FOR A TWELFTH DEFENSE

46. The plaintiffs' actions were not foreseeable to these defendants.

WHEREFORE, having fully answered the seconded amended complaint, defendants pray for the dismissal of same, costs and for such other and further relief as this Court deems just and proper.



Catharine Garbee Griffin
Baker, Ravenel & Bender, L.L.P.
P. O. Box 8057
Columbia, South Carolina 29202
(803) 799-9091
cgriffin@brblegal.com
Attorneys for Defendants Oman and Niemi

March 12 2014

STATE OF SOUTH CAROLINA)

County of Kershaw)

COURT OF COMMON PLEAS
2013-CP-28-250

CLIFFORD D. HOLLEY AND SHARON)
HOLLEY,)

PLAINTIFFS,)

vs.)

TRANSCRIPT OF RECORD

DAN-SA, INC., CHARLES E. OMAN,)
JANIS M. NIEMI, GINA L. PIKE)
DERMAC CONTRACTORS, LLC,)
BLUEWATER DEVELOPMENT OF SOUTH)
CAROLINA, LLC, AND BLUE RIDGE)
SAVINGS BANK, INC.,)

DEFENDANTS,)

January 20, 2015
Camden, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE.

APPEARANCES:

H. FREEMAN BELSER, ESQ.
Attorney for the Plaintiffs

CATHARINE GRIFFIN, ESQ.
Attorney for the Defendants

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. Ms. Griffin, is this your
2 motion?

3 MR. BELSER: Yes, Your Honor.

4 MS. GRIFFIN: Yes, Your Honor.

5 MR. BELSER: There are actually two motions. I think
6 the first one is my motion to amend.

7 THE COURT: All right. Let me find that. I have the
8 motion for summary judgment in front of me.

9 MR. BELSER: I have an extra.

10 THE COURT: And I have got the motion to amend the
11 second amended complaint.

12 MR. BELSER: Yes, sir.

13 THE COURT: To include a prayer for prejudgment
14 interest.

15 (Pause).

16 Well, somebody lead off.

17 MR. BELSER: Your Honor, I will.

18 THE COURT: Tell me what this case is about.

19 MR. BELSER: May it please the Court, Your Honor.

20 This is -- this is the second amended -- this is -- the
21 second amended complaint was filed. This is -- I'm
22 relatively new to the case.

23 The first two, I guess three pleadings were filed by
24 a lawyer named Chip Burn who is still involved in the
25 case. I've been involved for less than a year, but this

1 case, Your Honor, is about buried trees, stumps and
2 organic material on a lot.

3 THE COURT: Buried?

4 MR. BELSER: Buried, yes, sir, with a house on it.

5 The plaintiffs, the Holleys, who I represent, of
6 course, discovered the material about four years after it
7 was buried when they were excavating for a pool that was
8 adjacent to their house.

9 The material was largely adjacent to the house, but
10 it actually extended underneath a retaining wall and also
11 underneath where the foundation was.

12 Upon discovery, the plaintiffs who had the financial
13 ability to make the repairs, spent about \$118,000 or so to
14 remove the material to stabilize the house before
15 embarking on a rather large remodel, renovation, and
16 addition.

17 So how did the -- it's not a \$1 million question.
18 It's only about a \$118,000 question, but how did the dirt
19 -- how did the debris get there? Well, the --

20 MS. GRIFFIN: I thought we were arguing the motion to
21 amend and not the motion for summary judgment, which is my
22 motion.

23 I hate to interrupt, but I think the motion to amend
24 is whether he can add prejudgment interest to his
25 complaint verses the factual issues that are going to be

1 discussed or the facts discussed.

2 THE COURT: Do you have any objection to that?

3 MS. GRIFFIN: Yes, Your Honor, to him adding the
4 prejudgment interest?

5 THE COURT: Yes.

6 MS. GRIFFIN: I do.

7 THE COURT: Okay.

8 MR. BELSER: Your Honor, the reason I was going into
9 the facts was so I could tell you what the case is about,
10 but what we -- eventually what we discovered through the
11 discovery, even though I took Mr. Oman's deposition.

12 THE COURT: Who is Oman?

13 MR. BELSER: He is the defendant. He is the
14 remaining defendant.

15 Mr. Oman and Ms. Niemi are husband and wife, and they
16 are the ones who were responsible for burying material on
17 the lot.

18 THE COURT: All right. So what happened to Dan-Sa?

19 MR. BELSER: Dan-Sa is -- they're -- they filed --
20 they're in default. They don't have insurance. They're
21 in North Carolina, and I believe that the individuals
22 filed bankruptcy.

23 MS. GRIFFIN: But they're still in the case.

24 MR. BELSER: They're still in the case.

25 THE COURT: All right. Dan-Sa is in default.

1 MR. BELSER: Yes, sir.

2 THE COURT: What did you say about bankruptcy?

3 MR. BELSER: The individuals, the shareholders of
4 Dan-Sa filed for a personal bankruptcy. The corporation
5 does not file for bankruptcy. They're still in the case.

6 Gina Pike and Dermac Contractors have been dismissed
7 without prejudice.

8 THE COURT: Gina Pike is out. Dermac?

9 MR. BELSER: Dermac is out and Blue Ridge Savings.
10 Well, Bluewater Development of South Carolina, LLC is
11 still in the case. They were the company that buried the
12 stuff out at Mr. Oman's direction, and then Blue Ridge
13 Savings Bank went belly up. So they're not a party to the
14 case.

15 THE COURT: And Ms. Griffin, who do you represent?

16 MS. GRIFFIN: Your Honor, I represent Mr. Oman and
17 Ms. Niemi who were the owners in 2006, 2007 of the
18 property.

19 THE COURT: So Bluewater is represented?

20 MR. BELSER: Bluewater is represented by -- to a
21 limited extended by Roy Hemphill out of Greenwood, but
22 there is no -- there is no insurance coverage there. This
23 is not his motion. He has not objected to this motion.

24 THE COURT: Okay. Okay. Now, at least I have the
25 players.

1 Go ahead, Mr. Belser.

2 MR. BELSER: And so what we have here is that
3 in 2011, the plaintiffs spent about \$118,000 on restoring
4 the property and getting rid of this debris and
5 stabilizing the actual structure.

6 There is no prayer for prejudgment interest in the
7 complaint which I did not draft and which we are going to
8 amend. It's well established that leave of court shall be
9 freely given to amend the complaint.

10 Here we believe that we're entitled to prejudgment
11 interest and certainly -- but certainly entitled to at
12 least plead for it. Whether we actually receive it later
13 is another matter, but the law in South Carolina is that a
14 plaintiff can recover prejudgment interest if the measure
15 of recovery is fixed by conditions at the time the claim
16 arose.

17 The fact that a claim is disputed is not controlled.
18 There will be issues of fact in the case as to what the
19 \$118,000 was repair versus potential betterment, I guess,
20 to the property, but the fact that it's disputed is --
21 does not prevent the bar of prejudgment interest.

22 THE COURT: Well, it's no longer sum certain, is it?

23 MR. BELSER: No, but it's -- it's capable of -- I
24 think it's -- because it was -- the measure of damages in
25 this case is what is the -- what is it going to cost to

1 get the debris out of there and to repair and restore the
2 property?

3 That -- at the time the claim arose, which was in
4 2007 -- well, at the time the claim arose, at the time my
5 clients bought the property, the property was damaged in
6 2007 when this material was buried.

7 The amount of damages to restore the property is
8 something that was capable of being determined. The
9 plaintiffs actually spent the money to -- to have the work
10 performed.

11 The --

12 THE COURT: Now, the typical situation is a note.

13 MR. BELSER: Uh-huh.

14 THE COURT: There is no question about what the
15 value --

16 MR. BELSER: Uh-huh.

17 THE COURT: -- I mean, what the principal of the note
18 is. That's a sum certain. I grant hundreds of
19 prejudgment interests on sum certain.

20 MR. BELSER: Well, I think that that is the
21 traditional -- sorry to interrupt.

22 THE COURT: Take that and run with it. I mean, it
23 sounds to me like this -- there may be some dispute about
24 whether it took \$118,000 to remedy the problem. I don't
25 know.

1 MR. BELSER: Well, I think he --

2 THE COURT: Is there a dispute about that amount?

3 MR. BELSER: I think that there will be a dispute
4 about that amount.

5 THE COURT: Okay.

6 MR. BELSER: But when you think about prejudgment
7 interest, you normally think about what it is in a note.
8 When it says, "We enter prejudgment interest" or when
9 there is some, you know, contract document.

10 There is a case of Babb versus Rothrock, 310-SC-350,
11 which says that the law allows prejudgment interest on
12 obligations to pay money from the time when either by the
13 agreement of the parties or by operation of law, the
14 payment is demandable if the sum is certain or capable of
15 being reduced to certainty.

16 I think in this particular situation, the plaintiffs'
17 claim against the defendants was capable of being
18 determined at the time that the claim was discovered and
19 actually the money -- the money was actually spent.

20 I cannot find a case that specifically is on all
21 fours with this case that would allow for the recovery of
22 prejudgment interest, but what I'm doing right now is not
23 asking. This is not a directed verdict motion.

24 THE COURT: I understand.

25 MR. BELSER: I just want to be able to plead for it,

1 and I guess if leave of court is granted, then I think I
2 would also like to maybe clean up the complaint because of
3 all the, you know, other parties who are out.

4 THE COURT: Well, you can do that. I'm sure there
5 would be no objection to that.

6 All right. Thank you.

7 MR. BELSER: Thank you, Your Honor.

8 THE COURT: All right. Ms. Griffin, address his
9 motion first --

10 MS. GRIFFIN: Yes, Your Honor.

11 THE COURT: -- then I'll hear you on the --

12 MS. GRIFFIN: It's our position that the plaintiffs
13 are not entitled to any prejudgment interest in an
14 unliquidated sum which is what this is.

15 He has conceded that the amount is in dispute,
16 whatever they spent to repair this -- the debris that was
17 in their side yard as a result of them trying to build a
18 pool, and so it's unliquidated.

19 Unlike the cases like you pointed out that are known
20 by contract or by statute where the court allows you to
21 potentially recover prejudgment interest. In this case,
22 it's unliquidated, and there is no right for them to
23 recover prejudgment interest. So we have opposed the
24 amendment to the pleadings.

25 We don't oppose if he wants to clean them up and

1 eliminate people that he has dismissed and refine them in
2 some way, but we oppose the request for prejudgment
3 interest.

4 THE COURT: Well, he says he is not seeking summary
5 judgment on the issue of prejudgment interest. He just
6 says that he wants to plead it if allowed to plea it.

7 MS. GRIFFIN: Yes, Your Honor. I understand that.
8 Our position is if the Court allows him to plead it, we'll
9 be back here moving to strike it.

10 So either, you know, the Court allows him to plead it
11 and then I come back and make a motion to strike it, or
12 the law up front is so clear that he is entitled to
13 recover prejudgment interest that we don't allow him to
14 amend it right now.

15 THE COURT: Okay. How about summary judgment?

16 MS. GRIFFIN: You want me to argue the motion for
17 summary judgment?

18 THE COURT: Yes.

19 MS. GRIFFIN: Your Honor, I filed a memo and some
20 exhibits this morning. I'm not sure if they made it to
21 the file, but I have another copy of it.

22 THE COURT: Is that this?

23 MS. GRIFFIN: Yes, Your Honor.

24 THE COURT: Just hand it to me.

25 Does Mr. Belser have a copy of it?

1 MR. BELSER: Yes, sir, Your Honor.

2 MS. GRIFFIN: Yes, sir.

3 THE COURT: Go ahead.

4 MS. GRIFFIN: All right. Your Honor, I represent Mr.
5 Oman and Ms. Niemi who are two landowners or previous
6 landowners who owned some property out on Lake Wateree
7 back in 2006 and 2007. Just to --

8 THE COURT: Together?

9 MS. GRIFFIN: Together. They're married. They're a
10 couple. They just have different last names.

11 In the light most favorable to the plaintiffs, I'm
12 going to recite the facts to the best of my abilities.
13 This property was purchased, and it was a little over --
14 or a little under two acres.

15 The defendants decided to divide the property. There
16 was a modular home existing on one half of the property,
17 and then the other half was undeveloped.

18 It's on Lake Wateree. There was a dock out there.
19 They decided that what they wanted to do was move the
20 modular home from we'll call it from the right side of the
21 property to the left side of the property.

22 In doing that, they hired Lou Water who is still one
23 of the defendants to come out there and clear the land.
24 The facts have shown that when Lou Water was out there
25 clearing the land that they had stumps and limbs and

1 organic debris that was buried on the left side of the
2 property near the tree line.

3 Now, what happens next is Mr. Oman and Ms. Niemi
4 apply for a building permit because they're intending to
5 move the modular home to the left side of the property.

6 When they applied for the building permit, that was
7 their intent. Mr. Oman then got sick, and it was -- they
8 decided they were going to back to Minnesota where they're
9 from.

10 In the meantime, though, they had -- they had hired
11 Dermac to pour the footings on the left side of the
12 property.

13 THE COURT: For what?

14 MS. GRIFFIN: The footings for the modular home that
15 was going to be moved. So what we have is debris on the
16 left side of the footings.

17 We have the footings, and then Mr. Oman built a
18 retaining wall on the property near where the modular home
19 would have been moved, and eventually a house is built.
20 I'll talk about that.

21 In July of '07, Kershaw County approved the footings
22 for the structure that was going to be moved there. Then
23 the defendants decided they couldn't stay here. They put
24 the property up for sale.

25 Dan-Sa comes in. That's the builder. Dan-Sa

1 purchases the property with the footings on it with the
2 retaining wall on it, and apparently a driveway that had
3 been poured and was going to the left side of the
4 property.

5 Dan-Sa then obtains their own building permit in
6 January of 2008, and they build a spec home which took
7 maybe four or five months. I think the certificate of
8 occupancy is issued to Dan-Sa in the summer of 2008.

9 Well, at that time, the house is completely built.
10 The market is going south, as we all know, and Dan-Sa has
11 to turn the house over to the bank. So the bank, which is
12 Blue Ridge, takes a deed into foreclosure.

13 Blue Ridge holds onto the property for a couple of
14 years before they sell it to Gina Pike. What is important
15 about that is we have a situation where the builder then
16 turns the deed over to the bank. There is no disclosure
17 at that time.

18 The bank sells to it Pike. There is no disclosure.
19 Pike takes the special warranty deed. She now has a house
20 on the property. Pike holds it for about a year. There
21 are no problems with the house while she lives in it, and
22 then she sells it to the Holleys.

23 The Holleys buy it, pay cash back in July 2011, and
24 then soon after that, they decide they're going to build a
25 swimming pool.

1 Now, this property is sloped going toward the lake,
2 and in order to build their pool, what the testimony was
3 is that they would dig out maybe two feet up near the
4 house and then just a small amount, maybe a foot at the
5 bottom of the pool, the deep end, because the intention
6 was always to build like a six-foot retaining wall around
7 the pool.

8 So they would essentially drop the pool into this
9 area, fill it in with dirt, and then they would have a
10 pool right next to their house. It's undisputed when they
11 started digging to the left of the house, to the left of
12 the porches, to the left of the foundation of the house
13 that they found debris.

14 Now, what else is undisputed, and the plaintiffs have
15 presented an affidavit of Neil Bayer (phonetic), but there
16 is no evidence as to one of his conclusions in the
17 affidavit.

18 It's undisputed from the people who were there, so it
19 is Tara Tech (phonetic), Pete Morrison, Wayne Rabon, their
20 general contractor, that none of the debris goes under the
21 footers of the house.

22 There is some discussion about what's foundation,
23 what's footers, but it's -- nothing goes under the house,
24 and that there is no damage to the house itself.

25 Where the damage occurred is that the house had

1 porches on the side of it. So when they started digging
2 for the pool, they disturbed the retaining wall which then
3 the porch is built by Dan-Sa, were built by some of the
4 supporting members on the retaining wall.

5 The porch starts sagging. Along comes the
6 construction people to firm up the porches. So all of the
7 work is done on the porches, the decks on the outside of
8 the house. That essentially gives you sort of the
9 background of what happened.

10 They have sued Oman and Niemi on essentially two
11 theories. It's all negligence but two theories that I
12 think the plaintiff would agree with me: The first is a
13 duty to disclose; the second is that Oman and Niemi were
14 acting as contractors or builders, and that they're
15 responsible for the condition of the house even though
16 they didn't build it. They're responsible for what Dan-Sa
17 built on the property after they conveyed it.

18 So in looking at the disclosure issue first, the law
19 in South Carolina is generally that there is -- there is
20 no cause of action for negligent failure to disclose to
21 subsequent purchasers. Because what we have is we have
22 2006, 2007 activity of Oman and Niemi that they're saying
23 should be disclosed to people who purchased the house
24 three -- three owners down the road.

25 I can't find any case that says that there is a duty

1 of disclosure. There is no privity between these parties.
2 There is no fiduciary relationship. The restatement which
3 section 323 and the cases that discuss it, the restatement
4 don't envision a factual scenario like this where we have
5 Oman and Niemi conveying the lot with buried material
6 that's not affecting the footers itself, and whether they
7 had a duty to disclose it to subsequent purchasers.

8 Now, beyond that --

9 THE COURT: Did anybody else in that chain know about
10 the buried debris?

11 MS. GRIFFIN: No.

12 THE COURT: Okay.

13 MS. GRIFFIN: Not to -- not to our knowledge. So
14 Dan-Sa didn't know about the buried debris, but they
15 would -- their primary owner, Mr. Gibson, says is that his
16 house was built to survive for 40 years if they had not
17 built the pool.

18 That's where he thinks the problem is; that they
19 built the pool, not that the house was affected in any
20 way. The house is very stable which is exactly what the
21 experts also say. So no -- there was no disclosure.

22 Now, with respect to that disclosure issue, though,
23 is the duty to disclose the condition sort of off,
24 offsite, away from where the footers were built was not
25 material to the transaction with Dan-Sa because he didn't

1 build in that area.

2 If you look at the photographs, you'll see it's a
3 side yard. It's green grass, and then the photograph, I
4 think, is exhibit three and maybe -- let's see.

5 THE COURT: Looks like --

6 MS. GRIFFIN: Tab number 11. Just to give you an
7 idea of what we're talking about as to where this building
8 was taking place of the swimming pool.

9 So going back to Dan-Sa, the first issue is: Is
10 there a duty to disclose to the subsequent purchasers who
11 are the Holleys, the plaintiffs, and it is our position
12 that there is nothing in the case law that requires that
13 he has a duty to disclose to them.

14 The second one is is there any duty to disclose to
15 Dan-Sa, and even if there were a duty to disclose to
16 Dan-Sa, this information was not material to them because
17 they were not building in that area.

18 Dan-Sa says there is no problem with my house. It's
19 built correctly. The footers were strong. The footers
20 did exactly what they were supposed to do to support the
21 weight of the house.

22 So beyond that just looking at the disclosure issue,
23 even if there had been a disclosure to Dan-Sa, it never
24 would have made it down the chain because you would have
25 to have Dan-Sa disclose it to the bank which they don't --

1 they didn't make any disclosure when the bank took a deed
2 on the foreclosure.

3 So there is nothing in writing. There is nothing in
4 the chain about the title that would have passed on any
5 information, and then similarly when Ms. Pike buys the
6 house as is from the bank, there is no disclosure at that
7 point. So it would never have made it to the Holleys.

8 So our position is there is no duty to disclose to
9 subsequent purchasers. No duty to disclose to Dan-Sa, and
10 even if there had been a duty to disclose, it never would
11 have made it to the owners who decided to build a pool
12 four years after the property was conveyed to the builder.

13 The second argument that I believe the plaintiffs are
14 advancing is this whole idea that we are responsible. We,
15 being the homeowners, are responsible as builders under
16 the Terlinde vs. Neely case.

17 In this situation, though, all the homeowners
18 conveyed were the footers. We weren't the builder. The
19 builder was Dan-Sa. The builder built on the footers.

20 The builder, in fact, according to the plaintiffs'
21 expert, at least an email that he exchanged with the
22 plaintiffs' attorney, he said it was the builder who had
23 the responsibility to check the soil and be certain that
24 it was proper for the house to be built on.

25 Now, if -- if that's true, then all we did as owners

1 was we hired a contractor, Dermac, for the footers, and
2 then we sold the property with the footers on it for
3 Dan-Sa to build a house.

4 That doesn't fall under the Terlinde vs. Neely case
5 where the courts envision that you are putting into the
6 stream of commerce a house.

7 The case doesn't speak to, "Well, what if you put
8 into the stream of commerce footers that a builder -- that
9 is a qualified builder with a general contractor's license
10 comes along and builds on top of it," but it's our
11 position that we're not liable for conveying the footers
12 to Dan-Sa in the condition they were in.

13 Even if there is some argument that we were liable
14 for conveying the footers under the Terlinde case, there
15 is no evidence that there was any damage to the house as a
16 result of the condition of the footers.

17 If you read the affidavit of the plaintiffs,
18 Mr. Bayer (phonetic) affidavit, it talks about, "Well, it
19 could have caused problems, or it may cause problems or it
20 will cause problems, but in the event my clients want to
21 have a pool, and so we're going to clean out the area so
22 they can build their pool. And then while undermining the
23 soil out there by the lake, we have to shore up the deck,
24 but there is no problem with the house itself."

25 That's the way the testimony has come down. So even

1 if they conveyed the footers and that can be construed to
2 be a house, we're putting a house into the stream of
3 commerce under the line of those cases.

4 There is no evidence that that caused the damage --
5 the damages as a result of the Holleys wanting to build a
6 pool next to their house and not being able to build the
7 pool when they discovered that there was buried debris.

8 So for those reasons, we ask that you grant summary
9 judgment to the defendants.

10 THE COURT: All right. Mr. Belser?

11 MR. BELSER: Yes, sir, Your Honor. May I approach?
12 I have, for the record, one thing that has already been --
13 it should be in the Court's file is the affidavit of Neil
14 Bayer who is --

15 THE COURT: I have it.

16 MR. BELSER: You have it?

17 THE COURT: I do.

18 MR. BELSER: Okay.

19 THE COURT: I must comment when I turned to his
20 curriculum vitae --

21 MR. BELSER: Yes, sir.

22 THE COURT: -- I was shocked at first glance.

23 MR. BELSER: Okay.

24 THE COURT: Do you know why?

25 MR. BELSER: Sir?

1 THE COURT: Do you know why?

2 MR. BELSER: Why?

3 THE COURT: You've seen that picture. I thought it
4 was a former speaker of the house.

5 MR. BELSER: Oh really. Well, I think he's in
6 Florida.

7 THE COURT: I had to look at it twice.

8 MR. BELSER: I'll tell Mr. Bayer you said that.

9 THE COURT: No, don't.

10 MR. BELSER: Okay.

11 THE COURT: You'll probably get me sued.

12 MR. BELSER: Your Honor, I do have the original
13 deposition transcript of Danny Gibson, the builder for
14 Dan-Sa.

15 THE COURT: What does he say?

16 MR. BELSER: Well, he -- before I leave, Your Honor,
17 I do also have a deposition transcript copy of the
18 deposition of Roland Reynolds who is a Kershaw County
19 building official.

20 Ms. Griffin has the original. We can substitute that
21 out if we need to, but Your Honor, the -- just for
22 visualization purposes, this was about -- according to the
23 testimony in the case, this was about 20 truckloads of
24 debris that was buried on this lot.

25 The facts in this case are that Mr. Oman pulled the

1 permit to do the work on this particular lot and according
2 to --

3 THE COURT: To do what, to the building permit?

4 MR. BELSER: To the building permit, yes, sir, Your
5 Honor. And according to Mr. Roland Reynolds on page 27 of
6 his deposition, that meant that he was responsible for --
7 what he did is he hired a subcontractor to clear the lot
8 and directed the subcontractor to bury the material.

9 There is some discussion in the deposition transcript
10 of Mr. Maxi Altman which I only have a copy of and do not
11 have the original because it was just a few weeks ago that
12 the reason that it was buried is because it was cost
13 prohibitive to either carry it off or to burn it.

14 Now -- so what mister -- Mr. Oman directly instructed
15 Mr. Altman to bury the material in a certain spot. Then
16 just a few months later, Mr. Oman directed a
17 subcontractor, Dermac, to pour the footings.

18 And it's undis--- there is no evidence in the case
19 that anybody knew that these 20 truckloads of material was
20 buried on the lot. The only people who knew about it were
21 Mr. Oman and Mr. -- and Mr. -- the Bluewater company, Mr.
22 Altman's company.

23 THE COURT: Right.

24 MR. BELSER: So the footing contractor, even though
25 they were also specifically directed by Mr. Oman as to

1 where the footings were going to be poured, Mr. Oman did
2 not tell them that the debris was there. Then after the
3 footings were poured, Mr. Oman --

4 THE COURT: That's probably without dispute at this
5 point.

6 MR. BELSER: Sir, Your Honor?

7 THE COURT: That's probably not in dispute at this
8 point.

9 MR. BELSER: No, sir, Your Honor.

10 Then Mr. Oman on his own built -- built a retaining
11 wall which we now know was over the area where the debris
12 was located. He also brought in fill material to kind of
13 level out the lot.

14 So this 20 truckloads of dirt was -- I mean, of trees
15 and stumps and organic material was completely concealed,
16 and the only person who knew about it was Mr. Oman.

17 Then after the footings were poured, Mr. Oman --
18 there's been some discussion about a modular home, but the
19 -- in the deposition of Mr. Gibson, he testified that Mr.
20 Oman actually had construction plans for the construction
21 of a house on the lot and that before -- and then before
22 construction started, Mr. Gibson appeared on the scene.
23 He was a spec builder. He bought both the lot and the
24 improvements and the plans from Mr. Oman. So it's pretty
25 clear right there that the -- that this house is going in

1 the stream of commerce.

2 THE COURT: All right. So there is no -- there is
3 probably no dispute that he failed to disclose, correct?

4 MR. BELSER: No, sir, Your Honor.

5 The -- yeah, the spec home builder had no idea it was
6 there, and then the spec home builder built the house.
7 Then the market tanked. About four months later, it was
8 deeded over to the bank.

9 The bank didn't know. Then the bank sold it to a
10 lady named Gina Pike who didn't know it was there who sold
11 it to the Holleys.

12 Now -- so we have this -- this 20 truckloads of
13 material that's buried on the lot that even if it was
14 unrelieved--- even if it was, you know, 20 yards away from
15 the actual structure itself, that material according to
16 Neil Bayer will decay over time and cause a big hole over
17 time.

18 So what we have here is we have the material that was
19 buried, and then we have the nondisclosure. And
20 Ms. Griffin is correct that there are two legal theories
21 here: One is kind of a general negligence theory; the
22 second one is a negligent nondisclosure.

23 Now, under the -- under the general negligence
24 theory, the source of the duty is the permit that Mr. Oman
25 pulled to get the work started. As testified by Reynolds

1 in his deposition, with that permit becomes -- there comes
2 obligations and responsibilities.

3 There is also the testimony of the affidavit of Neil
4 Bayer who says that Mr. Oman did not comply with
5 applicable standards that apply to him by virtue of the
6 fact that he pulled the permit by burying this material on
7 the lot. So there is a construction standard there, as
8 well. Mr. Bayer also establishes the breach of that
9 general duty.

10 Now, with reference to the Terlinde cases and the
11 stream of commerce, the issue about -- about those cases
12 is this: There is one case which is the Breedlove case
13 which addresses this somewhat.

14 There are -- a person who is undertaking construction
15 activities on his or her property owes a duty to a
16 subsequent purchaser if that subsequent purchaser is
17 foreseeable.

18 If it's foreseeable at the time that the activities
19 are taking place that there is a subsequent purchaser who,
20 you know, would rely on what was done.

21 There is a case of -- Breedlove case from -- here is
22 a -- it was a 2008 case, but what happened in that case is
23 that an individual built his own home with no intent to
24 sell.

25 It was his own house. He wasn't going to sell it.

1 He was his own general contractor. He -- he had the
2 intent of living there the rest of his days. It was going
3 to be his house. So if he had a problem, he could sue
4 himself.

5 In 19--- in -- so four years later, life
6 circumstances changed, and he entered into a contract with
7 some buyers who bought it as is.

8 Three years later, they discovered eaves problems
9 with the house. In 2002, the subsequent purchasers
10 brought a lawsuit against Mr. Breedlove saying that he
11 breached the -- was negligent in -- in performing the
12 construction because of the placement of the eaves in the
13 house. What the court held in that case is that --

14 THE COURT: The eaves or the EIFS?

15 MR. BELSER: EIFS, the EIFS.

16 The -- what the court held in that is that there --
17 there was no -- that the builder, Mr. Breedlove, had no
18 duty to the plaintiffs because at the time that he built
19 it, it was not foreseeable that -- even though it was
20 possible that he may eventually sell the house, it was not
21 foreseeable that he would.

22 In this particular case, Mr. Oman may or may not
23 have -- he started this particular work on the -- on the
24 lot, but then he sold the house and construction plans to
25 a spec builder.

1 So it's -- it's certainly foreseeable, and
2 absolutely, you know, it's an issue of fact as to whether
3 it was foreseeable to Mr. Oman that a subsequent purchaser
4 would buy the house and have a claim against him for
5 construction defects.

6 THE COURT: Well, you're talking about construction
7 defects. This is clearing a lot and burying the debris.

8 MR. BELSER: Uh-huh.

9 THE COURT: It's not a material part of the dwelling
10 of a structure. It's just something that's probably done
11 frequently.

12 MR. BELSER: Uh-huh.

13 THE COURT: I mean, does the burying of the debris
14 rise -- because you're entitled to a notice.

15 MR. BELSER: Uh-huh.

16 THE COURT: Just a question.

17 MR. BELSER: And I think to -- the Pruitt --

18 THE COURT: I mean, how can burying the debris and
19 it's covered and you have got grass on it --

20 MR. BELSER: Uh-huh.

21 THE COURT: -- why should a homeowners or a person
22 selling it to anybody have to disclose that because it's
23 not a -- it's not a hazard?

24 MR. BELSER: Your Honor, I think that --

25 THE COURT: It's not a material part of the house.

1 MR. BELSER: I think that maybe the Pruitt case helps
2 answer that question.

3 THE COURT: Okay.

4 MR. BELSER: The Pruitt case is -- it's Pruitt v.
5 Morrow. The case cite is 288 SC 298. I have an extra
6 copy for Your Honor.

7 THE COURT: All right.

8 MR. BELSER: Okay.

9 THE COURT: Did you furnish one to Ms. Griffin?

10 MS. GRIFFIN: Your Honor, I'm familiar with the case.
11 Thank you.

12 MR. BELSER: Your Honor, the facts in Pruitt are as
13 follows: It's a pretty short opinion, but a lot happens.
14 So it's kind of hard to follow it.

15 There is a subdivision called Camelot III that was
16 started in 1971. A company called Ervin Company was the
17 developer and got the process of doing the infrastructure
18 and clearing everything and sold the development in 1974
19 to a company called Westgate.

20 A company called Maelstrom (phonetic) was the
21 successor of Ervin Company. So the company that started
22 the development and then sold it, Maelstrom, is the
23 successor.

24 In 1976, a gentleman named Morrow purchased a lot
25 from -- purchased a lot from Westgate and built a spec

1 house on it. Then Mr. Marrow sold the house to the family
2 Couick, C-O-U-I-C-K.

3 In 1979, Pruitt purchased it. Pruitt was the
4 plaintiff in this case. After the -- after Pruitt
5 purchased the house, he noticed there was a shift and
6 called Morrow. Morrow dug out, dug underneath the house,
7 and found that the lot was actually -- there was a gully
8 that was filled in with stumps and debris and that kind of
9 stuff.

10 The issue in the case was between Pruitt, the owner
11 of the house, and Maelstrom who was -- did not have
12 privity of contract with -- with Pruitt, and the issue was
13 did Maelstrom have any duty to disclose the fact -- the
14 nature in which this lot was prepared to any subsequent
15 purchaser; did they owe any duty to Pruitt.

16 The -- in that case -- in the case, the court -- on
17 page two, the court cited the Lawson case, and the quote
18 is "where material facts are accessible to the vendor
19 only, and he knows them not to be within the reach of the
20 diligent intention and observation or judgment of the
21 purchaser, the vendor is bound to disclose such facts and
22 make them known to the purchaser."

23 And so the -- what the court held that -- in that
24 particular case, the doctrine of caveat emptor was not
25 applicable because there was this obligation to disclose

1 material facts that are not within the diligent,
2 intention, observation or judgment of the potential
3 purchaser.

4 That's exactly what we have here is this
5 20 truckloads. It's buried. It's concealed that nobody
6 knows about, and so this -- is there a duty to disclose?
7 Yes, and does it extend to subsequent purchasers? Yes,
8 according to the Morrow -- to the Pruitt case.

9 THE COURT: Okay.

10 MR. BELSER: And in terms of the duty to disclose,
11 there is also -- in addition to this case, there is
12 also -- Mr. Barrett (phonetic) also addresses that is in
13 his affidavit.

14 In paragraph six references -- references the duty to
15 disclose as a matter of -- as a matter of just -- of
16 standard -- of making improvements to the property.

17 Because what we're dealing with here, even though
18 some people -- if you own 1,000 acres and you cut timber
19 and decide to bury the -- you know, the timber that you
20 can't sell, then that's one thing. But if you own a lot
21 and you -- and you bury this on it, then that's a much
22 different situation.

23 It's very important to note that the -- this material
24 extended underneath the retaining wall and so when they
25 started to excavate the pool, they had to shore up the

1 house so that it wouldn't -- so it wouldn't topple over.
2 So it's not like it was -- the house was here and the
3 debris was, you know, 50 yards away. It was right
4 adjacent to where the house was.

5 THE COURT: Ms. Griffin.

6 MS. GRIFFIN: Your Honor, just in response to his
7 understanding in the Pruitt case, first, to distinguish it
8 from our situation, that was a case where the house was
9 built on the debris not like what we have here where the
10 debris is outside of the footprint of the structure of the
11 house itself.

12 In that case, the court didn't address the issue of
13 whether there was a duty to disclose which is the primary
14 issue that this court is addressing is a duty to disclose
15 under these circumstances. It addressed the issue of
16 whether or not you can plead caveat emptor as a defense.
17 So that case is not on point.

18 Going back to what I said earlier, there is no law
19 that requires that the homeowner disclose these
20 conditions. They are not hazardous. They weren't
21 material to the sale to Dan-Sa. Then beyond that, like I
22 said, if there had been a disclosure, it never would have
23 made it down the line to the Holleys.

24 Thank you, Your Honor.

25 THE COURT: All right.

1 All right. Counsel, let me have proposed orders in
2 ten days if you please. Thank you.

3 MS. GRIFFIN: Thank you.

4 MR. BELSER: Thank you, Your Honor.

5 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Kershaw County, South Carolina, on the 20th day of
January, 2015.

May 21, 2015



Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW) IN THE COURT OF COMMON PLEAS

Clifford D. Holley and
Sharon Holley,

Plaintiffs,

vs.

C/A #2013-CP-28-00250

Dan-Sa, Inc.; Charles E. Oman;
Janis M. Niemi; Gina L. Pike;
Dermac Contractors, LLC;
Bluewater Development of
South Carolina, LLC; and
Blue Ridge Savings Bank, Inc.,
Defendants.

 COPY

DEPOSITION OF MAXIE F. ALTMAN, JR.

Thursday, January 8, 2015
2:05 p.m. - 4:08 p.m.

The deposition of **MAXIE F. ALTMAN, JR.**, taken on behalf of the Defendants, at the law offices of Baker, Ravenel & Bender, 3710 Landmark Drive, Suite 400, Columbia, South Carolina on the 8th day of January, 2015, before Judy R. Urso, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

URSO COURT REPORTING
21 Surrey Court / Columbia, SC 29212
(803) 731-8585

1 A: No, I was not.

2 Q: Okay. So you do not know exactly I mean do you
3 know whether Mr. Oman indicated to him where to dig
4 the hole?

5 A: Yes.

6 Q: So your employee

7 A: Was instructed.

8 Q: to dig the hole in that particular location by
9 Mr. Oman?

10 A: Mr. Oman supervised.

11 Q: Okay.

12 A: He was there.

13 Q: Okay. Do you have any written records of the work
14 that was going to be done, the scope of work that
15 was going to be done? Did you have like a written
16 quote?

17 A: No, ma'am.

18 Q: So it was all oral?

19 A: Yes, ma'am, I believe so to the best of my
20 recollection.

21 Q: Did you take any photographs of the area that was
22 going to be cleared, the, the trees that were going
23 to be cleared?

24 A: No, ma'am.

25 Q: Or any photographs after or during?

1 Q: Okay.

2 A: to set the dirt out so you it's like a
3 ramp.

4 Q: Right. Right. Right. So they so you have to
5 actually have a larger hole than that, correct? I
6 mean than what we're talking about with the 10 by 25
7 to 30, correct? Because you have to
8 logistically to get, to get the Caterpillar down in
9 there?

10 A: There, there's a little bit of slope that possibly
11 wouldn't have any debris in it.

12 Q: Okay. I got you. But we're talking about that
13 about as being a, basically a minimum space what
14 we're talking about, right?

15 A: Yes, sir.

16 Q: Okay. Now if that hole we're talking about as, as
17 this being the minimum dimensions of it and placed
18 where you're talking about or where you indicated,
19 I'm sorry, on, on Exhibit Two, given those
20 indications, looking at Plaintiff's Three,
21 Plaintiff's Exhibit Three, which includes setbacks
22

23 A: Correct.

24 Q: would you say, and this is from your experience
25 as in, in developing and, and construction, okay,

1 would you say that that would make it more difficult
2 to find a, a footprint on which to build?

3 MS. DUDAU: Object to the form.

4 A: Well, it was absolutely a poor choice on where to
5 bury it seeing as though he decided to subdivide it
6 and sell it.

7 Q: And why was it a poor choice?

8 A: Cause it was not in a setback line or anything of
9 that nature after that.

10 Q: Would it have limited the use of the land?

11 A: Absolutely.

12 Q: When you were building, excuse me, not building, I'm
13 sorry. When you were clearing, was there anything
14 to indicate that any kind of construction was going
15 on

16 A: No.

17 Q: on, on the excuse me. Let me just finish
18 for the record.

19 A: Okay.

20 Q: on the left side of that subdivided line on
21 Defense Exhibit Two?

22 A: Absolutely not.

23 Q: Okay. And you said that there was no fill dirt that
24 was, that was used. Was any hauled off?

25 A: No, sir.

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

Clifford D. Holley and
Sharon Holley,

Plaintiffs,

vs.

C/A #2013-CP-28-00250

Dan-Sa, Inc.; Charles E. Oman;
Janis M. Niemi; Gina L. Pike;
Dermac Contractors, LLC;
Bluewater Development of
South Carolina, LLC; and
Blue Ridge Savings Bank, Inc.,

Defendants.

COPY

DEPOSITION OF FRANK BRADSHAW

Tuesday, September 9, 2014
12:35 p.m. - 1:30 p.m.

The deposition of **FRANK BRADSHAW**, taken on behalf of the Defendants, at the offices of Burn Law Firm, 945 East Main Street, Lexington, South Carolina on the 9th day of September, 2014, before Judy R. Urso, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

URSO COURT REPORTING
21 Surrey Court / Columbia, SC 29212
(803) 731-8585

1 (Defendants' Exhibit Number One was marked for
2 identification purposes.)

3 A: Yes.

4 Q: And when you're facing the lake, the, this would be
5 the back of the house?

6 A: That's right.

7 Q: It says front view of the property.

8 A: Yeah.

9 Q: It depends on what you think is the front, but the
10 area we're talking about is to the left if you're on
11 the back of the house facing the lake?

12 A: Correct.

13 Q: So where you were going to put the pool is can
14 you just draw a circle on there for me?

15 A: Do you want me to draw it here?

16 Q: Wherever you were going to put the pool.

17 A: Yeah, that would be it.

18 Q: And that is right near this retaining wall?

19 A: Yes, ma'am.

20 Q: And the, the decking area?

21 A: Yes, ma'am.

22 Q: What was the slope of this area over where the pool
23 was going to go?

24 A: It was, it was a good bit. It was about it was
25 probably about six feet cause I think the shallow

1 is where most of the earth I'd have to move.

2 Q: All right. When you met with the Holleys initially,
3 did you express that that was the only way they
4 could have a pool was if they had a retaining wall?

5 A: No, I think they, they already knew they would have,
6 you know, have to have a retaining wall.

7 Q: Was that something they had probably discussed with
8 Juanita?

9 A: I'm sure.

10 Q: When you all walked the property to determine where
11 to place the pool, was there any inspection of what
12 was under the surface of the land?

13 A: No, not that I was aware of.

14 Q: When you walked around, did you think that it felt
15 as though the earth was soft?

16 A: No. I mean it felt fine, but it was, it was just
17 such a slope that I couldn't drive my backhoe around
18 on it either, so.

19 Q: Why couldn't you drive your backhoe on it?

20 A: Cause of the slope.

21 Q: Cause it would flip over?

22 A: Yes.

23 Q: Potentially?

24 A: Exactly, yes. I mean I can dig them on a slope, but
25 you have to be very careful.

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
IN THE 5th JUDICIAL CIRCUIT
Case Number 2013-CP-28-250

Clifford D. Holley and
Sharon Holley,

Plaintiffs,

vs.

Dan-Sa, Inc, Charles E. Oman,
Janis M. Niemi, Gina L. Pike,
Dermac Contractors, LLC,
Bluewater Development of
South Carolina, LLC; and
Blue Ridge Savings Bank, Inc.,

Defendants.

ORIGINAL

DEPOSITION OF DANNY GIBSON, SR.

Taken By Plaintiffs

Monroe, North Carolina

July 8, 2014

Reported by: Kimberly Hancock

Verbatim Court Reporting Services

P.O. Box 690362

Charlotte, North Carolina 28227-9498

Phone: (704) 545-7441 ** Fax: (704) 545-7527

1 property.

2 A Uh-huh.

3 Q Before I get into that, I'd like to learn a
4 little bit about your background. Where are you from?

5 A Monroe.

6 Q When did you graduate from high school?

7 A 1972.

8 Q Did you go to college after that?

9 A One year.

10 Q Where did you go?

11 A Bob Jones University.

12 Q And how long were you in the construction
13 industry?

14 A Since I was 15.

15 Q Did you continue in construction?

16 A Yes.

17 Q And what types of construction activities
18 did you do between 1973 and when you stopped?

19 A Framing, complete building of houses. I got
20 my contractor's license in '77.

21 SARAH GIBSON: '87.

22 A '87 she says (indicating to Sarah Gibson).
23 Have built houses ever since, up until '08.

24 Q And that's when you stopped?

25 A Uh-huh.

1 Q Why did you stop?

2 A Housing crashed. That's the last house I
3 ever built.

4 Q Do you have any active licenses in North or
5 South Carolina.

6 A I do. I still have my contractor's license.

7 (Comments off the record.)

8 MR. BELSER: I know it's hard, but we'll
9 have a chance to ask Mrs. Gibson some questions --
10 and husbands and wives often do this -- but I'll
11 have a chance to ask you questions, and you can
12 clean up anything that you feel needs to be
13 cleaned up.

14 Q And so you said you do still have your
15 contractor's license?

16 A Uh-huh.

17 Q In North and South Carolina?

18 A North.

19 Q How many times have you been sued in the
20 past?

21 A Never; never even had a complaint.

22 Q Did you do any commercial work?

23 A No.

24 Q Did you do large houses and small houses?

25 A Both.

1 about Workers' Comp? General liability, are you
2 talking about?

3 Q I'm talking about general --

4 A I don't know. It seemed like we used
5 somebody through North Carolina.

6 THE WITNESS: Do you remember? (indicating
7 to Sarah Gibson)

8 Q I'll be able to ask her some questions.

9 But your wife was generally in charge of the
10 bookkeeping and insurance for the business?

11 A Yes.

12 Q To your knowledge, was there any period of
13 time that you were engaged in construction but did not
14 maintain insurance?

15 A No.

16 Q What other homes did you build on
17 Lake Wateree?

18 A Do you want to know the addresses?

19 Q How many was it?

20 A One, two, three -- five.

21 Q What timeframe were you building those
22 houses?

23 A I think '07, '08.

24 Q Do you know the addresses?

25 A I ain't got a clue.

1 (indicating to Sarah Gibson)

2 Q It's to the best of your recollection.

3 A No. I don't know nothing about it.

4 Q And did you visit the site before you
5 decided to buy it?

6 A Yes.

7 Q And what was the condition of the site when
8 you visited it?

9 A The lot was clear. The septic tank was in,
10 driveway in, retaining walls in, footing was dug.

11 Q When you visited the property before you
12 purchased it, was there any work ongoing? Or had all
13 that work been completed?

14 A It had already been completed.

15 Q How many times did you visit the property
16 before you decided to buy it?

17 A Three.

18 Q Is that a guess?

19 A That's just the dumbest question I've ever
20 heard in my life.

21 Q Well, thank you very much.

22 Did you do any inspections of the property
23 before you purchased it?

24 A No. What kind of inspections are you
25 talking about?

1 Q Any evaluation of the construction that had
2 been started or anything like that.

3 A I looked at it.

4 Q You said that the footings were dug and
5 retaining wall was in. How big of a footprint was it?

6 A It was a big footing. Actually, it was. It
7 was at least 2-foot wide.

8 It was actually wider than what I would
9 normally -- we usually used a smaller backhoe with like
10 a 16-inch bucket. It looked like it was used with a
11 2-foot bucket.

12 Q Did you have any conversations or any
13 interactions with Mr. Oman or Ms. Niemi before you
14 decided to buy the house?

15 A I'm sure I met with him, yes; talked about
16 wanting the plans and building permit.

17 Q Did you-all have any discussions about who
18 would perform the work?

19 A No. I don't have a clue if we did or not.

20 Q Did you ever receive a copy of the plans?

21 A Yes.

22 Q Are those in these documents?

23 A No, I can't find it. I think they only gave
24 me one set at the time. I might have had two. I'm not
25 sure. I can't locate it right now. I've moved about

1 five or six times since then.

2 Q Were you familiar with the person who drew
3 the plans?

4 A No. It had somebody's name, and it had his
5 name on it like maybe he had them drawn for him.

6 Q Okay. They were drawn for Mr. Niemi?

7 A Oman.

8 Q Yeah. I'm sorry.

9 A It had his name on it.

10 Q Were they architectural plans, or were they
11 draftsman plans?

12 A It looked like architectural plans, like
13 maybe he ordered them somewhere.

14 Q What was your understanding about Mr. Oman's
15 role in the construction work that had taken place up
16 to that point?

17 A He told me he was a builder, I think maybe
18 in Minnesota. And I don't know if he built anything
19 else on the lake or not. I think he had bought this
20 property and subdivided -- I think is what it was -- so
21 he could build another house on this property.

22 Q Okay. And describe the retaining wall to me
23 that was already constructed when you were looking at
24 the property.

25 A I've got a picture of it in here

1 where they shot the elevation, "C2." That's elevation
2 shots to make sure it's out of the floodplain.

3 Q Okay. And this was I guess five or
4 six months after you purchased the property?

5 A Four months, probably.

6 Q The house that we see here (indicating),
7 what work did you perform?

8 A Every bit of it. We do our own framing, our
9 own boxing, and our own trim.

10 Q But the retaining wall was already there?

11 A Uh-huh.

12 Q Did you extend the retaining wall?

13 A Huh-uh, didn't touch it.

14 Q With the footings, did you make any changes
15 to the footings or to the foot --

16 A No. That's why I had to have that plan.
17 The footing would have been useless without that plan.

18 Q Did you make any changes to the footprint of
19 the house at all?

20 A What do you mean "footprint"?

21 Q Well, you didn't expand the footings or
22 expand the foundation?

23 A I changed the upstairs a little bit and made
24 a bedroom upstairs. I think the original plans didn't
25 call for a bedroom upstairs. It called for just a big

1 things later in front of a judge.

2 A I had no reason to question anything there
3 that had been passed by the County.

4 Q In looking at the plans you received, did
5 you ever have any contact with the author of the plans?

6 A No.

7 Q Are the plans typically filed with
8 Kershaw County?

9 A No. I don't think so.

10 Q Did you have a written contract with
11 Mr. Oman?

12 A Sure.

13 Q Okay. Why don't I take a look at that.

14 I'm looking at a contract "Lake Wateree Real
15 Estate," dated October 23rd, 2007, between Dan-Sa, Inc.
16 and Charles Oman and Janis Niemi. It looks like the
17 sales price was \$237,113.50.

18 That's a pretty precise number. Were you
19 given any figures as to the money they had expended so
20 far for the construction of the house?

21 A No.

22 Q How did you-all arrive at that number?

23 A I would say that was the sales price plus
24 the attorney's fees and stuff like that.

25 Q Okay. So, to your recollection, they didn't

1 give you like a list of construction costs they had
2 already incurred?

3 A No. I had to redo all that myself for my
4 loan. I wouldn't think he had a loan yet. I imagine
5 he just did this out of his pocket.

6 Q I know that Mr. Oman and Ms. Niemi have now
7 moved. But at the time that you were performing this
8 work, to your knowledge, did Mr. Oman have any heavy
9 equipment that he kept on his property?

10 A I don't know where his property is. Are you
11 talking about this actual property here (indicating)?

12 Q The next-door property.

13 A I never seen anything.

14 Q Do you know if he was still engaged in the
15 construction industry in South Carolina?

16 MS. GRIFFIN: Object to the form.

17 A I don't know.

18 Q Okay. There were some contingencies on this
19 contract. The seller was required to provide the
20 septic permit. Why did you want that?

21 A You just have to have that to get a building
22 permit.

23 Q Okay. And then there's a reference, "Seller
24 to provide copy of building plan for house."

25 That's what we've talked about earlier?

1 A Uh-huh.

2 Q "Purchaser to obtain pier permit paid by
3 purchaser."

4 Did you eventually get a pier permit?

5 A No.

6 Q And the seller was to provide the building
7 permit. To your recollection, what was done to
8 transfer the building permit?

9 A I had to take them both to the County. They
10 took the old one and gave me a new one.

11 Q You mean, you had to take Oman and Niemi?

12 A I just had to take their building permit.

13 Q Oh, just their building permit?

14 A Uh-huh.

15 Q So you had to take their building permit and
16 exchange it for a new one?

17 A I actually thought I could maybe use it and
18 just not have to pay for another one, but I had to buy
19 a new one.

20 Q Okay. Now, it also references on here,
21 "Purchasers are licensed South Carolina real estate
22 agents. (Sarah Gibson)"

23 Why was that on here?

24 A She (indicating to Sarah Gibson) worked for
25 Lake Wateree Real Estate.

1 Q "She" is Sarah Gibson, worked for Lake
2 Wateree?

3 A Uh-huh.

4 Q Did you have the right to inspect the
5 property before the closing?

6 A I'm sure I did.

7 Q How long did the construction process take?

8 A Probably five months, five to six months.

9 Q Were you building it as a spec house, or did
10 you have a buyer?

11 A Spec.

12 Q Have you ever heard of Gina Pike?

13 A No.

14 Q How long after the house was completed did
15 the foreclosure --

16 A Four months.

17 Q Four months after completion?

18 A It's in the documents.

19 Q We'll look at it in a minute.

20 During that four-month time, did you-all try
21 to list the property for sale?

22 A Sure.

23 Q Who was the listing agent?

24 A She was (indicating Sarah Gibson).

25 Q Did you-all have any interested buyers, to

1 your recollection?

2 A No.

3 Q I know there was eventually a Deed in Lieu
4 of Foreclosure. How long did the foreclosure
5 proceedings go?

6 A How long did it take?

7 Q Yeah.

8 A One day.

9 Q After they filed the foreclosure action, how
10 long after that did the Deed in Lieu take place?

11 A They didn't file a foreclosure action. I
12 called them and told them if they wanted it back, I'd
13 sign it over to them.

14 Q Okay. And that happened four months after
15 you completed it?

16 A Exactly. I called and told them I couldn't
17 pay the interest anymore, so we decided to do that.

18 Q Did they accept that?

19 A Yes. I did two of them at the same time.

20 Q You deeded it over and then walked away, no
21 strings attached?

22 A Uh-huh.

23 Q They didn't seek any deficiency judgment or
24 anything?

25 A No, sir.

1 Is that what it looks like to you?

2 MS. GRIFFIN: Object to the form.

3 A Yes.

4 Q What goes into a -- based on your experience
5 working in Kershaw County -- an inspection of the
6 footings?

7 A They come out and look at it. And they take
8 a probe, and they probe down to see how solid the
9 ground is. If it's not solid, you have to re-dig it
10 until you get to solid ground. If they find any
11 debris, it's got to be dug up.

12 Q How many of those soil testings do they do?

13 MS. GRIFFIN: Object to the form.

14 A Just that one.

15 Q How many actual samples?

16 A Oh, they go all the way around it. They
17 probably go 10 times in different spots.

18 Q Okay. Plaintiff's Exhibit Number 2 is the
19 next document. This is a document that is signed by
20 Mr. Oman and Ms. Niemi to the Kershaw County Planning
21 and Zoning. What is your recollection of what this is?

22 MS. GRIFFIN: Object to the form.

23 A It's where they give me the permit.

24 Q It's notarized by somebody in Minnesota.

25 Were Mr. Oman and Ms. Niemi already there at that time?

1 Real Estate. I'm sure it was. Larry Jackson was the
2 listing agent. We didn't list it.

3 Q Plaintiffs' Exhibit 4, if you flip over to
4 the next page, this is a Plat of Foundation Survey for
5 Dan-Sa, Inc. that was performed by the Knight Surveying
6 Company. Why were you required to have this survey
7 done?

8 A You can't get a draw without it from the
9 bank. The bank wants to make sure this foundation is
10 on the lot before you go any further, and out of the
11 floodplain.

12 Q So this was done for financing reasons?

13 A Yes.

14 Q And, on here, it shows the retaining wall
15 and the "Brick/Block Foundation Under Construction."
16 Is your testimony that you did not change the footprint
17 of the foundation that was under construction?

18 A That's correct.

19 Q And you did not make any changes to the
20 retaining wall?

21 A No.

22 Q And when it says, "Brick/Block Foundation
23 Under Construction," how far along in the construction
24 process was it?

25 A Just the foundation. At this point?

1 Plaintiffs' Exhibit Number 1. And there's also
2 estimated evaluation of \$102,200. What's your
3 understanding as to what that \$102,200 was?

4 A You have to understand, when builders go get
5 this permit, they try to get this as low as possible so
6 that the permit costs less. Do you understand?

7 Q Yes, sir.

8 A All right. So mine is more than his, but
9 that's basically what I figured the rough part of the
10 house would cost for me to build, you know? So that's
11 where the \$102,000 -- that's not counting lot or all
12 that kind of stuff, no septic tank. That's just the
13 house. That's what that number is.

14 Q Okay. And if you look at Plaintiffs'
15 Exhibit Number 5 and compare that to Plaintiffs'
16 Exhibit Number 1 -- which is the first page of this
17 stapled set here -- under "Square Footage," for number
18 1 it has interior heated square footage of 1,142 square
19 feet, and then yours was 2,100. What was the
20 difference?

21 A He just didn't tell the truth there.

22 Q So the plans that you saw were for a
23 two-story house?

24 A No. It was not quite a two story. It was
25 like a story-and-a-half. Now, he might not have been

1 going to finish the upstairs, something like that. I
2 don't know that. But if you count the downstairs and
3 the upstairs, it's got 2,100 feet in it. But the
4 original plans really called for the upstairs just to
5 be one big room basically, and I did make a bedroom out
6 of it. But that didn't change the square footage.

7 Q Okay. Now, the next page in Plaintiffs'
8 Exhibit Number 5, this is the Construction Permit. And
9 it shows where Mr. Reynolds did the inspections and the
10 foundation and the framing and the plumbing and the
11 electrical and mechanical.

12 A Uh-huh.

13 Q But he had already done the inspection for
14 the footings?

15 A Oh, yeah. See, I've never seen this
16 (indicating). This is my permit.

17 Q Okay. Plaintiffs' Exhibit Number 6, this is
18 some Notice of Violations. The first is dated
19 January 7th, 2008, and we'll start with the first one.
20 I think it says:

21 "Code requires that piers be bonded to
22 4-inch brick every 16 inches (using wire)"

23 What is your recollection of that?

24 A We had to go back and put wire in it, on the
25 top rung.

1 Q What's marked as Exhibit Number 7, these are
2 the documents that were in the manila envelope entitled
3 Contracts, Title Settlement. Let's just walk through
4 these real quick. It looks like the first few pages,
5 this is your Purchase Contract with Mr. Oman and
6 Ms. Niemi?

7 A Uh-huh, yes.

8 Q And then, after that, we have the Deed from
9 Mr. Oman and Ms. Niemi to Dan-Sa, Inc.?

10 A It's actually Dan-Sa.

11 Q Dan-Sa, okay.

12 And then we have the HUD Settlement
13 Statement after that?

14 A Uh-huh.

15 (Plaintiffs' Exhibit 8 was marked for
16 identification.)

17 Q Then Exhibit Number 8, these are the
18 documents that were in the manila envelope that's
19 labeled "2834 Survey."

20 And Exhibit Number 8 looks like it starts
21 with the Elevation Certificate with the photographs by
22 Chris Knight. Those are the first two pages.

23 And then, the next page is a survey by
24 Robert Lackey, from October 12th of 2006.

25 And then the final two pages are both

1. copies -- one with the bottom cut off and the other one
2. complete -- for a foundation survey for Dan-Sa.

3. A Correct.

4. Q And one more question about Exhibit
5. Number 8: The survey that was done by Lackey Surveying
6. for Mr. Oman and Ms. Niemi, was this given to you prior
7. to the closing or with the closing?

8. A I'm not sure. I don't remember.

9. Q Okay.

10. A If I had my guess, I would say probably
11. before closing. But I'm not sure.

12. (Plaintiffs' Exhibit 9 was marked for
13. identification.)

14. Q Okay. On Exhibit Number 9, these are the
15. documents that were in the manila folder that's labeled
16. "2834 Lake Road Foreclosure Deed." This is the Deed in
17. Lieu from Dan-Sa to Blue Ridge Savings Bank?

18. A Yes.

19. Q And, as you testified, this was in October
20. of 2008. So you would have finished the construction
21. four or five months before then, say in May or June?

22. A If you look on the CO, it will have the
23. exact date.

24. Q Okay. But that's consistent with your
25. testimony?

1 A I can't read it. It looks like "177" -- I
2 can't read it.

3 Q That's all right.
4 "Electric Company, Duke"?

5 A Duke.

6 Q And is that your signature at the bottom?

7 A Yes.

8 Q And the last document in Exhibit Number 10
9 is the CO?

10 A Uh-huh.

11 Q And this was issued June the 20th of 2008?

12 A Correct.

13 Q And the Code that would have applied to this
14 construction was a 2003 code?

15 A I guess so. It's what's on the permit.

16 Q Okay, but was that your recollection?

17 A Yes. Correct tax map numbers on the CO.
18 (Plaintiffs' Exhibit 11 was marked for
19 identification.)

20 Q All right. On Exhibit Number 11, these are
21 the documents that were in the manila envelope that's a
22 mailing from KWT Insurance Agency, Inc. in Monroe,
23 North Carolina. It looks like this was mailed
24 December 18th of 2007. And it encloses the Builders
25 Risk 2834, and Title Insurance. Do you understand the

1 the property condition when you purchased the property.
2 Per your Settlement Statement, it said you purchased
3 the property December 19th, 2007; is that correct?

4 A Yes.

5 Q I would like for you to describe to me the
6 condition of the property when you bought the property.
7 You testified earlier that there was the beginning
8 stages of what may be a structure. Tell me what was on
9 the property when you bought it.

10 A When I purchased the property, the lot was
11 already cleared. The retaining walls were in. The
12 driveway was in. It had an existing septic tank. And
13 the footing was dug and poured already.

14 Q And I hate to be so naive, was the
15 foundation complete or just the footers?

16 A No, no. I put the foundation in. Just the
17 footing was complete.

18 Q And the foundation you built on top of the
19 footers?

20 A Yes.

21 Q When you're talking about retaining walls,
22 where were the retaining walls in reference to the
23 footers?

24 A All right. When you come in to the
25 property, there was about a 4-foot tall retaining wall,

1 all down the right. Then there was a retaining wall
2 all the way around, that the porch is set on, of the
3 house.

4 Q But the porch was not constructed?

5 A No, no, just the retaining wall.

6 Q In reference to the footers and the
7 retaining wall, how much base was between the two?

8 A Retaining wall and the footing?

9 Q Yes, sir.

10 A I'd say 8 foot.

11 Q And you testified earlier, to your knowledge
12 and your recollection, what was between the footings
13 and those retaining walls?

14 A Some kind of fill.

15 Q Some kind of fill?

16 A Uh-huh.

17 Q Do you have any idea who built any of that
18 stuff?

19 A Huh-uh.

20 Q Did you have any communications with the
21 sellers who, for the record, were Mr. Oman and
22 Ms. Niemi? Did you have any communications as to who
23 built that?

24 A No. I just assumed he did.

25 Q That he did it himself, or did you think he

1 had contractors?

2 A I don't know any of that. I've never met
3 him until I got involved with this one lawyer.

4 Q So in reference to the footers, did you have
5 any reason to inspect the footers?

6 A No. Why would I? It had been passed by the
7 County. I wasn't there to dig them. I wasn't there
8 when they inspected them. They looked very good.

9 Q And you testified to that earlier. And you
10 also stated earlier that if you were to build this
11 house, including the footers, from scratch --

12 A I would have probably just dug a 16-inch
13 footing. This was 2-foot.

14 Q So you do have experience in building
15 footers on structures?

16 A Yes.

17 Q In reference to the footers on this property
18 that we're talking about, when you build the footers,
19 how far do you normally go down and check the soil?

20 A A footing is usually 8 to 10 inches deep,
21 and then they'll stick a probe in as far as they can.

22 Q How long is that probe normally?

23 A 4 foot long, but I've never seen anyone
24 stick it in that long. If they can stick it in 3 or
25 4 inches, or 5, pretty easy, then they'll make you dig

1 that.

2 Q Do you have any knowledge what the depth of
3 these footers were? Did you check at all?

4 A How could I check them?

5 Q You could probe them.

6 A You mean probe around the outside edges?

7 Q (Nods head up and down.)

8 A No.

9 Q In reference to the retaining wall, in your
10 impression, how was that built? Was it built right on
11 top of the soil? Was there any foundation or footers
12 to that?

13 A I'm not sure. They were constructed out of
14 block, the retaining wall block.

15 Q Cinder block?

16 A It was colored cinder block.

17 Q Colored cinder block. And when you
18 constructed this home, that was the support for your
19 porches?

20 A Yes.

21 Q And then the footers were the sole support
22 for the house or the structure?

23 A Uh-huh.

24 Q And you saw the previous building permit
25 that --

1 A Passed the footing?

2 Q -- that passed the footing. And I believe
3 it was Plaintiffs' Exhibit Number 1. I'm going to put
4 this (indicating) in front of you. I'll just use mine.
5 It says, "Moving modular home."

6 A Uh-huh.

7 Q You testified earlier --

8 A This (indicating) could be the footage of
9 the modular home. I don't know what that is.

10 MR. SHAW: And let the record reflect, he
11 pointed to where it says "Interior Heated Square
12 Footage" as "1,142."

13 A Because, right here (indicating), when it
14 says "Type Construction," it says "Modular." So I
15 don't know what he did there.

16 Q So when you built, it was stick built. And
17 you had to get a new application and a new permit
18 because?

19 A It was 2,100 feet.

20 Q But why did you have to get a new permit?

21 A You'll have to ask Kershaw County that.
22 They made me.

23 Q Is that because you were a new owner, or is
24 it you changed the plan?

25 A No, because you're a new owner.

1 Q So that's your understanding why you had to
2 get a new permit, because it couldn't be transferred?

3 A Right. I don't think they allow that. They
4 can get more money the other way.

5 Q Yes, sir. In reference to the footers that
6 you built the house on, was it your opinion that the
7 footers were sufficient to build a 2,100 square foot
8 home?

9 A Yes, very good-looking footers, like I said.

10 Q And I want to go back to that colored cinder
11 block retaining wall that was between the footers that
12 was built, did that extend all the way around the
13 entire footer base?

14 A All the way, except the front.

15 Q Why not in front? In front of the home?

16 A Yes, sir.

17 Q Why was that?

18 A Because there was no porch on the front.

19 Well actually, the part facing the road. Actually,
20 they call the front of the house on the lake, the part
21 facing the lake. So it would be the part facing the
22 road doesn't have a retaining wall.

23 Q In reference to the condition of the
24 property, you said earlier that the land was cleared?

25 A Uh-huh.

1 photographs. And if you could look at these and help
2 us out, for the record, by identifying them by their
3 number.

4 So we're looking at Exhibit Number 2. And
5 looking at that exhibit, what does that show you as far
6 as the retaining wall?

7 A The retaining wall looks fine.

8 Q Okay. And this (indicating) is the block
9 wall that is on the front side of these porches?

10 A Uh-huh. That's what was here when I bought
11 it.

12 Q Okay. And what you were talking about
13 earlier is what part of the decks went onto the
14 retaining wall? Any of it?

15 A No.

16 Q It's all behind it?

17 A Yeah, it's all behind it. You can see right
18 here (indicating). See here? These are dug down and
19 put in concrete.

20 Q And when you say "these," you're talking
21 about the support --

22 A 6x6s.

23 Q 6x6s for the two-story deck, right?

24 A Right.

25 Q And the retaining wall -- when you were

1 of the retaining wall was level; is that right?

2 A Well, it slopes this way (indicating), but
3 yes.

4 Q Slopes toward the lake?

5 A Well, sort of. It's actually to the left
6 side.

7 Q Okay. And looking at our first exhibit,
8 which side of the house are we on?

9 A Right here (indicating).

10 Q Right where the pool now is?

11 A Uh-huh, right.

12 Q Can you estimate how far down that debris
13 is?

14 A That looks like 2 to 4 foot.

15 Q Do you know if any soil had been brought
16 into this property before you bought it?

17 A I don't know that.

18 Q Did you have any conversation with anybody
19 that they had added soil?

20 A No.

21 Q In looking at all these pictures
22 (indicating), was it something that you had ever
23 encountered out at Lake Wateree that there would be
24 buried timbers on people's property?

25 A I've never experienced it.

1 Q In like Exhibit Number 8, how far down does
2 that appear to be?

3 A This part (indicating), a foot. This part,
4 maybe 3 feet.

5 Q Based upon your experience as a builder, is
6 there any way you can tell how long those materials
7 have been buried?

8 A That looks like a couple years.

9 Q And how would you estimate that?

10 A Just looking at the rot of it. That's as
11 best I can tell you. I'm no wood expert, as far as
12 aging wood.

13 Q Now, do you have any opinion, based upon
14 your years as a contractor, as to whether this area
15 that we're looking at in the photographs where they're
16 digging the hole and this debris is located would have
17 affected the structure of the house?

18 A I don't know that. I wouldn't think --
19 you're talking about back here (indicating) on the main
20 house?

21 Q Right.

22 A I don't know, unless this (indicating) goes
23 all the way back.

24 Q But what you're looking at on Exhibit 8 --

25 A What I'm looking at here (indicating)

1 shouldn't affect the house, no.

2 Q What about would it affect the decks? Do
3 you know?

4 A I don't think so because we don't -- these
5 are just individual holes dug with concrete poured in
6 them.

7 Q And then when you're saying "these," those
8 are for the timbers that you used to support the deck?

9 A Yeah.

10 Q So those timbers were how deep into the
11 ground?

12 A A couple feet.

13 Q And how would you have --

14 A Post hole diggers.

15 Q A post hole digger is all you need to use in
16 order to dig all the holes for --

17 A Yes, ma'am.

18 Q And how far apart are they?

19 A Ma'am, you don't even have to do that. You
20 can go buy a cement block this big (indicating) and set
21 it on the top of the ground and it will pass.

22 Q How far apart are these support beams?

23 A 6 foot, I think is what we put them.

24 Q When Kershaw County inspected the home,
25 would they have inspected the decks also?

1 A Oh, sure.

2 Q And they passed inspection too?

3 A Yes. That's one of the main things they
4 check. It has to be bolted back here (indicating) to
5 the house, and all sorts of things.

6 Q And they check it at the lake, why?

7 A Because a lot of people have parties on
8 decks on lakes, more than normal, and put a lot of
9 weight on them.

10 Q And so the deck could potentially fall from
11 the house?

12 A Well, yeah, especially big, high decks are
13 the ones to worry about.

14 Q How do you describe this material that is
15 used for the retaining wall? What is that called?

16 A It's just retaining wall blocks. That's all
17 I can tell you.

18 Q I've got one other exhibit I want you to
19 look at.

20 (Defendants' Exhibit 9 was marked for
21 identification.)

22 Q Can you orient yourself, in that picture, as
23 to the retaining walls?

24 A Yeah. That would be looking I think from
25 the lake. And up here (indicating), would be the

1 would come over when I was building this house, you
2 know, just interested. And I talked to him. He had
3 some trees -- now, I don't know whether Chuck did or
4 not -- I'm just saying that he had some trees took down
5 I know, and that's them (indicating). Because I
6 remember him telling me that he would get them up
7 sometime.

8 Q Did he get them up?

9 A I don't remember. I don't think they were
10 there once I got the house built. If I had a picture
11 of it, which I don't --

12 Q A picture of what?

13 A The finished house.

14 Q That wasn't on Mr. Knight's Elevation?

15 A I don't know that that shows that. No, I
16 can't see over there (indicating). But these trees
17 here are a lot bigger than these trees that's buried.

18 Q Okay. And what you're referring to are the
19 trees on Exhibit 9, on Padgett's property, are larger
20 than the trees you can see --

21 A This is just little old brush stuff here
22 (indicating).

23 Q So what you see in the hole on Exhibits 5
24 and 7, you're saying that that's more like brush stuff?

25 A Yeah. This is little old stuff. That's

1 big. You'll see in that picture, that's a big tree.

2 (Defendants' Exhibit 10 was marked for
3 identification.)

4 Q I'm going to show you one more. Here is
5 Exhibit 10. This, I'll represent to you, is after they
6 have reinforced the deck with this steel beam.

7 A Uh-huh.

8 Q But looking under the deck, can you tell how
9 far down this --

10 A How deep?

11 Q -- debris is?

12 A 3 or 4 foot.

13 Q Would you have any reason to go down that
14 deep?

15 A Me?

16 Q Right.

17 A No. I told you, the biggest thing I had on
18 here was a little tractor.

19 Q Would you have had any reason to check that
20 deep when you were building this house?

21 A Me?

22 Q Yes.

23 A No, absolutely not.

24 Q Would those materials that you can see 3 to
25 4 feet under the ground, is that something that you

1 understand was typical out on Lake Wateree?

2 A It just looks like typical wood that's been
3 put there, whether it's here or Lake Wateree.

4 Q Would that debris that you can see in that
5 picture, Exhibit Number 10, would that affect the
6 structural integrity of the house that you built?

7 A No, not unless they dug it out like they
8 did.

9 Q What happens when they dig it out?

10 A Well, they made a big hole here. Nothing to
11 hold it up now. They had to go put that beam in.

12 Q So could they just have taken out the
13 debris, put more dirt in, filled it, and then put the
14 post back in?

15 A You're asking me questions that I wasn't
16 there. You're asking me stuff that I don't know about.

17 Q I'm getting you too far off the track.

18 So you can't say what you think a reasonable
19 repair would have been?

20 A All I can say is I've been building houses
21 for 35 years, and I had no reason to think anything was
22 buried there. And what I'm saying is if they had never
23 dug that pool, the house would still be there like in
24 40 years from now.

25 Q Do you know anything about pool construction

1 tractor; is that right?

2 A Yes.

3 Q So you wouldn't have done any additional
4 grading to the property?

5 A No, none. Didn't have to put the septic
6 tank in, didn't have to do anything; run a pulverizer
7 over it and throw some seed out.

8 Q And when the house was given back to the
9 bank, was it totally completed?

10 A Totally completed, not a scratch on it.

11 Q Do you know anything about why the retaining
12 walls were built?

13 A Just for looks, I guess.

14 Q For looks?

15 A Now, the one on the right, coming in,
16 probably to hold the dirt back because he cut down.
17 Whoever put the driveway in, did cut it down some.

18 Q All right. And you say whoever put the
19 driveway in, they cut down the amount of dirt that was
20 on the property?

21 A Uh-huh.

22 Q And you don't know who did that?

23 A No.

24 Q Did you ever have any dealings with
25 Max Altman?

1 A I've heard the name, but I don't know what
2 he does.

3 Q What about Bluewater Developments?

4 A No.

5 Q No.

6 A I mean, I may have heard the name. But I
7 wouldn't know whether they talked to me or what. I
8 don't remember.

9 Q Did you have any information that any part
10 of the lot could not be built on?

11 A Well, any builder would know that. It's got
12 to be above the 100-year floodplain.

13 Q And that was the only restriction you had?

14 A There might be some more restrictions. I
15 don't know. But he had already started that, and I'm
16 not going to argue with what was already done.

17 Q That is Mr. Oman had already started by
18 putting up the retaining wall and creating a homesite?

19 A Yes. I mean, there's setbacks and that kind
20 thing. I don't know what it is down there. Up here,
21 it's 50 in front, 40 in back. I'm not sure what it was
22 down there anymore.

23 Q During the time that you were building the
24 house, did you notice any problem with the land around
25 the house? Is there anything they gave you? Any

1 information that there was buried debris under the
2 dirt?

3 A No, none. It just looked like a normal lot
4 that had been cleared. You could tell it had no fill
5 on it much. See, if you fill up around trees, they
6 die. So you could see there was no fill on it.

7 Q What do you mean by that, that they didn't
8 bring any fill dirt in?

9 A No -- maybe a little bit. But see, if
10 you've got a tree and you put that much (indicating)
11 fill dirt on it, it's going to die.

12 Q And you're saying "that much," 6 inches? Or
13 "that much," 3 feet?

14 A No, 6 inches.

15 So you could see the roots on most of these
16 trees. There might have been some brought in for the
17 footing. I'm not sure.

18 Q When you bought the lot, were there any
19 trees on your lot that had not been removed that is
20 like we were looking at on the picture?

21 A No. If there would have been, I would have
22 had him move it.

23 Q What about any stumps that you had to deal
24 with on your lot?

25 A Huh-uh.

1 Q There's not more weight with a regular home?

2 A No. They actually say a modular home weighs
3 more.

4 Q Who is "they"?

5 A People on TV say there's more wood in a
6 modular home than a stick-built home. That's what they
7 say.

8 Q How many houses have you built in your
9 career?

10 A Probably 75.

11 Q Have you ever done any geotechnical testing
12 of soil before you started the construction of a house?

13 A No, but I've had compaction tests done when
14 I've built houses.

15 Q What does a compaction test show?

16 A If you're going to build a slab -- if it's
17 going to be a slab house, you come in there and you
18 fill it. Then an engineer will come in, and he's got a
19 little instrument that he drops and sees how long it
20 takes it to go down. And if it passes compaction test,
21 you can pour it, and if it doesn't, you have to redo
22 it.

23 Q But on a single occasion in your career as a
24 builder, have you done any of your own probing on a
25 site?

1 just looked at it -- Exhibit Number 10, who used the
2 post hole digger for those?

3 A Me or my son, one.

4 Q Was your son working for you at the time?

5 A Yes.

6 Q You said you dug them 2 feet deep.

7 A Approximately.

8 Q On Defense Exhibit Number 9 -- I've got a
9 copy here -- the location where the house is -- I'm
10 going to just point to it -- is this area right here
11 (indicating)?

12 A The house starts up here (indicating) and
13 comes around here and down here and goes back up.

14 Q Okay. But it's in between the retaining
15 wall in the foreground and the retaining wall in the
16 rear?

17 A Yes. There's actually 8 foot of porch and
18 then the house starts.

19 Q Okay. And now, you made a statement that if
20 the Holleys -- or the Plaintiffs -- had never dug the
21 pool they wouldn't have any problems. What's your
22 basis for saying that?

23 A I'm just saying this would have never
24 collapsed, if that's what they're saying. If they're
25 saying it collapsed. You're asking me to tell you

1 something I don't know.

2 Q Okay. But you don't know how far the
3 organic material extended?

4 A No. I have no idea. I'm just saying -- you
5 understand a footing is almost impossible to collapse.
6 If they dug this footing right, you could dig the dirt
7 out from under the footing and it still stay there.

8 Q Generally speaking, is it a problem to have
9 organic material underneath the house?

10 A Oh, yeah. You don't want that.

11 Q Why not?

12 A It can sink. See, once this (indicating)
13 rots, you can sink.

14 Q Have you ever seen that happen?

15 A But the porch wasn't sitting on that anyway.

16 Q Have you ever seen that before?

17 A I've not seen it at a house. See, years
18 ago, maybe 25 years ago -- you might still can in
19 North Carolina -- you could bury stuff on property as
20 long as you disclosed it, put it on there and showed
21 them where it was. But if you'll come back 10 years
22 later, you can see that that sunk some.

23 Q To your knowledge, was there any requirement
24 about disclosure of where buried timber and organic
25 material was at the time?

1 A Say that again.

2 Q To your knowledge, was there any requirement
3 at the time, in the 2006/2007/2008 timeframe, was there
4 any requirement in Kershaw County that the burial of
5 material needed to be disclosed?

6 A I don't know that.

7 Q Would you expect that to be disclosed?

8 A Yes.

9 Q Why?

10 A Why? It's the law, probably.

11 Q But from a practical standpoint, why would
12 you expect it?

13 A Because it's not good. You see what's
14 happened there, don't you?

15 MR. BELSER: Mr. Gibson, thank you very
16 much. I don't have anymore questions.

17 MS. GRIFFIN: No questions.

18 MR. SHAW: No.

19 * * * * *

20 (Defendants' Exhibit 11 was marked for
21 identification at conclusion of
22 deposition.)

23 (Proceedings concluded at 1:43 p.m.

24 Signature was reserved.)

25

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

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Clifford D. Holley and
Sharon Holley,

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Plaintiffs,

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vs.

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Dan-Sa, Inc., Charles E. Oman
and Janis M. Neimi, Gina L.
Pike and Blue Ridge Savings
Bank, Inc.,

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Defendants.

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COPY

DEPOSITION OF

CLIFFORD D. HOLLEY

Tuesday, November 12, 2013

10:10 a.m.-12:02 p.m.

The deposition of Clifford D. Holley, taken on behalf of the Defendants at the offices of the Burn Law Firm, 945 East Main Street, Suite D, Lexington, South Carolina on the 12th day of November, 2013, before Lyn Allen Hudson, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

1 A: Yes.

2 Q: The contract's dated June, looks like the final date
3 June 29, 2011. And y'all closed shortly after that?

4 A: Right.

5 Q: Did y'all pay cash or did you get a mortgage on the
6 property?

7 A: Cash.

8 Q: All right. And it looks like I think y'all produced
9 this in discovery that y'all had an inspection done of
10 the house?

11 A: Right.

12 Q: All right. Were you or your wife present at that
13 inspection?

14 A: Yes. We both were.

15 Q: Both of you?

16 (Off the Record)

17 BY MR. LANFORD:

18 Q: Do you recall being there at the inspection?

19 A: Yes.

20 Q: About how long did it take?

21 A: Two and a half hours.

22 Q: And how did you choose the inspection, the inspector?
23 Was that at the recommendation of the realtor?

24 A: Yes.

25 Q: Okay. Did you go with the inspector everywhere through

1 the house?

2 A: No.

3 Q: You didn't go in the crawl space?

4 A: No.

5 Q: All right. Before you purchased the house did you do

6 any kind of soil testing or anything like that?

7 A: No.

8 Q: Did you do any due diligence other than the inspection

9 from DuBose Home Inspection?

10 A: No.

11 Q: Did y'all have a heating and air inspection or anything

12 like that?

13 A: Yes.

14 Q: Did that. Okay. And I assume that was somebody

15 separate from DuBose or do you remember?

16 A: All of it was inspected. Well, he did the minor stuff

17 like that too. So I think he did pretty well all of

18 the inspections.

19 Q: Okay. All right. And I assume y'all had, or did you,

20 did you have to get a termite letter? Termite

21 inspection?

22 A: I don't remember on that now.

23 Q: Okay. And either during or after the inspection were

24 there any issues that were brought to your attention by

25 Mr. DuBose?

1 A: No. Very, well, there were a couple of minor things
2 but nothing. He's one of those that said in those kind
3 of situations you can write a page or two and he said
4 he couldn't hardly find a paragraph.

5 Q: Okay.

6 A: And that was inside the house.

7 Q: So he was having trouble finding things that were wrong
8 with it?

9 A: Yes.

10 Q: I did see where he mentioned that the moisture content
11 was a little bit high.

12 A: Right. We had a guy power washing that day.

13 Q: So you think that was the cause of it?

14 A: Yes.

15 Q: All right. Were there any issues with the foundation
16 that were brought to your attention by Mr. DuBose?

17 A: No.

18 Q: Okay. It looks like the date of the inspection was
19 July 1st. So just a couple days after y'all got the
20 contract?

21 A: Yes.

22 Q: And then you closed about a week after that; is that
23 right?

24 A: I believe so. Yes.

25 Q: Approximately. Okay. And you purchased the property

1 you look on their web site or did you actually go to
2 their place of business in St. Matthews?

3 A: Yeah. We went to their place of business.

4 Q: Okay. And I assume when you went there you went over
5 options for pools and that sort of thing?

6 A: Yes.

7 Q: And you wanted something smaller?

8 A: Right.

9 Q: Okay. What other types of options were you looking
10 for?

11 A: Well, the whole thing was this wasn't going to be in
12 the ground. It was going to be raised up with a wall
13 around it.

14 Q: Okay. How far raised up was it going to be?

15 A: About six foot.

16 Q: Okay. Okay. Why were you doing it that way?

17 A: Didn't want to go into the ground because of the water
18 coming up to the hundred year floodplain.

19 Q: Okay. And was that mandated by Kershaw County or was
20 that just what y'all decided to do?

21 A: You can't, well, you could put a pool in the ground but
22 it's better because of the way the thing floods if you
23 will get it up out of the ground.

24 Q: All right. So I assume this pool was going to cost
25 more probably than what they usually did if you're

1 Q: Okay. Let me just mark this.

2 A: Otherwise you would have a lot of dirt to pull back out
3 and there wasn't any reason to pull the dirt back out.

4 (Defendant's Exhibit Number Three was marked for
5 identification purposes.)

6 Q: Just so the record is clear we're talking about
7 Defendant's Exhibit Three as the plat and survey. And
8 you were pointing to the, I guess the left side. And
9 that's the house right there; correct?

10 A: Yes. And it's this side right here. And it slopes at
11 a pretty good little clip.

12 Q: Okay.

13 A: So there again by the time you put a road in there
14 enough to be able to get the dump truck to back up and
15 put the debris in it and haul it off, by the time you
16 got through you just might as well add another 10 or 15
17 or 20 loads of dirt and put it all the way around the
18 garage too.

19 Q: Okay.

20 A: Which is what we ended up doing.

21 Q: I follow you now. So basically they had to bring dirt
22 in to make it level so the dump trucks could get in and
23 out?

24 A: Yes.

25 Q: So their suggestion was just leave that there rather

1 issues with it?

2 A: No.

3 Q: All right. So in your mind all this has been fixed and
4 you don't have any reason to believe you're going to
5 have any future problems with it?

6 A: Yes. That's fine.

7 MR. LANFORD: All right, Chip. Why don't we do
8 this? It's 11:20. Let's take a short break. I think
9 I'm about done.

10 (Break - 11:20 p.m.-11:42 a.m.)

11 (Defendant's Exhibit Number Five was marked for
12 identification purposes.)

13 BY MR. LANFORD:

14 Q: Mr. Holley, just a few follow-ups. The refinance that
15 you, I guess that would tend to be a finance, when
16 exactly was that done? You said it was last year?

17 A: I believe it was 2012.

18 Q: It was later in the year you said?

19 A: I believe so.

20 Q: Do you remember how much that was for?

21 A: Probably \$50,000. But I'm not sure of that.

22 Q: Okay. All right. And that was with First Citizens
23 Bank?

24 A: I believe so.

25 Q: Okay. Did y'all ever do your own survey of the

1 property?

2 A: Did we do our own? It was already surveyed. Yeah.

3 Q: Did you have one done when you purchased the house?

4 A: I believe we did.

5 Q: Have you had any done since then?

6 A: I think three had to be done.

7 Q: When all the work was being done?

8 A: Nosy neighbor.

9 Q: Nosy neighbor?

10 A: Yeah.

11 Q: Tell me about that.

12 A: He kept saying we were in the floodplain. So he kept

13 referring it to Kershaw County.

14 Q: And which nosy neighbor was that?

15 A: He was a real estate agent.

16 Q: He was a real estate agent?

17 A: Yeah.

18 Q: Was he a neighbor of, a neighbor at the Wateree house?

19 A: Yes.

20 Q: Okay. Was it anybody you mentioned in your discovery

21 responses? Larry Padgett? Inga Padgett?

22 A: No.

23 Q: Okay. Who was it? Are you reluctant to tell me?

24 MS. HOLLEY: He can't remember his name.

25 BY MR. LANFORD:

1 Q: Oh, you can't remember his name? Okay. That's fine.
2 Maybe your wife will remember.
3 A: She will.
4 Q: That nosy neighbor, where did he live? Or is it a she?
5 A: On the point. It's a he. On the point.
6 Q: Tell me where that is on the point.
7 A: If you're looking on our back porch looking out he's to
8 the left.
9 Q: So he's directly to the left of you or is he --
10 A: Out on the point. Yeah.
11 Q: All right. So you had to have surveys done to convince
12 him that you were not in the floodplain?
13 A: To convince Kershaw County, yes.
14 Q: Okay. So he told Kershaw County?
15 A: That we were trying to build in a floodplain.
16 Q: And that's when you were doing all the work with the
17 garage and with the pool?
18 A: And the wall. Yeah.
19 Q: And were they ultimately convinced that you were --
20 A: Yeah. We're still about 30 feet from the line.
21 Q: Did you ever have any conversations with this
22 individual as to why he was --
23 A: Not about that, no.
24 Q: Did you ever have any conversations with any of the
25 neighbors about this fill issue?

) IN THE COURT OF COMMON PLEAS

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1 give us an expert opinion about that and that we took
2 the necessary expense to be able to rectify that
3 situation.

4 Q: And you trusted those people to do that?

5 A: I have no reason not to trust them.

6 Q: Okay. I think that's all I have. I may have a couple
7 of follow-ups after Mr. Miles is done but I think
8 that's it. Thank you.

9 A: Okay.

10 EXAMINATION BY MR. MILES:

11 Q: I can tell you're a lady of wisdom and knowledge. So
12 having said that --

13 MR. LANFORD: That's a high compliment coming from
14 him.

15 BY MR. MILES:

16 Q: And probably excellent memory. So if you remember the
17 questions I asked your husband, you can go down and
18 answer them chronologically.

19 A: I might could. But I think I would rather just hear
20 them again.

21 Q: All right. Well, that's good. You, you're a party to
22 this lawsuit so you're one of the complainants in this
23 suit?

24 A: That is correct.

25 Q: Do you have any reason to believe that Gina Pike misled

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW) IN THE COURT OF COMMON PLEAS

Clifford D. Holley and)
Sharon Holley,)

Plaintiffs,)

vs.)

C/A #2013-CP-28-00250

Dan-Sa, Inc.; Charles E. Oman;)
Janis M. Niemi; Gina L. Pike;)
Dermac Contractors, LLC;)
Bluewater Development of)
South Carolina, LLC; and)
Blue Ridge Savings Bank, Inc.,)

Defendants.)

COPY

DEPOSITION OF PETE MORRISON

Tuesday, September 9, 2014
11:00 a.m. - 11:50 a.m.

The deposition of **PETE MORRISON**, taken on behalf of the Defendants, at the offices of Burn Law Firm, 945 East Main Street, Lexington, South Carolina on the 9th day of September, 2014, before Judy R. Urso, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

URSO COURT REPORTING
21 Surrey Court / Columbia, SC 29212
(803) 731-8585

1 been removed.

2 Q: So he wanted them to stop before they got any closer
3 to the house?

4 A: He stopped them.

5 Q: Okay. In looking at Exhibit Four

6 A: Uh-huh.

7 Q: and I've got the color copy. What is the
8 distance between where the excavation stopped and
9 this brick wall?

10 A: The wall? The house, the wall? It's hard to tell.
11 This is a this is part of the

12 Q: Retaining wall?

13 A: Retaining wall. Thank you. And of course that's a
14 that's part of the retaining wall, too. I
15 would say it's probably about two feet, 18 inches to
16 two feet.

17 Q: While you were supervising the Terratec portion of
18 the project, did this dirt next to the retaining
19 wall ever get I mean next to the wall of the
20 house ever get removed?

21 A: No. Huh-uh.

22 Q: Was there any digging that went under the footers of
23 the house?

24 A: No.

25 Q: Would you have recommended that they dig under the

1 footers of the house?

2 A: No. I what I did, I do remember this, I told
3 them if they had any settlement problems in that
4 area, we could underpin that. We gave them that
5 option. We did not give them a proposal. I told
6 Mr. Rabon about it, and I guess he discussed it with
7 the owners, and it never, never happened.

8 Q: So the main concern was the porch and then the roof
9 on the second story had

10 A: Right.

11 Q: that needed to be supported once the excavation
12 had taken place?

13 A: Yes.

14 Q: Exhibit Number Five which is well, let's look
15 at Four and Five. They're essentially the same, the
16 same picture at a different angle.

17 A: Correct. I think it was just a closer picture of
18 that portion of the excavation.

19 Q: And then Exhibit Six, what does that show?

20 A: Basically that's just a picture of the side of the
21 porch and the beam, you can see the lake in the
22 background, and, and the project is not completed at
23 that point. There was some X bracing and a lot of
24 bracing that went in there later. We don't have any
25 pictures of the finished product.

1 Defendants' Exhibit Number Eight was marked for
2 identification purposes.)

3 Q: So I've marked Exhibit Number Eight, and that shows
4 us the type of crossbeams that you all were using?

5 A: It's two by, two by six and two by six.

6 Q: And this was as recommended by Timmerman?

7 A: That's correct.

8 Q: What other work did you all do? You said the
9 helical piers. Where did they extend from?

10 A: They went from the bottom

11 Q: Can you just draw can you draw them in on
12 Exhibit Seven?

13 A: They go from the bottom of the crosspieces.

14 Q: Down to where they hit solid ground?

15 A: Right. Right, refusal.

16 Q: Did you do any inspection of the house itself to
17 determine if there were any foundation problems with
18 the house?

19 A: Yes, I did.

20 Q: And what did you find?

21 A: Well, I did, I always do. Didn't find anything in
22 the house at that particular time that indicated
23 settlement in the house itself.

24 Q: Have you been back since August of 2011 to look
25 again?

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW) IN THE COURT OF COMMON PLEAS

Clifford D. Holley and)
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Plaintiffs,)

vs.)

C/A #2013-CP-28-00250)

Dan-Sa, Inc.; Charles E. Oman;)
Janis M. Niemi; Gina L. Pike;)
Dermac Contractors, LLC;)
Bluewater Development of)
South Carolina, LLC; and)
Blue Ridge Savings Bank, Inc.,)
Defendants.)

COPY

DEPOSITION OF P. WAYNE RABON

Wednesday, September 3, 2014
10:01 a.m. - 1:15 p.m.

The deposition of **P. WAYNE RABON**, taken on behalf of the Defendants, at the offices of Fairfield County Magistrates Court, 115 B. South Congress Street, Winnsboro, South Carolina on the 3rd day of September, 2014, before Judy R. Urso, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

1 A: That fell into my hands by accident. Well, no, it
2 was not by accident. It was planned for me to do
3 that. When they was digging the pool, we finally
4 getting to where I thought we was going to be.

5 Q: Sorry.

6 A: When we were digging the pool, they were digging the
7 pool, Alaglass is digging the pool, and I forget the
8 contractor's name, Frank Bradshaw, God, I'm doing
9 better than I thought, he started digging out
10 debris. He said, Wayne, I got some debris here. I
11 said, no problem, just dig it out. I mean it's got
12 to be excavated, and then he run out of room with
13 his backhoe. I mean it wouldn't dig any deeper, and
14 we still had debris there, but the debris started
15 out here where they were putting in the pool, and
16 then he started pulling debris out from underneath
17 the house, and that's when I made him stop, and I
18 said do not pull no more because I saw the concrete
19 block wall that was already existing start to
20 separate. It had three-quarters of an inch to inch
21 gaps in the wall starting to separate. After a day
22 or so, I could see a sag in the roof of the porch up
23 there, and, and that's when I said we got to have
24 some help, and we called Alaglass, and Alaglass's
25 engineer was Juanita, and I do not know her last

1 Q: So did you have to cut down the property where the
2 garage was located, or did you build it up?

3 A: I built it up.

4 Q: You built up the garage area?

5 A: Yes. Uh-huh. We have steps going down to the pool.

6 Q: And they also built up the pool area. After the
7 fact, or was it at the same level that it was before
8 they started digging?

9 A: I'm not sure I understand what you're asking,
10 Catharine.

11 Q: Okay. If I went out to that house and I walked onto
12 the property before they started digging and then I
13 walked onto the property after it was filled back
14 in, would it be at the same level, or it would be
15 higher or lower?

16 A: No. It would be much higher.

17 Q: Much higher. How much higher?

18 A: You're talking about the pool?

19 Q: Right. Where the pool is located.

20 A: You have not been out to the house?

21 Q: No.

22 A: Okay. From the house is where the slope started.
23 It would be it's a pretty big hill, and that's
24 where they started digging on the ground. I don't
25 know. Probably about five or six feet slope there,

1 height is exactly 238 as a minimum restriction on
2 Lake Wateree.

3 Q: What is the 238 feet?

4 A: That is sea level. That is the minimum height of a
5 floor can be for new construction which is
6 approximately 13, 14 foot over the dam in, in
7 elevation. The top of our dam is at 226.

8 Q: Okay. So it wouldn't be practical to try to build a
9 building over in this sloped area where the pool
10 ultimately went?

11 A: No. No.

12 Q: Now in looking at what Alaglass uncovered, you said
13 that there was methane gas and that it was a rank
14 smell.

15 A: Yeah.

16 Q: Had you ever seen anything like that before or
17 smelled anything like that?

18 A: Yeah.

19 Q: In what circumstances?

20 A: Digging. This is not the first debris that's been
21 buried up at the lake, but it has been, I can't say
22 completely banned, but it was banned for any
23 construction. All debris is supposed to be hauled
24 off and disposed of.

25 Q: When were the other times when you found debris

1 you're calling the footers.

2 A: It was the same thing, and let me, let me see if I
3 can help you just a little bit, Catharine.

4 Q: Okay.

5 A: I told you earlier, and this is going to be the lake
6 side here, and I'm going to do it this way for, for
7 lack of a better way of doing it. This is the
8 retaining wall right here.

9 Q: The existing retaining wall we're talking about.

10 A: Exist, exist and what had happened now, and you
11 can't see it here, here's the main part of the
12 house, and it had standard footers, okay, and the
13 house was built there, but they had an upstairs
14 patio and everything that come out and deck and the
15 whole roof line came out because the roof line
16 extended out over the whole thing, and so the roof
17 line had posts sitting out here on this retaining
18 wall to support the whole upper section of the roof.
19 The roof overhung approximately six or eight feet.
20 You had your, your walls of your house here which
21 was on the concrete footers, and these posts were
22 put on that wall, retaining wall, and I would have
23 never have done that being a contractor, but, you
24 know, I don't know if there's a code for that or
25 not, and the reason I say that is when you do

1 Q: And I think did you say that you had criticism
2 of the contractor who built the house for putting
3 the pillars onto the retaining wall that is the
4 supports for the decks?

5 A: Yeah.

6 Q: And you said that should not have been done?

7 A: Should not have been done.

8 Q: Is the reason that the steel beam had to be put on
9 the house because of the way the decks were built by
10 the contractor?

11 A: Yeah.

12 Q: In looking at these photographs, I heard during a
13 break you were asked who took them, and you said you
14 thought you took them, and that is Exhibit Two, is
15 that right?

16 A: Uh-huh. Yes, ma'am.

17 Q: And these would have been taken at the very
18 beginning of the project, or can you just walk me
19 through them, and then I'm almost done, and identify
20 them by the letters so that's A. Would that have
21 been day one, or when would that have been taken?

22 A: Probably day one.

23 Q: And then what is the next picture B?

24 A: It could be the same day, but it's just more debris.

25 Q: Just an up-close picture?

1 little bit more level to get up there to be able to,
2 to work instead of being on an angle.

3 Q: Is there any photographs in there that show debris
4 underneath the footers? Not over the porch but of
5 the, the main structure.

6 A: I think this is about one of the last photographs we
7 took.

8 Q: That would be referencing I. Here's H.

9 A: And we're right here at the wall now, and, and it
10 goes up underneath there right down here on this,
11 this lower end.

12 Q: Do you think, I'm going back to photograph F, do you
13 think you went any deeper on the top surface than
14 what this cut is right here?

15 A: Not on the top surface. We, we went it, it
16 went under here cause this was pretty stationary
17 here, and but it did go under there a little bit
18 deeper here. See, this is getting close except this
19 is a little bit deeper, and we were actually we
20 were right at the very end of it right along in
21 here.

22 Q: So the majority of the soil underneath the footers
23 for the entire main house, not the porch, is, is
24 reasonably compacted, does not have debris
25 underneath it?

1 all in it, and they said, well, why did you do that.

2 I said, well, we put them in all of them, and most
3 counties require it, but Kershaw does not.

4 Q: And you, you stated earlier you weren't, it wasn't
5 your field, how long it would take for that debris
6 to potentially rot away?

7 A: I, I, I don't know.

8 Q: And the issue seems to be more under the footers for
9 the porch than

10 A: Porch, exactly.

11 Q: than the foundation of the home?

12 A: Uh-huh. But the roof line is established to that
13 house over there. That's, that was where the
14 problem was, a lot of weight on it.

15 Q: When you build your footers for your garage and your
16 foundation for the garage, what is your normal
17 process to do that? How would you, what would you,
18 what would be your first step to do that?

19 A: We usually use a small piece of equipment, a mini ex
20 is what we call it, a small backhoe. Dig it 16
21 wide, a foot deep, line up the rebar, have it
22 inspected, and then we pour the concrete and it's
23 reinspected, and then we put our foundation block on
24 it.

25 Q: Who would check below the soil there? Who would

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW) IN THE COURT OF COMMON PLEAS

Clifford D. Holley and
Sharon Holley,

Plaintiffs,

vs.

C/A #2013-CP-28-00250

Dan-Sa, Inc.; Charles E. Oman;
Janis M. Niemi; Gina L. Pike;
Dermac Contractors, LLC;
Bluewater Development of
South Carolina, LLC; and
Blue Ridge Savings Bank, Inc.,

Defendants.

COPY

DEPOSITION OF ROLLIN G. REYNOLDS, III

Wednesday, September 3, 2014
2:35 p.m. - 3:35 p.m.

The deposition of **ROLLIN G. REYNOLDS, III**, taken on behalf of the Defendants, at the offices of Kershaw County Government Center, 515 Walnut Street, Camden, South Carolina on the 3rd day of September, 2014, before Judy R. Urso, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

1 on by the inspector doing whichever inspection.

2 Q: If you look at the application where it has under
3 comments, moving modular home from 2830 Lake Road,
4 do you see that?

5 A: Uh-huh.

6 Q: And who would have put that information there? Is
7 that your office or the homeowner?

8 A: That would be our office.

9 Q: And then that correlates with construction of one
10 modular home?

11 A: Yes.

12 Q: But it what, what the homeowner's asking to do
13 is move the modular home from the adjacent property
14 to 2834 Lake Road, is that right?

15 A: Yes.

16 Q: And then you all characterize it as construction
17 even though it is the movement of a home, and then
18 there may be some construction associated with
19 getting it in place on the new lot, correct?

20 A: Yes.

21 Q: With respect to moving the modular home, what was
22 the first thing that the building inspector would
23 have gone out to inspect?

24 A: Footing inspection.

25 Q: And this is Mr. Keisler's initial who did this?

1 A: Yes.

2 Q: What does the building inspector do to inspect the
3 footings?

4 A: He would examine the footings to see if it meets the
5 building code for whatever this particular structure
6 may be that's going on this property.

7 Q: And what type of footings would you need to meet
8 code for a modular home?

9 A: It depends on the modular home. Depends on the
10 construction of the modular home which I have no
11 knowledge of right now.

12 Q: Does the construction permit indicate that the
13 footings are okay? Is that what that stands for?

14 A: Yes.

15 Q: And that means that they were approved in the state
16 that they were in?

17 A: Yes.

18 Q: In order to inspect the footings, what do you all
19 do?

20 A: We observe potentially proper width, proper depth,
21 placement, and proper placement on the, on the soil,
22 where the footings are on the soil, and, and
23 possible compaction.

24 Q: How do you test for compaction?

25 A: The inspector very simply be walking on the site and

ROLLIN G. REYNOLDS, III

27

1 that what does that mean to the county?

2 A: That the owner is responsible for this permit.

3 Q: And the extent of the responsibility, does that
4 extend to any person that comes to work at his or
5 her specific request?

6 **MS. GRIFFIN:** Object to the form.

7 Q: And if there are objections, you can unless
8 there's instruction not to answer, you need to go
9 ahead and answer the question, but I'll restate it.
10 My, my question is the as far as the county is
11 concerned, this disclosure statement means that the
12 owner's responsible, and I'm asking about is that
13 as far as the county is concerned, does that
14 responsibility extend to other say subcontractors
15 who are hired by the owner?

16 **MS. GRIFFIN:** Object to the form.

17 **MR. SHAW:** Same objection.

18 A: Can I answer it?

19 Q: Yeah. Yeah, you can go ahead.

20 A: The owner letter states that the owner is
21 responsible for the permit and anyone doing work
22 pertaining to that permit for the owner.

23 Q: Have you had any discussions with Mr. Keisler about
24 any of this?

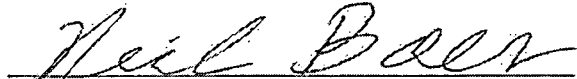
25 A: No, I have not.

IN THE COURT OF COMMON PLEAS
IN THE 5th JUDICIAL CIRCUIT
Case Number 2013-CP-28-250

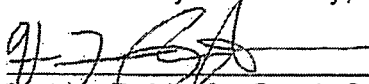
FILED FOR RECORD
JAN 20 AM 9 10
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

- 1 R. 149**

- 01-2-BA 05-01-15
- i. the builder built the "spec house", but defaulted on the mortgage and lost the house to the bank,
 - j. the Holleys purchased the lot and home from the person who purchased the house from the bank,
 - k. neither the bank nor the person who purchased the house from the bank were aware that organic material had been buried by Oman and Niemi,
 - l. the Holleys discovered the organic material in 2011 when they began excavation to install a swimming pool adjacent to the house,
 - m. the buried organic material extended underneath the foundation of the home, and
 - n. the Holleys spent a substantial amount of money removing the buried debris and repairing the property.
5. In my opinion, Oman and Niemi violated applicable construction and other standards when they buried the organic material on the lot both adjacent to and underneath where the foundation was to be poured. Organic material will decay over time. Therefore, when a foundation is poured or a structure is built over the organic material, there will be damage to the structure caused by settlement. The extent of the damage, and when it will manifest itself, is a function of time and other factors. However, the burial of organic material in and of itself created an immediate unstable condition and defect to the property that was concealed by the burial and had to be remediated. This is true even if an area is not "buildable" because it will still sink or settle.
6. In my opinion, Oman and Niemi violated applicable construction and other standards by failing to disclose to anyone that they had the organic material buried on the property in 2007. The purchaser of the property, as well as subsequent purchasers of the property, had no way of knowing that the organic material had been buried because it was concealed.


Neil Baer

SWORN TO AND SUBSCRIBED TO ME
This 16th day of January, 2015


Notary Public for South Carolina
My Commission Expires: 7/10/22



NEIL R. BAER, P.E.

Engineer: Structural, Civil

Property Loss Claims Investigations
Cause and Extent of Property Damage
Building Code Compliance
Structural Repair Scopes
Technical Investigations
Structural Analysis
Water Intrusion and Damage, Mold Causation

Education

1976 **Master of Business Administration**
 Clemson/Furman MBA Program

1969 **Bachelor of Science in Civil Engineering**
 Clemson University

Experience

September 1997 to Present

Summit Engineering, L.L.P., Columbia, South Carolina. Consulting Engineer performing specialized consulting in the areas of: **Property Loss Claims Consultation:** cause of loss(wind versus water), building code compliance, repair or replacement analysis, scope of damage, estimate of repair, actual cash value, salvage value, and time to repair; **water intrusion and mold causation, Failure Analysis:** analysis and evaluation of designs, determination of cause of failure, **Standards and Code Compliance;** accident evaluation: structural damage evaluation, **Structural Analysis:** analysis of existing structures for load carrying capacity and code compliance; **E.I.F.S. Examination:** identification of defects in EIFS and related building systems, scope of damage determination, estimate of repair costs.

August 1996 to August 1997

Special Projects Manager, SMI Joist, S.C. of Cayce, South Carolina. Responsible for feasibility study for consolidation of two manufacturing plants, design of concrete foundations and steel superstructure for plant additions and improvements including design of overhead crane bridge beams, column repair and replacement, and land surveys.

November 1994 to August 1996

Plant Manager for SMI Owen Joist of Cayce, South Carolina. Responsibilities included safety, quality control, and production for two manufacturing plants, design of column replacement system in existing plant, supervision of new assembly line construction, structural analysis of steel building structure for overhead crane additions, design of concrete containment structures for paint tanks.

June 1992 to November 1994

Vice President and General Manager for Owen Joist of Cayce, South Carolina. Responsibilities included safety, quality control and production improvements for three manufacturing plants, assembly line modifications and additions, design and construction supervision of a paint system for joists, and supervision of modifications and upgrades on a robotics joist machine.

April 1986 to June 1992

Vice President-Sales for South Carolina Steel Corporation of Greenville, South Carolina. Responsibilities included estimating, selling, and managing design-build structural steel and reinforcing steel projects, supervision of sales personnel, analysis of subcontractor bids, and coordination and planning of corporate sales efforts. Managing each project included detailed coordination with the steel erector and other trades, job site trouble shooting, and determination of causes and solutions for field problems.

April 1984 to April 1986

Manager of Structural Steel Sales for South Carolina Steel Corporation of Greenville, South Carolina. Responsibilities included estimating, selling, and managing design-build structural steel and reinforcing steel projects, supervision of sales personnel, analysis of subcontractor bids, and coordination and planning of corporate sales efforts. Managing each project included detailed coordination with the steel erector and other trades, job site trouble shooting, and determination of causes and solutions for field problems.

January 1975 to April 1986

Engineer, Estimator, Project Manager for South Carolina Steel Corporation of Greenville, South Carolina. Responsibilities included estimating, selling, and managing design-build structural steel and reinforcing steel projects and analysis of subcontractor bids. Managing each project included detailed coordination with the steel erector and other trades, job site trouble shooting, and determination of causes and solutions for field problems.

August 1973 to January 1975

Structural Engineer with J. E. Sirtine Co. of Greenville, South Carolina. Responsibilities included structural analysis and design of steel and concrete structures.

April 1971 to August 1973

Project Manager and Estimator for Yeargin Construction Co. of Greenville, South Carolina. Responsibilities included managing the construction of two office buildings including coordinating subcontractor's schedule and performance standards, dispute resolution, field inspection, trouble shooting, and problem resolution. Estimating responsibilities included material take-offs, subcontract price solicitation and coordination and scheduling.

April 1970 to April 1971

Office Engineer for Yeargin Construction Co. at an industrial job site in North Carolina. Responsibilities included estimating and obtaining approval for over three hundred change orders, coordinating drawing revisions with the Architect/Engineer and all trades on-site, and assisting the Project Manager in material procurement and scheduling.

September 1969 to April 1970

Estimator for Yeargin Construction Co. of Greenville, South Carolina. Responsibilities included material take-offs, subcontractor's price solicitation, and bid compilation for industrial and commercial turnkey projects.

June 1969 to September 1969

Field engineer for Yeargin Construction Co. at an industrial project in South Carolina. Responsibilities included setting and checking elevations and locations of forms for concrete pours, verification of dimensions of structures to assure adherence to plans and specifications.

June through August 1967, 1968

Rodman for J. R. McCrone Surveying in Annapolis, Maryland. The duties in this summer job included being part of a surveying crew performing property boundary surveys for private residences and commercial establishments.

June through August 1964, 1965

Laborer for Powell Marine Construction Co. in Edgewater, Maryland. Responsibilities in this summer job included assisting with the operation of a floating pile driver in the construction of bulkheads and piers.

Professional Organizations

American Concrete Institute
American Society of Civil Engineers
Southern Building Code Congress, International

Registration

Registered Professional Engineer in South Carolina (#5696)
Registered Professional Engineer in North Carolina (#023149)
Registered Professional Engineer in Georgia (#24277)
Registered Professional Engineer in Virginia (#032129)
Registered Professional Engineer in Alabama (#26877-E)
Registered Professional Engineer in Florida (62899)

Continuing Education

June – August 1980	Design of Concrete Structures, Greenville Technical College
1986	CRSI reinforcing bar seminar
1988	AISC Bolt Seminar
1988	LRFD introduction seminar
August 1989	Earthquake Loads in Buildings
December 1989	Allowable Stress Design in Steel
1990	Seminar on Causes of cracking of structural steel shapes receiving hot-dipped galvanizing
1991	Study project on the effects of reinforcing in concrete slabs on grade with the Construction Specifications Institute.
March 1991	Practical Steel Design Using LRFD
April 1996	Effects of Vibration on a Joist Floor System
September 1997	Brick Veneer Seminar
June 1998	Structural Condition Assessment of Existing Structures
July 1998	Lightning 101
July 1999	NEHRP Guidelines for the Seismic Rehabilitation of Buildings
March 2000	Foundation Design Overview, Seismic Retrofit and Mapping

September 2000	Masonry Design Software Seminar
September 2000	ASCE Technical Seminars
March 2001	Law for Design Professionals, status of E.I.F.S. Claims
March 2001	Surveying in the Flood Plain
April 2001	E.I.F.S. Inspector Certification Course
September 2001	Soil Basics for Engineers, Dr. David J. Elton, P.E., Auburn University College of Engineering
October 2001	National Mold Symposium, Charlotte, North Carolina
March 2002	High Strength Bolts – Design and Installation
March 2002	Force Protection
March 2002	Design Solutions for Engineered Wood
June 2002	Solving Water Intrusion and Mold Problems in South Carolina
October 2002	ASCE Geotechnical Seminar
March 2003	ASCE Seminars: Steel Framing and Erection; Soil Properties and Excavation Stability
March 2003	Advances In Environmental Mold Issues
November 2003	Structural Provisions of the International Building Code
March 2004	ASCE Seminar: Earthquake Design, Concrete Design, Deep Foundation Design
May 2004	ASCE Seminar: Steel and Concrete Design
June 2004	CASE Seminar: Structural Construction Documents

September 2004	ASCE Seminar: Structural Analysis and Design
April 2005	ASCE Seminar: ACI-318, Concrete Anchorage, Precast/Pre-stressed Lintels, Continuous load paths in wood to wood and wood to concrete connections, Tunnel Project methods and scheduling
June 2005	Roofing and Waterproofing Course
September 2005	ASCE Seminar: Design Standards, Stability Design, Insulated Structural Panels, Seismic Remediation of Dams, City Development
April 2006	ASCE Seminar: Seismic Design with Wood, Anchorage to Masonry and Concrete, Design Build Construction, Ports Authority
May 2006	ACI Course: Reinforcement in Concrete ACI Course: Concrete Floor and Slab Construction
October 2006	ASCE Seminar: Groundwater Treatment; Ground Vibration Monitoring and Damage Documentation; Soil Response to Earthquake Ground Motion; Renovation Project Management; Future Civil Engineering Requirements
March 2007	ASCE Seminar: Ground Improvement Techniques; Building Code Changes; Bridge Design Practice; Bridge Needs in South Carolina
June 2007	ACI Course, Structural Crack Repair by Epoxy Injection ACI Course, Crack Repair by Gravity Feed with Resin ACI Course, Spall Repair by Low-Pressure Spraying
September 2007	ASCE Seminar: Civil Engineering in Today's World Storm water Permitting and Management Soil Reinforcement Solutions Vibration Control Program Design of Two-Way Slabs
March 2008	ASCE Seminar: Pile Splicing Seismic Design Guidelines Sheet Pile Installation Steel Underpinning Systems

May 2008	Designing with Wood, Auburn University	
November 2008	Designing with Wood, ASD, Auburn University	
December 2008	Designing with Wood, LRFD, Auburn University	
April 2009	Concrete Design, Part I, Auburn University	
May 2009	Concrete Column Design, Auburn University	
October 2009	ASCE Seminar	Sheet Piling Self-Consolidating Concrete Coordination between structural and geotechnical
December 2009	ASCE Seminar	Seismic Design
January 2010	ASCE Seminar	Nuclear Power Plants
March 2010	ASCE Seminar	Coastal Erosion
April 2010	ASCE Seminar	Dam Stabilization
May 2010	ASCE Seminar	Wind Load Design
September 2010	ASCE Seminar	Engineering Registration Issues
November 2010	ASCE Seminar	S. C. Economic Development
December 2010	ASCE Seminar	USC Construction Planning
January 2011	ASCE Seminar	Charleston Roadwise Project
February 2011	ASCE Seminar	Past 40 years of engineering
June 2011	S. C. Engr. Conf.	Professional Ethics Engineering Registration Roof and Wall Leaks Steel Fiber Concrete Reinforcing Engineering Education in South Carolina Bridge Replacement Project

		Fatigue Damage Evaluation Vulnerability Studies of Marine Structures
September 2011	ASCE Seminar	Public School Design in S. C.
October 2011	ASCE Seminar	Post-Disaster Safety Evaluations
November 2011	ASCE Seminar	Lighthouse Foundation Stabilization
January 2012	ASCE Seminar	Offshore Wind Power Design
March 2012	ASCE Seminar	Airport Runway Rehabilitation
April 2012	ASCE Seminar	South Carolina Archaeology
May 2012	ASCE Seminar	Aquifer Storage and Recovery
June 2012	S. C. Engr. Conf.	Business Development Design of Port Infrastructure Overhead Rates Micropile Foundations Soil Stabilization CU-ICAR Engineering Center Lightweight Concrete Seismic Evaluation and Retrofit Underwater Inspection and Acoustic Imaging
September 2012	ASCE Seminar	Forensic Engineering
October 2012	ASCE Seminar	Masonry Vencer Design Wood Floor Framing Performance Impact of Energy Code on Residential Construction Design of Hoover Dam Bypass Bridge Pre-Fabricated Wood Shear Panels
February 2013	ASCE Seminar	Railroad Design
March 2013	ASCE Seminar	Licensure of Professional Engineers
March 2013	Auburn University	Geotechnical Aspects of Shallow Foundation Design

April 2013	Auburn University	Structural Design of Spread Footings
April 2013	ASCE Seminar	Construction Permitting
May 2013	ASCE Seminar	Infrastructure Funding
October 2013	ASCE Seminar	DCD Interchange Design
November 2013	ASCE Seminar	Pipeline Rehabilitation
December 2013	ASCE Seminar	Stormwater Design
January 2014	ASCE Seminar	Boring Hole Repair
February 2014	ASCE Seminar	Transportation Funding
March 2014	ASCE Conference	August Canal Engineering Pile Performance Use of Engineered Wood Traffic Engineering Case Study Structural Failures Impact on Codes Forensic Engineering Practices Nuclear Plant Tour Canal Tour
May 2014	ASCE Seminar	Design-Build Projects
September 2014	ASCE Seminar	Self-Consolidating Concrete
October 2014	ASCE Seminar	Contract Law
November 2014	ASCE Seminar	Concrete Pipe Design and Construction

(Rev. November 2014)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW) FOR THE FIFTH JUDICIAL CIRCUIT

Clifford D. Holley and Sharon) C. A. No. 2013-CP-28-00250

Holley,)

Plaintiffs,)

-vs-)

AFFIDAVIT OF CHARLES E. OMAN

Dan-Sa, Inc., Charles E. Oman, and)

Janis M. Niemi, Gina L. Pike,)

Dermac Contractors, LLC,)

Bluewater Development of South)

Carolina, LLC, and Blue Ridge)

Savings Bank, Inc.,)

Defendants.)

PERSONALLY APPEARED before me, Charles E. Oman, who being duly sworn, affirms and says that he knows the facts stated herein to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true:

1. In October 2006, I, along with my wife, Janis Niemi, purchased the property located at 2830 Lake Road, Ridgeway, in Kershaw County South Carolina, at Lake Wateree.
2. This property had approximately 1.93 acres.
3. A modular home existed on the property.
4. After we purchased the property, the property was divided into a lot of 1.07 acres, with the address of 2830 Lake Road, on which the modular home was located, and another lot of 0.86 acres, with the address of 2834 Lake Road.
5. I intended to move the existing modular home onto the lot located at 2834 Lake Road to use as our residence. In preparation to move the modular home, in January or February of 2007, I retained BlueWater Development to clear the portion of the lot where the modular home was to be moved.
6. In the area to the left of our new home site, it was my understanding that the land was not buildable due to the slope, terrain, erosion and the flood plain.
7. On March 1, 2007, we applied for and obtained a permit for moving the modular

home to 2834 Lake Road.

8. Around July 2007, the footings for moving the modular home from 2830 Lake Road to 2834 Lake Road were poured and approved by the building inspector.

9. At the building inspector's recommendation, a retaining wall was built on the lot at 2834 Lake Road around the area where the modular house was to be moved. The building inspector also confirmed that the land in the area to the left of the home site was not buildable.

10. On October 24, 2007, we entered into a contract with Dan-Sa for the sale of 2834 Lake Road.

11. At Dan-Sa's request so that they could obtain financing from the bank, we provided to Dan-Sa draftsman's drawings for a house which could be built on the footings poured on the lot at 2834 Lake Road. The plans provided that the porch be supported by posts which had their own footings.

12. I had no knowledge that Dan-Sa planned to attach a two story porch to a side of the house and support it partially on the retaining wall.

Further affiant sayeth not.



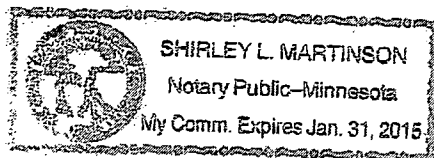
Charles E. Oman

Sworn to before me this

15th day of January, 2015

Shirley L. Martinson (L.S.)
Notary Public for Minnesota

My Commission Expires: Jan 31, 2015
2



W. R. Perry 2/1/00

SUBDIVISION <i>NA</i>		LAND AREA <i>0.86 Ac.</i>	
DEVELOPMENT GROUP			
NAME <i>Man, Charles & Niemi, James</i>		MAILING ADDRESS, ZIP <i>3800 N. 1st St. #101</i>	
PROPERTY OWNER		TELEPHONE <i>615-308-2121</i>	
CONTRACTOR		DESIGNER <i>Design, Inc. #1130</i>	
EXISTING CONDITIONS OF PROPERTY			
PRESENT ZONING <i>R-15</i>	CURRENT USE	USE ZONE	FIRE ZONE
NO. OF DWELLING UNITS		EXISTING IMPROVEMENTS	
DIRECTIONS TO PROPERTY		COMMENTS <i>Making Markler home</i>	
PROPOSED USE			
TYPE CONSTRUCTION ☒ New Building ☐ Addition ☐ Repair ☐ Other	TYPE OCCUPANCY ☒ Residential ☐ Industrial ☐ Commercial ☐ Other	TYPE FRAME ☐ Wood ☐ Metal ☐ Masonry ☐ Other	TYPE FUEL ☐ Electric ☐ Gas ☐ Oil ☐ Other
EXTERIOR WALLS ☐ Brick ☐ Wood ☐ Vinyl ☐ Other			
SINGLE FAMILY RESIDENCE			
Interior Information Bedrooms Bathrooms Total Rooms Playroom	Interior Walls ☐ Sheetrock ☐ Panel ☐ Other	Floor Covering ☐ Carpet ☐ Linoleum/Vinyl ☐ Hardwood ☐ Other	Height (in Feet) ☐ One Story ☐ Two Story ☐ 1 1/2 Story ☐ Basement
Square Footage Total Interior Heated Garage Porch Deck Unfinished Basement		<i>1142 + 4/4 add 1481 1400 8448 26</i>	
SPECIAL APPROVALS			
REQUIRED	NOT REQUIRED	OFF STREET PARKING SPACES ☐ PAVED ☐ NOT PAVED	
ZONING	GRADING	FIRE DEPT.	
SPRINKLER		NOTICE: FIRE STOPPING REQUIREMENT: Penetrations thru rated walls and floors shall be sealed with a material capable of preventing the passage of flames and hot gases when subjected to the requirements of the Test Standard Fire Stops ASTM-E-814	
SPECIAL CONDITIONS			
UTILITIES PERMIT NUMBERS AND PROVIDER		BUILDING INSPECTIONS REQUIRED	
WATER <i>28</i>	SEPTIC <i>splitting</i>	☐ SAW POLE ☐ FRAMING/ROUGH IN	
ELEC. CO. <i>Duke</i>	SEWER	☐ FOOTINGS ☐ FOUNDATION ☐ FINAL	
FLOOD PLAIN DATA		FLOOD LETTER	
FLOOD CERTIFICATE		FLOOD CERTIFICATE	
STATE LICENSE		ESTIMATED COMPLETION DATE	
SITE WORK		BUILDING	
PLUMBING		MECHANICAL	
GAS		ELECTRICAL	
OTHER		COMMENTS <i>11/10/07 Duvona notational permit to transfer (new) property to owner</i>	
ESTIMATED VALUATION: <i>76700</i>		COMMENTS	
*The Building Official will determine the initial construction/occupancy permit fee based upon the estimated construction valuation given by the applicant. However, he may require copies of all final contract documents necessary to determine actual valuation. The Building Official shall withhold the electrical service or certificate of occupancy until all actual fees are remitted.			
NOTICE TO OWNER ON POSSESSION			
Pursuant to S.C. Code Sec. 15-3-440 you have the right to contract for a guarantee of the structure being free from defective or unsafe conditions beyond fifteen years after substantial completion of the improvement for which the permit is issued.			
AFFIDAVIT OF APPLICANT			
2. If a permit is issued I understand and agree to the following:			
a. That no work will be started before permit is posted on the job site, or continued if the permit is destroyed, lost or stolen without prior approval.			
b. Contractor will secure all required permits or licenses before beginning any work.			
c. This permit becomes void if scheduled work is not started within six (6) months of application date.			
d. It is expressly understood that the issuance of this permit does not constitute a privilege to violate any applicable ordinances, codes, or laws, and that any omission of or misrepresentation of fact with or without intention of the undersigned or any alteration or change from this application without the approval of the Kershaw County Planning & Zoning Director, shall constitute sufficient grounds for the revocation of any permit issued which was based on the approval of this application. This permit does not authorize any encroachment upon any property of others.			
e. This permit is subject to approval of water supply and sewer disposal arrangements by local health authorities as may be applicable.			
Signature of Applicant <i>James M. Niemi</i>		Witness <i>Charles Markler</i> Date <i>03-01-07</i>	
Print Name of Applicant <i>JAMES M. NIEMI</i>			
FOR OFFICE USE ONLY			
PERMIT # <i>18794</i>	FEE \$ <i>352.00</i>	RECEIPT # <i>8086</i>	DATE <i>3-2-07</i>
WHITE - PLANNING AND ZONING DIRECTOR • YELLOW - SUSPENSE FILE • BLUE - APPLICANT • TAG - ASSESSOR/AUDITOR			
1081/19109/19539 • 24 HOUR NOTICE BEFORE INSPECTION • 04 1007			



KERSHAW COUNTY

Construction Permit

Date 3-2-07 Permit No. № 18794

Address 2834 Lake Road District 44-280

Description of Work Construction of new GI Modular Home

Issued To Charles Oman - Jarvis Niami

THIS CARD MUST BE POSTED IN
A CONSPICUOUS LOCATION

ISSUED BY:

Rollie Reynolds

PROP. LINES MARKED 7/10/07

NO LOWER A MODULAR HOME OWNER AND COWORKER TO BE "STICK" BUILT. PK

BUILDING INSPECTION APPROVALS

1. Footings
Date: 7/10/07
Inspector: PK

2. Foundations
Date: _____
Inspector: _____

3. Framing - Prior to Sheetrock or Lath, Includes Rough HVAC
Date: _____
Inspector: _____

4. Final INSPECTION
Date: _____
Inspector: _____

WORK SHALL NOT PROCEED UNTIL EACH DIVISION HAS APPROVED THE VARIOUS STAGES OF CONSTRUCTION.

PLUMBING INSPECTION APPROVALS

1. Rough Plumbing
Date: _____
Inspector: _____

2. Final Inspection
Date: _____
Inspector: _____

CALL: 425-1500

Ext. 5340

24 HOURS IN ADVANCE

FOR INSPECTIONS

ELECTRICAL INSPECTION APPROVALS

1. Rough
Date: _____
Inspector: _____

2. Rough Electrical
Date: _____
Inspector: _____

3. Temp Power
Date: _____
Inspector: _____

4. Final Inspection
Date: _____
Inspector: _____

MECHANICAL INSPECTION APPROVALS

1. Rough HVAC
Date: _____
Inspector: _____

2. Final Inspection
Date: _____
Inspector: _____

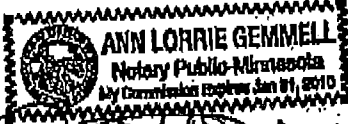
December 18, 2007

To: Kershaw County Planning and Zoning

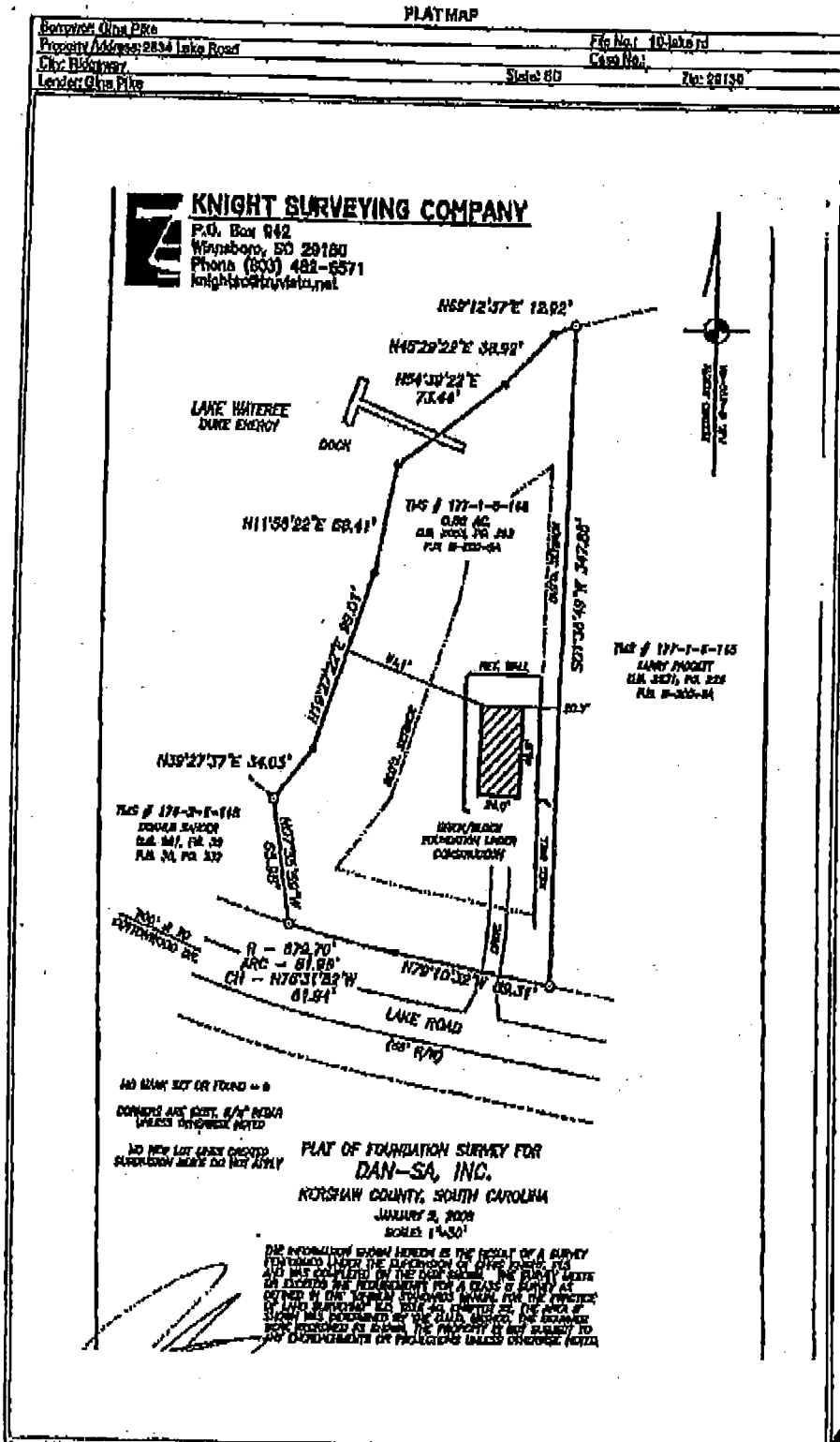
From: Janis Niemi

I, Janis M. Niemi, release permit #18794 to Dan-Sa, Inc. This permit pertains to the property which my husband, Charles Oman and I own, located at 2834 Lake Road, Ridgeway, South Carolina.

Charles Oman Janis M. Niemi


[Signature]
18 Dec. 07



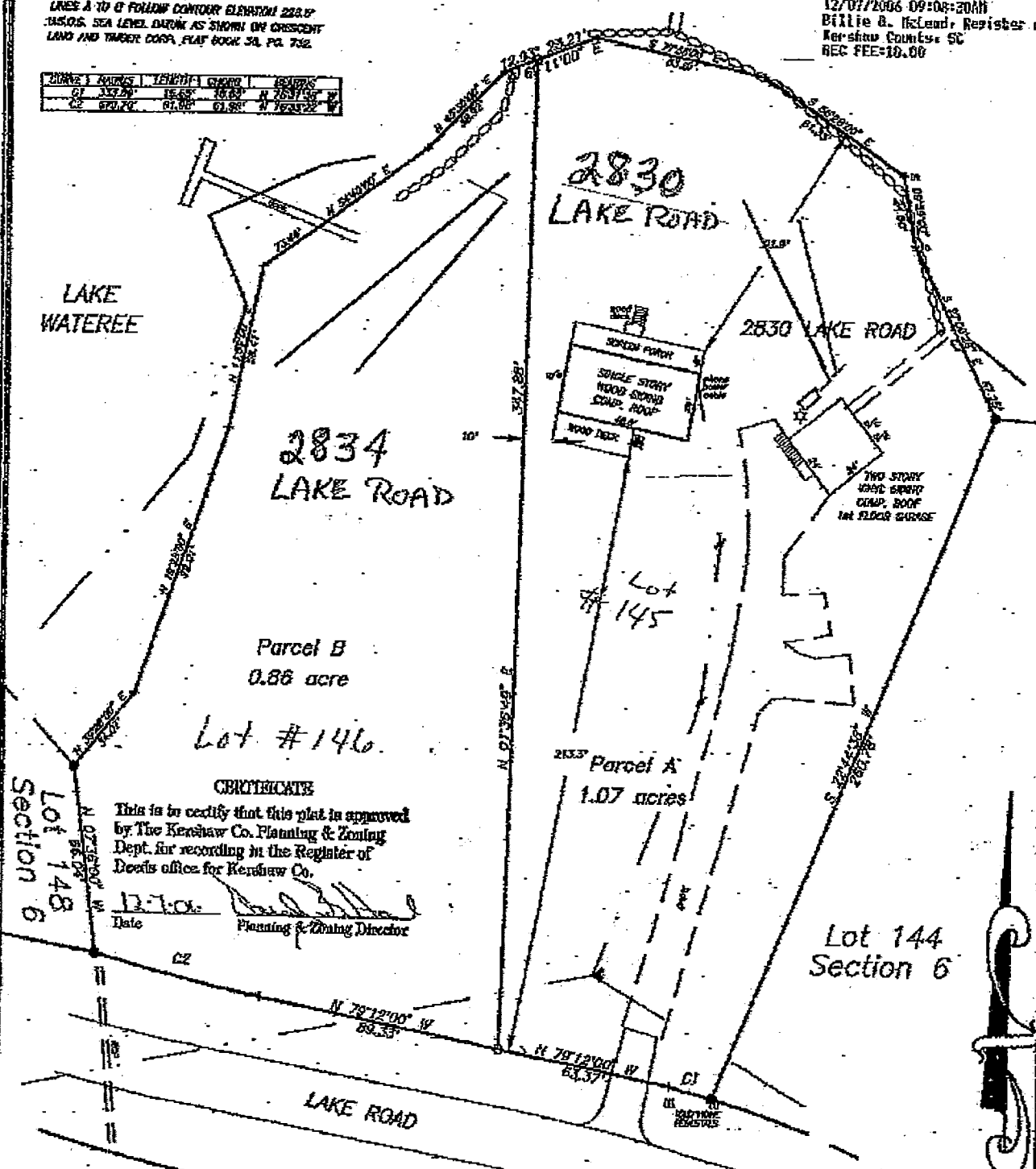


NOTES:

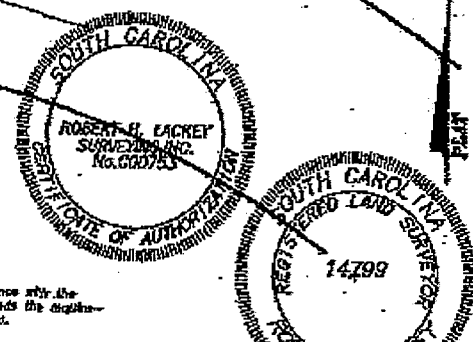
LINE 1 TO 10 FOLLOW CONTOUR ELEVATION 222.17
 1050.5 SEA LEVEL DURING AS SHOWN ON CROSSCUT
 LAND AND TRIMMER CORP. PLAT BOOK 30, PG. 732

000013204 BK= 5200 PG. 41
 12/07/2006 09:08:20AM
 Billie A. McLeod, Register of Deeds
 Kershaw County, SC
 REC FEE=10.00

LINE	ADJACENT	LENGTH	BEARING	ADJACENT
1	2834 LAKE ROAD	15.83	N 78°12'00" W	2834 LAKE ROAD
2	2834 LAKE ROAD	15.83	N 78°12'00" W	2834 LAKE ROAD



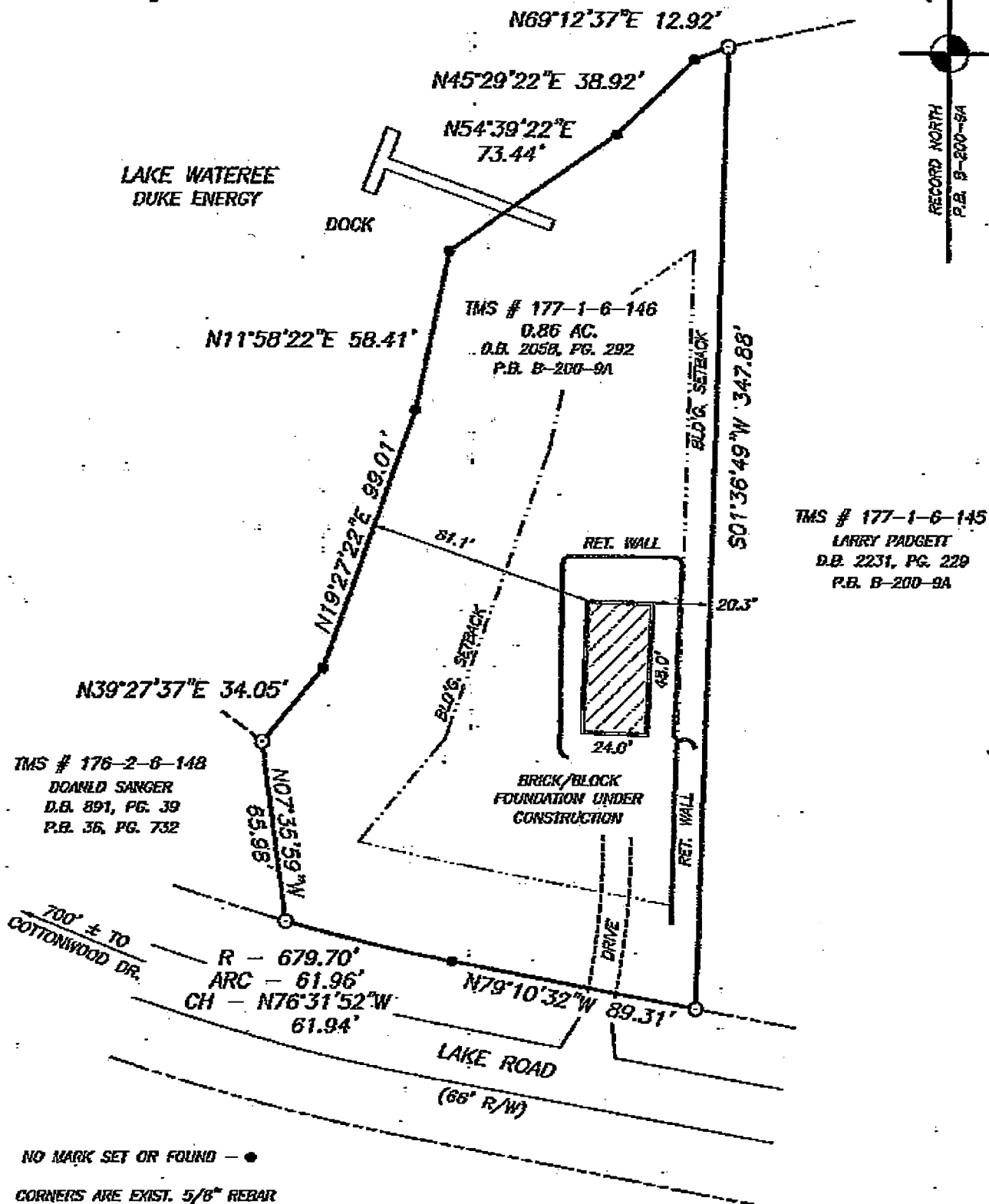
Prepared for
CHARLES OMAN & JANIS NIEMI
 Prepared by: **ROBERT H. LACKEY SURVEYING, INC.**
 IMPROVEMENT SURVEY October 12, 2006 Tax Map No. 177-01-06-145
 Located NW of Luffkin Kershaw County - South Carolina
 Being shown as Lot 145 - Section 6 - LAKE WATERREE - P.B. 36, PG. 732
 A portion of this property lies within the 100 year flood plain
 as shown on Flood map 44055G, panel 0260 D, dated 12/6/2000.
 I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the
 requirements of the Uniform Standards Map for the Practice of Land Surveying in South Carolina, and meets or exceeds the require-
 ments for a second class survey as required therein, and that there are no other encroachments or projections other than shown.





KNIGHT SURVEYING COMPANY

P.O. Box 942
Winnsboro, SC 29180
Phone (803) 482-6571
knightsc@truvista.net



NO MARK SET OR FOUND - ●

CORNERS ARE EXIST. 5/8" REBAR
UNLESS OTHERWISE NOTED

NO NEW LOT LINES CREATED
SUBDIVISION REC'S DO NOT APPLY

PLAT OF FOUNDATION SURVEY FOR
DAN-SA, INC.
KERSHAW COUNTY, SOUTH CAROLINA
JANUARY 2, 2008
SCALE: 1"=50'

THE INFORMATION SHOWN HEREON IS THE RESULT OF A SURVEY
PERFORMED UNDER THE SUPERVISION OF CHRIS KNIGHT, PLS
AND WAS COMPLETED ON THE DATE SHOWN. THE SURVEY MEETS
ALL EXCEPT THE REQUIREMENTS AND A PLACE OF CHOICE AS

R. 168



DEFENDANT'S
EXHIBIT (2)
Gibson
7-8-14

R.169



R. 170



R. 171



DEFENDANT'S
EXHIBIT (10)
Gibson
7-8-14

COUNTY OF KERSHAW

DISCLOSURE STATEMENT

The Codes Enforcement Division under the authority of the Codes of Laws of the State of South Carolina, 1976, as amended Title 40, Chapter 59, Article 1, Section 40-59-260, is providing the undersigned owner-builder this disclosure statement.

State law requires residential construction to be done by licensed, residential builders and specialty contractors. You have applied for a permit under the exemption to the law. The exemption allows you, as the owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may improve any one-family or two-family residence. The building must be for your own use and occupancy. It may not be built for sale or rent. If you sell or rent a building that you have built yourself within two years after the construction is completed, the law will presume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your residential builder or specialty contractor. It is your responsibility to make sure that persons employed by you have licenses required by State Law and by county or municipal licensing ordinances. Your construction must comply with all applicable laws, ordinances, building codes and zoning regulations.

Pursuant to South Carolina Code Section 40-59-260 (e), the owner must promptly file a PUBLIC RECORD NOTICE, provided by the permitting office, in the Register of Deeds office for Kershaw County upon completion of the construction. The undersigned acknowledges the above notice and acknowledges the receipt of the PUBLIC RECORD NOTICE that must be filed in the Register of Deeds office.

Date: 3-1-07

Owner-Builder signature: Janis M. Niemi

Owner-Builder printed name: JANIS M. NIEMI

Address/Description of Property: 2834 LAKE ROAD RIDGEWAY S.C. 29130

Tax map number of Property: 177-01 - 06-145 (part of)

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Clifford D. Holley and Sharon Holley,

Plaintiffs,

v.

Dan-Sa, Inc.; Charles E. Oman; Janis M.
Niemi; Gina L. Pike; Dermac Contractors, LLC;
Bluewater Development of South Carolina,
LLC, and Blue Ridge Savings Bank, Inc.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) Civil Action No.: 2013-CP-28-00250

) DEFENDANTS OMAN AND NIEMI'S
) MEMORANDUM IN SUPPORT OF
) THEIR MOTION FOR
) SUMMARY JUDGMENT

FILED FOR RECORD
2015 JAN 20 AM 9:09
JUDGE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Defendants, Charles E. Oman and Janis M. Niemi ("Defendants" or "these Defendants" or "Oman and Niemi"), move this court for summary judgment because Plaintiffs, Clifford D. Holley and Sharon Holley, do not have a cause of action against these Defendants for negligent failure to disclose buried debris on land that Defendants sold to another defendant. Additionally, no disclosure as to the condition of the land was required to be made even to the defendant to whom Defendants sold the property, Dan-Sa, Inc., and Oman and Niemi cannot be liable, as a matter of law, to Plaintiffs for failure to disclose. Furthermore, Oman and Niemi owed no duty of care to subsequent purchasers, the Plaintiffs, in clearing their own land and building a retaining wall and footings. Consequently, for the reasons stated herein, this court should grant Defendants' Motion for Summary Judgment.

FACTS

In the light most favorable to the plaintiffs, on October 20, 2006, Oman and Niemi, residents of Minnesota, purchased a property with a modular home situated on 1.93 acres in Kershaw County, at Lake Wateree. (Affidavit of Oman). After purchasing the property, Oman and Niemi divided the property to make two lots: one was 1.07 acres on which the modular home

was located; and the other parcel was 0.86 acres. (Affidavit of Oman; Exhibit 1, Plat of Lackey). On March 2, 2007, Defendants obtained a building permit to move the modular home from the original site onto the site of the smaller lot. (Exhibit 2, Kershaw County Building Permit; Depo. of Reynolds, p. 8; Affidavit of Oman). Defendants planned to sell the larger lot, and keep the smaller lot with the modular home on it for themselves to use it as their house. (Affidavit of Oman). In January or February of 2007, Oman hired a company, Bluewater Development, to clear the lot to prepare it for the footings on which to move the modular home. (Affidavit of Oman).

Bluewater employee Altman testified that Oman directed that Bluewater move the debris which had been cleared off the property into an area on the left side of the property and bury it. (Depo. of Altman, p. 32). Oman believed that the area to the left of the new home site cleared by Bluewater was not buildable due to the slope, terrain, erosion and the flood plain. (Affidavit of Oman). The slope of the land to the left of the house was described as a forty five degree angle, sloping at a "pretty good little clip." (Depo. of Cliff Holley, p. 43, Exhibit 3, Photo of Property). The plaintiffs' contractor also concurred that where the slope started that "it was a pretty big hill" and estimated that it had a five to six foot slope. (Depo. of Rabon, p. 33). The plaintiffs' contractor agreed that it was "not practical to build a building in this sloped area" which Mr. Oman also described as "nonbuildable." (Depo. of Rabon, p.35). Another contractor also commented that the land had a six foot slope which was so steep that he could not drive his backhoe on it. (Depo. of Bradshaw, pps. 5, 10).

Oman hired Der-Mac to pour the footings for the foundation for where the modular home would be relocated. (Affidavit of Oman). On July 10, 2007, the Kershaw County building official approved the footings poured by DerMac. (Exhibit 4, Kershaw County Construction

Permit; Depo. of Reynolds, pp. 8-9). On the smaller lot, Mr. Oman built a retaining wall, at the County building official's recommendation. (Affidavit of Oman).

After having the footings dug and completing a retaining wall, defendants decided not to move the modular home, but to return to Minnesota, due to health issues of Mr. Oman. On October 24, 2007, defendants entered into a "Land, Lots and Acreage Contract of Sale" with Dan-Sa, who purchased the smaller lot from Defendants. (Exhibit 5, Contract of Sale). When Oman and Niemi entered into the contract with Dan-Sa to sell the lot with the footers, driveway, and retaining wall, they did not provide a Seller's Disclosure Form because no house existed on the property. Oman and Niemi provided a set of draftsman plans to Dan-Sa for a house which could be built on the existing footers. (Affidavit of Oman). The draftsman's drawings provided that the porch on the side of the house be supported by posts which had their own footings. (Affidavit of Oman). Before buying the lot, Gibson had the right to inspect the property. (Depo. of Gibson, p. 21). Gibson was aware that the property had a driveway, septic tank, footers and retaining wall. (Depo. of Gibson, p. 12). He testified that he looked at the footers before buying the property and described them as "big footers" dug with a "two foot bucket." (Depo. of Gibson, p. 13). He testified that they were "good looking footers." (Depo. of Gibson, p. 46). Gibson also testified that there was no foundation built for the house at the time of his purchase of the lot. (Depo. of Gibson, p. 41). As required by his bank, Gibson had a survey done on the property to be sure that the footers on the lot were not in the flood plain. (Depo. of Gibson, p. 28).

On December 21, 2007, Oman and Niemi transferred the property to Dan-Sa. (Exhibit 6, Deed). Danny Gibson, the owner of the building company, Dan-Sa, intended to build a spec home on the property. (Depo. of Gibson, p. 21). Gibson had worked in the construction business

since 1973 and obtained a general contractor's license in 1987. (Depo. of Gibson, p. 7). Gibson had built five houses in the Lake Wateree area before purchasing this property. (Depo. of Gibson, p. 10). Gibson built seventy-five houses while a licensed contractor. (Depo. of Gibson, p. 77). Gibson applied for and received a building permit to build a home on the property on January 3, 2008. (Exhibit 7, Building Permit; Depo. of Gibson, p. 20). Gibson estimated his own construction costs. (Depo. of Gibson, p. 19).

After being issued the building permit, Gibson constructed the now Holley home in approximately five to six months. (Depo. of Gibson, p. 21). Dan-Sa built a house on the existing footings. (Depo. of Gibson, p. 41). Gibson had inspections completed by Kershaw County of the foundation, framing, plumbing, electrical and HVAC. (Exhibit 7, Building Permit). A certificate of occupancy was issued to Gibson on June 20, 2008. (Depo. of Gibson, p. 38).

During the construction of the home, Gibson modified the draftsman's plans. (Depo. of Gibson, p. 16). The plans provide that the porch on the house be supported by posts which had their own footings. (Affidavit of Oman). However, Dan-Sa modified the plans and built the house with two stories instead of one story and a half. (Depo. of Gibson, pp. 16, 30-31). Additionally, Dan-Sa also built a two-story porch on the house, using the retaining wall to support at least part of the porch on it. (Depo. of Gibson, p. 44; Depo. of Rabon, p. 39). The porch was also supported by some posts dug about two feet in the ground. (Depo. of Gibson, pp. 60-61).

Four months after finishing the construction, Gibson gave the deed in lieu of foreclosing to Blue Ridge Savings Bank. (Exhibit 8, Deed; Depo. of Gibson, p. 22). On June 23, 2010, Blue Ridge Savings Bank sold the property to Gina Pike almost two years after it had acquired the property. (Exhibit 9; Contract of Sale; Exhibit 10; Special Warranty Deed). The contract of sale

between the bank and Pike indicated the property was sold "AS-IS" and that "Buyer and Seller agree[d] that Seller will not complete nor provide a Residential Property Condition Disclosure Statement" pursuant to the applicable statute. (Exhibit 9, Contract of Sale). Furthermore, the South Carolina Residential Property Condition Disclosure Act exempts certain transfers from its requirement of providing a disclosure form, including a transfer when the bank takes title from a mortgagor whose indebtedness was in default. See, S.C. Code Ann. . § 27-50-30 (2).

The property was conveyed pursuant to a Special Warranty Deed. (Exhibit 10, Special Warranty, Deed). Gina Pike owned the house for one year. On June 29, 2011, Pike contracted with the Holleys to sell the property (Exhibit 11, Contract). Pike conveyed the property to the Holleys on July 8, 2011. Before purchasing the property from Pike, the Holleys had the home inspected. (Depo. of Cliff Holley, pp. 22-24). No structural defects were found in the home. (Depo. of Cliff Holley, p. 24).

Soon after purchasing the house from Pike, the Holleys decided to build a pool to the left of the existing home. (Exhibit 3, Photo of Home). The Holleys contracted with Alaglass to build the pool. (Exhibit 12, Contract with Alaglass).. The Holleys did not test the soil to determine if the soil was suitable for a pool. The Holleys were aware when they began their project to build the pool that the project was more complex due to the slope of the land. The Holleys had the property surveyed three times to be certain that it was not in the flood plain. (Depo. of Cliff Holley, pp. 57-58). In undertaking the project, the Holleys knew that the slope of the property was so severe that they would need to build a six foot retaining wall around the deep end of the pool, and fill it in with dirt to accommodate the natural terrain. (Depo. of Cliff Holley, p. 28).

In August of 2011, the plaintiffs started working on installing a pool in the portion of the

yard to the left of the house. (Exhibit 3, Photo of House). When their contractor, Alaglass, started work on the pool, they found debris -- timber, limbs, and other organic materials -- buried underground. During the digging out of the debris in the yard adjacent to the house, the retaining wall on the left side of the house was affected. (Depo. Of Rabon, p. 23). After the retaining wall was affected, the roof of the porch began to sag. (Depo. of Rabon, p. 23). The debris found on excavating the pool extended from the side yard to under the porch. (Depo. of Rabon, p. 107). The plaintiffs complain that the construction of the upper porch was done incorrectly because it was supported by the retaining wall rather than a footer. (Depo. of Rabon, p. 79; Depo. of Cliff Holley, p. 34). The majority of the soil underneath the footers for the entire main house, not the porches, was considered to be reasonably compacted and did not have any debris underneath it. (Depo. of Rabon, p. 104). In removing the debris, there was no digging under the actual footers of the house. (Depo. of Morrison, p. 14). The contractor focused on stabilizing the porches and the roof on the second story porch. (Depo. of Morrison, p. 15). The contractor hired to stabilize the porches testified that there was no settlement in the house itself due to the debris. (Depo. of Morrison, p. 20). Likewise, the plaintiffs agree that there was no damage to the house itself. (Depo. of Cliff Holley, p. 56; Depo. of Sharon Holley, p. 45).

The plaintiffs' only cause of action listed in the complaint is negligence. The duties allegedly breached by the insureds are the duty to act reasonably and with care in maintaining the property, dividing the property, and disclosing any defects or materials located on the property. (2nd Am. Compl. ¶32). Specifically, Plaintiffs alleged Oman and Niemi acted negligently in burying debris "on the property to be conveyed to Defendant Dan-Sa, Inc." and in failing to disclose the existence of buried debris to Dan-Sa and subsequent purchasers. (2nd Am. Compl.)

STANDARD FOR SUMMARY JUDGMENT

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). A trial court may properly grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). However, when triable issues exist, those issues must go to the jury. BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn there from in the light most favorable to the non-moving party. Worley Cos., Inc. v. Town of Mount Pleasant, 339 S.C. 51, 528 S.E.2d 657 (2000). The burden is on the moving party to clearly establish an absence of a genuine issue of material fact. Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 671 S.E.2d 79 (Ct. App. 2008). Once the moving party meets the initial burden of showing an absence of evidentiary support for the non-moving party's case, the non-moving party is required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In meeting its burden, the non-moving party cannot simply rest on mere allegations or denials contained in the pleadings. Moore v. Weinberg, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007). It is not sufficient that a party create an inference which is not reasonable or an issue of fact that is not genuine. Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). A trial court should grant summary judgment

against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case. Harris v. Rose's Stores, Inc., 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993).

DISCUSSION

I. OMAN AND NIEMI CANNOT BE LIABLE TO PLAINTIFFS, SUBSEQUENT PURCHASERS, FOR FAILURE TO DISCLOSE BURIED DEBRIS ON LAND SOLD TO DAN-SA

A. Plaintiffs do not have a cause of action against Oman and Niemi for negligent failure to disclose the buried debris

In their complaint, Plaintiffs assert a cause of action in negligence against Oman and Niemi allegedly stemming from these Defendants' sale of the property at 2834 Lake Road to Dan-Sa. No South Carolina court has ever decided whether a subsequent purchaser of land could bring an action for negligent failure to disclose debris buried on a portion of land not built upon against a seller not in privity with them.

Pursuant to South Carolina law involving situations of non-disclosure in the context of contracts of sale,

The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties.

Ardis v. Cox, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (S.C. Ct. App. 1993) (quoting Jacobson v. Yaschik, 249 S.C. 577, 585, 155 S.E.2d 601, 605 (1967)); see also Holly Hill Lumber Co. v.

McCoy, 201 S.C. 427, 23 S.E.2d 372, 376 (1942).

Plaintiffs purchased the property from Gina Pike in 2011 and had no relationship with these Defendants. In 2007, Oman and Niemi sold the lot located at 2834 Lake Road to defendant Dan-Sa who eventually deeded it to their bank in lieu of foreclosure and without any disclosures who then sold it to Pike without any disclosures. As a matter of law, Plaintiffs do not have a cause of action against these Defendants because Plaintiffs were not in privity with them and this situation does not fall into any of the three classes listed above in which the duty to disclose exists.

South Carolina addressed an action similar to that brought by Plaintiffs against these Defendants in Pruitt v. Morrow, 288 S.C. 298, 301, 342 S.E.2d 400, 401 (1986), in which the court referred to “actions based upon negligent or reckless non-disclosure of land defects.” In Pruitt, the Ervin Company (Ervin) purchased a tract of land and subdivided it, roughed in streets and laid utilities. Another company purchased these properties in 1974, and then sold a lot to Anthony Morrow upon which he built a “spec” house. Morrow sold this house to a couple, who subsequently sold it to Pruitt, the plaintiff in that case. The house began to shift and it was discovered that it had been built over a gulley filled with stumps and construction materials capped with fill dirt.

The single issue addressed in Pruitt was whether the doctrine of *caveat emptor* afforded a defense to Ervin’s successor against the causes of action in fraud and negligence/recklessness brought by Pruitt. Ervin’s successor argued that the exception to *caveat emptor* that applied to sales of new buildings did not extend to sales of undeveloped land. The court held that “the doctrine of *caveat emptor* is also inapplicable in actions based upon negligent or reckless non-disclosure of land defects,” relying on the two opinions in Lawson v. Citizens and Southern

National Bank of South Carolina (Lawson I, 255 S.C. 517, 180 S.E.2d 206 (1971), in which the plaintiffs in that case appealed the trial court's decision to sustain defendant's demurrer and Lawson II, 259 S.C. 477, 193 S.E.2d 124 (1972), in which the defendant appealed the trial court's decision declining to grant JNOV or new trial after the jury's verdict for plaintiffs).

However, the court held "the remaining issues present no errors of law" and it is not apparent from the record what other issues were raised. Id. There is no indication that Ervin's successor raised the issue that Pruitt did not have a cause of action based upon negligent non-disclosure of land defects against it. Therefore, the court did not decide whether Pruitt had such a cause of action against Ervin's successor. An analysis of the language in Lawson I and II, on which the Pruitt court relied, and in the case law addressing the situations where the duty to disclose arises indicates Plaintiffs could only bring an action for failure to disclose against Gina Pike, and Oman and Niemi would only be liable to Dan-Sa, if they are liable for a failure to disclose at all.

In Lawson, Mr. Lawson, purchased a lot in a residential subdivision from the developer of the property. He and his wife built their home on the lot. They subsequently divorced and Mr. Lawson conveyed the house to his wife. Afterward, Mrs. Lawson discovered the house was built over a ravine filled with unsuitable material and capped with clay and the house suffered damage. Mr. and Mrs. Lawson joined in bringing an action against the developer, asking for actual and punitive damages. In Lawson I, the court analyzed the specific allegations in the complaint, noting they "jumble[d] allegations appropriate to an action for deceit with allegations appropriate to an action for negligence" but found:

. . . the complaint charges, by specific allegation or reasonable inference, that the defendant in developing and subdividing its land into lots to be sold for residential use only, filled an enormous gulley with stumps and other rubble to a depth of twenty to twenty-

five feet and concealed this fill by covering it with soil. A large part of the lot sold to Mr. Lawson was comprised of this filled area, which the defendant knew was unstable and unsuited for the intended purpose. Knowing that the purchaser was ignorant of the condition, which was not apparent upon inspection, and knowing its materiality, the defendant failed to disclose the truth.

Lawson I, 255 S.C. at 520-21, 180 S.E.2d at 208.

However, on the issue of the subsequent conveyance of the property by Mr. Lawson to his ex-wife, the court decided it did not need to determine whether Mrs. Lawson was a proper party because the cause of action “ripened in Mr. Lawson upon completion of the dwelling.” Id. at 522, 180 S.E.2d at 209. The court specified it did not need to inquire whether Mrs. Lawson was a proper party because “defect of parties, not multiplicity, is ground for demurrer,” i.e. a proper party, Mr. Lawson, had a cause of action against the developer, and it did not matter that Mrs. Lawson did not. Id.

Furthermore, Lawson II acknowledges the South Carolina law regarding the limitation of the duty to disclose as between the parties to the transaction by citing to Holly Hill Lumber Co. Explicitly, in Lawson II, the court addresses the duty to disclose arising from the transaction between Mr. Lawson and developer, and the developer’s duty to disclose in the context of that transaction. Lawson II, 259 S.C. at 480-81, 193 S.E.2d at 126.

Furthermore, in support of its holding, the Pruitt court also noted that section 353 of the Restatement (Second) of Torts “reject[ed], by clear implication, *caveat emptor* in non-disclosure of land defect cases.” Pruitt, 288 S.C. at 301, 342 S.E.2d at 401. In LoPresti v. Burry, 364 S.C. 271, 612 S.E.2d 730 (Ct. App. 2005), the court states, in a footnote, that section 353 “suggest[s] a seller of real property may be liable for negligent nondisclosure of defects in the land” but points out the condition precedent before liability can be imposed that “the vendee does not know or have reason to know of the condition or the risk involved.” (emphasis added). In LoPresti, a

subsequent purchaser brought a claim for negligent and reckless nondisclosure of land defects against the seller, together with claims for fraud and fraudulent concealment, in an action arising from their purchase of a home encumbered by a flood easement. The seller recorded a plat without the floodplain line, although the flood easement had been previously recorded. The appellate court affirmed the trial court's grant of summary judgment to the seller on all causes of action and specifically considered as dispositive the absence of any special relationship between the subsequent purchaser and the seller that would require disclosure of a matter of public record, along with the constructive notice of the easement. Consequently, it can be inferred that the absence of a special relationship warrants summary judgment in favor of the seller even in a case of negligent or reckless nondisclosure of land defects.

Furthermore, there are other jurisdictions that limit the duty to disclose land defects to situations where the relationship between the parties is that of seller-purchaser. See Wellesley Hills Realty Trust v. Mobil Oil Corp., 747 F. Supp. 93, 100-101 (D. Mass. 1990) (specifying that the exception to the general rule¹ of nonliability for vendors in the circumstances of any hidden defects that the vendor knows or should know would create an unreasonable risk of harm does not apply in this case where the relationship between the plaintiff and the defendant was not one of vendor and vendee); Christy v. Glass, 415 Mich. 684, 696, 329 N.W.2d 748, 753 (1982) (the vendor of land with water problems had no duties of disclosure to the subvendees and its only liability for a failure to disclose would have been only to its vendee). See also DeAravjo v. Walker, 589 So. 2d 1292, 1294 (Ala. 1991) (affirming summary judgment granted to the vendor of land when the plaintiffs did not offer anything to indicate they were in privity with the vendor).

¹ This "exception to the general rule" is the one referred to in section 353 of the Restatement. See Wellesley Hills Realty Trust, 747 F. Supp. at 100; Christy, 415 Mich. at 695 n. 7, 329 N.W.2d at 752 n.7.

Consequently, a duty to disclose from the sale of Defendants' lot, if any, arose only as to Dan-Sa, their purchaser. Oman and Niemi cannot be liable to Plaintiffs, as a matter of law, for failure to disclose buried debris.

B. No disclosure required by Defendants even to Dan-Sa

Oman and Niemi are not liable even to Dan-Sa for failure to disclose debris buried on any portion of the lot that was outside the perimeter of the footings. A fundamental difference exists between the situations in Pruitt and Lawson and the situation in the present case. In both Pruitt and Lawson, the developer/seller of land failed to disclose debris buried on the lots in situations where the residential homes could be built anywhere on those lots. Additionally, Lawson II indicates that the purchaser of the lot placed the location of the house in such a manner as to avoid a gulley or ditch that was visible on the lot. Lawson II, 259 S.C. at 484, 193 S.E.2d at 128. The Pruitt court does not specify what a cause of action in negligent or reckless non-disclosure of land defects must rely on, but cites to Lawson I and II. The land purchaser's cause of action in Lawson II relied on the seller's knowledge that the land was unstable and unsuited for the intended purpose of building a residential house on it, which was a *material fact* in the transaction between Lawson and the developer. From the Pruitt court's reliance on Lawson, it is inferable that materiality of the non-disclosure applies even when the non-disclosure is negligent or reckless, as opposed to fraudulent.

However, in our case, the material fact in the transaction between Defendants and Dan-Sa was the possibility of building a house on the footings poured on the property. In the present case, the location of the house was clearly established by the footings poured on the lot prior to the lot being sold to Dan-Sa. The house built on the footings did not show any defects or signs that it was built on unsuitable footings. (Depo. of Rabon, p. 104; Depo. of Morrison, p. 20;

Depo. of Cliff Holley, p. 56; Depo. of Sharon Holley, p. 45). The remaining part of the lot was, to Defendant's knowledge, not buildable, due to the topography of the land and the 100-year floodplain which shows a large portion of the remaining lot was not above the 100-year floodplain. Dan-Sa's owner actually agreed that a builder would know not to build in an area not above area the 100-year floodplain and it is general knowledge for builders that it could not be built upon. (Depo. of Gibson, p. 73). Therefore, building anything on the part of the property known as unbuildable was not a material part of the transaction between Dan-Sa and Oman and Niemi to give rise to a duty to disclose. Consequently, Oman and Niemi cannot be liable as a matter of law for failure to disclose.

Furthermore, Section 353 of the Restatement (Second) of Torts, to which the Pruitt court referred, and the comments thereof, clearly establish that this section is not applicable under the facts of this case. Pursuant to section 353, the vendor of land is subject to liability for physical harm when the vendor fails to disclose to his vendee a condition "which involves unreasonable risk to persons on the land" IF

- (a) the vendee does not know or have reason to know of the condition or the risk involved, and
- (b) the vendor knows or has reason to know of the condition, and realizes or should realize the risk involved, and has reason to believe that the vendee will not discover the condition or realize the risk.

Restatement (Second) of Torts § 353 (1965) (emphasis added).

Comment (e) to this section, specifies that a condition necessary to subject the vendor to liability² is that he realized or should realize the risk involved. Specifically,

[i]f the defect which he fails to disclose is one which does not

² Other conditions are necessary to subject the vendor to liability pursuant to this section, if applicable, specifically that the condition involves an unreasonable risk to persons on land and causes physical harm. For the purposes of this motion for summary judgment, Defendants do not argue that the condition of the lot did not involve an unreasonable risk of and caused physical harm to persons on land but retain the right to do so.

make the land dangerous to persons upon it unless it is used for a purpose to which the vendor has reason to believe that it will not be applied, a reasonable man, though knowing of the condition, would not believe that it was likely to cause any harm to such persons.

Plaintiffs' complaint indicates the discovery of the debris was a result of their contractor's work to install a pool. This pool was to be placed on the portion of the lot to the left of the house that had been built by Dan-Sa on the footings poured by Defendants. Defendants had not reason to believe that the buried debris would make the land unsuitable for building a pool in that area when, to their knowledge, that area was not buildable to begin with.

Also, the draftsman's drawings provided by Defendants to Dan-Sa were for a house that could be built on the existing footings, but did not include porches that would be supported on any part by the retaining wall. The drawings actually indicated the porches were to be supported by posts, each of them placed on its own footings. (Affidavit of Oman). Dan-Sa supported the second floor roof of the porch with a post placed on the retaining wall which violated the standard of care for a builder. (Depo. of Rabon, p. 79). Thus, Defendants did not realize and could not have realized that Dan-Sa would decide to use a part of the retaining wall to support the porch and these Defendants cannot be liable to Dan-Sa for failure to disclose to him that the retaining wall was unsuited for such a use. Additionally, Defendants could not have realized that removing the debris to accomplish the construction of a pool on the left side of the retaining wall would create a risk to the porch to be subsequently constructed by Dan-Sa on that side of the house.

Consequently, Oman and Niemi did not owe a duty even to Dan-Sa, their purchaser with whom they were in privity, to disclose that debris was buried on the lot in an area considered not buildable, which was to the left of the home site marked by the poured footings.

C. Assuming there was a duty to disclose, Oman and Niemi were relieved of liability for non-disclosure because Dan-Sa could have discovered the condition

Even if Oman and Niemi would have had a duty to disclose the existence of the debris to Dan-Sa, pursuant to section 353 of the Restatement (Second) of Torts, knowledge of a land defect on the part of the vendee or an opportunity to discover it and to remedy the situation relieves the vendor of any duty or liability. In our case, Dan-Sa had the opportunity to discover that some buried debris ran under the retaining wall when it dug footers for some of the posts to a depth of two feet to support the porch on the left side of the house. Noteworthy, Defendants were not subject to the statute requiring a Residential Property Condition Disclosure Statement during the conveyance of the property to Dan-Sa because the transaction was of "Land, Lots and Acreage" and did not fall within the scope of the article. See S.C. Code Ann. §§ 27-50-10 & -20.

D. Assuming there was a duty to disclose, Oman and Niemi's disclosure would never have reached the plaintiffs because the property was sold "As Is" to Pike.

Furthermore, Dan-Sa conveyed the property to Blue Ridge Savings Bank in lieu of foreclosure. At the time Dan-Sa gave a deed in lieu of foreclosure, it did not make any disclosures to the bank nor was it required to make any disclosures. For that reason, when the bank conveyed the property two years after acquiring it, the bank conveyed the property "AS-IS" to Gina Pike under a contract specifically stating that no Residential Property Condition Disclosure Statement was to be provided. The South Carolina Residential South Carolina Residential Property Condition Disclosure Act specifically exempts disclosure under these circumstances where the bank takes title from a mortgagor whose indebtedness was in default. See, S.C. Code Ann. . § 27-50-30 (2).

Consequently, even if these Defendants would have had any duty to disclose any of the buried debris, which is specifically denied, such a disclosure could not have reached Plaintiffs

because neither Dan-Sa nor the bank made any disclosure to Pike who sold to the Plaintiffs.

II. NO DUTY TO PLAINTIFFS IN MAINTAINING THE LOT THEY OWNED IN A PARTICULAR MANNER OR IN CLEARING THE LAND AND IN BUILDING THE RETAINING WALL

In a negligence action, [t]he court must determine, as a matter of law, whether the law recognizes a particular duty.” Steinke v. S. Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999). “An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Without a duty, there is no actionable negligence.” Bishop v. S. Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998).

Plaintiffs allege that Oman and Niemi a had duty “to act reasonably and with care in maintaining the property” while they cleared the land. However, no South Carolina cases impose a duty on a landowner to maintain their property in a certain way while owning the property. Such a duty would be unreasonable, as expressed persuasively by a court from another jurisdiction:

... no legal authority ... would support the imposition of a duty on an owner of land to maintain his or her property in a certain condition or to refrain from any activity affecting the property which would extend to future owners of the land. The imposition of such a duty would be unreasonable because such future owners may not be known or even contemplated at the time the landowner creates or maintains a condition on his or her property. Moreover, such a duty would unreasonably interfere with a landowner's right of ownership; the right to do with his or her property as desired without liability so long as he or she does not interfere with the interests of others.

Wellesley Hills Realty Trust v. Mobil Oil Corp., 747 F. Supp. 93, 100 (D. Mass. 1990).

In Wellesley, Mobil Oil Corporation sold a property on which it previously operated a gasoline station to Harold Alexander. A few months thereafter, Alexander sold the property to

Wellesley Hills Realty Trust (Trust). One of the Trust's many causes of action asserted that "Mobil had a duty to ensure that there were no releases of oil or hazardous materials at the site" and that Mobil was liable in negligence because it breached this duty and caused damage to the Trust's property. The court concluded as a matter of law that Mobil did not owe a duty to the Trust to ensure that there were no releases of oil or hazardous material on the property while Mobile owned and possessed the property. See also Jones v. Texaco, Inc., 945 F. Supp. 1037, 1047 (S.D. Tex. 1996) (citing to Wellesley Hills Realty Trust and to cases from other jurisdiction in which the courts declined to impose liability under a negligence theory upon a prior landowner in favor of remote, subsequent purchasers, in situations of contamination with oil or other chemicals).

Similarly, Oman and Niemi had no duty to Plaintiffs to maintain the property in a certain condition or refrain from any activity affecting the property, like the clearing of their land and disposal of the debris on their property. Even more, our case does not involve hazardous material per se that contaminated the property, but debris that was organic material that would decompose in time. Therefore, Defendants Oman and Niemi are entitled to judgment as a matter of law because a homeowner has no duty to maintain its property for subsequent purchasers.

Furthermore, an action in negligence by Plaintiffs' against Oman and Niemi arising from the building of the retaining wall and pouring the footings, although one not asserted in the complaint, must fail due to Plaintiffs' failure to establish the existence of an essential element of the party's case. See Harris, 315 S.C. at 346, 433 S.E.2d at 906.

In Terlinde v. Neely, 275 S.C. 395, 399, 271 S.E.2d 768, 770 (1980), the Supreme Court held that a residential builder of a home built as speculative owes a duty of care in constructing it to the members of the class for which it was constructed, so as to render him accountable for

negligent workmanship, even in absence of privity. First, the duty of care in Terlinde is applicable to the entire home, the finished product placed into the stream of commerce. Therefore, it cannot be extended to the footings or, even more so, to the retaining wall, which is not even a part of a residential building. As stated above, the house was built on the poured footings by Dan-Sa, a South Carolina licensed residential builder, who was building it for speculative sale. Even the plaintiff's expert, Baer, states that Dan Sa should have conducted soil tests of the site unless documentation was given to him showing that soil tests had been performed. (Exhibit 14, Email of Baer to Belser). Under these circumstances, the duty of care in building the residence should be imputed to Dan-Sa, who built the finished product.

Defendants intended to move the modular home on the lot at 2834 Lake Road to use as their residence. For this purpose, they applied for and obtained a permit. If their plan would have proceeded as planned, Oman and Niemi would have been in a similar situation as the one described in Smith v. Breedlove, 377 S.C. 415, 661 S.E.2d 67 (2008). Breedlove planned to build a residence for his family on a vacant lot he owned in Hilton Head and he did not have any agreement or intention to sell the residence. Breedlove built the house acting as his own general contractor. The family lived in the residence for a while, but unforeseen circumstances made it necessary for them to sell it. Several years later, the purchaser filed suit against Breedlove on several causes of action, including negligence in constructing the home. The supreme court affirmed the grant of summary judgment to Breedlove. In regard to the negligence argument, the supreme court noted "[t]he circuit court held that the undertaking or agreement to construct a dwelling for another is what creates the duty to exercise and use due care in the construction of that dwelling." Id. at 424, 661 S.E.2d at 72. In light of Smith, it would be unreasonable to impose a duty on Oman and Niemi when all their work consisted of pouring footings and

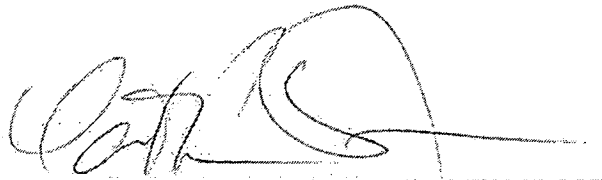
building a retaining wall, while the construction of a dwelling for another was done by Dan-Sa.

Additionally, the Terlinde court's imposition of liability in tort in the absence of privity between the tortfeasor and the third party was limited to protecting an innocent purchaser in the context of defective construction. Therefore, there could not be any liability imposed on Oman and Niemi because the house constructed on the footings by Dan-Sa was not defective. According to Dan-Sa's owner, Danny Gibson, who built the house, "if [the plaintiffs] had never dug that pool, the house would still be there like in 40 years from now." (Depo. of Gibson, p. 70). His statements are supported by the allegations in the complaint, where it is explained that the discovery of buried debris was the result of Plaintiffs' contractor's work to install a pool, and not by finding any defects in the house. Furthermore, any issues to the porch were caused by the defective construction of the porch by Dan-Sa, who supported a part of it on the retaining wall, and was not created by the debris running partially under the retaining wall.

Therefore, the court should grant summary judgment to Oman and Niemi because Plaintiffs also failed to show they had a duty of care in the construction of a residential home.

CONCLUSION

For the reasons stated above, this court should grant Defendants' Oman and Niemi's Motion for Summary Judgment.



Catharine Garbee Griffin
BAKER, RAVENEL & BENDER, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202-8057
(803) 799-9091
Attorneys for Defendants Charles E. Oman and
Janis M. Niemi

Columbia, South Carolina

January 20, 2015

Clifford D. Holley and Sharon Holley v. Dan-Sa, Inc.; Charles E. Oman; Janis M. Niemi; Gina L. Pike; Dermac Contractors, LLC; Bluewater Development of South Carolina, LLC, and Blue Ridge Savings Bank, Inc.

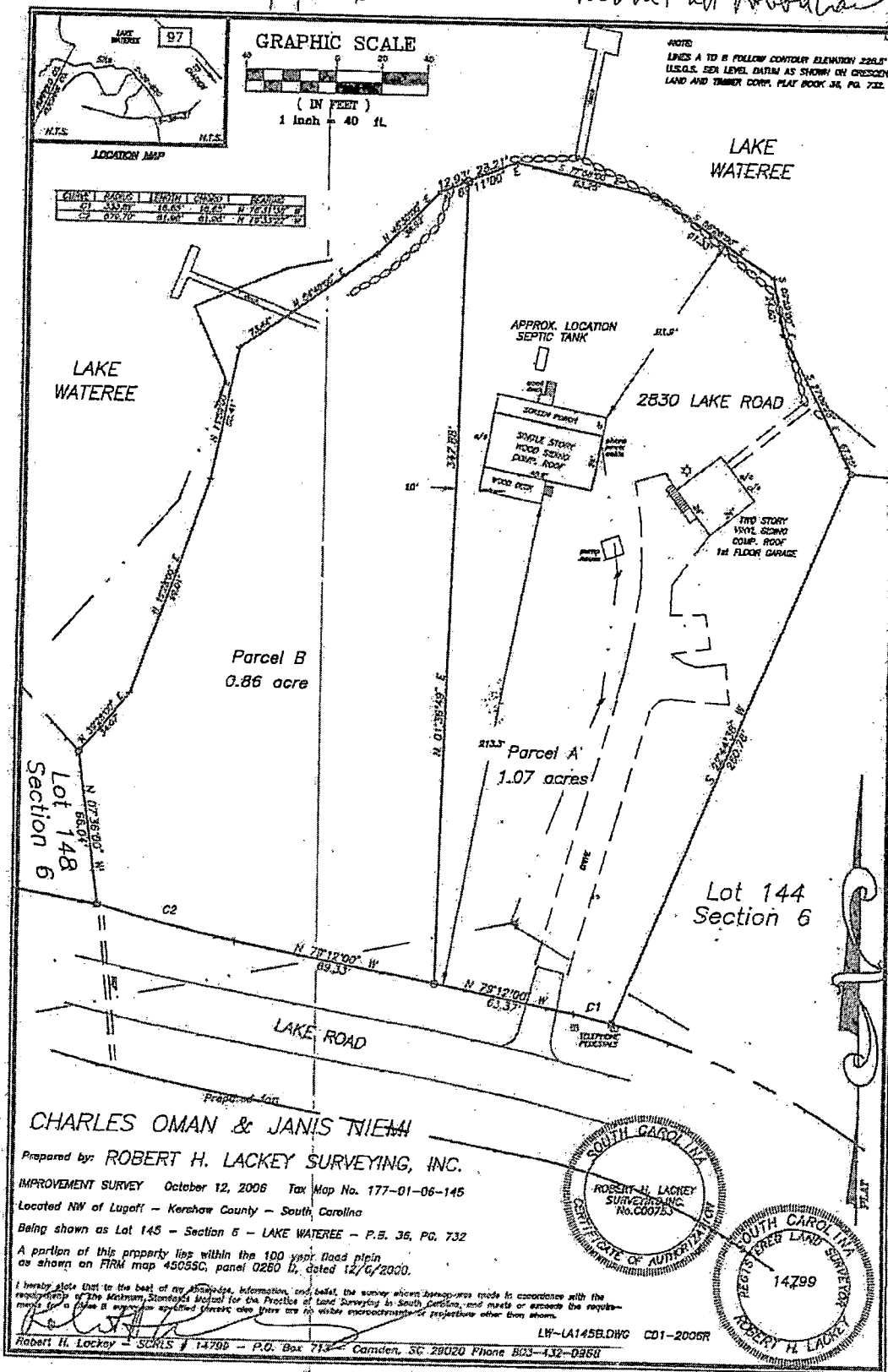
C/A No.: 2013-CP-28-00250

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Motion for Summary Judgment

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- Tab 19— Exhibit 11: Contract between Gina Pike and Clifford and Sharon Holley
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- Tab 21— Exhibit 13: Contract with Alaglass
- Tab 22-- Exhibit 14: Email from expert Baer to Belser

12/10/2006 Check#6702 Paid in Full Robert H. Lackey





KERSHAW COUNTY PLANNING AND ZONING DEPARTMENT
515 WALNUT ST. • TELEPHONE: 425-1500 Ext. 5340 • CAMDEN, SOUTH CAROLINA 29020
APPLICATION FOR DEVELOPMENT AND IMPROVEMENT PERMIT

EXHIBIT 1
WIT: Kenneth
DATE: 9-3-14
URSO COURT REPORTING

1. I hereby make an application for a Development and Improvement Permit. The following data is provided:

TYPE PERMIT: ☒ BUILDING ☐ DEMOLITION ☐ SIGN ☐ SWIMMING POOL
☐ MOBILE OFFICE ☐ MOVING (BLDG) ☐ HOME OCCUPATION ☐ OTHER

(280)

LOCATION OF PROPOSED IMPROVEMENT

911 ADDRESS 2834 Lake Rd. TM# 177-06-145 DISTRICT W 280
STREET NO., CITY, ZIP Redbank SC 29130

SUBDIVISION NA LAND AREA 0.86 Ac.

DEVELOPMENT GROUP

NAME Owner, Charles & Niemi, Janis MAILING ADDRESS, ZIP 2830 Lake Rd TELEPHONE 651-288-5710
CONTRACTOR Redbank SC 29130

DESIGNER

PRESENT ZONING R-15 EXISTING CONDITIONS OF PROPERTY

CURRENT USE Moving Modular home USE ZONE 2830 Lake Rd FIRE ZONE Ed

NO. OF DWELLING UNITS 1 EXISTING IMPROVEMENTS

DIRECTIONS TO PROPERTY

COMMENTS

PROPOSED USE

TYPE CONSTRUCTION	TYPE OCCUPANCY	TYPE FRAME	TYPE FUEL	EXTERIOR WALLS
☐ New Building	☒ Residential	☐ Wood	☐ Electric	☐ Brick ☐ Metal
☐ Addition	☐ Industrial	☐ Metal	☐ Gas	☐ Wood
☐ Repair	☐ Commercial	☐ Masonry	☐ Oil	☐ Vinyl
☐ Other	☐ Other	☐ Other	☐ Other	☐ Other

SINGLE FAMILY RESIDENCE

Interior Information	Interior Walls	Floor Covering	Height (In Feet)	Square Footage
Bedrooms <u>3</u>	☐ Sheetrock	☐ Carpet ☐ Tile	☐ One Story	Total <u>1142 + 400</u>
Bathrooms <u>2</u>	☐ Panel	☐ Linoleum/Vinyl	☐ Two Story	Interior <u>548.16</u>
Total Rooms <u>5</u>	☐ Other	☐ Hardwood	☐ 1 1/2 Story	Heated <u>19200</u>
Fireplace <u>1</u>		☐ Other	☐ Basement	Garage <u>8x48</u>
				Porch <u>26.88</u>

SPECIAL APPROVALS

REQUIRED	NOT REQUIRED	OFF STREET PARKING SPACES	PAVED	NOT PAVED
ZONING				
GRADING				
FIRE DEPT.				
SPRINKLER				

NOTICE/FIRE STOPPING REQUIREMENT: Penetrations thru rated walls and floors shall be sealed with a material capable of preventing the passage of flames and hot gasses when subjected to the requirements of the Test Standard Fire Stops ASTM-E-814

SPECIAL CONDITIONS

UTILITIES PERMIT NUMBERS AND PROVIDER	BUILDING INSPECTIONS REQUIRED	FLOOD PLAIN DATA
WATER <u>LE</u> SEPTIC <u>offering</u>	☐ SAW POLE ☐ FRAMINGS/ROUGH IN	☐ FLOOD LETTER ☐ FLOOD CERTIFICATE
ELEC. CO. <u>Duke</u> SEWER	☐ FOOTINGS ☐ FOUNDATION ☐ FINAL	STATE LIC/REG

SITE WORK	CONTRACTOR	ESTIMATED COMPLETION DATE
BUILDING	<u>Owner</u>	
PLUMBING		
MECHANICAL		
GAS		
ELECTRICAL		
OTHER		

*ESTIMATED VALUATION: \$ 76704

The Building Official will determine the initial construction/use permit fee based upon the estimated construction valuation given by the applicant. However, he may require copies of all final contract documents necessary to determine actual valuation. The Building Official shall withhold the electrical service or certificate of occupancy until all actual fees are remitted.

NOTICE TO OWNER OR POSSESSOR

Pursuant to S.C. Code Sec. 15-3-640 you have the right to contract for a guarantee of the structure being free from defective or unsafe conditions beyond thirteen years after substantial completion of the improvement for which the permit is issued.

AFFIDAVIT OF APPLICANT

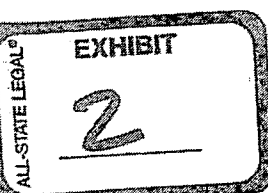
2. If a permit is issued I understand and agree to the following:

- That no work will be started before permit is posted on the job site, or continued if the permit is destroyed, lost or stolen without prior approval.
- Contractor will secure all required permits or licenses before beginning any work.
- This permit becomes void if scheduled work is not started within six (6) months of application date.
- It is expressly understood that the issuance of this permit does not constitute a privilege to violate any applicable ordinances, codes, or laws, and that any omission of or misrepresentation of fact with or without intention of the undersigned or any alteration or change from this application without the approval of the Kershaw County Planning & Zoning Director, shall constitute sufficient grounds for the revocation of any permit issued which was based on the approval of this application. This permit does not authorize any encroachment upon any property of others.
- This permit is subject to approval of water supply and sewer disposal arrangements by local health authorities as may be applicable.

Signature of Applicant Janis M. Niemi Witness William Stokley Date 03-01-07
Print Name of Applicant JANIS M. NIEMI

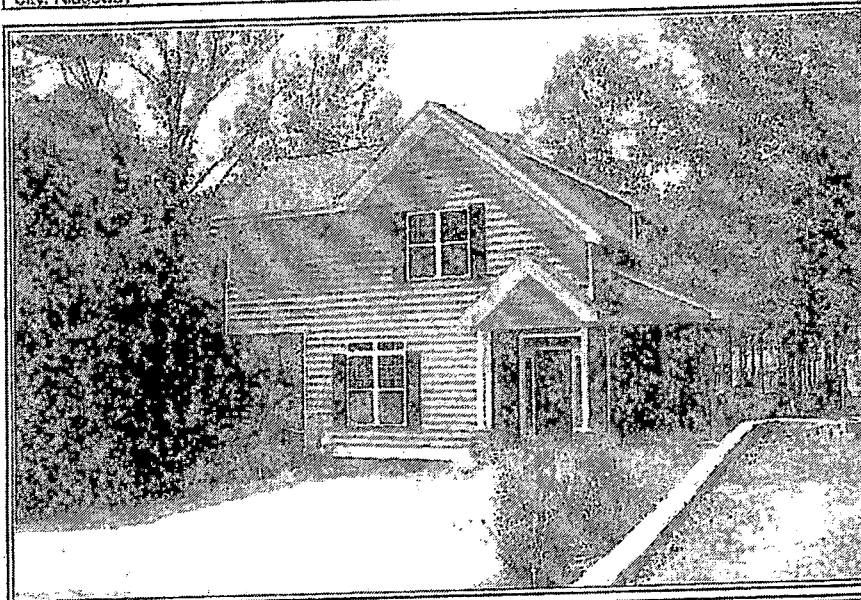
FOR OFFICE USE ONLY

PERMIT # 18794 FEE \$ 358.00 RECEIPT # 8086 DATE 3-2-07
WHITE - PLANNING AND ZONING DIRECTOR • YELLOW - SUSPENSE FILE • BLUE - APPLICANT • TAG - ASSESSOR/AUDITOR



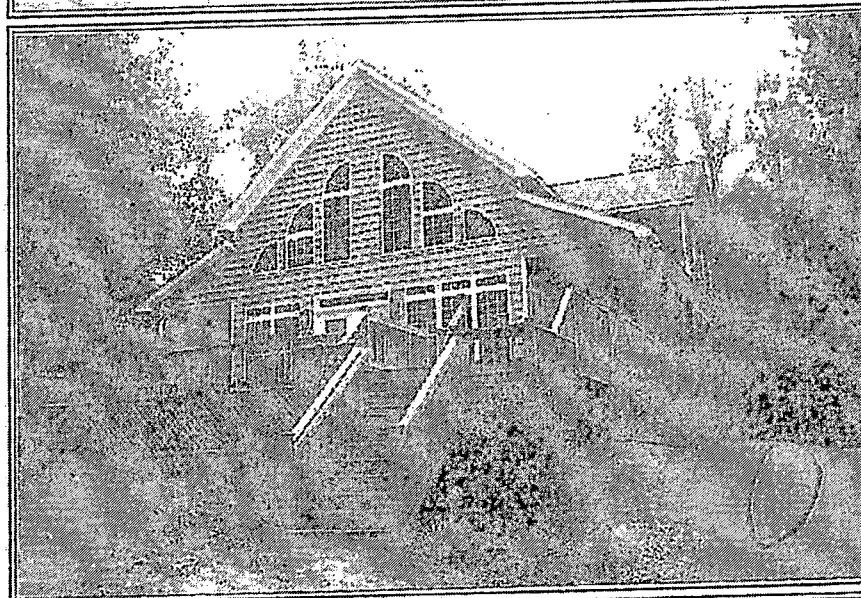
SUBJECT PROPERTY PHOTO ADDENDUM

Borrower: Gina Pike		File No.: 10-lake rd	
Address: 2834 Lake Road		Case No.:	
City: Ridgeway	St: SC	Zip: 29130	Lender: Gina Pike



**FRONT VIEW OF
SUBJECT PROPERTY**

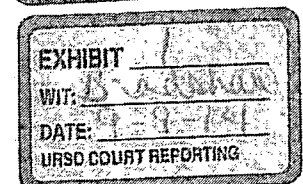
Date: June 8, 2010
Appraised Value: \$ 390,000



**REAR VIEW OF
SUBJECT PROPERTY**



STREET SCENE



KERSHAW COUNTY

Construction Permit



Date 3-2-07 Permit No. Nº 18794
 Address 2834 Lake Road District W-580
 Description of Work Construction of one (1) Modular Home
 Issued To Charles Owens + Jarvis Niemi

THIS CARD MUST BE POSTED IN
A CONSPICUOUS LOCATION

ISSUED BY: Rellie Reynolds

PROP. LINES MARKED 7/6/07
RE

NO LOWER MODULAR
HOME OWNER SAYS CONW TO BE
"STICK" BUILT. RIK

BUILDING INSPECTION APPROVALS	
1. Footings <u>RIK</u> Date: <u>7/6/07</u> Inspector: <u>RE</u>	
2. Foundations Date: _____ Inspector: _____	
3. Framing - Prior to Sheetrock or Lath, Includes Rough HVAC Date: _____ Inspector: _____	
4. Final INSPECTION Date: _____ Inspector: _____	

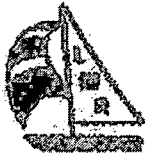
PLUMBING INSPECTION APPROVALS	
1. Rough Plumbing Date: _____ Inspector: _____	
2. Final Inspection Date: _____ Inspector: _____	

CALL: 425-1500
Ext. 5340
24 HOURS IN ADVANCE
FOR
INSPECTIONS

ELECTRICAL INSPECTION APPROVALS	
1. Sawpole Date: _____ Inspector: _____	
2. Rough Electrical Date: _____ Inspector: _____	
3. Temp Power Date: _____ Inspector: _____	
4. Final Inspection Date: _____ Inspector: _____	

MECHANICAL INSPECTION APPROVALS	
1. Rough HVAC Date: _____ Inspector: _____	
2. Final Inspection Date: _____ Inspector: _____	

WORK SHALL NOT PROCEED UNTIL EACH
DIVISION HAS APPROVED THE VARIOUS
STAGES OF CONSTRUCTION.



Lake Wateree Real Estate, L.P.



LAND, LOTS AND ACREAGE CONTRACT OF SALE

(Standard Form of The Greater Columbia Association of REALTORS®, Rev. 01/02.) This form is available for use by the entire real estate industry. The use of this form is not intended to identify the user as a REALTOR®, REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics and Standards of Practice.

Agency Confirmation: Purchaser and Seller acknowledge that a S.C. Real Estate Commission Agency Disclosure has been executed by the Purchaser prior to making this offer and by the Seller prior to its presentation and serves as written confirmation to the agreed upon agency status.

1. DATE A contract to purchase is offered this 23rd day of OCTOBER, 2007,
by DAN-SEA, Inc., Purchaser(s)
to CHARLES OMAR & JANIS NIEM, Seller(s).

2. PROPERTY DESCRIPTION Subject to terms and conditions hereof, Seller agrees to sell and Purchaser agrees to buy the following described property with improvements and fixtures thereon.

Lot 146
Lot 146, Block 6, Subdivision LAKE WATREEE,
Address 2334 LAKE ROAD
Tax Map # 177-01-06-445 Hwy BRIDGEWAY Zip 29130
County of KIRKLAND 146, State of South Carolina.

3. PRICE The sales price is \$ 237,113.50 to be paid as follows:
A. \$ 2,000.00 Earnest Money paid by 1 cash, 1 check, 0 other held in trust by LAKE WATREEE REAL ESTATE L.P.
B. \$ 0 Balance of down payment at closing to be in the form of a cashier's check or certified funds.
C. \$ TBD Loan amount (this marked below) to be obtained by Purchaser.

4. FINANCING CONVENTIONAL ☒ SELLER CASH (NO FINANCING REQUIRED) ☐ OTHER TERMS

A. If Seller financing is included in the financing of this property, Selling Broker and/or Listing Broker and their Agents in this transaction make no representation as to the creditworthiness of Purchaser and suggest that Seller determine for himself that Purchaser's credit is satisfactory.

B. In a cash transaction, Purchaser agrees to provide Seller or Seller's agent, within ten (10) business days of acceptance of this Contract, written verification of sufficient and available funds for the agreed time of closing.

5. CLOSING COSTS/ DISCOUNT POINTS Purchaser's closing costs shall be paid by PURCHASER. Purchaser's prepaid items shall be paid by PURCHASER. Discount points (if any) shall be paid by PURCHASER. At Seller's closing costs, prepaid items, and/or discount points on behalf of Purchaser, Seller will pay costs of Purchaser, not to exceed \$ 0.00.

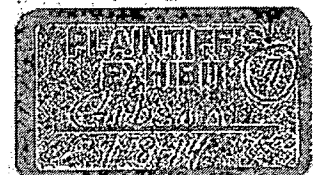
6. LOAN PROCESSING/ APPLICATION/ FINANCING Purchaser agrees to apply for financing as stated above, from the institution of his choice, and agrees to provide Seller, within five (5) business days from the date of acceptance, confirmation from Lender that application has been made and funds advanced for appraisal and appraisal. Purchaser to furnish Lender any documentation required for the processing of this loan in a timely manner. Purchaser's failure to apply as required above shall constitute a default under this Contract. Purchaser further hereby gives permission to Lender to disclose pertinent information concerning the Purchaser's loan to the Listing or Selling Broker and/or Agents. If loan is rejected by Lender, Purchaser or Purchaser's Agent must notify the Listing Agent immediately, and Seller shall then have the option to void Contract. Contract is contingent upon above financing. If loan cannot be obtained, earnest money will be refunded to Purchaser.

7. ADDITIONAL CONTINGENCIES, CONDITIONS
- Seller to provide the Septic permit.
- Seller to provide copy of Building plan for house.
- Purchaser to obtain pier permit, paid by purchaser.
- Seller to provide Building permit.
- PURCHASERS ARE LICENSED S.C. REAL ESTATE AGENTS (GABRIEL AND SON)

CRS
7-01-02

Purchaser's initials DM DATE 10/23/07 HAVE READ THIS PAGE. Seller's initials DM DATE 10/23/07 HAVE READ THIS PAGE.

R. 200



8. SURVEY, TITLE EXAMINATION, INSURANCE

The Listing and Selling Brokers and their Agents recommend that Purchaser have a survey of the subject property prepared. If a survey indicates that property does not meet the following minimum specifications (dimensional, square feet, acres), Purchaser may elect to terminate this Contract by notifying Seller or Seller's Agent in writing of Purchaser's intent to terminate or Purchaser may elect to complete this sale according to the terms and conditions of this Contract. The Listing and Selling Brokers and their Agents recommend that Purchaser select an attorney to examine the title to the property, and obtain an appropriate insurance coverage, including that required by the lender.

9. CONDITION OF PROPERTY

The Seller does not warrant any mineral, oil, minerals or otherwise affect the condition of the property after the signing of this Contract. All (fracture, etc., minerals, etc., shall remain with the property and be a part of the property and be transferred to Purchaser. The Seller shall not allow any trash, refuse, debris, medical or hazardous waste, or other improper materials upon the property. In the event any condemnation proceeding is brought by any governmental authority, agency, utility, etc., prior to the closing, then Purchaser may elect to rescind this Contract and receive a refund of the earnest money deposit.

A. The Seller represents that the property is ☐ or is not ☐ located in a flood zone.
B. Seller represents that the property is ☐ or is not ☐ subject to a mandatory association fee (i.e., homeowners association/regions or otherwise). If property is subject to a mandatory fee, the fee is \$ _____ per _____ and shall be subject at closing.

C. Seller represents that the property is ☐ or is not ☐ subject to a special assessment of any governing body, including but not limited to a homeowners association, utility or otherwise. If the property is subject to a special assessment, the assessment has ☐ or has not ☐ been paid. If assessment has not been paid, it shall be paid by ☐ Seller or the amount of \$ _____ and/or ☐ Purchaser in the amount of \$ _____.

D. If the property may be connected to public/community water or sewer systems, the tap fees of \$ _____ shall be paid by _____.

E. Seller represents that the property is ☐ or is not ☐ subject to a current lease or property management agreement. If agreements are in effect, Purchaser shall honor them. Agreements shall be attached to and made a part of the Contract.

10. WELL, SEPTIC SYSTEMS, ENVIRONMENTAL INSPECTIONS

All required reports and certifications concerning environmental matters, wells, septic systems, wetlands, hazardous materials or a special study shall be done by a professional inspector or government authority qualified in the appropriate fields. Such reports or studies shall be done at the expense of Purchaser and shall be completed within twenty (20) business days after execution of this Contract by both parties. If Seller or Seller's agent does not receive Purchaser's written consent to the inspection or studies and a copy of each report within the same twenty (20) business day period, this section is nullified in its entirety.

A. If Purchaser finds the results of said reports unacceptable, Purchaser may elect to terminate this Contract by notifying Seller in writing of Purchaser's intent. Should Purchaser terminate this Contract, Seller agrees to immediately sign all documents necessary for the release of the earnest money and refund of Purchaser's earnest money.

B. If Purchaser elects to proceed with the sale, Purchaser has the option of accepting the property in current condition as referenced by the report of Purchaser must notify Seller or Seller's agent by signed addendum along with a copy of the reports specifying the defects Purchaser expects Seller to remedy.

C. Seller may agree by written addendum within five (5) business days of written notification to remedy, repair or treat any defects or conditions at Seller's expense. In return Purchaser agrees to complete this sale according to the terms of this Contract. Otherwise, Seller may give written notice to terminate this Contract within five (5) business days. Purchaser shall have the right to accept the property with whatever defects exist and complete the sale according to the terms and conditions of this Contract. To exercise this right, Purchaser must provide Seller or Seller's agent with written notice of such intention, within two (2) business days after receipt of Seller's notice to terminate, or the Contract is void. Purchaser's failure to notify Seller or Seller's agent in writing of any problem found by said reports within the time and/or herein provided, or Purchaser's acceptance of the same at closing, shall constitute full acceptance of the condition of the property and a waiver of Purchaser's right to object to any defects found by said reports.

11. CONVEYANCE DATE OF CLOSING

Conveyance shall be made subject to all covenants as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a proper deed and deed book at closing, except for certain states. All statutory deed recording fees shall be the responsibility of Seller. The deed shall be prepared in the name of _____ and delivered to the designated place at closing. This transaction shall be closed on or before Jan 5, 2025.

12. POSSESSION

Absent a written agreement to the contrary, Seller shall give Purchaser possession at closing, subject to tenant's rights or property management agreements which must be disclosed at time of Contract. Seller shall give Purchaser access to the herein described property for the purpose of a final inspection within twenty-four (24) hours prior to closing.

13. EXTENSION OF AGREEMENT

Time is of the essence. If Purchaser or Purchaser's agent has provided written loan commitment but not closed within the stipulated time limit of this Contract, both parties agree to extend this Contract for a period not to exceed ten (10) business days from the original closing date. In each instance, it shall be the responsibility of Seller to extend this Contract for a period not to exceed ten (10) business days from the original closing date.

14. BROKERAGE FEE

An oral estate brokerage fee as specified in the Listing Agreement or in the Buyer's Brokerage Representation Agreement. If applicable, the earned upon the acceptance of this offer and are due and payable at the time of closing, subject to any contingencies specified herein.

15. EARNEST MONEY

Broker shall not guarantee payment of check or checks accepted as earnest money. Earnest money is to be promptly deposited in Broker's escrow account, upon acceptance by both parties of this Contract. In the event of any action wherein Broker is made a party by virtue of being an escrow agent, or in any action wherein the funds, held in escrow by Broker, are subject to an action in the nature of interpleader, and Broker is made a party, Broker shall be entitled to recover reasonable attorney's fees and court costs. The funds to be charged and assessed against Purchaser or Seller or both as the court may decide. Earnest money shall not be returned for any reason until the check has cleared the financial institution on which it was written.

"The South Carolina Real Estate Practices Act allows the Broker holding the earnest money to deposit it into an interest-bearing account. Purchaser agrees to and understands that he has been informed of this right to ownership of the interest and relinquishes to the Broker by this written agreement said right of ownership. The earnest money is noted ☒ with _____ will not be deposited into an interest-bearing account with the interest accruing to the benefit of the Broker."

Page 8 of 8

Purchaser's initials 10-23-17 HAVE READ THIS PAGE, DATE 10-23-17 HAVE READ THIS PAGE, DATE 10-23-17

- 15. ADJUSTMENTS** Taxes, water, sewer charges, fuel oil, propane, electricity, natural gas, rents when applicable, and all other assessments, including homeowner's association fees, regime fees or like fees shall be adjusted as of the date of closing. Tax provisions pursuant to this Contract are to be based on the tax information available on the date of closing, and are to be prorated on that basis unless otherwise stipulated in this Contract. Any increase or decrease of taxes shall be subject to an adjustment by Purchaser and/or Seller when the current year's taxes are determined.
- 17. ROLL-BACK TAXES** If applicable, roll-back taxes shall be the responsibility of ALL.
- 18. NON-RESIDENT TAXES** Seller agrees to comply with the provisions of South Carolina Code Section 12-6-500 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.
- 19. FIRE OR CASUALTY** In case this property is damaged wholly or partially by fire or other casualty prior to delivery of deed, Purchaser or Seller shall have the right for ten (10) business days after the notice of such damage to terminate this Contract. Upon such termination, the earnest money deposit of Purchaser shall be returned to Purchaser and neither party shall have any further rights hereunder. If neither Purchaser nor Seller elects to terminate the Contract, the parties shall proceed according to the terms of this Contract.
- 20. DEFAULT** If Purchaser shall default under this Contract, Seller shall have the option of suing for damages or rescinding this Contract. In the event the Contract is rescinded, one-half of the earnest money shall be paid to the Broker(s), not to exceed the commission due such Broker, and the remaining balance of earnest money shall be paid to Seller. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or rescinding this Contract. Upon default by Seller, if Purchaser elects to rescind this Contract, he will be refunded all sums paid hereunder and in addition shall be reimbursed by the Seller for actual costs incurred including but not limited to credit report, appraisal fee, survey and cost of title examination. In any action to enforce the provisions of this Contract, the prevailing party and Broker(s) shall be entitled to the award of their costs, including reasonable attorney's fees.
- 21. MEDIATION** Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Purchaser, Seller or any real estate broker or other person or entity in connection with the sale, purchase, financing, commission or other aspect of the property to which this Contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any Contract signed by the parties pursuant to the mediation conference shall be binding. South Carolina Code Ann. Section 15-45-10, et. seq. shall not apply in this Contract.
- 22. ENTIRE CONTRACT AND BINDING CONTRACT** The parties agree that this written Contract expresses the entire agreement between the parties, and that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract shall be binding on both parties, their principals, heirs, personal representatives, successors and assigns in state law courts.
- 23. EXPIRATION OF OFFER** This offer from Purchaser shall be withdrawn at 5 o'clock PM on Oct 25, 2017, unless accepted or countered by Seller in written form prior to such time.
- 24. FAX** Both Purchaser and Seller agree that receipt of a signed contract by facsimile (FAX) will be the same as receipt of an original signed contract.
- 25. SURVIVAL** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and continue binding upon and for the parties hereto until fully observed, kept or performed.
- 26. DEFINITIONS** In this Contract, a single business day is defined as a twenty-four (24) hour period, beginning at the time of acceptance of this Contract, excluding Saturdays, Sundays and South Carolina legal holidays.
- 27. HYPOTHECATING STATEMENT RELEASE** Seller and Purchaser authorize their respective attorneys and the settlement agent to furnish to lending Broker and Selling Broker copies of the HUD-1 settlement statement for the transaction.
- 28. DISCLAIMER** The parties acknowledge that the Listing and Selling Broker(s) and their Agent(s): (a) Give no warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvements, systems or systems, including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems, or to the structural; (b) Give no warranty, express or implied, concerning the condition of the property. Any matters which would be reflected by a current survey of the property, or the accuracy of the published square footage; (c) Give no warranty, express or implied, as to title; (d) Give no warranty, express or implied, as to the fitness for a particular purpose of the property or improvements; (e) Give no warranty, express or implied, that the property being purchased is in compliance with all necessary zoning ordinances and regulations; (f) Give no warranty, express or implied, as to projected income, value or other possible benefits to the Purchaser.

This is a legally binding contract. Purchaser and Seller should seek legal advice if the contents are not understood. Both Purchaser and Seller acknowledge the receipt of a copy of this Contract. Signatures below signify acceptance of all terms and conditions stated herein.

IN WITNESS WHEREOF, this Contract has been duly executed by the parties herein.

<u>Larry Jackson</u> Witness of Purchaser	<u>David M. [Signature]</u> Agent	<u>10-25-17</u> Date	SSN
<u>Larry Jackson</u> Witness of Purchaser	<u>David S. Gibson</u> Purchaser	<u>10/23/17</u> Date	SSN
<u>Larry Jackson</u> Witness of Seller	<u>Charles E. [Signature]</u> Seller	<u>10/23/17</u> Date	SSN
<u>Larry Jackson</u> Witness of Seller	<u>James M. [Signature]</u> Seller	<u>10/23/17</u> Date	SSN
<u>Larry Jackson</u> Witness Agent	<u>LAKE WATEREE REAL ESTATE LLP</u> Office	<u>803-337-3000</u> Telephone Number	
<u>SARAH R. Gibson</u> Selling Agent	<u>LAKE WATEREE REAL ESTATE LLP</u> Office	<u>803-337-3000</u> Telephone Number	

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT 5 O'CLOCK PM ON 10/25/17

200700013164

Filed for Record in
 Kershaw County SC
 BILLIE MCLEOD, REGISTER
 12-27-2007 At 10:37 AM.
 GED 10.00
 STATE 617.50
 0220075-SRS-JGI 261.25

DR Volume 2291 Page 130 - 131

STATE OF SOUTH CAROLINA)

) TITLE TO REAL ESTATE

COUNTY OF KERSHAW)

KNOW ALL MEN BY THESE PRESENTS, That We, Charles E. Oman and Janis M. Niemi, in the State aforesaid, for and in consideration of the sum of Two Hundred Thirty-Seven Thousand One Hundred Thirteen and 50/100 (\$237,113.50) Dollars to me in hand paid at and before the sealing of these presents by Dan-Sa, Inc., in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant bargain, sell and release, subject to exceptions hereinabove stated, unto the said, its successors and assigns:

All that certain piece, parcel or lot of land, with improvements thereon, if any, lying, being and situate in the County of Kershaw, State of South Carolina, and identified as Parcel "B", containing 0.86 acres, more or less, on that plat prepared by Robert H. Lackey Surveying, Inc., dated October 12, 2006, recorded in the office of the Register of Deeds for Kershaw County in Plat Book B-200 at page 9-A. Reference to said plat is craved for accurate metes and bounds description.

The above described property is a portion of the property conveyed to Charles E. Oman and Janis M. Niemi by deed of Robert C. Long and Mildred J. Long dated October 20, 2006 and recorded in the office of the Register of Deeds for Kershaw County in Book 2058 at page 292 on October 24, 2006

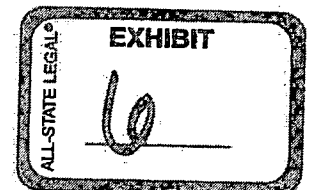
The above described property is subject to Restrictions, Reservations, conditions and Easements recorded in Book IN at page 1555; also subject to Flood Easement as set forth in Book HW at page 1493.

TMS # 177-01-06-146

The property is conveyed subject to the state of facts a personal inspection, review of records or accurate survey would disclose.

Grantor's Address:

1654 Lake Rd.
 Ridgeway, SC 29130



TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

Recorded this 27th Day
 OF December, 2007

Robin H. Watkins,
 Kershaw County Auditor

TO HAVE AND TO HOLD all and singular the premises before mentioned, subject to exceptions hereinabove stated, unto the said Dan-Sa, Inc., its successors and assigns, forever.

And We do hereby bind ourselves and our heirs, executors and administrators, to warrant and forever defend all and singular the said premises, subject to exceptions hereinabove stated, unto the said Dan-Sa, Inc., its successors and assigns, against me and my heirs and against every person whomsoever lawfully claiming or to claim, the same or any part thereof.

WITNESS Our Hand and Seal this 19 day of December in the year of our Lord two thousand seven and in the two hundred and thirty-second year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Ann Anderson
First witness signature

Charles E. Oman
Charles E. Oman

Alexa Pashan
Second witness signature

Janis M. Niemi
Janis M. Niemi

STATE OF MINNESOTA)
COUNTY OF Hennepin)

ACKNOWLEDGMENT

I, Ann L. Gemmell, Notary Public for the State of Minnesota, do hereby certify that Charles E. Oman and Janis M. Niemi personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn to before me this 19 day of December, 2007.

 ANN LORRIE GEMMELL
Notary Public - Minnesota
My Commission Expires Jan 31, 2010
My Commission Expires: 19 dec 07
31 Jan 07



KERSHAW COUNTY

Construction Permit

Date 1-3-08 Permit No. No 19496

Address 2834 Lake Road District 2nd

Description of Work Construction of new 6.5

Single family dwelling

Issued To Don De Sade

THIS CARD MUST BE POSTED IN
A CONSPICUOUS LOCATION

ISSUED BY: Rollin Reynolds

BUILDING INSPECTION APPROVALS

1. Footings OK
Date: 7/10/07
Inspector: PK

2. Foundation OK
Date: 1/8/08
Inspector: PK

3. Framing - Prior to
Sheetrock or Lath. Includes Rough HVAC
Date: 2/29/08
Inspector: PK

4. Final Inspection OK
Date: 6/20/08
Inspector: PK

WORK SHALL NOT PROCEED UNTIL EACH
DIVISION HAS APPROVED THE VARIOUS
STAGES OF CONSTRUCTION.

PLUMBING INSPECTION APPROVALS

1. Rough
Plumbing OK
Date: 2/29/08
Inspector: PK

2. Final
Inspection OK
Date: 6/20/08
Inspector: PK

CALL: 425-1500

Ext. 5340

24 HOURS IN ADVANCE

FOR
INSPECTIONS

ELECTRICAL INSPECTION APPROVALS

1. Rough
Electrical OK
Date: 1/7/08
Inspector: PK

2. Final
Inspection OK
Date: 2/29/08
Inspector: PK

3. Temp
Power
Date:
Inspector:

4. Final
Inspection OK
Date: 6/20/08
Inspector: PK

MECHANICAL INSPECTION APPROVALS

1. Rough
HVAC No Duct
Date:
Inspector:

2. Final
Inspection OK
Date: 6/20/08
Inspector: PK

KC FOIA 035

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

DEED

20080009661
 Filed For Record in
 KERSHAW COUNTY SC
 BILLIE MCLEOD, REGISTER
 10-27-2008 At 10:24:25 am.
 DEED 10.00
 STATE .00
 COUNTY .00
 DR Volume 2435 Page 310 - 314

KNOW ALL MEN BY THESE PRESENTS, that Dan-sa, Inc. (hereinafter called "Grantor"), for and in consideration of the sum of Five Dollars (\$5.00) and in lieu of foreclosure of that certain mortgage dated December 21, 2007, recorded in Volume 2291 Page 132 in the Kershaw County Register of Deeds on December 27, 2007, to the Grantor in hand paid at and before the sealing of these presents by Blue Ridge Savings Bank, Inc. (hereinafter called "Grantee") in the State aforesaid (the receipt of which is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell, and release, unto the Grantee, its Successors and Assigns, forever:

All that certain piece, parcel or lot of land, with improvements thereon, if any, lying, being and situate in the County of Kershaw, State of South Carolina, and identified as Parcel "B", containing 0.86 acres, more or less, on that plat prepared by Robert H. Lackey Surveying, Inc., dated October 12, 2006, recorded in the Office of the Register of Deeds for Kershaw County in Plat Book B-200 at page 9-A. Reference to said plat is craved for accurate metes and bounds description.

The above described property is the same property conveyed to Dan-Sa, Inc. by deed of Charles E. Oman and Janis M. Miami dated December 19, 2007, and recorded in the Office of the Register of Deeds for Kershaw County in Book 2291 at page 130 on December 27, 2007.

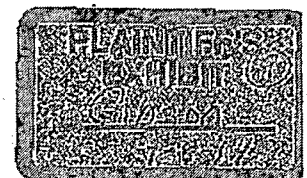
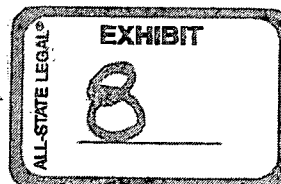
Also conveyed herewith is that certain boat dock and boat slip, including, but not limited to all related appurtenances to the boat dock and boat slip, on the subject property.

TMS# 177-01-06-146

Real Property Street Address: 2834 Lake Road, Ridgeway, SC 29130

Grantee's Address: 20 South Pack Square or P.O. Box 6249
 Asheville, NC 28801 Asheville, NC 28816

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the Premises belonging or in anywise incident or appertaining.



TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the Grantee, its successors and assigns forever.

And the Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the premises unto the Grantee, its successors and assigns against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

This deed is an absolute conveyance of title in effect as well as in form and is not intended as a mortgage, trust conveyance, or security of any kind, with the consideration as recited above. The execution of this conveyance and the recording thereof is not intended to accomplish a merger of the Mortgage in the legal title of the property described herein, which Mortgage shall remain in full force and effect until the Satisfaction of same is recorded. It is the parties intent that the Mortgage shall remain to secure the entire debt evidenced thereby which debt shall not be satisfied until and ended until the filing of this deed with no lien or encumbrance upon the title to the property having been created or existing subsequent to the Mortgage, except for easements and restrictions of record and current year taxes. HOWEVER, should this deed be filed with any encumbrance junior to the Mortgage existing on the property, except for easements, restrictions of record and current year taxes, this conveyance shall not result in any satisfaction of the debt secured by the Mortgage and Grantee shall have the right to foreclose on the Mortgage (naming Grantor as a party thereto with liability under the Note secured by the Mortgage) and to obtain a judgment of foreclosure and sale for the full amount due under the Note secured by the Mortgage, without reduction for the value of the property herein conveyed. In any sale resulting from such action, the Grantor shall be allowed to bid the full amount of the debt secured by the Mortgage without reduction for the value of the property herein conveyed. So long as the property is conveyed to Grantee without any encumbrances

upon the title to the property having been created or existing subsequent to the Mortgage, except for easements and restrictions of record and current year taxes, Blue Ridge Savings Bank, Inc. will Satisfy the Mortgage and will not seek any personal or deficiency judgment against Dan-Sa, Inc. for the debt secured by the mortgage dated December 21, 2007, recorded in Volume 2291 Page 132 in the Kershaw County Register of Deeds on December 27, 2007.

Any reference in this instrument to the singular shall include the plural and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has hereunto set its hands and seals.

Date: October 24, 2008.

Signed, Sealed and Delivered
In the Presence of:

Dan-sa, Inc. a/k/a DAN-SA, INC.

Budget R. Shaupe
Witness #1

By: [Signature]
DAN SA, INC.

[Signature]
Witness #2

Its: President

Dan-sa, Inc. a/k/a DAN-SA, INC.

Budget R. Shaupe
Witness #1

By: [Signature]
SARAH G. GIBSON

[Signature]
Witness #2

Its: V. President

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ACKNOWLEDGMENT

S.C. Code § 30-5-30

I, Joey R. Floyd, the undersigned, a Notary Public for the State of South Carolina, do hereby certify that Danny M. Gibson, Sr. & Sarah Gibson of Dan-Sa, Inc. (name of Grantor), personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 24th day of October, 2008

Joey R. Floyd (SEAL)
Notary Public for South Carolina
My commission expires: 1-21-10

STATE OF CAROLINA

AFFIDAVIT

COUNTY OF KERSHAW

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Deed to property located at 2834 Lake Road, Ridgeway, South Carolina 29130, TMS#177-01-06-146, was executed by Danny M. Gibson, Jr. & Sarah S. Gibson on behalf of Dan-Sa, Inc. to Blue Ridge Savings Bank, Inc. on this 24th day of October, 2008.
2. The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. § 12-24-10 et seq., because the deed is:

Transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings. S.C. Code § 12-24-40(13).

3. I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

Joey R. Floyd
Joey R. Floyd

Date: 10/24/08

BRUNER, POWELL, ROBBINS, WALL
& MULLINS, LLC

1735 St. Julian Place, Suite 200

P.O. Box 61110

Columbia, S.C. 29260

(803) 252-7693

Attorneys for the Plaintiff

Sworn to before me this

24th day of October, 2008.

Budget R. Shaver (L.S.)

Notary Public for South Carolina

My Commission Expires: 5-27-2018



CONTRACT OF SALE RESIDENTIAL

Revised 09/08



[] BUYER [] SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. PARTIES: This Contract of Sale is entered into on 05/31, 20 10 between Buyer(s) Gina Pike (hereinafter called "Buyer"), and Seller(s) Blue Ridge Savings Bank (hereinafter called "Seller").

2. PROPERTY: Seller agrees to sell and Buyer agrees to buy the following real property with improvements and fixtures thereon:
Lot _____ Block _____ Phase _____ Subdivision Lake Wateree
Address: 2834 Lake Road Unit # _____ City Ridgeway Zip 29130
TMS# 177-01-00-146 County of Kershaw, State of South Carolina.

3. PRICE: The purchase price is \$ 380,000 383,000.00 6-1-10

4. EARNEST MONEY:

A. \$ 38,000 Earnest money is paid by Check ☒ Cash () Other ()

B. \$ _____ Additional earnest money to be delivered on or before _____

C. Earnest money to be held in trust by Unlimited Realty, LLC (Escrow Agent).

D. Escrow Agent does not guarantee payment of funds accepted as earnest money. All earnest money received will be deposited as required by South Carolina law and the South Carolina Real Estate Commission's rules and regulations. Buyer agrees to and understands that earnest money may be deposited in an interest-bearing escrow account and that he has the right to ownership of any interest accrued. Buyer, through this written agreement, relinquishes ownership of the accrued interest to Escrow Agent as consideration for the expenses incurred in maintaining the account. Earnest money deposited in an escrow account will not be released to either Party until confirmation is received that funds have cleared the bank. If a dispute arises between Buyer and Seller concerning entitlement to and disposition of an earnest money deposit, the deposit will be retained in Escrow Agent's escrow account until Escrow Agent has obtained a written release signed by Buyer and Seller consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. See S.C. Code, Section 40-57-135 (1976). If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

5. TRANSACTION COSTS: Buyer's Transaction Costs include all closing costs generated by the type of financing selected, pre-paid recurring items, mortgage insurance and discount points. Seller's Transaction Costs include preparation of deed, any recording charge based on value of the Property (deed stamps), all costs necessary to deliver a marketable title (including recording of satisfaction), property taxes pro-rated to the day of closing and the real estate brokerage fee.

Buyer's and Seller's Transaction Costs will be paid as follows: (Select, initial and date only one of the options below)

* A. (Buyer/Date JP / 5/31/10) (Seller/Date MB / 6/1/10) Buyer will provide or pay for all Buyer's Transaction Costs and Seller will provide or pay for all Seller's Transaction Costs as well as pay for Buyer's non-allowable costs if the financing type selected in Paragraph 6(A) is either VA or FHA.

OR

B. (Buyer/Date _____) (Seller/Date 5/31/10) Seller will pay Buyer's Transaction Costs not to exceed \$ _____ which includes non-allowable costs first (for VA or FHA financing) and then allowable costs. Buyer is responsible for any Buyer's Transaction Costs exceeding this amount. If the amount Seller has agreed to pay toward Buyer's Transaction Costs exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all Seller's Transaction Costs.

BUYER

JP
Initials

5-31-10
Date

SELLER

MB
Initials

6/1/10
Date



6. **FINANCING:** Buyer's obligation under this Contract is () is not (X) contingent on Buyer obtaining financing. All financing contingencies herein automatically expire five (5) Business Days prior to the closing date set forth in Paragraph 7 and this Contract will become non-contingent on financing unless otherwise agreed to in writing. If Buyer subsequently fails to close because of the inability to obtain financing, the Buyer will be in default of this Contract. See Paragraph 21.

A. **FINANCING TYPE.** Financing type will be: Lender-provided Conventional (); FHA (); VA (); Seller-provided (); Cash (no financing required) (X); Other _____

Note: If Buyer utilizes FHA or VA financing, an FHA/VA Addendum signed by Buyer and Seller must accompany this Contract. Utilizing FHA or VA financing will require Seller to pay for certain loan-related closing costs termed "non-allowable costs". VA financing will additionally require Seller to pay for the cost of conducting the VA-required termite (CL-100) inspection.

B. **APPLICATION FOR FINANCING.** If Lender financing is being used, Buyer will have five (5) Business Days from the date of Contract acceptance to apply for financing from Lender of their choice. Application will include advancement of any funds required by Lender and providing Lender's identity to Seller or Seller's Broker. Buyer will also furnish Lender all documentation required for the processing of this loan in a diligent and timely manner.

1. Should Buyer fail to apply for the loan within five (5) Business Days, Buyer will be in default of this Contract and Seller will have the option of voiding this Contract with earnest money being released to Seller. Should the loan be denied while subject to a financing contingency, Contract will be voided and earnest money will be released to Buyer. See Paragraph 4(D).

2. If Buyer elects to make any material change to their financial condition after Contract acceptance that negatively affects their ability to close the transaction, Buyer will be in default and earnest money will be released to Seller. See Paragraph 4(D).

3. Buyer gives permission to Lender to disclose any allowable pertinent information concerning Buyer's loan to any attorney representing Buyer or Seller and to the Buyer's and Seller's Brokers.

C. **SELLER FINANCING.** If Seller financing is included in the financing of this Property, Buyer's and Seller's Brokers make no representations as to the creditworthiness of Buyer and suggest that Seller determine whether Buyer's credit is satisfactory. The terms of Seller financing should be noted in Paragraph 18 of this Contract or in a separate Addendum to this Contract.

D. **CASH TRANSACTION.** In a cash transaction, Buyer agrees to provide Seller or Seller's Broker, within five (5) Business Days of acceptance of this Contract, written verification of availability of funds from the source(s) of those funds. If Buyer fails to comply with the above requirement, then Seller will have the option of voiding this Contract and earnest money will be released to Seller. See Paragraph 4(D).

E. **APPRAISAL CONTINGENCY.** This Contract is (X) is not () contingent on lot or parcel with building and improvements thereon, if any, appraising according to Lender's appraisal, or other appraisal as agreed by Buyer and Seller for non-Lender financed transactions, for the selling price or more. If contingent, and lot or parcel with building and improvements thereon appraises for less than the selling price, the Buyer will have 24 hours after notification of the results of the appraisal to proceed with the consummation of this sale without regard to the appraised value or attempt to renegotiate this Contract. If the Parties are unable to reach agreement within the prescribed time frame then either party can terminate this Contract by providing written notification to the other. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D).

F. **SELLER'S MORTGAGE PAYOFF:** (Seller/Date 6/1/10 / Date) Seller gives permission to Closing Attorney to obtain Seller's mortgage payoff information.

7. **CONVEYANCE DATE OF CLOSING/POSSESSION:** (Buyer and Seller to initial and date Paragraph 7A). Conveyance will be made subject to all easements and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a general warranty deed, if applicable, free of encumbrances, except as herein stated. The deed will be prepared in the name(s) of Junaid Pire or as otherwise stipulated by Buyer, and delivered to stipulated place of closing. The deed will be held in trust by the Closing Attorney until sales proceeds have been disbursed to Seller, at which time the Closing Attorney shall be authorized to record the deed. This transaction will be closed on or before June 17, 2010, unless extended pursuant to Paragraph 7(B) or by mutual agreement.

A. (Buyer/Date 6/1/10 / Seller/Date 6/1/10 / Date) Seller will be obligated to vacate and give possession of the Property (free of debris and in a clean condition) to Buyer: at closing (X) 24 hours after closing () 48 hours after closing () or in accordance with attached agreement ().

BUYER [Signature] 6/1/10
 Initials Date

SELLER [Signature] 6/1/10
 Initials Date

B. If Buyer has provided written loan commitment without additional conditions, or in a cash transaction Buyer has met the terms and conditions of Paragraph 6(D), but has not closed within the stipulated time limit of this Contract, both Parties agree to extend this Contract for a period not to exceed five (5) Business Days from the original closing date.

8. RIGHT OF BUYER TO INSPECT/RE-INSPECT PROPERTY: Buyer, or Inspectors selected by Buyer at Buyer's expense, will have the right to enter Property to inspect, examine and test the Property. For the purposes of this Contract, the term "Inspector" will mean a person or company, licensed or certified where required by law, with specific, professional expertise or knowledge in property inspections, or in an item, building product or condition contained therein for which the Inspector is inspecting, examining or testing. Seller will make the Property available for all inspections and will have all utilities operational for the inspections, any re-inspections, appraisals and final walk through. Seller agrees to allow Buyer, or Inspectors selected by Buyer, the right to re-inspect the Property to determine if agreed upon repairs and/or replacements have been made. Buyer will also be allowed to perform a walk-through prior to closing to confirm that the Property has been maintained in compliance with Paragraph 11, if applicable, and that any personal Property to be transferred or conveyed is on the premises. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages arising out of, or related to, the exercise of these rights and will repair any damages resulting from same.

9. PROPERTY SOLD SUBJECT TO DUE DILIGENCE PERIOD: (If Property being sold "As-Is" proceed to Paragraph 10 - PROPERTY SOLD "AS-IS")

A. DUE DILIGENCE PERIOD INSPECTIONS: Buyer will have a ten (10) Business Day Due Diligence Period beginning at time of final Contract acceptance, as defined in Paragraph 29(B), to conduct, at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. This will include, but is not limited to, conducting a risk assessment/test for lead-based paint and lead-based paint hazards, testing for environmental hazards, inspecting the heating and air (HVAC) system and inspecting for active infestations of and/or damage from termites, other wood destroying organisms, fungi and for any drainage problems (CL-100 inspection). [Note: If Buyer utilizes VA financing Seller will be required to pay for the cost of conducting the VA-required termite (CL-100) inspection.] Any re-inspections that may be required will also be at Buyer's expense. If this Contract is contingent on the sale and closing of Buyer's Property, then the Due Diligence Period will begin on the date Seller or Seller's Broker receives written notification that this contingency is removed.

B. DUE DILIGENCE PERIOD EXTENSION: Notwithstanding other provisions to the contrary, in the event an inspector, in a written report provided to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, recommends any additional study, inspection or evaluation of any product, item or condition in the Property, or the results of any tests conducted cannot be completed or produced prior to the expiration of the Due Diligence Period, then the Due Diligence Period may be extended by mutual agreement of Buyer and Seller through a written Addendum to this Contract. If Buyer and Seller cannot agree on an extension to the Due Diligence Period, then Buyer may proceed under the terms of Paragraph 9(C) based on available inspection reports or void this Contract and earnest money will be released to Buyer. See Paragraph 4(D).

C. INSPECTION OPTIONS: Buyer will have the following options during the Due Diligence Period:

1. Buyer can accept Property as inspected.

2. If Buyer, in his sole discretion, determines the results of any inspections, examinations or tests conducted to be unsatisfactory, Buyer may terminate this Contract by providing copies of any inspection reports and written notice of termination to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed upon extension to this period and the earnest money will be released to Buyer. See Paragraph 4(D). If Buyer fails to give such notice prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property and Buyer being obligated to proceed with the transaction in accordance with the terms of this Contract.

3. If Buyer requests Seller make repairs and/or replacements to the Property, Buyer must submit complete copies of any inspection reports and an Inspection Repair Addendum, identifying specific defects Buyer wants corrected, to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed extension to this period. If Buyer fails to submit complete copies of these reports and the Addendum to Seller or Seller's Broker prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property, and Buyer will be obligated to proceed with the transaction in accordance with the terms of this Contract. If reports and Addendum are submitted within the Due Diligence Period and any extension, Buyer and Seller will then have five (5) Business Days from Seller's receipt of the Addendum to negotiate the defects to be corrected by Seller, at Seller's expense, and sign the Addendum. If Buyer and Seller have not reached agreement on the Addendum by the end of this negotiation period:

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Date

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Date

- a. Buyer and Seller may mutually agree to extend the negotiating period through written Addendum to this Contract, or;
- b. Buyer will have 24 hours after the end of the negotiation period, or any extension to the period, to accept Property "As-Is" in current state with no repairs or replacements made by Seller by providing written notice to Seller or Seller's Broker, or;
- c. If the negotiating period is not extended and Buyer does not accept Property "As-Is" within the time frame prescribed in the above Paragraph, then either party can terminate this Contract by providing written notice of termination to the other and earnest money will be released to Buyer. See Paragraph 4(D). Seller's failure to respond to the Inspection Repair Addendum within the five (5) Business Day period will be deemed to be a refusal to do repairs/replacements.

D. **FHA/VA APPRAISAL INSPECTIONS:** If Buyer uses FHA or VA financing, the Property may be inspected by an Appraiser appointed by Lender. This inspection is not subject to time limitations or other requirements of the Due Diligence Period outlined above. If Appraiser identifies repairs to be made as a condition of loan approval and Seller elects not to make them, Buyer will have the option of paying for and completing the repairs prior to closing or voiding this Contract, with earnest money being released to Buyer. See Paragraph 4(D).

*** 10. PROPERTY SOLD "AS-IS":** (Terms of Paragraph 9 do not apply) (Select, initial and date only one of the options below)

A. (Buyer/Date 2/15/10) (Seller/Date 1/10/10) **PROPERTY SOLD "AS-IS" WITH DUE DILIGENCE PERIOD**
All Parties agree that Property is being sold "As-Is" with all defects including but not limited to lead-based paint, lead-based paint hazards, environmental hazards, active infestations of and/or damage from termites, other wood destroying organisms or fungi and for any drainage problems (CL-100). Buyer will have the same ten (10) Business Day Due Diligence Period as stipulated in Paragraph 9(A) to have Property inspected, examined and tested to determine its condition. Seller will have no obligation to make any repairs or replacements to the Property identified as a result of inspections. Based on inspection results, Buyer may proceed under the terms of this Contract or void this Contract by providing copies of any inspection reports and written notice of termination to Seller or Seller's Broker, prior to the expiration of the Due Diligence Period, with the earnest money released to Buyer. See Paragraph 4(D). Failure to provide notice of voiding this Contract prior to the expiration of the Due Diligence Period will be deemed Buyer's acceptance of the Property in "As-Is" condition with no Seller repairs or replacements.

OR

B. (Buyer/Date 2/15/10) (Seller/Date 1/10/10) **PROPERTY SOLD "AS-IS" - NO DUE DILIGENCE PERIOD**
All Parties agree that Property is being sold "As-Is". Seller will make no repairs or replacements, and Buyer elects not to have a Due Diligence Period. Buyer retains the right to inspect, examine and test the Property but waives the right to both request repairs and replacements and to void this Contract based on inspection results.

11. CONDITION OF PROPERTY: After any inspections by Buyer and after any repairs or replacements made as a result of any such inspections, Seller agrees to maintain the Property (including lawn, shrubbery, grounds and fixtures, equipment and systems that convey with the Property) and all improvements thereon in similar condition until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the Property which would adversely affect the value when conditions are hidden by furniture, fixtures or window treatments currently in place in the Property.

12. PROPERTY CONDITION DISCLOSURE STATEMENT: (Select, initial and date only one of the options below)

A. (Buyer/Date 2/15/10) (Seller/Date 1/10/10) Buyer and Seller agree that a Residential Property Condition Disclosure Statement, as required by S.C. Code, as amended, Section 27-50-10, et. seq., has been provided to Buyer by Seller prior to the final acceptance of this Contract. If Seller discovers, after his delivery of the Disclosure Statement to Buyer, any material inaccuracy in the Disclosure Statement or the Disclosure Statement is rendered inaccurate, misleading, incomplete or false in a material way by the occurrence of some event or circumstance, Seller will promptly make reasonable repairs needed to eliminate the deficiency and repair the damage caused by the occurrence or correct the inaccuracy by delivering a corrected disclosure statement to Buyer before closing. Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property.

OR

B. (Buyer/Date 2/15/10) (Seller/Date 1/10/10) Buyer and Seller agree that Seller will not complete nor provide a Residential Property Condition Disclosure Statement in accordance with S.C. Code, as amended, Section 27-50-30, Paragraphs (1-13).

13. LEAD-BASED PAINT: Buyer is advised that if this Property was built prior to 1978, it may contain lead-based paint and that a "Disclosure of Information and Acknowledgement Lead-Based and/or Lead-Based Paint Hazards" form is hereby made an Addendum to this Contract and will be signed by both Buyer and Seller and their Agents.

BUYER [Signature] 2/15/10
Initials Date

SELLER [Signature] 6/1/10
Initials Date

14. HOME WARRANTY COVERAGE: Buyer and Seller agree that a home warranty will () will not (✓) be provided at closing. If applicable, the warranty premium will be paid by Buyer () Seller () in an amount not to exceed \$ _____, provided by _____ (home warranty company) and written by the Buyer's Broker () Seller's Broker (). If the price of the warranty at closing exceeds the dollar amount entered in this paragraph, Buyer shall be responsible for the difference at closing. Brokers may receive a fee for issuance of a home warranty.

15. PROPERTY DOCUMENTATION: (Initial and date after reviewing information in Paragraphs 15 A-D)
(Buyer/Date 5/15/10) (Seller/Date 6/1/10) Buyer's and Seller's Brokers strongly recommend Buyer review existing Property documentation to include the most current plat, Covenants and Restrictions, and Seller's Property Condition Disclosure Statement before entering into this Contract. The Buyer's and Seller's Brokers also recommend that prior to closing on this Contract Buyer have a survey of the subject Property made to verify land size/boundary dimensions, measure existing structures to verify square footage, have an examination as to the title to the Property, obtain owner's title insurance and that Buyer obtain appropriate hazard, flood, earthquake and wind/hail damage insurance coverage effective at the time of closing.

A. Seller represents that the Property is:

Connected to - public/community sewer system () septic tank (✓)

Connected to - public/community water system (✓) well system () Other _____

B. Seller represents that to the best of Seller's knowledge, the Property is () is not () partly or entirely located within a designated Special Flood Hazard Area (flood zone). If Seller's response indicates that it is in a flood zone, Buyer understands that it may be necessary to purchase flood insurance in order to obtain a loan. If Seller's response indicates that the Property is not in a flood zone and, subsequent to Contract acceptance, it is determined that permanent improvements to the Property are within a flood zone causing Lender to require Buyer to purchase flood insurance as a condition of loan approval, then Buyer can terminate this Contract. Buyer will have three (3) Business Days after receipt of Notice from Lender to provide written Notice to Seller of the decision to terminate. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D). Buyer's failure to provide written Notice to Seller within the three (3) Business Day period will be deemed Buyer's agreement to purchase flood insurance to close the transaction.

C. Seller represents that the Property is () is not (✓) subject to a special assessment of any governing body, including, but not limited to, a homeowner's association/regime or otherwise. The special assessment fee is \$ _____.

D. Seller represents that the Property is () is not (✓) subject to a mandatory association fee (i.e., homeowner's association/regime or otherwise). If the Property is subject to a mandatory association fee, the fee is \$ _____ per _____ and is payable to _____.

16. ADDITIONAL CONTINGENCIES: (Initial and date either Paragraph A or B if applicable and Paragraph C if other contingencies apply)

A. SALE AND CLOSING CONTINGENCY

(Buyer/Date 5/15/10) (Seller/Date 6/1/10) This Contract is contingent on the sale and closing of the Buyer's Property not later than the closing date agreed to in Paragraph 7 of this Contract. Property is located at the following address: _____ Buyer's failure to disclose the existence of this contingency will constitute a default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

1. Buyer represents that the Buyer's Property identified in Paragraph 16(A) above is () is not () currently listed with a real estate company.

2. As long as this contingency remains in effect, Seller may continue to market Seller's Property and can accept another offer to purchase as a Primary Contract, with this contingency Contract becoming a Back-up Contract upon agreement of both Parties to the Back-up contract. If agreement cannot be reached, this Contract will become null and void and earnest money will be released to Buyer. See Paragraph 4(D).

3. If Buyer does not remove this contingency by the closing date in Paragraph 7, this Contract will automatically become null and void unless both Parties agree to extend the closing date. If Contract is voided, earnest money will be released to Buyer. See Paragraph 4(D).

4. Once Buyer accepts a Contract of Sale on their Property with all contingencies removed or waived (other than financing), with any Due Diligence Period and/or repair negotiations completed, and with a closing occurring prior to the date and time scheduled for the Seller's closing, Buyer will provide written notice of this acceptance to Seller. This Contract will then become contingent on completion of the closing of the sale of Buyer's Property. See Paragraph 16(B) below.

BUYER

Initials

Date

SELLER

Initials

Date

B. CLOSING CONTINGENCY

(Buyer/Date 05/11/10) (Seller/Date initials / Date) This Contract is contingent on completion of the closing of the sale of Buyer's Property, the Contract for which has all contingencies removed or waived (other than financing), with any Due Diligence Period and/or repair negotiations completed, and a closing occurring at a date/time prior to the date/time specified for closing the Seller's property. Buyer's Property is located at _____

1. Buyer to provide documentation of sale of Buyer's Property upon request.

2. Seller may continue to market Seller's Property for sale; however, any offer received will be negotiated as a Back-up Contract.

C. OTHER CONTINGENCIES

(Buyer/Date 05/11/10) (Seller/Date initials / Date) This Contract is contingent on: _____

Deke Power to approve relocation of deck and design.

17. FIXTURES AND PERSONAL PROPERTY: This sale includes all fixtures, equipment and improvements of any kind which now exist and are attached to or planted on the premises such as, but not limited to: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, storage sheds, lawn irrigation system and all related equipment, pool and spa equipment, window and door screens, storm windows and doors, garage door openers and remotes, satellite dishes, Seller-owned security systems, smoke detectors, gas logs, central vacuum system, landscape lighting, curtain/drapery rods, ceiling fans and remotes, attached mirrors, light bulbs, switch plates, heating and air system registers and built-ins, such as equipment, appliances, cabinets, furniture and shelves, unless otherwise agreed herein. Items of personal property other than those above may be sold separately by Bill of Sale.

18. OTHER TERMS: If conflicting with pre-printed portions of this Contract, the following terms will control:

19. ADJUSTMENTS: Real estate taxes, homeowner association/condo fees, and rents when applicable, will be adjusted as of the date of closing. Tax prorrations pursuant to this Contract are to be based on the tax information available and deemed reliable by the Closing Attorney on the date of closing and to be prorated on that basis. Buyer will be responsible for applying for any applicable tax exemptions. Buyer is also responsible for any tax increases due to change in ownership. Unless otherwise agreed, Seller will pay all regular and special homeowner's association assessments and all governmental assessments levied through date of closing and Buyer will pay for those assessments levied after the date of closing.

20. FIRE OR CASUALTY: In case the Property herein is damaged wholly or partially by fire or other casualty prior to delivery of deed, Buyer will have the right for ten (10) Business Days after notice of such damage to terminate this Contract. Upon such termination, earnest money will be released to Buyer and neither party will have any further rights hereunder. See Paragraph 4(D). If Buyer elects not to terminate this Contract or fails to provide timely notice of termination, the Parties will proceed according to its terms.

BUYER

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5-31-10
Date

SELLER

[Signature]
Initials

6/1/10
Date

21. DEFAULT: If Buyer or Seller fails to perform any of the terms of this Contract, the other may elect to seek any remedy provided by law including, but not limited to, attorney fees and actual costs incurred or terminate this Contract with written notice. Actual costs incurred will include all costs and expenses incurred or obligated for by Buyer, Seller or Brokers in an effort to consummate this sale. Such costs will include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, attorney's fees and real estate brokerage fee for this sale. If Contract is terminated, both Parties will execute a written release of the other from this Contract and both will hold Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or a court of competent jurisdiction dictates legal disposition. If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

22. MEDIATION: Buyer and Seller agree to mediate any dispute between them arising out of or relating to this Contract, the breach of this Contract, services provided in relation to this Contract, or any resulting transaction, before resorting to arbitration or court action. Disputes will be submitted to mediation in accordance with the rules and procedures of the dispute resolution system of the National Association of REALTORS®. Disputes will include representations made by Buyer, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreements signed by the Parties pursuant to the mediation conference will be binding. S.C. Code, Ann. Section 15-48-10 et. seq. shall not apply to this Contract.

23. ENTIRE BINDING CONTRACT: The Parties agree that this written Contract expresses the entire agreement between the Parties, that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract will be binding on both Parties, their principals, heirs, personal representatives, successors and assigns as state law permits.

24. NON-RESIDENT TAX: Seller covenants and agrees to comply with the provisions of S.C. Code, Section 12-8-580 (as amended) regarding tax withholding requirements of Sellers who are not residents of South Carolina as defined in said statute.

25. EXPIRATION OF OFFER: This offer from Buyer will be withdrawn at 12 o'clock PM (Eastern Time) on JUNE 2 - 2010 unless accepted or countered by Seller in written form prior to such time.

26. TIME IS OF THE ESSENCE: Time is of the essence with respect to all provisions of this Contract that stipulate a specific period of time for performance. Failure of Buyer or Seller to complete any provision of this Contract within the stipulated period of time for completion of the provision will constitute, where applicable, a default of this Contract.

27. NOTICE AND DELIVERY: Notice means a unilateral communication, including offers, counteroffers and associated Addenda from one Party to this Contract to the other. Notice to a Broker or affiliated Agent representing a Party to this Contract will be deemed to be Notice to that Party. All Notices required under this Contract will be in writing and will be effective as of Delivery. Delivery methods may include hand-carried, sent by professional courier service, by United States mail, or by facsimile (fax) or e-mail transmission. A faxed or e-mailed signature of a Party to this Contract will constitute an original signature binding upon that Party. The Parties agree that Delivery will be deemed to have occurred either on the day and at the time Notice is delivered by hand, by a professional courier service, or by United States mail (return receipt requested) or on the day and at the time Notice is sent by facsimile or e-mail transmission provided written confirmation of receipt is received by deliverer. No Party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.

28. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after closing, it will survive the closing and remain binding upon and for the Parties hereto until fully observed, kept or performed.

29. DEFINITIONS:

A. In this Contract, a single Business Day is defined as a twenty-four (24) hour period, beginning at the time of final acceptance of this Contract, excluding Saturdays, Sundays and Federal legal holidays.

B. Final contract acceptance will occur at the time and date when the Party making the last offer receives written Notice that the offer has been accepted. The Agent representing this Party will fill in the final contract acceptance date and time on the last page of this Contract. If the Party is unrepresented, they will assume responsibility for filling in the required information. All deadlines/timelines set forth in this Contract will begin at time of final Contract acceptance unless otherwise agreed to by Buyer and Seller.

C. In this Contract, closing is defined as the time and date that the Closing Attorney disburses funds.

D. The term Broker is also deemed to include affiliated Agent(s) of the Buyer's and Seller's Brokers.

BUYER

JP
Initials

5-31-10
Date

SELLER

[Signature]
Initials

6/1/10
Date

30. HUD-1 SETTLEMENT STATEMENT RELEASE: Seller and Buyer authorize the Closing Attorney to furnish to Buyer's and Seller's Brokers copies of the HUD-1 Settlement Statement for the transaction.

31. MEGAN'S LAW: Buyer and Seller agree that the Buyer's and Seller's Brokers and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry and that no course of action may be brought against the Buyer's and Seller's Brokers and all affiliated agents for failure to obtain or disclose such information. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information which may be obtained from appropriate law enforcement officials.

32. NON-RELIANCE CLAUSE: Both Buyer and Seller execute this Contract freely and voluntarily without reliance upon any statements, representations, promises or agreements by the Buyer's and Seller's Brokers except as set forth in this Contract. Buyer and Seller acknowledge that the Buyer's and Seller's Brokers are being retained solely as real estate agents and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, mold or air quality expert, home inspector or other professional service provider. Buyer and Seller are legally competent to enter into this Contract and to fully accept responsibility for it. This is a legally binding Contract. Buyer and Seller should seek legal advice prior to entering into this Contract if, after having read it, its contents and provisions are not understood. Both Buyer and Seller acknowledge receipt of a copy of this Contract and acknowledge receiving, reading and understanding South Carolina Real Estate Commission's Agency Disclosure Brochure.

33. DISCLAIMER: Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage listed or unlisted; (3) title to the Property including the existence or absence of easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like; (4) fitness for a particular purpose of the Property or improvements; (5) Property being purchased being in compliance with necessary zoning ordinances and restrictions; (6) projected income, value, or other possible benefits to Buyer.

X *Lin Pike* (U.S.) *Lin Pike* 5-37-10
Buyer's Signature Buyer's Printed or Typed Name Date/Time

____ (U.S.) _____
Buyer's Signature Buyer's Printed or Typed Name Date/Time

BRSB, Inc (U.S.) *Dwayne Wiseman, Pres* 6-1-10 9:15AM
Seller's Signature Seller's Printed or Typed Name Date/Time

____ (U.S.) _____
Seller's Signature Seller's Printed or Typed Name Date/Time

Bob Brown/Unlimited Realty, LLC 803-420-1572
Buyer's Agent/Company acknowledges Buyer is a Client () Customer (X). Agent's Telephone Number

Morris L. Worthington/Lake Waterlee Properties
Seller's Agent/Company acknowledges Seller is a Client () Customer (X). Agent's Telephone Number 803-669-1700

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT _____ O'CLOCK _____ M (ET) ON _____ DATE _____
ACCEPTANCE ENTERED BY _____ AGENT _____

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PREPARED BY:

THE CONNELL LAW FIRM, LLC
20 TOWNLEE LANE, STE. A
LUGOFF, SC 29078
10-125

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COUNTY 421.30
OR Volume 2687 Page 1 - 3

SPACE ABOVE THIS LINE RESERVED FOR RECORDING INFORMATION

THE STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

SPECIAL WARRANTY DEED

Instrument Volume Page
201000004686 OR 2687 1

KNOW ALL MEN BY THESE PRESENTS, that, **BLUE RIDGE SAVINGS BANK, INC.**, herein referred to as the Grantor, for and in consideration of the sum of **Three Hundred Eighty Three Thousand and 00/100 (\$383,000.00)** to the Grantor in hand paid at and before the sealing of these presents by **GINA L. PIKE**, hereinafter referred to as the Grantee, in the State aforesaid, the receipt and sufficiency whereof is hereby acknowledged, subject to all easements and restrictions of record and otherwise affecting the property, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, her heirs, successors and assigns forever in fee simple, the following described property:

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the County of Kershaw, State of South Carolina, being shown and designated as **PARCEL "B"**, containing 0.86 acres, more or less, on a plat prepared for Charles Oman and Janis Niemi by Robert H. Lackey Surveying, Inc., dated October 12, 2006, and recorded in the Office of the Register of Deeds for Kershaw County in Plat Book B-200, at Page 9-A. Reference to said plat is hereby made for a more complete and accurate description thereof. Be all measurements a little more or less.

Also conveyed herewith is that certain boat dock and boat slip, including but not limited to all related appurtenances to the boat dock and boat slip, on the subject property.

This being the same property conveyed to Blue Ridge Savings Bank, Inc., by deed of Dansa, Inc. (in lieu of foreclosure), dated October 24, 2008, recorded October 27, 2008, in Book 2435, at Page 310, Kershaw County Records.

TAX MAP NUMBER: 177-01-06-146

PROPERTY ADDRESS: 2834 LAKE ROAD, RIDGEWAY, SC 29130

GRANTEE'S ADDRESS: 2834 LAKE ROAD, RIDGEWAY, SC 29130

This conveyance is made subject to easements, restrictions, covenants, and conditions of record, including matters shown on recorded plats.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

R. 219



TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, her heirs and assigns forever in fee simple.

AND THE GRANTOR does hereby bind Grantors' successors and assigns to warrant and forever defend all and singular the said premises unto the said Grantee, her heirs and assigns, against the Grantor and the Grantors' successors and assigns and against every person whomsoever lawfully claiming or to claim, the same or any part thereof, to all Grantor's right, title and interest thereto during its period of ownership of this property which was obtained as a result of that certain deed in lieu of foreclosure from Dan-sa, Inc., to Blue Ridge Savings Bank, Inc., recorded October 27, 2008, in Book 2435, at Page 310, in the Office of the Register of Deeds for Kershaw County.

ANY REFERENCE in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

WITNESS My Hand and Seal this 23rd day of June, 2010.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

BLUE RIDGE SAVINGS BANK, INC.

Cindy McMahon

Witness (1)

J. McCall

Witness (2)

[Signature]

(Signature of Officer)

By: Scott Nesbitt

(Print Name of Officer)

Its: Vice President

(Print Title of Officer)

THE STATE OF NORTH CAROLINA)

COUNTY OF Buncombe)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 23rd day of June, 2010, by the Grantor(s), BLUE RIDGE SAVINGS BANK, INC., by Scott Nesbitt, its Vice President.

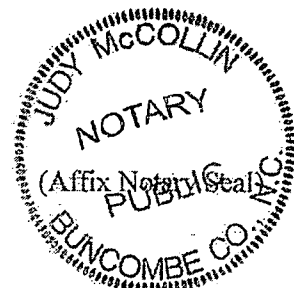
SWORN to before me this 23rd day of June, 2010

J. McCall

(L.S.)

Notary Public for North Carolina

Commission Expires: 10/20/13



STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 2834 LAKE ROAD RIDGEWAY, SC 29130, bearing KERSHAW County Tax Map Number , and was transferred by BLUE RIDGE SAVINGS BANK, INC. to GINA L. PIKE on June, 2010.
3. Check one of the Following: The Deed is
 - (a) XX Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ Exempt from the deed recording fee because (See Information section of this affidavit);

(If exempt, please skip items 4-7, and go on to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) XX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$383,000.00.
- (b) _____ The fee is computed on the fair market value of the realty which is _____.
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No XX to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: N/A.

6. The deed recording fee is computed as follows:

- | | |
|---|---------------------|
| (a) Place the amount listed in item 4 above here: | <u>\$383,000.00</u> |
| (b) Place the amount listed in item 5 above here:
(If no amount is listed, place zero here.) | <u>\$ 0.00</u> |
| (c) Subtract line 6(b) from line 6(a) and place result here: | <u>\$383,000.00</u> |

7. The deed recording fee due is based on the amount listed on line 6(c) above and the deed recording fee due is: \$1,417.10.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: BLUE RIDGE SAVINGS BANK, INC.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

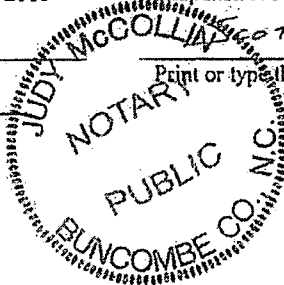
SWORN to before me this 23rd day of June, 2010

Notary Public for North Carolina

My Commission Expires: 10/20/13

Responsible Person Connected with the Transaction

Print or type the above name here





CONTRACT OF SALE RESIDENTIAL

Revised January 2011



THE [] BUYER [] SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. **PARTIES:** This Contract of Sale is entered into on June 29, 2011 between

Buyer(s) Clifford D. Holley, Sharon L. Holley (hereinafter called "Buyer"), and

Seller(s) Gina Pike (hereinafter called "Seller").

Seller represents that this Offer is () is not () subject to approval by a Third Party (i.e. a bank, corporation or relocation company).

2. **PROPERTY:** Seller agrees to sell and Buyer agrees to buy the following real property with improvements and fixtures thereon:

Lot _____ Block _____ Phase _____ Subdivision _____

Address 2234 Lake Road Unit # _____ City Ridgeway Zip 29130

TMS# 177-01-06-146 County of Kershaw State of South Carolina.

3. **PRICE:** The purchase price is \$ 271,000.00 350,000.00 SA CH JP

6-30-11

6-30-11

4. **EARNEST MONEY:**

A. \$ 1,000.00 Earnest money is paid by: Check (X) Cash () Other ()

B. \$ _____ Additional earnest money to be delivered on or before _____

C. Earnest money to be held in trust by Russell & Jeffcoat Real Estate (Escrow Agent).

D. Escrow Agent does not guarantee payment of funds accepted as earnest money. All earnest money received will be deposited as required by South Carolina law and the South Carolina Real Estate Commission's rules and regulations. If earnest money is returned because it is a fraudulent instrument or due to insufficient funds, the Agent holding earnest money will immediately notify the other Agent and Contract may be voided at the Seller's option. Buyer agrees to and understands that earnest money may be deposited in an interest-bearing escrow account and that he has the right to ownership of any interest accrued. Buyer, through this written agreement, relinquishes ownership of the accrued interest to Escrow Agent as consideration for the expenses incurred in maintaining the account. Earnest money deposited in an escrow account will not be released to either Party until confirmation is received that funds have cleared the bank. If a dispute arises between Buyer and Seller concerning entitlement to and disposition of an earnest money deposit, the deposit will be retained in Escrow Agent's escrow account until Escrow Agent has obtained a written release signed by Buyer and Seller consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. See S.C. Code, Section 40-57-135 (1976). If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

BUYER (SA) 6.29.11
Initials Date

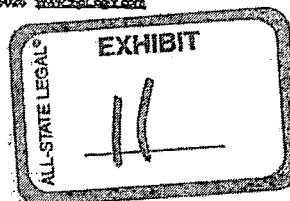
SELLER JP 6-29-2011
Initials Date

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Russell and Jeffcoat - Chapin 539 Columbia Ave Chapin, SC 29036
Phone: 803.345.8300 Fax: 803.345.8790 Andrea St John

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Holley - lake



R. 222

Holley 004

5. TRANSACTION COSTS: Buyer's Transaction Costs include all closing costs generated by the type of financing selected, pre-paid recurring items, mortgage insurance and discount points. Seller's Transaction Costs include preparation of deed, any recording charge based on value of the Property (deed stamps), all costs necessary to deliver a marketable title (including recording of satisfaction), property taxes pro-rated to the day of closing and the real estate brokerage fee.

Buyer's and Seller's Transaction Costs will be paid as follows: (Select, initial and date only one of the options below)

A. BUYER (SA / 6.29.11) SELLER (JP / 6.29.11) Buyer will provide or pay for all Buyer's Transaction Costs and Seller will provide or pay for all Seller's Transaction Costs as well as pay for Buyer's non-allowable costs if the financing type selected in Paragraph 6(A) is either VA or FHA.

OR

B. BUYER (initial / _____) Date: _____ SELLER (initial / _____) Date: _____ Seller will pay Buyer's Transaction Costs not to exceed \$ _____ which includes non-allowable costs first (for VA or FHA financing) and then allowable costs. Buyer is responsible for any Buyer's Transaction Costs exceeding this amount. If the amount Seller has agreed to pay toward Buyer's Transaction Costs exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all Seller's Transaction Costs.

6. FINANCING: Buyer's obligation under this Contract is ☒ is not ☐ contingent on Buyer obtaining financing. Buyer and Seller acknowledge that all financing contingencies herein automatically expire five (5) Business Days prior to the closing date set forth in Paragraph 7 and this Contract will become non-contingent on financing unless otherwise agreed to in writing. If Buyer subsequently fails to close because of the inability to obtain financing, the Buyer will be in default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

BUYER (initial / _____) Date: _____ SELLER (initial / _____) Date: _____

A. FINANCING TYPE. Financing type will be Conventional (☐), FHA (☐), VA (☐), Seller (☐), Cash (no financing required) (☒), Other _____.

Buyer or Buyer's Agent will immediately notify Seller or Seller's Agent if Buyer changes financing type. If the change in financing type modifies the terms of this Contract, then Seller will have the option of agreeing with the change or voiding this Contract. If Seller elects to void the Contract, earnest money will be released to the Buyer. See Paragraph 4(D).

Note: If Buyer utilizes FHA or VA financing, an FHA/VA Addendum signed by Buyer and Seller must accompany this Contract. Utilizing FHA or VA financing will require Seller to pay for certain loan-related closing costs termed "non-allowable costs". VA financing will additionally require Seller to pay for the cost of conducting the VA required termite (CL-100) inspection.

B. APPLICATION FOR FINANCING. If Lender financing is being used, Buyer will have five (5) Business Days from the date of Contract acceptance to apply for financing from Lender of their choice. Application will include advancement of any funds required by Lender and providing Lender's identity to Seller or Seller's Brokers. Buyer will also furnish Lender all documentation required for the processing of this loan in a diligent and timely manner.

1. Should Buyer fail to apply for the loan within five (5) Business Days, Buyer will be in default of this Contract and Seller will have the option of voiding this Contract with earnest money being released to Seller. Should the loan be denied while subject to a financing contingency, Contract will be voided and earnest money will be released to Buyer. See Paragraph 4(D).

2. If loan is rejected by initial lender or subsequent lenders, Buyer or Buyer's Agent must give written notice of each occurrence to the Seller or Seller's Agent immediately, and Seller will then have the option of continuing with or voiding the Contract. If Seller elects to void the Contract, the earnest money will be released to Buyer, provided it is not within (5) business days prior to closing. See Paragraph 4(D).

3. If Buyer elects to make any material change to their financial condition after Contract acceptance that negatively affects their ability to close the transaction, Buyer will be in default and earnest money will be released to Seller. See Paragraph 4(D).

4. Buyer gives permission to Lender to disclose any allowable pertinent information concerning Buyer's loan to any attorney representing Buyer or Seller and to the Buyer's and Seller's Brokers.

BUYER (SA / 6.29.11)
Initial Date

SELLER (JP / 6.29.11)
Initial Date

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Holley - lake

C. SELLER FINANCING. If Seller financing is included in the financing of this Property, Buyer's and Seller's Brokers make no representations as to the creditworthiness of Buyer and suggest that Seller determine whether Buyer's credit is satisfactory. The terms of Seller financing should be noted in Paragraph 18 of this Contract or in a separate Addendum to this Contract.

D. CASH TRANSACTION. In a cash transaction, Buyer agrees to provide Seller or Seller's Broker, within five (5) Business Days of acceptance of this Contract, written verification of availability of funds from the source(s) of those funds. If Buyer fails to comply with the above requirement, then Seller will have the option of voiding this Contract and earnest money will be released to Seller. See Paragraph 4(D).

E. APPRAISAL CONTINGENCY. This Contract is () is not (X) contingent on lot or parcel with building and improvements thereon, if any, appraising according to Lender's appraisal, or other appraisal as agreed by Buyer and Seller for non-Lender financed transactions, for the selling price or more. If contingent, and lot or parcel with building and improvements thereon appraises for less than the selling price, the Buyer will have one business day after notification of the results of the appraisal to proceed with the consummation of this sale without regard to the appraised value or attempt to renegotiate this Contract. If after the one business day period, the Parties are unable to reach agreement on a renegotiated Contract then either party can terminate this Contract by providing written notification to the other. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D).

F. SELLER'S MORTGAGE PAYOFF: Seller gives permission to Closing Attorney to obtain Seller's mortgage payoff information. SELLER (initials/_____) Date _____

7. CONVEYANCE DATE OF CLOSING/POSSESSION: Conveyance will be made subject to all easements and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a general warranty deed, if applicable, free of encumbrances, except as herein stated. The deed will be prepared in the name(s) of Clifford D. Holley & Sharon L. Holley, or as otherwise stipulated by Buyer, and delivered to stipulated place of closing. The deed will be held in trust by the Closing Attorney until sales proceeds have been disbursed to Seller, at which time the Closing Attorney shall be authorized to record the deed. This transaction will be closed on or before July 15, 2011, unless extended pursuant to Paragraph 7(B) or by mutual agreement.

A. BUYER (initials/_____) **SELLER** (initials/_____) 6-29-2011 Seller will be obligated to vacate and give possession of the Property (free of debts and in a clean condition) to Buyer: at closing (X), 24 hours after closing (), 48 hours after closing (), or in accordance with attached agreement ().

B. If Buyer has provided written loan commitment without additional conditions, or in a cash transaction Buyer has met the terms and conditions of Paragraph 6(D), but has not closed within the stipulated time limit of this Contract, both Parties agree to extend this Contract for a period not to exceed five (5) Business Days from the original closing date.

8. RIGHT OF BUYER TO INSPECT/RE-INSPECT PROPERTY: Buyer, or Inspectors selected by Buyer at Buyer's expense, will have the right to enter Property to inspect, examine and test the Property. For the purposes of this Contract, the term "Inspector" is defined as a person or company, licensed or certified where required by law, with specific, professional expertise or knowledge in property inspections, or in an item, building product or condition contained therein for which the Inspector is inspecting, examining or testing. Seller will make the Property available for all inspections and will have all utilities operational for the inspections, any re-inspections, appraisals and final walk through. Seller agrees to allow Buyer, or Inspectors selected by Buyer, the right to re-inspect the Property at Buyer's expense to determine if agreed upon repairs and/or replacements have been made. Buyer will also be allowed to perform a walk-through prior to closing to confirm that the Property has been maintained in compliance with Paragraph 11, if applicable, and that any personal Property to be transferred or conveyed is on the premises. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages arising out of, or related to, the exercise of these rights and will repair any damages resulting from same.

BUYER (initials/_____) 6-29-11
Date

SELLER (initials/_____) 6-29-2011
Date

01/2011
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9. PROPERTY SOLD SUBJECT TO DUE DILIGENCE PERIOD:

(If Property being sold "As-Is" proceed to Paragraph 10 PROPERTY SOLD "AS-IS")

A. DUE DILIGENCE PERIOD INSPECTIONS: Buyer will have a ten (10) Business Day Due Diligence Period beginning at time of final Contract acceptance, as defined in Paragraph 29(B), to conduct, at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. This will include, but is not limited to, conducting a risk assessment/test for lead-based paint and lead-based paint hazards, testing for environmental hazards, inspecting the heating and air (HVAC) system and inspecting for active infestations of and/or damage from termites, other wood destroying organisms, fungi and for any drainage problems (CL-100 inspection). If Buyer utilizes VA financing, Seller will be required to pay for the cost of conducting the VA-required termite (CL-100) inspection. Any re-inspections that may be required will also be at Buyer's expense. If this Contract is contingent on the sale and closing of Buyer's Property (See Paragraph 16A) then the Due Diligence Period will begin on the date Seller or Seller's Broker receives written notification that this contingency is removed.

B. DUE DILIGENCE PERIOD EXTENSION: Notwithstanding other provisions to the contrary, in the event an inspector, in a written report provided to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, recommends any additional study, inspection or evaluation of any product, item or condition in the Property, or the results of any tests conducted cannot be completed or produced prior to the expiration of the Due Diligence Period, then the Due Diligence Period may be extended by mutual agreement of Buyer and Seller through a written Addendum to this Contract. If Buyer and Seller cannot agree on an extension to the Due Diligence Period, then Buyer may proceed under the terms of Paragraph 9(C) based on available inspection reports or void this Contract and earnest money will be released to Buyer. See Paragraph 4(D).

C. INSPECTION OPTIONS: Buyer will have the following options during the Due Diligence Period:

1. Buyer can accept Property as inspected.

2. If Buyer, in his sole discretion, determines for any reason, or as the result of any inspection, examination or test conducted to be unsatisfactory, Buyer may terminate this Contract by providing entire copies of all inspection reports if any and written notice of termination to Sellers or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed upon extension to this period and the earnest money will be released to Buyer. See Paragraph 4(D). If Buyer fails to give such notice prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligations to make any repairs or replacements to the Property and Buyer being obligated to proceed with the transaction in accordance with the terms of this Contract.

3. If Buyer requests Seller make repairs and/or replacements to the Property, Buyer must submit complete copies of any inspection reports and an Inspection Repair Addendum, signed by the Buyer, identifying specific defects Buyer wants corrected, to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed extension to this period. If Buyer fails to submit complete copies of these reports and the Addendum to Seller or Seller's Broker prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property, and Buyer will be obligated to proceed with the transaction in accordance with the terms of this Contract. If reports and Addendum are submitted within the Due Diligence Period and any extension, Buyer and Seller will then have five (5) Business Days from expiration of Due Diligence Period to negotiate the defects to be corrected by Seller, at Seller's expense, and sign the Addendum. If Buyer and Seller have not reached agreement on the Addendum by the end of this negotiation period:

a. Buyer and Seller may mutually agree to extend the negotiating period through written Addendum to this Contract, or;

b. Buyer will have one business day after the end of the negotiation period, or any extension to the period, to accept Property "As-Is" in current state with no repairs or replacements made by Seller by providing written notice to Seller or Seller's Broker, or;

c. If the negotiating period is not extended and Buyer does not accept Property "As-Is" within the time frame prescribed in the above Paragraph, then either party can terminate this Contract by providing written notice of termination to the other and earnest money will be released to Buyer. See Paragraph 4(D). Seller's failure to respond to the Inspection Repair Addendum within the five (5) Business Day period will be deemed to be a refusal to do repairs/replacements.

BUYER (SH, SAH) 6-29-11
Initials Date

SELLER (SP) 6-29-2011
Initials Date

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D. FHA/VA APPRAISAL INSPECTIONS: If Buyer uses FHA or VA financing, the Property may be inspected by an Appraiser appointed by Lender. This inspection is not subject to time limitations or other requirements of the Due Diligence Period outlined above. If Appraiser identifies repairs to be made as a condition of loan approval and Seller elects not to make them, Buyer will have the option of paying for and completing the repairs prior to closing or voiding this Contract, with earnest money being released to Buyer. See Paragraph 4(D).

10. PROPERTY SOLD "AS-IS": (If Selected Terms of Paragraph 9 do not apply) (Select, initial and date only one of the options below)

A. BUYER (initials/_____) **SELLER** (initials/_____) **PROPERTY SOLD "AS-IS" WITH DUE DILIGENCE PERIOD**

All Parties agree that Property is being sold "As-Is" with all defects including, but not limited to, lead-based paint, lead-based paint hazards, environmental hazards, active infestations of and/or damage from termites, other wood destroying organisms or fungi and for any drainage problems (CL-100). Buyer will have a ten (10) Business Day Due Diligence Period as stipulated in Paragraph 9(A) to have Property inspected, examined and tested to determine its condition. Seller will have no obligation to make any repairs or replacements to the Property identified as a result of inspections. Buyer may proceed under the terms of this Contract or void this Contract by providing written notice to Seller or Seller's Broker, prior to the expiration of the Due Diligence Period, with the earnest money released to Buyer. See Paragraph 4(D). Failure to provide notice of voiding this Contract prior to the expiration of the Due Diligence Period will be deemed Buyer's acceptance of the Property in "As-Is" condition with no Seller repairs or replacements.

OR

B. BUYER (initials/_____) **SELLER** (initials/_____) **PROPERTY SOLD "AS-IS" - NO DUE DILIGENCE PERIOD**

All Parties agree that Property is being sold "As-Is", Seller will make no repairs or replacements, and Buyer elects not to have a Due Diligence Period. Buyer retains the right to inspect, examine and test the Property but waives both the right to request repairs or replacements and the right to void this Contract based on inspection results.

11. CONDITION OF PROPERTY: Except for property being sold "As-Is" per terms of Paragraph 10, after any inspections by Buyer and after repairs or replacements, if any, made as a result of any such inspections, Seller agrees to maintain the Property (including but not limited to, lawn, shrubbery, grounds and fixtures, equipment and systems that convey with the Property) and all improvements thereon in similar condition until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the Property which would adversely affect the value when conditions are hidden by furniture, fixtures or window treatments currently in place in the Property.

12. PROPERTY CONDITION DISCLOSURE STATEMENT: (Select, initial and date only one of the options below)

A. BUYER (initials/_____) **SELLER** (initials/_____) Buyer and Seller agree that a Residential Property Condition Disclosure Statement, as required by S.C. Code, as amended, Section 27-50-10, et. seq., has been provided to Buyer by Seller prior to the final acceptance of this Contract. If Seller discovers, after his delivery of the Disclosure Statement to Buyer, any material inaccuracy in the Disclosure Statement or the Disclosure Statement is rendered inaccurate, misleading, incomplete or false in a material way by the occurrence of some event or circumstance, Seller will promptly make reasonable repairs needed to eliminate the deficiency and repair the damage caused by the occurrence or correct the inaccuracy by delivering a corrected disclosure statement to Buyer before closing. Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property.

OR

B. BUYER (initials/_____) **SELLER** (initials/_____) Buyer and Seller agree that Seller will not complete nor provide a Residential Property Condition Disclosure Statement in accordance with S.C. Code, as amended, Section 27-50-30, Paragraphs (1-13).

BUYER (initials/_____) **DATE** 6-29-11

SELLER (initials/_____) **DATE** 6-29-2011

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13. LEAD-BASED PAINT: Buyer is advised that if this Property was built prior to 1978, it may contain lead-based paint and that a "Disclosure of Information and Acknowledgement Lead-Based and/or Lead-Based Paint Hazards" form is hereby made an Addendum to this Contract and will be signed by both Buyer and Seller and their Agents.

14. HOME WARRANTY COVERAGE: Buyer and Seller agree that a home warranty providing at least twelve (12) months of coverage for the Buyer will ☒ will not ☐ be provided at closing. If applicable, the warranty premium will be paid by Buyer ☐ Seller ☒ in the amount of \$ 425.00, provided by HSA (home warranty company) and written by the Buyer's Agent ☒ Seller's Agent ☐. If the price of the warranty exceeds the dollar amount entered in this paragraph, Buyer shall be responsible for the difference at closing.

15. PROPERTY DOCUMENTATION: (Initial and date after reviewing information in Paragraphs 15 A-D)

BUYER (Initials / 6.29.11) SELLER (Initials / 6.29.2011) Buyer's and Seller's Brokers strongly recommend Buyer review existing Property documentation to include the most current plat, Covenants and Restrictions, and Seller's Property Condition Disclosure Statement before entering into this Contract. The Buyer's and Seller's Brokers also recommend that prior to closing on this Contract, Buyer have a survey of the subject Property made to verify land size/boundary dimensions, measure existing structures to verify square footage, have an examination as to the title to the Property, obtain owner's title insurance and the Buyer obtain appropriate hazard, flood, earthquake and wind/hail damage insurance coverage effective at the time of closing.

A. Seller represents that the Property is:

Connected to - public/community sewer system ☐ septic tank ☒.

Connected to - public/community water system ☒ well system ☐ Other _____.

B. Seller represents that to the best of Seller's knowledge, the Property is ☒ is not ☐ partly or entirely located within a designated Special Flood Hazard Area (flood zone). If Seller's response indicates that it is in a flood zone, Buyer understands that it may be necessary to purchase flood insurance in order to obtain a loan. If Seller's response indicates that the Property is not in a flood zone and, subsequent to Contract acceptance, it is determined that permanent improvements to the Property are within a flood zone causing Lender to require Buyer to purchase flood insurance as a condition of loan approval, then Buyer can terminate this Contract. Buyer will have three (3) Business Days after receipt of Notice from Lender to provide written Notice to Seller of the decision to terminate. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D). Buyer's failure to provide written Notice to Seller within the three (3) Business Day period will be deemed Buyer's agreement to purchase flood insurance to close the transaction.

C. Seller represents that the Property is ☐ is not ☒ subject to a special assessment of any governing body, including, but not limited to, a homeowner's association/regime or otherwise. The special assessment fee is \$ _____.

D. Seller represents that the Property is ☐ is not ☒ subject to a mandatory association fee (i.e., homeowner's association/regime or otherwise). If the Property is subject to a mandatory association fee, the fee is \$ _____ per _____, and is payable to _____.

16. ADDITIONAL CONTINGENCIES: (Initial and date either Paragraph A or B if applicable and Paragraph C if other contingencies apply)

A. SALE AND CLOSING CONTINGENCY

BUYER (Initials / 6.29.11) SELLER (Initials / 6.29.2011) This Contract is contingent on the sale and closing of the Buyer's Property not later than the closing date agreed to in Paragraph 7 of this Contract. Property is located at the following address:

Buyer's failure to disclose the existence of this contingency will constitute a default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

BUYER (Initials / 6.29.11)
Initials Date

SELLER (Initials / 6.29.2011)
Initials Date

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1. Buyer represents that the Buyer's Property identified in Paragraph 16(A) above is () is not () currently listed with a real estate company.

2. As long as this contingency remains in effect, Seller may continue to market Seller's Property and can accept a subsequent offer to purchase under the following terms:

a. Any subsequent offer that does not contain a sale and closing contingency may be accepted as a Primary Contract, with this contingent Contract becoming a Back-up Contract upon agreement of Buyer and Seller. If agreement cannot be reached, this contingent Contract will become null and void with earnest money released to Buyer. See Paragraph 4(D).

b. Any subsequent offer that does not contain a sale and closing contingency may only be accepted as a Back-Up Contract.

3. If Buyer does not remove this contingency by the closing date in Paragraph 7, this Contract will become null and void unless both Parties agree to extend the closing date. If Contract is voided, earnest money will be released to Buyer. See Paragraph 4(D).

4. Once Buyer accepts a Contract of Sale on their Property with all contingencies removed or waived (other than financing), with any Due Diligence Period and/or repair negotiations completed, and with a closing occurring prior to the date and time scheduled for this closing, Buyer will provide written notice of this acceptance to Seller. This Contract will then become contingent on completion of the closing of the sale of Buyer's Property. See Paragraph 16(B) below.

B. CLOSING CONTINGENCY

BUYER (Initials /) Date: SELLER (Initials /) Date: This Contract is contingent on completion of the closing of the sale of Buyer's Property. The Contract the Buyer has accepted on his Property must have all contingencies other than financing, removed or waived with any due diligence period and/or repair negotiations completed, on or before _____ . Property is located at _____ .

1. Buyer to provide documentation of sale of Buyer's Property upon request.

2. Seller may continue to market Seller's Property for sale; however, any offer received will be negotiated as a Back-up Contract.

C. OTHER CONTINGENCIES

BUYER (Initials /) Date: SELLER (Initials /) Date: This Contract is contingent on:

17. **FIXTURES AND PERSONAL PROPERTY:** This sale includes all fixtures, equipment and improvements of any kind which now exist and are attached to or planted on the premises such as, but not limited to: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, storage sheds, lawn irrigation system and all related equipment, pool and spa equipment, window and door screens, storm windows and doors, garage door openers and remotes, satellite dishes, Seller-owned security systems, smoke detectors, gas logs, central vacuum system, landscape lighting, curtain/drapery rods, ceiling fans and remotes, attached mirrors, light bulbs, switch plates, heating and air system registers and built-ins, such as equipment, appliances, cabinets, furniture and shelves, unless otherwise agreed herein. Items of personal property other than those above may be sold separately by Bill of Sale.

BUYER (Initials /) Date: 6-29-11

SELLER (Initials /) Date: 6-29-2011

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Holley - Lake

18. OTHER TERMS: If conflicting with pre-printed portions of this Contract, the following terms will control:

Purchaser requests that the existing American Heritage pool table with billiard accessory rack and American Heritage game table and chairs remain at no additional cost.

Seller to have the exterior of house and deck powerwashed 5 days prior to closing

Seller to have the house cleaned prior to closing.

All drapery rods to remain.

A copy of the earnest money check will be provided upon ratification of contract.

Purchaser will provide a proof of funds letter upon ratification of contract.

19. ADJUSTMENTS: Real estate taxes, homeowner association/regime fees, and rents when applicable, will be adjusted as of the date of closing. Tax prorrations pursuant to this Contract are to be based on the tax information available and deemed reliable by the Closing Attorney on the date of closing and to be prorated on that basis. Buyer will be responsible for applying for any applicable tax exemptions. Buyer is also responsible for any tax increases due to change in ownership. Unless otherwise agreed, Seller will pay all regular and special homeowner's association assessments and all governmental assessments levied prior to closing and Buyer will pay for those assessments levied after closing.

20. FIRE OR CASUALTY: In case the Property herein is damaged wholly or partially by fire or other casualty prior to delivery of deed, Buyer will have the right for ten (10) Business Days after notice of such damage to terminate this Contract. Upon such termination, earnest money will be released to Buyer and neither party will have any further rights hereunder. See Paragraph 4(D). If Buyer elects not to terminate this Contract or fails to provide timely Notice of Termination, the Parties will proceed according to its terms.

21. DEFAULT: If Buyer or Seller fails to perform any of the terms of this Contract, the other may elect to seek any remedy provided by law including, but not limited to, attorney fees and actual costs incurred or terminate this Contract with written notice. Actual costs incurred will include all costs and expenses incurred or obligated for by Buyer, Seller or Brokers in an effort to consummate this sale. Such costs will include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, attorney's fees and real estate brokerage fee for this sale. If Contract is terminated, both Parties will execute a written release of the other from this Contract and both will hold Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or a court of competent jurisdiction dictates legal disposition. If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

22. MEDIATION: Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the rules and procedures of the dispute resolution system of the National Association of Realtors. Disputes will include representations made by Buyer, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreements signed by the Parties pursuant to the mediation conference will be binding. S.C. Code, Ann. Section 15-48-10 et. seq. shall not apply to this Contract.

BUYER (W, G, A) 6-29-11
Initials Date

SELLER (JP) 6-29-2011
Initials Date

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Holley - Lake

23. ENTIRE BINDING CONTRACT: The Parties agree that this written Contract expresses the entire agreement between the Parties, that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract will be binding on both Parties, their principals, heirs, personal representatives, successors and assigns as state law permits.

24. NON-RESIDENT TAX: Seller covenants and agrees to comply with the provisions of S.C. Code, Section 12-8-580 (as amended) regarding tax withholding requirements of Sellers who are not residents of South Carolina as defined in said statute.

25. EXPIRATION OF OFFER: This offer from Buyer will be withdrawn at 12 o'clock Evening M. (Eastern Time) on June 30, 2011 unless accepted or countered by Seller in written form prior to such time.

26. TIME IS OF THE ESSENCE: Time is of the essence with respect to all provisions of this Contract that stipulate a specific period of time for performance. Failure of Buyer or Seller to complete any provision of this Contract within the stipulated period of time for completion of the provision will constitute, where applicable, a default of this Contract.

27. NOTICE AND DELIVERY: Notice means a unilateral communication, including offers, counteroffers and associated Addenda from one Party to this Contract to the other. Notice to a Broker or affiliated Agent representing a Party to this Contract will be deemed to be Notice to that Party. All Notices required under this Contract will be in writing and will be effective as of Delivery. Delivery methods may include hand-carried, sent by professional courier service, by United States mail, or by facsimile (fax) or e-mail transmission. A faxed or e-mailed signature of a Party to this Contract will constitute an original signature binding upon that Party. The Parties agree that Delivery will be deemed to have occurred either on the day and at the time Notice is delivered by hand, by a professional courier service, or by United States mail (return receipt requested) or on the day and at the time Notice is sent by facsimile or e-mail transmission provided written confirmation of receipt is received by deliverer. No Party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.

28. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after closing, it will survive the closing and remain binding upon and for the Parties hereto until fully observed, kept or performed.

29. DEFINITIONS:

A. A single Business Day is defined as a twenty-four (24) hour period beginning at 8AM of any week day (Monday through Friday). A Business Day may not begin or end on a Saturday, Sunday or Federal legal holiday. For the purposes of this Contract, the first Business Day will begin at 8AM of the Business Day following final Contract acceptance. All deadlines/timelines set forth in the Contract will begin at 8AM of the first Business Day following the date of final Contract acceptance unless otherwise agreed to by Buyer and Seller.

B. Successful negotiation of this offer will have been completed when one of the Party's to the negotiation places the final, required signatures and/or initials on this offer. Contract acceptance will occur at the date and time when this Party subsequently delivers a copy of this executed document to the other Party. The Party receiving the executed document will be responsible for filling in the final Contract acceptance date and time on the last page of this Contract. If a Party is unrepresented, they will assume responsibility for filling in the required information.

C. In this Contract, closing is defined as the date and time that the Closing Attorney disburses funds.

D. The term Broker is also deemed to include affiliated Agent(s) of the Buyer's and Seller's Brokers.

30. HUD-1 SETTLEMENT STATEMENT RELEASE: Seller and Buyer authorize the Closing Attorney to furnish to Buyer's and Seller's Brokers copies of the HUD-1 Settlement Statement for the transaction.

31. MEGAN'S LAW: Buyer and Seller agree that the Buyer's and Seller's Brokers and all affiliated Agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry and that no course of action may be brought against the Buyer's and Seller's Agents and all affiliated Agents for failure to obtain or disclose such information. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information which may be obtained from appropriate law enforcement officials.

BUYER (SA) 6-29-11
Initials Date

SELLER (SA) 6-29-2011
Initials Date

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Holley - lake

32. NON-RELIANCE CLAUSE: Both Buyer and Seller execute this Contract freely and voluntarily without reliance upon any statements, representations, promises or agreements by the Buyer's and Seller's Brokers except as set forth in this Contract. Buyer and Seller acknowledge that the Buyer's and Seller's Brokers are being retained solely as Real Estate Agents and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, mold or air quality expert, home inspector or other professional service provider. Buyer and Seller are legally competent to enter into this Contract and to fully accept responsibility for it. This is a legally binding Contract. Buyer and Seller should seek legal advice prior to entering into this Contract if, after having read it, its contents and provisions are not understood. Both Buyer and Seller acknowledge receipt of a copy of this Contract and acknowledge receiving, reading and understanding South Carolina Real Estate Commission's Agency Disclosure Brochure.

33. DISCLAIMER: Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage heated or unheated; (3) title to the Property including the existence or absence of easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like; (4) fitness for a particular purpose of the Property or improvements; (5) Property being purchased being in compliance with necessary zoning ordinances and restrictions; (6) projected income, value, or other possible benefits to Buyer.

<u><i>Clifford D. Holley</i></u> (L.S.)	<u>Clifford D. Holley</u>	<u>6.29.11</u>
Buyer's Signature	Buyer's Printed or Typed Name	Date
<u><i>Sharon L. Holley</i></u> (L.S.)	<u>Sharon L. Holley</u>	<u>6.29.11</u>
Buyer's Signature	Buyer's Printed or Typed Name	Date
<u><i>Gina Pike</i></u> (L.S.)	<u>Gina Pike</u>	<u>6-29-2011</u>
Seller's Signature	Seller's Printed or Typed Name	Date
____ (L.S.)	____	____
Seller's Signature	Seller's Printed or Typed Name	Date

Andrea St. John Russell & Jeffcoat Real Estate (803) 606-6185
Buyer's Agent/Company acknowledges Buyer is a Client (☒) Customer (). Agent's Telephone Number

Bob Brown Palmetto Elite Realty, LLC (803) 420-1572
Seller's Agent/Company acknowledges Seller is a Client (☒) Customer (). Agent's Telephone Number

This section is not to be completed until the conditions of paragraph 29B are fulfilled

CONTRACT ACCEPTED BY BOTH PARTIES AT 9:55 O'CLOCK P M (ET) ON 6.30.11 DATE

ACCEPTANCE ENTERED BY *[Signature]* (AGENT)

NOTE: Once the above Contract acceptance date and time are filled in a copy of this Contract should be promptly forwarded to the other Party.

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STATE OF SOUTH CAROLINA

COUNTY OF Kershaw

TITLE TO REAL ESTATE (DEED)

KNOW ALL MEN BY THESE PRESENTS THAT Gina L. Pike (Grantor/s) in the State aforesaid, for and in consideration of Three Hundred Fifty Thousand dollars and Zero cents (\$350,000.00) dollars, to the Grantor herein paid at and before the sealing of these presents by Clifford D. Holley and Sharon L. Holley (Grantee/s), as joint tenants, with the right of survivorship and not as tenants in common, in the state aforesaid, the receipt and sufficiency whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Grantee/s, as joint tenants, with the right of survivorship and not as tenants in common, their heirs, successors, and assigns.

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the County of Kershaw, State of South Carolina, being shown and designated as PARCEL 'B', containing 0.86 acre, more or less, on a plat prepared for Charles Oman and Janis Niemi by Robert H. Lackey Surveying, Inc., dated October 12, 2006 and recorded in the Office of the ROD for Kershaw County in Plat Book B-200 at page 9-A. Reference to said plat is hereby made for a more complete and accurate description thereof. Be all measurements a little more or less.

Also conveyed herewith is that certain boat dock and boat slip, including but not limited to all related appurtenances to the boat dock and boat slip, on the subject property.

This being the same property conveyed to Grantor(s) by deed of Blue Ridge Savings Bank, Inc., recorded 6/25/10 in Book 2687 page 1.

TMS#: 177-01-06-146

Grantee's Mailing Address: 106 Shallow Brook Drive, Columbia, SC 29223

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said Premises belonging, or in anywise incident appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Clifford D. Holley and Sharon L. Holley as hereinabove provided, Grantee/s as joint tenants, with the right of survivorship and not as tenants in common their successors, heirs and assigns, forever.

Grantor/s hereby bind Grantors' successors, heirs, personal representatives and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Clifford D. Holley and Sharon L. Holley, as hereinabove provided, Grantee/s' successors, heirs and assigns against Grantor/s and Grantor/s' successors, heirs and assigns, and all other persons whosoever lawfully claiming, or to claim the same or any part thereof. Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

Recorded this 12th Day
Of July, 2011

Robin H. Watkins,
Kershaw County Auditor

R. 232

201100004412
Filed for Record in
KERSHAW COUNTY SC
BILLIE MCLEOD, REGISTER,
07-12-2011 At 11:11:00 am.
DEED 10.00
STATE 910.00
COUNTY 385.00
OR Volume 2819 Page 298 - 299



WITNESS Grantor/s' hand and seal this 8th day of July, 2011.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
Witness #1

[Signature]
Witness #2

[Signature]
Gina L. Pike Grantor

Grantor

Grantor

Grantor

STATE OF SOUTH CAROLINA

COUNTY OF Richland

)
)
)
)
ACKNOWLEDGMENT

I, Ronald C. Dodson, do hereby certify that Gina L. Pike personally appeared before me this date and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 8th day of July, 2011.

[Signature] [SEAL]

Ronald C. Dodson
Notary Public for South Carolina
My Commission Expires: 3/10/2020

Fax (803) 655-5680

ALL-STATE LEGAL[®]

EXHIBIT

13

Alaglas Pools

165 Sweet Bay Road • St. Matthews, SC 29135

Toll Free (877) 655-7179

Fax (803) 655-5680

BUYER				DATE			
POOL INSTALLATION ADDRESS				COUNTY			
SUBDIVISION		LOT#		MODEL			
MAILING ADDRESS						SALESMAN	
HOME PHONE		WORK PHONE		EMAIL		CELL PHONE	
						OTHER	

Pool and Accessories				POOL AND ACCESSORIES			
Pool Type:		\$		OPTIONAL EQUIPMENT	\$		
Pump Size:		Included		SALES TAX	\$		
Filter Type:	Size:	Included		SUB-TOTAL	\$		
Light Type:		Included		FREIGHT	\$		
1 Skimmer & 2 Return Jets		Included		CONSTRUCTION	\$		
Handrail		Included		CRANE (TO BE CONFIRMED)	\$		
Floating Chlorine Dispenser		Included		PERMIT-FEE	\$		
Telescopic Pole/Manual Vacuum		Included			\$		
Leaf Skimmer/Wall Brush		Included			\$		
Pool Start Up and Demo		Included			\$		
		\$			\$		
POOL AND ACCESSORIES TOTAL			\$	TOTAL PRICE	\$		

Optional Equipment				PAYMENT SCHEDULE			
Auto Chlorinator		\$		40% POOL			
Salt Water Chlorinator		\$		DEPOSIT	\$		
Dedicated Vac Line		\$		50% PAYABLE IN CERTIFIED			
Baracuda		\$		FUNDS UPON POOL ARRIVAL	\$		
Tile Type		\$		10% UPON COMPLETION			
Heater Type		\$		OF CONCRETE	\$		
Cover Type		\$					
Other		\$					
		\$					
		\$					
		\$					
OPTIONAL EQUIPMENT TOTAL			\$	Modifications included by Alaglas Pools 			
Construction to Include (Must Indicate Yes/No)			\$				
Installation, Concrete, Electrical		\$					
Removal of dirt	Estimate	\$					
Rock dust/Sand	Estimate	\$					
		\$					
Construction Additions as Marked			\$				
Electrical Additions		\$					
Extra Concrete		\$					
Cantilever Deck		\$					
Stamping		\$					
Cool Deck		\$					
		\$					
		\$					
		\$					
		\$					
ALL ABOVE CONSTRUCTION ADDITIONS WITH AN "X"			\$				
IN THE APPROPRIATE BOX INDICATES ITEMS TO BE			\$				
INCLUDED OR EXCLUDED FROM THIS AGREEMENT.			\$				
ITEMS NOT MARKED ARE EXCLUDED.			\$				
		\$					
CONSTRUCTION TOTAL			\$				

All checks must be payable to Alaglas Pools or warranty will be voided.

FOB Point of Origin

Alaglas Pools Not Valid Unless Signed and Accepted by an officer of the Company		I, OR WE, ACKNOWLEDGE RECEIPT OF A COPY OF THIS ORDER AND THAT I, OR WE, HAVE READ THE BACK OF THIS AGREEMENT.	
By _____	Approved _____	SIGNED X _____	BUYER
Date _____		Date _____	

WHITE - ORIGINAL / CANARY - CUSTOMER COPY / PINK - FILE COPY / GOLD - FACTORY

NOTICE
You are entitled to a copy of this Agreement at the time you sign it. You may cancel this Agreement any time prior to midnight of the third business day after the date of this transaction.

GENERAL TERMS AND CONDITIONS

PLANS AND SPECIFICATIONS

Aleghis Pools is an operating division of The Blakeson Corporation doing business as Aleghis Pools. All references to the "Buyer" shall mean the purchaser of product and/or services contained in this Agreement. All references to "Contractor" shall refer to Aleghis Pools and/or its authorized representative. The brochures, plans and specifications provided to the Buyer form part of this Agreement. In case of conflict between information contained in such brochures, plans and specifications and the terms within the Agreement, the terms of the Agreement shall prevail. All measurements as provided in plans, specifications, and literature are approximate and may vary within reasonable tolerances not to exceed plus or minus 5%. This Agreement and signed Addendum(s) constitute the full agreement between the Buyer and Contractor, neither being bound by any statements, representations, or oral expressions by any agent or person(s) purporting to act on behalf of the Buyer or Contractor.

BUYER RESPONSIBILITY

The swimming pool, equipment, accessories and utilities shall be installed upon the land and in the location upon such land designated by the Buyer and as approved by the Contractor. Even though Contractor may assist Buyer in locating the pool, equipment, accessories and utilities, Buyer warrants that Buyer is familiar with the location of the property lines and that the pool site herein agreed upon is within said property lines. The property lines used to locate the pool will be the fence line and if no fence exists the property line in the plat plan will be used. However, the Buyer shall have complete responsibility for the accurate determination of the property line and shall have complete responsibility for, and pay all costs required in obtaining all necessary zoning variances, easements, waivers, or associated permits. Buyer covenants and agrees to indemnify and save harmless Contractor from any lawsuit, action, or claim of Buyer or any third person, firm or corporation for the location of said pool by Contractor in the place designated by Buyer. Even though the Contractor may assist the Buyer in locating utility lines, the Buyer is responsible for any costs in connection with the location of underground utilities incurred either as a result of Contractor's efforts or efforts of approved third parties such as public utilities. Buyer shall provide Contractor with all necessary and required access to the site and will ensure site is free of debris or obstacles prior to the start of work. Buyer agrees to pay Contractor all additional costs incurred as a result of Buyer's failure to so provide. The Buyer shall be responsible for the protection of all trees, shrubs, or other plants which Buyer desires to save that occupy space to be used in the installation of the swimming pool or necessary in providing fire and open site access to Contractor in the installation of the swimming pool. In the event Buyer authorizes access through adjacent properties for Contractor's use during construction, Buyer is required to obtain permission from the owner(s) of the adjacent properties for such use, and Buyer agrees to be responsible and accept any risks thereof, holding Contractor harmless for all damages. It shall be the responsibility of the Buyer to furnish water, power, or other utility(s) necessary to install the pool. Buyer is responsible for ensuring compliance with any and all local and federal regulations, laws, and restrictions concerning swimming pools. Buyer assumes all responsibility, including all costs, for the installation of electrical service and/or circuit(s) to upgrade, relocate, and/or replace existing electrical service fixture and panel if required in Buyer's electrical panel box to meet local codes and the removal and replacement of overhead wires to comply with existing codes. It is the Buyer's responsibility to have all utility lines (power, telephone, cable, gas, etc.) marked prior to the date of installation. Buyer agrees to assume all liability for any subsequent damage to driveway(s), walks, curbs, shrubs, lawns, sprinkler systems, patio, underground lines, fences, or lawn, to include the re-routing of irrigation system and all other items not within the control of the Contractor. All pool equipment, accessories or appliances subject to this Agreement delivered to the job site are the Buyer's property and are Buyer's responsibility if removed or stolen. This Agreement does not provide for fencing or the installation of well points or other non-standard construction requirements unless expressly provided for through a signed Addendum(s). Buyer shall comply with all laws pertaining to those subjects at Buyer's expense.

SOIL CONDITION

Agreement price is based on the following mutual assumptions of fact and is hereby mutually agreed that in the event the Contractor, in excavating the location of the swimming pool, shall encounter unusual conditions, including but not limited to the following: caliche, subterranean water, flotation of pool due to external water, granite, or other like and unusual sub-surface conditions, mass concrete, unusually large boulders or the like, or shall be required to move piping, septic tanks, or the like, or that said location should consist of low density fill soil of inadequate bearing capacity or shall contain underground electrical conduit or other obstructions not apparent from an inspection on the surface, or if blasting or jackhammer work or ripper-tooth construction, or other than normal excavating equipment is used or required, or if underground or surface work conditions will interfere with the work or operation of decking, all of which is Buyer's responsibility. The Buyer will be responsible for additional charges if the aforementioned conditions are encountered and must be corrected. An additional charge will be rendered to the Buyer as agreed to in a signed Addendum(s) to the Agreement, if the Contractor is requested to remove trees, stumps, rocks or other unforeseen objects including, but not limited to underground cables, septic tanks, water lines, sewer lines, electrical lines, etc. If during the course of the installation process any unforeseen objects are encountered, the Contractor will immediately inform the Buyer if there will be an additional charge and if so, the Buyer shall authorize the additional work through a signed Addendum(s) to the Agreement. The Buyer will have the option of approving or disapproving the additional charge. If disapproved, the Contractor will terminate the installation and the Buyer will be billed for all work performed to date at the rate of \$150.00 per hour. All excess soil will be left on site unless otherwise specified in writing by Buyer and as stipulated prior to the beginning of the construction process. Buyer agrees to assume all responsibility for removal/disposal of soil incident to this request. No grading will be done unless specified in Agreement. Contractor is not responsible for any soil erosion or pool movement subsequent to the installation of the pool due to an improper or delayed installation of proper decking and/or for reasons outside Contractor's control. Contractor is not responsible for cracking of concrete, including cracking due to ground movement or shifting, pool settlement, retaining walls built without proper drainage, or problems with soil contraction. Contractor is not responsible for the color of the concrete as it is provided by the concrete manufacturing companies.

DELAY

Contractor agrees to install the pool in a reasonably diligent manner, but Contractor shall not be responsible for delay or damages caused by failure to perform work or furnish materials or equipment due to acts of God, conditions created by the threat of or imminent weather, war, riot, or other civil disturbances, strike, government prohibition, delays caused by Buyer, non-issuance of all required permits affecting the pool, availability of construction material, or other reasons beyond Contractor's control. Due to rapid changes in the cost of labor and raw materials, the price quoted in this Agreement, or Addendum(s) therein are valid for only sixty (60) days from the date of the signed Agreement/Addendum(s). If the excavation of the pool is not started within sixty (60) days from the date of the signed Agreement or any other phase is postponed for more than thirty (30) days beyond any previous construction phase, Buyer agrees that any increase in cost of construction will increase the Agreement price to the extent of the additional cost of labor and materials as a result of the Buyer, Buyer's agent, or home builder delaying the excavation or any other phase of construction.

WORK CHANGES

Contractor assumes no responsibility or liability for work performed by the Buyer, equipment, or materials supplied by the Buyer, any sub-contractor or third party for work relating to the installation of the swimming pool or damages to the swimming pool resulting from work performed by the Buyer, equipment or materials supplied by the Buyer, sub-contractor or third party, even though the Contractor or his agents may have recommended to Buyer said equipment, materials, subcontractor, or third party.

PAYMENTS

Buyer is solely responsible for any financing. While the Contractor may assist the Buyer in obtaining financing, financing arrangements as may be required by the Buyer do not constitute a condition of this Agreement. If progressive payments are required by this Agreement, time is of the essence. Should any payments become delinquent, the entire balance remaining owed on the Agreement will be declared immediately due and payable at the option of the Contractor. In the event any of the payments required hereunder are not paid in accordance with the requirements of this Agreement, a service charge of 1 1/2 % per month (18% corresponding annual percentage rate) will be applied from the date such payment becomes due.

ATTORNEY'S FEES

After execution of the Agreement and conditioned upon the three day acceptance terms of the Agreement and prior to construction excavation, Buyer agrees to pay a stipulated sum for damages in the amount of \$1000.00 in the event of cancellation by the Buyer to be deducted from Buyer's initial deposit payment. Buyer also agrees that in the event of breach or cancellation by Buyer after excavation, Buyer shall be responsible for all job costs and construction profits. In the event that any action or proceeding shall be brought by the Buyer for the purpose of determining or enforcing Buyer's rights under this Agreement, and in the event that the Contractor shall prevail in such action or proceeding, Contractor shall be entitled to recover from Buyer all costs and expenses incurred by Contractor in defending such action or proceeding, including reasonable attorney fees and expenses. In the event Contractor shall be required to employ an attorney to enforce collection of any payment required to be made by Buyer to Contractor under this agreement, Buyer agrees to pay to Contractor attorney's fees whether or not legal action was instituted or the claim was reduced to judgment. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of South Carolina, without regard to any conflicts of law rules otherwise applicable under any state's law. Any action brought against Contractor to determine rights under this Agreement or in any way relating to the manufacture, sale, operation or installation of the product and/or services contained in this Agreement shall be brought in a State or Magistrate Court sitting in the County of Columbia, State of South Carolina. In the event payments herein specified are not paid, Contractor may discontinue work until entire remaining balance of Agreement has been paid prior to the completion of the remaining work. Contractor is not bound by any verbal statements or representations made or which may be made by any salesman, employee, representative or person purporting to act for or on behalf of the Contractor.

GENERAL

This Agreement is not binding upon Contractor unless and until it is accepted by an authorized officer thereof. Copies do not require written acceptance. This Agreement shall be binding upon and inure to the benefit of the executor, administrators, assigns and legal successors of the Buyer and Contractor. Should any part of this Agreement be declared invalid for any reason, such decision shall not affect the validity of any remaining portions of the Agreement and shall remain in full force and effect as if the invalid portion had been eliminated. Requests for any changes or additions to this Agreement desired by the Buyer shall be made in writing as a signed Addendum(s) to the Agreement, mutually agreed to, signed by both Buyer and Contractor and shall become part of this Agreement. All sums for changes or additions shall be due and payable as the work progresses, concurrently with the other progress payments and Contractor shall have the right to stop work and keep the job idle if payments are not made when due. Buyer agrees to allow Contractor to place its Aleghis Pools sign in Buyer's front yard. Buyer shall pre-pay all transportation charges. When pool start-up is completed, and all remaining account balances are fully paid, this Agreement shall have been completed. Contractor's warranty is on the swimming pool shell only as per the Aleghis Limited Lifetime Warranty Terms. All associated non-swimming pool shell equipment, accessories and other equipment are warranted through their respective manufacturer. Contractor reserves the right to terminate this Agreement for any reason. NEVER drain your pool. To keep warranty valid, written authorization from the Contractor must be obtained before draining pool. Contractor does not warrant and in no way shall be liable, and Buyer agrees to be responsible for work performed which is not included in this Agreement.

BP151

Neil

From: Freeman Belser [Freeman@belserpa.com]
Sent: Thursday, July 10, 2014 2:42 PM
To: Neil
Subject: RE: Phone Call
Attachments: Oman, Niemi photo.pdf

Neil:

Attached is a photograph of what the lot looked like when the builder purchased it. The footings had been installed several months earlier and the county inspector had approved them. The retaining walls and the fill dirt was put in later by someone else, maybe the property owner. The builder did not investigate or inspect the work that had been performed because of the county "ok" of the footings. He just built on top. We are still trying to figure out who else worked on the site before the builder took over the construction.

Thanks,

Freeman

H. Freeman Belser, Esquire
BELSER & BELSER, P.A.
1901 Main Street, Suite 1550 (29201)
Post Office Box 96
Columbia, SC 29202
phone: (803) 929-0096
fax: (803) 929-0196

From: Neil [mailto:nbaer@summitengr.com]
Sent: Tuesday, July 01, 2014 11:28 AM
To: Freeman Belser
Subject: RE: Phone Call

Freeman

The builder should have noticed that the house was located on fill, which was likely composed of compressible soil, and should have had soil tests performed unless documentation was given to him showing that satisfactory soil tests had previously been performed.

See attached code R401.4 from the 2006 International Residential Code. The same requirements are listed in the 2003 IRC.

Neil

From: Freeman Belser [mailto:Freeman@belserpa.com]
Sent: Monday, June 30, 2014 6:17 PM
To: Neil Baer
Subject: RE: Phone Call

Great. I'll call you tomorrow at 11 AM.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2013-CP-28-0250

Clifford D. Holley and Sharon Holley, Appellants,

v.

Dan-Sa, Inc.; Charles E. Oman; Janis M. Niemi;
Gina L. Pike; Dermac Contractors, LLC; Bluewater
Development of South Carolina, LLC, and Blue
Ridge Savings Bank, Inc., Defendants,

Of whom Charles E. Oman and Janis M. Niemi are the Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 29, 2015



William C. Dillard, Jr.
Post Office Box 96
Columbia, South Carolina 29202
(803) 929-0096
Attorney for Appellants

R. 238

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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OCT 19 2015

APPEAL FROM KERSHAW COUNTY
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Clifford D. Holley and Sharon Holley, Appellants,
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Gina L. Pike; Dermac Contractors, LLC; Bluewater
Development of South Carolina, LLC, and Blue
Ridge Savings Bank, Inc., Defendants,

Of whom Charles E. Oman and Janis M. Niemi are the Respondents.

PROOF OF SERVICE

I certify that I have served the *Final Brief of Appellants*, *Final Reply Brief of Appellants*, and Rule 211 *Certificates of Counsel* on Respondents by United States First Class Mail to their attorneys of record, Catharine Garbee Griffin, Esquire and Alina Dudau, Esquire, at 3710 Landmark Drive, Suite 400, Columbia, South Carolina 29204.

October 19, 2015

William C. Dillard

William C. Dillard, Jr.
Post Office Box 96
Columbia, South Carolina 29202
(803) 929-0096
Attorney for Appellants